

From: Marie McCran
Sent: 27 October 2011 16:08
To: nuala borthwick
Subject: FW: Montrose Street/Kilbowie Road Church DC09/287/COU

Attachments: DC09287.doc

Marie McCran
Administrative Assistant
Licensing Team
Tel: 01389 738701
Fax: 01389 738674

From: Peter Clyde
Sent: 24 October 2011 09:48
To: Marie McCran
Subject: FW: Montrose Street/Kilbowie Road Church DC09/287/COU

From: keith bathgate
Sent: 21 October 2011 17:13
To: Peter Clyde
Cc: Lorna Ramsey
Subject: Montrose Street/Kilbowie Road Church DC09/287/COU

Hello Peter,

Lorna has passed me your e-mail, and I have discussed the matter briefly with Andrew and Pamela Clifford. I can attend the Licensing Board on 8 November if required – please let me know the venue/time.

The planning permission was for “change of use to licensed restaurant”, and the approved plans showed the ground floor predominantly occupied by tables as would be expected for such a use. No internal plans were required to be submitted for the S50 certificate application, and we confirmed at that time that the site had permission for use as a “licensed restaurant”. However, the plans which they have submitted to Licensing are different in several respects, the most significant differences being:

- the tables in the middle of the main public area have been replaced by a dance floor;
- a mezzanine floor has been added, containing tables;
- the disabled access ramp at the front of the building has been replaced by a substantial timber deck with a wheelchair lift at one end

Whilst the layout of the interior of the property is not normally a planning issue, the inclusion of a dance floor changes the layout from one which resembles a typical restaurant (with as much space as possible occupied by tables), to one which has the appearance of a pub/nightclub (with tables arranged around the perimeter of the room with a dance floor in the centre). This leads us to question whether the nature of the use now intended really is as a restaurant, or if it is more akin to a public house. Such doubts are reinforced by their licensing application form which lists live/recorded music, dancing, televised sport and quiz nights as activities. On the other hand, take-away food sales including home delivery is more akin to a restaurant use (albeit that any significant takeaway element would itself require planning permission, which it does not have). The reference to an outdoor drinking area is also of some concern to us as although our approved plans showed an outdoor smoking area, there is potentially a significant difference between an area where restaurant customers go outside for a brief smoke, and a beer garden. I recognise that the licensing form reiterates the intention that this should be a ‘family restaurant’, but there are also ‘family pubs’ – e.g. the Malt & Myre in Dumbarton – and this development appears to be drifting towards the latter.

The schedule to the Town & Country Planning (Use Classes) (Scotland) Order 1997 lists Use Class 3 (Food and Drink) as “use for the sale of food or drink for consumption on the premises”, whereas the Order itself specifies that “nothing in any class shall include any use ... as a public house ... or for the sale of hot food for consumption off the premises”. A public house is therefore a *sui generis* use and is specifically excluded from Class 3. There is no definition of a ‘public house’, but I would interpret this as a public bar which sells alcohol to persons who are not dining or residing on the premises, and my understanding of the phrase “nothing in any class shall include” means that as soon as any of the *sui generis* uses takes place (even on a fairly minor scale which might otherwise be considered ancillary to the main use) that use requires permission in its own right.

I am therefore of the view that the existing planning permission for a licensed restaurant does not cover the sale of alcohol to members of the public not consuming a meal on the premises, and would suggest that a condition to that effect be attached to any license that is granted.

There are a number of planning conditions outstanding, and we will pursue these, the various design amendments and the takeaway use with the developer ourselves.

Regards,

Keith

Keith Bathgate
Team Leader (Development Management)
Planning & Building Standards
West Dunbartonshire Council
Rosebery Place
Clydebank G81 1TG
tel. 01389 738563 / fax 01389 738584

From: Peter Clyde
Sent: 20 October 2011 14:30
To: Lorna Ramsey
Subject: Angelino's

Hi Lorna

Thanks very much for your assistance in this matter.

The information that Andrew requests is as follows:-

1. To what extent does the licensing application differ to the planning permission and the Section 50 certificate. A complete list of the planning conditions would be advantageous as we could then put our heads together and point out how these would be breached by the operation.
2. The definition of a restaurant in planning terms

And finally, Andrew requests that an officer be made available for attendance at the Board on the 8th November to speak to the planning permission granted.

If you need any further info you can get me on 8246

Regards

Peter

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Peter Clyde
Licensing Standards Officer
Licensing Team
Legal, Administrative and Regulatory Services
West Dunbartonshire Council
Rosebery Place
Clydebank
G81 1TG
Tel 01389 738246
Fax 01389 738674