

Report for Resolution

Report to Planning Applications Committee
20 January 2011

Item

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Report of Head of Planning Services

Subject Enforcement action: 27 Castle Meadow, Norwich, NR1 3DS

Purpose

This report relates to the following:

- (1) the unauthorised use of the upper floor of office premises at the above address as part of the adjacent Havana Bar premises (68 London Street) including the installation of a music amplification system within 27 Castle Meadow to serve the adjoining roof terrace and smoking shelter; and,
- (2) the unauthorised erection of a bar servery structure within the area of the terrace.

The report seeks authority to pursue appropriate enforcement action (including the issue of a stop notice) to secure immediate cessation of the unauthorised uses and removal of the unauthorised bar servery structure.

Recommendations

Authorise enforcement action and a stop notice to

- (a) secure the immediate cessation of the use of the internal areas of the premises as part of the bar;
- (b) secure the immediate cessation of the use of the bar servery adjoining the terrace, and
- (c) secure the removal of the new bar servery and reinstatement of the building to its former condition.

and the taking of connected legal proceedings, including prosecution if necessary.

Financial Consequences

There are no financial consequences of this report.

Corporate Objective/Service Plan Priority

The report helps to achieve the corporate objective to protect and enhance the special qualities of the built environment and the service plan priority to ensure compliance with permissions and to take enforcement action against unauthorised development as necessary whilst having regard to the Council's Enforcement Concordat.

Contact Officers

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Background Documents

City of Norwich Replacement Local Plan Adopted Version, November 2004
Relevant correspondence – Enforcement File – 11/00006/BPC/ENF
Planning Applications – 09/01391/F and 09/01392/L.

The Site

1. The site comprises a three storey former office building with semi-basement located on the north side of Castle Meadow close to its junction with Opie Street. The building, which dates from the 19th century, is located within the City Centre Conservation Area and is listed Grade II. The rear of the premises immediately adjoin the rear part of 68 London Street which operates as the Havana Bar. The Havana Bar includes a terrace and smoking shelter constructed on its roof, which extends to include part of the rear curtilage of 27 Castle Meadow, which is at the same level. Toilets serving the Havana Bar are accommodated in the rear wing of 27 Castle Meadow accessed from the terrace at the rear. A fire escape corridor provides an escape route from the terrace to Castle Meadow through the building.
2. Neighbouring premises are: offices adjoining the site on Castle Meadow within Opie House (26 Castle Meadow) to the west; the extensive former Barclays bank premises to the east currently accommodating the “Open” youth venue and “Closed” secure storage facility; and hairdressers and vacant office units to the north on London Street.

Planning History

3. Planning permission was granted in June 2008 for the change of use of 68 London Street from a restaurant (A3) to a drinking establishment (A4) (application ref: 08/00440/U).
4. Planning permission was granted in November 2008 for an external smoking terrace on the Havana bar roof, which abutted the (former) rear curtilage of 27 Castle Meadow (application ref: 08/01095/F).
5. Retrospective planning permission was granted in 2009 for a new fire escape serving the first-floor external smoking shelter/roof terrace, in order to comply with Building Regulations (application ref: 09/00123/F).
6. In December 2009, a planning enforcement investigation found that the original roof terrace and smoking shelter as approved in 2008 had been enlarged without gaining prior planning permission and internal works to 27 Castle Meadow to accommodate toilets and the fire escape corridor had been undertaken without the necessary prior Listed Building Consent. Applications were invited to cover these works and retrospective planning permission and Listed Building Consent were granted on 16th September 2010 (application refs. 09/01391/F and 09/01392/L).

Unauthorised Development

7. (a) Without benefit of planning permission, the change of use of 27 Castle Meadow from offices (Class B1) to use as part of the adjacent bar premises (Class A4) including the installation of a music amplification system to serve the adjacent outdoor terrace within the rear curtilage.
- (b) Without benefit of planning permission, the change of use of the outdoor terrace within the rear curtilage of 27 Castle Meadow to a separate bar area (Class A4) by reason of the formation of a bar server structure within the outbuilding adjoining the terrace.
- (c) Without benefit of planning permission and Listed Building Consent, the carrying out of works to form a bar server structure within the outbuilding adjoining the outdoor terrace within the rear curtilage of 27 Castle Meadow.

