

Proposed development: Full Planning Application (Retrospective) for Regularisation of door and retractable canopy to side elevation

Site address:

**Cin Cin
1A Church Bank Street
Darwen
BB3 3HA**

Applicant: Mr Dominic Holmes

Ward: Darwen East

**Councillors: Jane Oates
Paul Browne
Roy Davies**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – subject to the conditions detailed within section 4.1 of this report

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1.1 This application is before the Committee due to the public interest in the case, including the receipt of 3 letters of objection, in accordance with the Chair Referral Process as part of the Scheme of Delegation.

2.1.2 The retrospective development assimilates appropriately with the host building and would amount to less than substantial harm to the Darwen Town Centre conservation area within which the premises is positioned. The proposal is also consistent with economic and environmental objectives of sustaining viable town centres with regard to the protection and expansion of the leisure offer and development of an evening economy.

2.1.3 Accordingly, the proposal is consistent with the Borough's overarching growth strategy. It is also satisfactory from a technical point of view, with all issues having been addressed through the application, or capable of being controlled or mitigated through planning conditions.

3.0 RATIONALE

3.1 Site and Surroundings

3.1.1 The application site is located off Church Bank Street in the centre of the Darwen Town Centre Conservation Area, which was originally designated in 1996 and extended in 2005. The character of the area is principally made-up of commercial properties; primarily retail and leisure with shops, pubs, bars and restaurants. Towards the eastern end of Church Street is St. Peter's Church and beyond that at the eastern and northern edge of the conservation area the character changes and becomes largely domestic with stone fronted terraced houses laid out in a recognisable grid pattern.

3.1.2 1A Church Bank Street is a two-storey, stone constructed property dating from the late C19. The property is in use as a drinking establishment. The principle elevation fronts Church Bank Street and incorporates the main entrance and bi-folding doors at ground level and a large window detail with patio doors and glass balustrade detail at first floor. The existing openings are framed in anthracite coloured, powder coated aluminium. The exposed side elevation is faced with coloured render and has three windows at first floor level and a door at ground floor level that provides access for staff to the rear of the bar.

3.2 Proposed Development

- 3.2.1 Retrospective planning permission is sought for the erection of a retractable canopy and the insertion of a new glazed door to the side elevation. The door is constructed with anthracite powder coated frame to match the other openings within the building.



3.3 Development Plan

- 3.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise.

- 3.3.2 The Development Plan comprises the Core Strategy and adopted Local Plan Part 2 – Site Allocations and Development Management Policies. In determining the current proposal the following are considered to be the most relevant policies:

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy
- CS16 – Form and Design of New Development
- CS17 – Built and Cultural Heritage

3.3.4 Local Plan Part 2

- Policy 8 – Development and People
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 39 – Heritage

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework)- 2019

- Section 2: Achieving sustainable development
- Section 6: Building a strong, competitive economy
- Section 7: Ensuring the vitality of town centres
- Section 12: Achieving well-designed places
- Section 16: Conserving and enhancing the historic environment

3.4.2 Darwen Town Centre Conservation Area Appraisal

3.5 Assessment

3.5.1 In assessing this full application there are a number of important material considerations that need to be taken into account, as follows:

- Principle of the development
- Amenity impacts
- Design impacts
- Heritage impacts
- Highway impacts

3.5.2 Principle

As a site located within the Inner Urban Area of Darwen and Darwen Town Centre, designated as a Primary Shopping Area, the proposal is consistent with the Policies CS1 and CS16 of the Development Plan which state that the urban area is the preferred location for new development.

3.5.3 Policy 26 supports development involving main town centres uses within the town centres. Restaurants and cafes are defined as such in the Development Plan Glossary, which is consistent with the definitions offered for such uses in The Framework. Furthermore, Policy 26 supports protection and expansion of the leisure offer within town centres and development of an evening economy, including restaurants and cafes.

3.5.4 Accordingly, given the proposals are intended to support the existing authorised commercial use of the building, the principle of the development is supported, in accordance with policies CS1, 1 and 26 of the Development

Plan. It is also consistent with The Framework's economic and environmental objectives of sustaining viable town centres.

