



**CITY OF DURHAM
PARISH COUNCIL**

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18th September 2021

Dear Ms Eden,

DM/21/03052/FPA | Change of use of circulation/amenity space to outdoor seating areas | The Riverwalk Millburngate Durham DH1 4SL

The City of Durham Parish Council Planning Committee considered this application at its meeting on the 17th September 2021 and wishes to make the following observations.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) operates under a presumption in favour of sustainable development. It states that development proposals, which accord with the development plan, should be approved without delay. The adopted Development Plan where the site is located comprises the planning policies of the County Durham Plan (CDP) and the Durham City Neighbourhood Plan.

The Parish Council fully sympathises with the desire of local businesses to use outdoor seating to encourage trade in the wake of the Covid-19 pandemic. The Business and Planning Act 2020 received Royal Assent on July 22nd 2020 which, among other things, introduced pavement licences for businesses to provide outside seating areas for their customers on a temporary basis. The purpose of the Bill was to enable businesses to adhere to the social distancing standards set by Government, however, this is not part of the Town Planning Legislation. Legislation is clear that all furniture must not obstruct the public highway and be removed on a daily basis as soon as the time specified on the pavement licence application has expired and would be returned the next day.

On 2nd October 2020, the County Council granted permission for a temporary change of use of the part circulation/amenity space to allow outdoor seating areas for the following premises at Riverwalk: Biz R, Old Tom's, Thai River, Flip and Stack, Delaney's Donkey and El Pincho (DM/20/01718/FPA). Condition 1 of the Approval Notice states: *"This permission is granted for a temporary period until 30th September 2021, thereafter the site shall be*

reinstated to its former use and condition. Reason: The development is only considered suitable for a temporary period in response to the ongoing Covid-19 situation.”

The outdoor seating space being requested by this applicant has also increased from 209m² to 296m², with additional seating areas proposed to the front of Units 19, 20 and 21 as well as to the restaurant and retail space immediately West of these units.

Given that a number of the existing units already benefit from outdoor seating, the key consideration is whether the additional areas proposed would have any adverse impact on amenity and/ or safety of the site. When considering DM/20/01718/FPA, the Environmental Health team were clear that the use of outdoor seating at a number of premises at Riverwalk needed to be restricted in terms of the hours of operation, given their proximity to sensitive receptors and the Parish Council believes it is imperative that this condition be maintained should the Council be minded to approve this application for permanent use.

Furthermore, the Parish Council considers that this change of use of the public open space and over massing of outdoor seating associated with premises could potentially create an adverse impact on the definable hierarchy of the public amenity spaces flowing through Riverwalk, which was designed with the architectural objective of the development in part to create a pedestrian friendly environment that reinforces the existing pedestrian routes throughout the city centre as well as offering an outstanding terraced viewing point of the World Heritage Site.

There is insufficient information provided with this application in terms of the layout and quantity of the seating for these premises nor has any information been provided on whether the outside areas are to be heated and/or lit by artificial lighting.

Moreover, Paragraph 95 of the NPPF states that planning decisions should promote public safety and the layout and design of developments should be informed by the most up to date information available from the police. In turn, Policy E4 of the Durham City Neighbourhood Plan states that all development proposals, including those for a change of use, that would promote and/or support the early evening and night-time economy activity related to food and drink, arts and cultural uses, including later trading, will be supported provided that they contribute to the vitality and viability of the City centre and add to, and improve, the cultural and diversity offer by including a strategy regarding public safety, proving that the development would have no significant adverse effects upon local amenity, including amenity of local residents.

The Local Planning Authority has a duty to consider public safety and take into account any third-party views from interested parties. It is imperative that the Police take a view on whether the provision of additional outdoor trading areas at the location proposed would be at the detriment of public safety and the ease of evacuation of the site.

In conclusion, the application lacks very relevant information to be able to make a determination on the merits of this application. For the reasons set out above, it is also imperative that both Environmental Health and the Police take a view of this application. If further information is submitted in support of this application, the Parish Council would expect to be re-consulted on this scheme.

Yours sincerely,

Adam Shanley

Clerk to the City of Durham Parish Council