

COMMITTEE REPORT

Committee: West and City Centre **Ward:** Guildhall
Date: 17 August 2006 **Parish:** Guildhall Planning Panel

Reference: 06/01471/FUL
Application at: Ali G Pizza 11 Tower Street York YO1 9SA
For: Variation of condition 2 of planning permission 7/05/737/ARI/TP to extend opening hours to 16.00 hours - 1.00 hours Monday-Thursday 16.00 hours - 02.00 hours Friday and Saturday and 16.00 - 1200 hours Sunday
By: Ali Gurgur
Application Type: Full Application
Target Date: 1 September 2006

1.0 PROPOSAL

1.1 The application is a re-submission of application 06/00112/FUL. It requests to vary condition 2 of application 7/05/737/ARI/TP which relates to the permitted opening hours. It is proposed that the premises be allowed to open between the following hours

16:00 to 01:00 the following day	Monday to Thursday
16:00 to 02:00 the following day	Fridays and Saturdays
16:00 to 24:00 (midnight)	Sundays

1.2 This application relates to an A5 use trading under the name 'Ali G Pizza'. The host site is located on Tower Street, which is within the Central Historic Core Conservation Area. The site is within a terrace of retail, restaurant and leisure activity at ground floor level. Of note, the Jade Garden and The Olive Tree restaurants to each side of the host and also Castle Snooker Club. There is a mix of offices and residential above. There are residential units nearby on Tower Place, South Esplanade and Peckitt Street. The snooker club recently had a planning application refused by members, against officer recommendation (2.3.2006), to extend its hours of opening until 03:00. It is required to close by 23:30 and 23:00 Sundays (in accordance with permission 02/01823). When restaurants were approved at 8-10A (98/1654) and 9 and 10 (03/366) they were required to close by 23:30 Mondays to Saturdays and by 23:00 Sundays. The Olive tree would be restricted by this. There is no planning restriction on the Jade Garden restaurant. It is currently required by licensing to close at 24:00.

1.3 At present the premises are permitted to trade between the following hours:

16:00 to 2330	Monday to Thursday,
16:00 to 24:00 (midnight)	Friday and Saturday, and
16:00 to 2300	Sunday

This is as a consequence of application 04/00102/ful to vary condition 2 of planning permission 7/05/737/ARI/TP.

1.4 The application is brought before members as a previous application to vary the opening hours of the premises was refused at planning committee on 2.3.2006. Since this time, the premises have gained a premises license (subject to conditions) under the Licensing Act 2003 to operate until the hours as proposed in this application.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Floodzone 2 Flood Zone 2 CONF

Floodzone 3 Flood Zone 3

Listed Buildings Multiple (Spatial)

2.2 Policies:

CYHE3

Conservation Areas

CYS6

Control of food and drink (A3) uses

CYS7

Evening entertainment including A3/D2

3.0 CONSULTATIONS

3.1 Internal

Highway Network Management - No objection

Urban Design and Conservation - No comment

Environmental Protection Unit (EPU) - EPU has concerns regarding the impact on the amenity of the area. The site is located within the centre of York, but there are a number of residential properties located within the vicinity. The amenity of these residents has been taken into consideration when assessing this application.

A fast food takeaway is frequented by many customers for a short period of time. The constant movement of people into and out of the premise will create noise. Internal noise of the premises could be sufficiently contained, it is the noise made by customers as they arrive and leave the premises, particularly late at night which will have the greatest impact on local inhabitants. Nearby residents will experience raised voices, shouting and screaming that are often associated with customers frequenting these type of premises late at night. These short bursts of high noise levels are likely to disturb the sleep of local residents and have a detrimental impact on their quality of life.

The EPU does not consider that there is sufficient evidence in this case to recommend the refusal of this application. We would recommend that the application be granted a temporary approval to run for a 12 month period. This approval can then be reviewed taking into account any complaints that had been received and determine if the extended hours of operation should be permanently granted.

Safer York Partnership (Police architectural liaison officer) pending

3.2 External

Planning Panel - Object on the grounds that the extended hours would harm the living conditions of nearby residents.

Application publicised by neighbour notification (expiry date 3.8), press (7.8) and site notice (14.8). One letter in objection has been made to date.

The following objections to the application have been made

- Noise and disturbance as a consequence of extended hours

4.0 APPRAISAL

4.1 Key issues

- Crime and disorder
- Amenity
- Character and appearance of the Central Historic Core Conservation Area