3.5.5 Amenity

Policy 8 requires a satisfactory level of amenity and safety is secured for surrounding uses and for occupants or users of the development itself; with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.

3.5.6 The proposal poses no undue concerns with reference to privacy / overlooking or relationship between buildings.

3.5.7 The most significant element for Members to consider relates to the insertion of the new door opening within the side wall of the building and the potentially adverse impact of this upon the amenity of surrounding commercial and residential uses due to noise.

3.5.8 Objections to the scheme are set out in full within section 9 of this report. They originate from both commercial and residential premises and principally raise concerns with noise/music emanating from the building due to the side door being left open.

3.5.9 The Council's Head of Public Protection has appraised the application and advised that the main consideration is the potential for noise emanating from the new door opening to conflict with the amenity of surrounding uses that include residential properties. It is advised that;

"The music noise level needs to be controlled to minimise loss of amenity at premises in the locality. The approved opening hours extend to 02:00 hours at the weekends when local residents can be expected to be sleeping. The Cin Cin is a small bar which restricts the practicability of noise control measures that would normally be considered, most notably sound proofed double doors at entrance/exit doorways to contain noise within the bar. I understand that the additional door, which is the subject of this application, has been installed to facilitate a one-way system within this small bar to assist with customer distancing essential for Covid secure business operation. I recommend that the music noise level in the bar is restricted to a background level to ensure that amenity is preserved in the locality."

3.5.10 Two planning conditions have been suggested by the Public Protection team in order to preserve the amenity of surrounding uses and to directly address concerns set out within the public objections;

- The door must be kept closed except when in use to enter/exit the bar. It must be fitted with a suitable door closer device to ensure that it closes promptly after use.

- Music played at the ground floor bar shall be restricted to background levels and must not exceed 60dB LAeq (1minute).

3.5.11 These matters have been raised with the applicant's agent who has offered agreement to the introduction of a door closure mechanism, subject to the revised wording of the condition as set out within section 4.1 of this report. As such, that element is agreed.

3.5.12 Conversely, the applicant has indicated that they are unwilling to accept the condition to limit background music volume within the bar as they believe that the condition is unreasonable and would not meet the test for planning conditions set out within the national planning practice guidance (NPPG). The justification for this position includes;

- The extant planning permission for the bar (10/15/1552) does not include any condition to restrict noise emanating from the bar. There are several existing regularised openings at the premises, which were clearly depicted on the plans for 10/15/1552; the approved plans included one door, two velux windows and two windows that would all be in closer proximity to residential dwellings than the door that is the subject of this retrospective application. The retrospective door would therefore not significantly affect noise.
- Planning approval 10/15/1552 included zero conditions relating to noise mitigation, only to opening hours. I would emphasise that this application relates only to provision of a door, not to the use of the premises as a bar.
- Paragraph 55 of the NPPF states "planning conditions should be kept to a minimum and only imposed where they..." meet the 6 tests, as set out in the NPPG. Paragraph 005 (reference ID 21a-005-20190723) of the NPPG states that "any condition that fails to meet one of the six tests should not be used."

3.5.13 Members are advised that the agent's response has validity. Furthermore, given the acceptance of a door closure mechanism condition and the additional controls available through the Council's licensing of the premises and statutory noise nuisance legislation it can be considered that adequate controls will be in place to safeguard amenity standards.

3.5.14 Accordingly, subject to the suggested condition regarding door closure, as detailed in section 4.1 of this report, compliance with Policy 8 is achieved.

3.5.15 Design / Heritage

Policy 11 requires a good standard of design that should enhance and reinforce the established character of the locality and demonstrate an

understanding of the wider context towards making a positive contribution to the local area. Policy 39 requires development with the potential to affect designated or non-designated heritage assets to sustain or enhance the significance of the asset. In this context, the proposal is supported by submission of a Heritage Statement.

3.5.16 The principle statutory duty under the Planning (Listed Building and Conservation Areas) Act 1990 is to preserve the special character of heritage assets, including their setting. With reference to Conservation Areas, LPA's should pay special attention to the desirability of preserving or enhancing the character or appearance of that area and consider the impacts on character and appearance (which includes its setting) separately. Development proposals need to satisfy both aspects (to preserve or enhance) to be acceptable.