Human Rights Implications

8. The Human Rights Act 1998 came into effect on 2nd October 2000. Insofar as its provisions are relevant: -
 - Article 1 of the First Protocol (*the peaceful enjoyment of one's possessions*), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the cessation of the unauthorised use and removal of the unauthorised structures in the interests of amenity is proportionate to the breach in question.
 - Article 6 (*the right to a fair hearing*) is relevant to the extent that the recipient of the enforcement notice/stop notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

Background

9. Planning permission has been granted for the use of 68 London Street as a drinking establishment, construction of an outdoor smoking shelter and terrace on its roof and within part of the rear curtilage of 27 Castle Meadow, and the use of part of 27 Castle Meadow itself for limited purposes incidental to that use, namely customer toilets and an emergency fire escape corridor, which was conditioned to prevent 27 Castle Meadow being used as a secondary entrance into the Havana Bar and roof terrace.
10. The permitted use of the outdoor smoking shelter and terrace is solely for use ancillary to the Havana Bar and does not authorise its use as a separate bar area on which drinks are served. No planning permission exists for the use of any part of 27 Castle Meadow (other than the new toilets) for any purpose incidental to a bar: consequently its authorised use remains as an office within class B1. The September 2010 committee report on the approved retrospective applications for the works to form the outdoor terrace makes clear that the proposal as then submitted would not affect the existing office facility at 27 Castle Meadow, other than to change the use of the external area of the rear

curtilage. It goes on to state that the applicant's intention was to retain the building in office use, perhaps for purposes associated with management of the bar, although there is no reason why it could not be used by other office users.

11. Licensing and Environmental Health Officers have received several complaints from the public about excessive noise generated from the Havana Bar, including the activities taking place within the area of the outdoor terrace. Following advice that this use (including the siting of speakers on the terrace) was unlawful under the licensing act, the proprietor took action to cease the use of the terrace for providing licensable entertainment and the complaints subsequently ceased. Following a Facebook campaign which included the publication of Norwich City Council employees contact details, (resulting in some personal abuse), the speakers were re-sited within the second floor office window overlooking the terrace (outside the licensed area) and their use was claimed to be solely in connection with periodic but infrequent private parties held in that office. Notwithstanding these claims, the receipt of complaints from the public immediately recommenced.

The use of 27 Castle Meadow as a bar

12. Investigations over the New Year period by planning and licensing enforcement officers and Police revealed that the second floor of 27 Castle Meadow overlooking the terrace was evidently in full use as part of the bar, with a substantial DJ/sound system installed, including large full-height loudspeakers positioned in the second floor windows facing out onto the terrace. Although the operator asserts that this part of the building was being used at the time of the investigation solely for a private party, officers are satisfied on the basis of the evidence to hand that the use is intended to be regular, permanent and of a public nature
13. It is considered that the use of the second floor of 27 Castle Meadow for these purposes constitutes a change of use of this part of the building which requires planning permission. Use for any purpose other than an office and any genuinely ancillary activities associated with that use is not permitted within any floor level of 27 Castle Meadow. This is, in addition, a Grade II Listed Building and to make any further structural alterations would need prior Listed Building Consent.

Unauthorised erection of bar servery structure within the area of the smoking terrace and consequent intensification of its use.

14. The investigation also found that drinks were being served on the outdoor terrace from a separate bar servery structure provided within a former outbuilding within the curtilage of 27 Castle Meadow. The recently-added bar structure in the terrace area has been constructed without planning permission. The building is shown as falling outside the red line boundary of the previous applications for the drinking/smoking terrace and is marked on plan only as an 'outbuilding'. This indicates that it was not intended at the time of the applications for the building to be included in the terrace proposals or used for any particular purpose and it is not part of the approved development. It is also within the curtilage of the Listed Building and consequently should have had benefit of prior Listed Building Consent, which it does not have. Initial investigations also suggest that the smoking shelter may not have been

constructed in accordance with the approved scheme and that its awning has been positioned considerably higher than indicated on the plans (enabling patrons to climb onto it from adjoining upper floor windows). More information will be provided at the meeting.

15. An assessment has been made as to whether the serving of drinks on the terrace has resulted in an intensification of the use of the terrace which is sufficiently material to constitute a change in the character and use of the site. In the opinion of planning officers, the use of this outbuilding as a separate bar servery means that the use of the terrace as a whole has been significantly intensified. The terrace area has ceased to be ancillary to the main bar use in 68 London Street and the use of and activity on the terrace has been extended and prolonged beyond what could reasonably be expected from its permitted uses. Such a use is contrary to the extant permissions restricting the area to an outdoor terrace and smoking area used solely in association with the main bar within 68 London Street and planning permission is therefore necessary for its continued use.
16. Further, the use of the interior of 27 Castle Meadow for more than simply access to the new toilets results in patrons moving between buildings and prolonging and extending their outdoor activities on the terrace, with the resultant character of these areas becoming more akin to an extension of the main premises than an ancillary function.

Note on Licensing Arrangements

17. The permitted hours of use of the Havana Bar at 68 London Street have not been controlled through planning conditions. However, the current Premises License permits late night opening until 4.30 am Sunday to Thursday and 6.30 am Friday and Saturday (with music and entertainment and the sale of alcohol permitted until 30 minutes before these respective closing times). There are no planning conditions preventing the playing of live music either within 68 London Street or within the area of the terrace itself, but no amplified sound, music or entertainment is permitted on the terrace by the present licence and (as noted) the playing of music including amplified sound within any part of 27 Castle Meadow is not authorised either through planning or licensing. Licensing officers confirm that current activities at the premises constitute a breach of the current license and the Police report a significant recent increase in recorded crime in the area.