3.5.17 The Framework includes direction that LPA's should take account of;

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- The desirability of new development making a positive contribution to local character and distinctiveness.

P.193 states that when considering the impact of proposals on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be applied. This is irrespective of whether any harm is identified as being substantial, total loss or less than substantial harm to its significance.

P.196 identifies that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3.5.18 *Policy CS16: Form and Design of New Development* requires new development to be of a high standard of design, and to respect and reinforce local character. Particular attention must be paid to all of the following:

- i. Character
- ii. Townscape
- iii. Public realm
- iv. Movement and legibility
- v. Sustainability
- vi. Diversity
- vii. Colour

Development in prominent locations, in areas of major change and on transport gateways will be required to demonstrate particularly high standards of design.

3.5.19 The application is supported by a heritage statement. The submission advises that;

“The proposed design has taken reference from the wider context and will make a positive contribution to the area. The character in the immediate vicinity of the application site has been somewhat compromised and the proposal will help to create a sense of identity for Church Bank street. The development is proportionate and respects local scale. The development is hence compliant with Policy 11 of the Local Plan.

The development improves the distinctiveness of the immediate vicinity whilst preserving the character of the Conservation Area (CA) and enhancing the locality. There will be no harm to any listed building or building that makes a positive contribution to the Conservation Area, thus the proposal accord with Policy 39.

The applicant has demonstrated an ambition to invest in creating a high quality environment to positively contribute to the locality and there are few other high end bars within Darwen Town Centre therefore the proposal would represent the optimum use of the site (NPPF 196). Any perceived harm to any heritage Assets could not be considered as ‘substantial’; therefore, even if Council officers were of the opinion that the proposal could cause harm to a heritage asset, the proposal should be considered in the context of policy 196 of the NPPF.

The proposed development will “preserve and enhance the significance of the Conservation Area” and will make a positive contribution to local character and distinctiveness, hence according with 192(a & c) of the NPPF. The proposal comprises sustainable development and should be approved without delay (NPPF 38).”

3.5.20 The submitted details have been reviewed by the Council’s Heritage and Conservation consultee, who offered the following comments:

“The application is a retrospective application for the erection of a retractable canopy and the insertion of a new door to the side elevation that overlooks Bath Street, a street that is now primarily used as a service area for the adjoining businesses and runs parallel to a row of terraced houses along Victoria Street. This east-facing elevation of the property is fairly plain with few features and little historical interest.

The application however fails to explain the reason for the changes. The heritage statement is rather limited and does not provide any assessment of how the proposal will affect the conservation area or if there is harm, how this will be mitigated.

Although I have not seen the awning open, because of its location (on the side of the property) I do not feel the changes to the building, including the new doorway, necessarily affect the character or appearance of the building or the

wider CA. In this respect the significance of the Darwen Town Centre CA remains un-harmed.

I feel the proposal meets the statutory duty to preserve required by the Planning (Listed Building and Conservation Areas) Act 1990, and conforms to the planning guidance contained in Chapter 16 of the NPPF and the Blackburn with Darwen Borough Council Core Strategy.”

3.5.21 Accordingly, it is considered that the retrospective additions assimilate appropriately with the host building and less than substantial harm to the Darwen Town Centre conservation area has been identified. Compliance with local plan policies 11, 39 & CS16 and chapter 16 of the NPPF is therefore achieved.

3.5.22 Highways:

Policy 10 of the Local Plan Part 2 deals with accessibility and transport issues. Amongst other considerations, development will be permitted by Policy 10 where it has been demonstrated that the safe, efficient and convenient movement of highway users is not compromised

3.5.23 The new door opening fronts a section of back street that serves the rear of properties on Bridge Street. The awning is retractable, though when unfurled it will over-sail the back street at a height of circa 2.8m.

3.5.24 The public objections, as set out at section 9.0 of this report, include issues relating to the blocking of the back street by bins, tables, chairs and privacy screen. Those concerns are noted, though Members are advised that given the objects are not fixed, then they do not amount to development and are not elements under consideration within this application. Rather they are issues for management by the local highway authority separate to any assessment here. The following site photograph shows the back street in question.



3.5.25 The Council's highway officer has offered no objection to the application subject to the new door opening inwards and the awning's height not exceeding 2.1m above ground level in order to avoid any obstruction of movement of pedestrians or vehicles along the back street.

3.5.26 Members are advised that the proposals are consistent with the requirements set out by the highway officer and on that basis compliance with Policy 10 of the Local Plan is achieved.

3.5.27 Summary

This report assesses the full range of material issues affecting this planning application to inform a balanced recommendation that demonstrates compliance with the Development Plan and The Framework.

4 RECOMMENDATION

4.1 Approve, subject to a condition relating to the following matter:

1. Within 2 months of the date of this approval a self-closing mechanism shall be installed to the new side door, as detailed on drawing CC4.20-X202, received 24th August 2020. The mechanism shall thereafter be retained
REASON: To safeguard the amenity of surrounding uses and the area generally, in accordance with the requirements of Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2

2. Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:
Plans and Elevations: CC4.20-X202, received 24th August 2020

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent.

5 PLANNING HISTORY

5.1 10/20/0459 – Full Planning Application: Change of Use of Vacant land to A4 use Classification including erection of pergola, shipping container and other associated alterations (Approved November 2020)

5.2 10/20/0608 – Certificate of Lawfulness: Temporary use of the land for outdoor drinking area (Approved August 2020)

5.3 10/15/1152 – Full Planning Application: Change of use from Office (B1) and Residential (C3) to drinking establishment (A4) involving modifications to front facade and internal alterations (Approved March 2016)

6 CONSULTATIONS

6.1 Heritage & Conservation

Subject to obtaining satisfactory details of the awning, I feel the proposal meets the statutory duty to preserve required by the Planning (Listed Building and Conservation Areas) Act 1990, and conforms to the planning guidance contained in Chapter 16 of the NPPF and the Blackburn with Darwen Borough Council Core Strategy.

6.2 Public Protection

No objection subject to the following conditions:

- Music played at the ground floor bar shall be restricted to background levels and must not exceed 60dB LAeq (1minute).
- The door must be kept closed except when in use to enter/exit the bar. It must be fitted with a suitable door closer device to ensure that it closes promptly after use.

6.2 Environmental Services

No objection

6.3 Public Consultation

In accordance with the provisions of the Procedure Order, 8 neighbouring premises have been consulted by letter, a site notice displayed and press notice issued. 3 letters of objection have been received and are set out within section 9 of this report.

6.4 Highways:

No objection subject to confirmation that the new door opens inwards and the retractable awning has a height no lower than 2.1m above ground level

7 CONTACT OFFICER: Martin Kenny, Principal Planning Officer – Development Management.

8 DATE PREPARED: 4th December 2020.

9 SUMMARY OF REPRESENTATIONS

Objection Mr & Mrs Arnold. Rec- 09/09/20

Application Reference CIN CIN 1A CHURCH BANK ST 10/20/0784

I forwarded the email below early July and like to include it as part of the objection to the above proposal

As a retrospective application has now been made with regards to the above I wish to object for the following reasons.

It has added to the noise issue and had a negative impact on the residentials on Bath St as it has shifted the activity which was once at the front of the bar now down the back alley and noise even closer to our building.

Tables and chairs are being placed down there encouraging gatherings down the alley, attached to the wall is also a wind out canopy for shelter which has contributed to the issue and has been there for quite some time now the highway being used as an extension of the bar (although with the newly installed ballards they could use the space at the front of the bar instead).

The tenants in the shops which need access to their business at all hours and especially during working hrs are unable to access the alley to load and off load stock as it is permanently blocked by Cin Cin either having table and chairs out or using it as a parking space. Although he could easily use the car park which he owns and has no reason to park a vehicle down there but chooses to do so.