Planning Considerations

18. Food and drink uses in general and drinking establishments in particular are encouraged in national policy (PPS4) as suitable and beneficial town centre uses fostering a lively evening and night-time economy. However, care needs to be taken to properly manage and mitigate the impacts on neighbourhood amenity of individual drinking establishments through appropriate and effective planning controls, particularly where extended late-night opening is involved and where the music and entertainment offered may result in the establishment becoming more akin to a night club. (Night clubs are separate and distinct from bars in planning terms and always require planning permission as sui generis uses). Planning officers are currently investigating a number of cases where premises with benefit of permission only for A4 drinking establishment –

including this one – appear in fact to be operating as night clubs. City of Norwich Replacement Local Plan policy EMP2 accepts proposals for the expansion of existing businesses in general only where the use can be accommodated satisfactorily within the site, where there are no adverse environmental or visual impacts and where development is not over-intense.

19. The Council's longstanding Local Plan policy on late night entertainment uses seeks to concentrate them primarily within a late night activity zone defined in and around Prince of Wales Road and Riverside (under saved policy AEC1), recognising that the impacts of such uses may be more effectively managed and controlled where similar uses are clustered together. The site is situated outside of this zone. In cases where late night uses are located elsewhere in the City centre in close proximity to residential accommodation, or adjoining retail and office uses (as here) it is particularly important that the nature and intensity of the use is properly controlled to avoid adverse impacts on neighbour amenity through noise and disturbance, loss of outlook or increased fear of crime and disorder.
20. City of Norwich Replacement Local Plan policy EP22 refers in particular to the need to protect the amenity and living conditions of existing and nearby residents. Although there is no residential accommodation in the immediate vicinity of the site, the high noise levels emanating from the premises situated within an otherwise quiet area, further concentrated by surrounding buildings, are likely to be propagated over a very wide area of the city centre, including residential areas, and potentially (given the elevated position of the second floor windows with respect to surrounding buildings) even beyond the centre. (Noise complaints associated with these premises have been made by residents up to 0.5km from the site).
21. The site falls within a defined secondary shopping area at the east end of London Street where saved City of Norwich Replacement Local Plan policy SHO11 applies. The boundary of this area also takes in the frontage to Castle Meadow including number 27. Whilst policy SHO11 encourages the beneficial use of upper floors, this is only acceptable where proposed uses are seen to be compatible with surrounding uses. Because of its significant adverse late-night impacts on amenity and the character of the area, the ongoing unauthorised use can be argued to be incompatible with the general mix of uses in this secondary shopping area.
22. National policy in PPS5 seeks to ensure that the significance of designated heritage assets such as Listed Buildings and Conservation Areas is not harmed by inappropriate development, including changes in the use and character of sites and buildings. East of England Plan policy ENV6 in addition seeks to protect the special character of identified heritage assets in the region including the historic city of Norwich. Replacement Local Plan policy HBE8 requires that development in conservation areas should enhance the character and appearance of their surroundings and policy HBE9 requires that alterations to Listed Buildings should not have a harmful impact on their character or appearance. It is considered that the present unauthorised uses within the premises can be regarded as harmful to the heritage significance of the City Centre Conservation Area and the Listed Building by reason of their impact on the character, amenity and general ambience of the area.

23. The site is located within the tourism priority area running from the Cathedral to the Castle defined by saved City of Norwich Replacement Local Plan policy TVA4, in which appropriate tourism-related uses and new visitor attractions are encouraged, subject to those uses not creating or exacerbating environmental or traffic problems and being related to existing centres of tourism and leisure activity. The proximity of the Castle and Castle Gardens makes this an area of some importance both in terms of tourism potential and heritage significance, and it is incumbent on the Council to protect those elements which contribute to that significance. This would include discouraging inappropriate uses whose impacts are demonstrably harmful to the character and heritage significance of the area as a tourist destination and which may undermine its attractiveness for visitors.

Conclusions

24. It is considered that the unauthorised uses taking place at 27 Castle Meadow (including the erection of an unauthorised bar servery on the terrace at the rear) has significantly altered the character and use of the premises such as to require further planning permission and Listed Building Consent. The continued use for these purposes, through increased noise and disturbance, will cause a significantly harmful impact on the character and amenity of the area which could constitute reasons for refusal of any future application for planning permission and Listed Building Consent.

25. The ongoing identified breaches of planning control are considered, for the reasons given above, to be contrary to the provisions of PPS5 and advice in PPG24, policy ENV6 of the East of England Plan (adopted May 2008) and saved policies EMP2, HBE8, HBE9, AEC1, SHO11, TVA4 and EP22 of the City of Norwich Replacement Local Plan (adopted November 2004).

26. Therefore, for the reasons stated in the report, it is considered expedient to proceed with immediate enforcement action in this instance. to