The bins which are kept in the alley and are being emptied in the early hours of the morning 2am onwards this is causing issues as one of the residentials bedroom is above were these bin are left not only by Cin Cin but also by the Artisan. My tenant politely asked the manager at the Artisan if possible to leave it until the morning to empty the bottle bins his response was to swear at her instead and tell her to go away.

Can you also please take into account that Cin Cin and artisan both have large bins which need to be housed somewhere and not just left in the road. Not only do they look unsightly but are a health and safety issue on a regular basis bottles are taken out and smashed in the road by kids which hang around the area and have been caught trying to set them on fire on various occasions. We have provided housing for the bins for our residentials and commercial properties which were included in our plans and these bins are kept within the property yards, can a similar solution be sought or encouraged. |

Objection – Lee Arnold. Rec – 15/09/20

Following on from previous emails in the week and conversations.

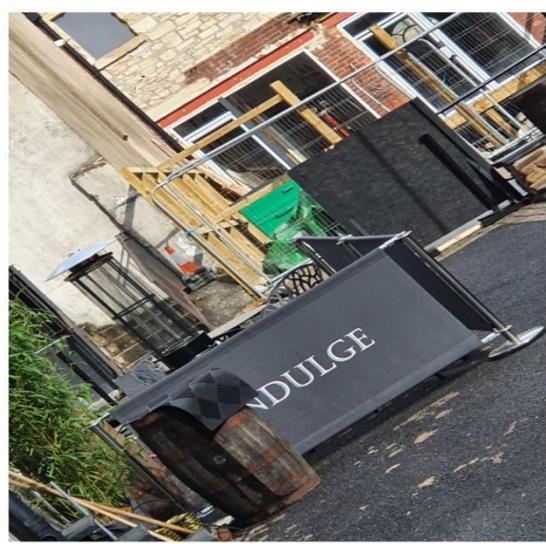
This is Saturday 12th September at 10am. My tenants are unable to access the back alley. I'm still not clear why these tables and chairs can't be at the front entrance of the Cin Cin bar or on the space which was the car park that Mr Holmes owns? Why would you block this alley and make it difficult for other businesses around you??

This is the situation when the bar is open and there is a bigger screen which goes up later in the day as per attached photos, this has been purposely built to fit from wall to wall. Can be seen on the pictures attached. The only way to access the alley when this is in place is to enter through cin cin and via the cut out door in it. When this doorway first appeared it was reported to Martin Kenny and planning enforcement and his reply was he couldn't foresee why this would cause any access issues. Now that we have an issue of a completely blocked road it needs addressing as soon as possible. This is not acceptable

The ladies in the boutique were unable to unload this morning's stock which has been in their car since yesterday evening. She was unable to gain access to unload last night because of the situation (as per attached photos). I'm out of suggestions for them. We now face a very real threat of our tenants looking for alternative business premises due to their growing frustration of this ridiculous situation.

Mr Holmes is unapproachable with regards to this and has verbally abused myself and the ladies running the boutique on separate occasions. Other than ringing 101 to see whether the police can ask him to unblock the access, I really don't know what else to do. We raised this at the beginning when the door initially appeared out of the blue. We expressed concerns that by temporarily allowing this door way that this would happen. We are now in the situation that we are unable to contact anyone at the weekend, we are extremely upset that although we tried to prevent this early on and give you fair warning of his intentions you still allowed it to get to this position

Hope this can be resolved soon.



Objection – Edwin Ainsworth Ltd Funeral Directors, Church Bank Street, Darwen. Rec-15/09/20

With regards to the doors that have been fitted on the side elevation of the Cin Cin Bar .

When you came to a site visit to the Cin Cin Bar, it was said that no outside music would be played and the double doors that he has installed would be shut, so internal music would not travel.

This over the last couple of months has been a complete Joke... the music is loud and these doors are kept open constantly. (no matter what he says). At times it's very unpleasant and we have had to apologise to the families that we have been dealing with.

I realise, it's highly unlikely that you are going to tell him to brick it up and just use his front door, but, even if he says he will shut the doors and keep them closed at certain times, this will not happen.

I will have to keep apologising to our families and hope that I don't lose too many of them because of this issue.

If his operation was kept indoors completely, then we would not be having this issue again.