4.2 Relevant site history

- Planning permission was refused in 1983 for a change of use from an ice cream parlour to a hot food takeaway on the basis that the proposed use would generate litter within an important historic area and that customers attracted to the premises late in the evening would be a source of noise nuisance and disturbance to nearby residents.
- Permission was granted on appeal subject to conditions restricting the permission to a 3 year temporary consent, restricting the hours of opening from 9:00 to 22:00 on any day and limiting the type of hot food sold to pizza only.
- The continued use of the premises as a takeaway was approved in 1987 subject to similar conditions restricting the hours and limiting the sale of hot food.
- A subsequent application to extend the opening hours to 24:00 (midnight) was refused in 1990 on the basis that the extension of hours at the premises would cause noise and disturbance to local residents.
- The removal of the condition restricting the type of food sold was approved at the City Centre Sub-Committee on 3.01.02.
- An application to open the hot food takeaway until 0200 hours on Saturday and Sunday mornings was refused by the Local Planning Authority on 11.06.03 on the grounds that the proposal would be detrimental to the amenity of nearby residents.
- An appeal was made against the decision (APP/C2741/A/03/1124677) and dismissed on 17.01.03. The inspector considered that the proposal was not acceptable, as there would be an undue adverse effect on residential amenity.
- Application to extend opening hours to 23:30 Mondays to Thursdays, to 24:00 Fridays and Saturdays and 23:00 Sundays approved (04/102)
- Application to extend opening hours to 24:00 Sunday to Thursday and to 02:30 the following day on Fridays and Saturdays refused by planning committee 2.3.06.

4.3 Summary of relevant planning policy

Planning Policy Statement 6: Planning for Town Centres (2005) paragraphs 2.23 to 2.26 provide advice on managing the evening and night-time economy. Local Authorities are encouraged to develop policies which encourage a range of complimentary evening and night-time economy uses which appeal to a wide range of age and social groups. Key issues are the cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents. LPA's should also adopt an

integrated approach so that planning policies and proposals complement their Statement of Licensing Policy and the promotion of licensing objectives under the Licensing Act 2003.

Policies S6 and S7 of the City of York Draft Local Plan are relevant to hot food takeaways and the night-time economy. Of relevance to this application is the need to ensure such uses do not unduly adversely affect amenity. A method of controlling the detrimental effect on amenity can be controlling opening hours.

Public order and safety are referenced in policy S7. However such issues are now predominantly intended to be controlled by the Licensing Act 2003.

4.3 Appraisal

A premises license has been granted for the application site. This was subject to conditions that the site held CCTV tapes for a period of 28 days and that the premises became an active member of pub watch. It is more the role of the premises license, which can be revoked if necessary, to control crime and disorder. Furthermore, it is unlikely there is a direct link between premises selling food and crime and disorder. As such there is no grounds to refuse the application on the basis of crime or disorder issues.

Residential amenity is considered to be the key issue in determining this application. The previous application was refused on this basis and the EPU (see 3.1) comments raise concern. Section 4.2 demonstrates there is a substantial history of the host site attempting to extend its hours, particularly on a weekend whereby the restricted hours are detrimental to the viability of the premises.

In other applications for extensions of hours of hot food takeaways and restaurants / bars in the city centre, appeals have been allowed by the planning inspectorate, or temporary permissions granted to enable the LPA to monitor impact. In this case, there are residential units above ground floor level on Tower Street and also to the west toward the river. Footfall and noise levels on Tower Street, with and without the host premises trading would aid to ascertain impact. However, this information is not available at present for consideration. Currently the premises should close in line with the hours restricted by previous planning permissions. Representations, both from this and previous applications illustrate there is already a problem with residential amenity as a result of people travelling through Tower Street late at night and causing disturbance through noise. To a certain extent, this is to be expected in a city centre location. This may, or may not be exacerbated by allowing the host to open later in the evening. As such it may be reasonable to allow the later opening hours, on a temporary trial basis. This would allow the effect to be monitored by the Council's EPU with the operating hours reverting back to the previously approved hours if residential amenity is proven to be adversely affected.

The extension of hours is considered not to affect the character and appearance of the conservation area, or the setting of nearby listed buildings. Problems associated with litter could be dealt with by a condition requiring litter patrols to be carried out by the applicant.

5.0 CONCLUSION

5.1 It has been established by previous applications refused and a dismissed appeal that residential amenity is a concern. However the guidance in PPS6 is more recent than the appeal dismissed in 2003. PPS6 seeks to manage and promote the night-time economy and places an emphasis on consistency between planning permissions and licensing. Furthermore, members are reminded that since the most recent application was refused, the site has gained a premises license, to open until the proposed hours. As such a temporary consent to monitor the premises is considered to be a reasonable option. Consequently, if

there were evidence of a detrimental impact on residential amenity, there would be a substantial material planning reason for the premises to revert to the previous hours. Members may also wish to vary the hours applied for. Although not recommended by PPS6, as it would not be consistent with licensing, this could be done if it were considered that the later opening times during the week are excessive.

6.0 RECOMMENDATION: Approve

- 1 The use hereby permitted shall not be open to customers outside the following hours:

Monday to Thursday 16:00 to 01:00 the following day
Fridays and Saturdays 16:00 to 02:00 the following day
Sundays 16:00 to 24:00 (midnight)

The use shall adhere with these hours for a period of one year from the date of this permission after which the opening hours shall revert to the following hours:

Mondays to Thursdays 16:00 to 23:30
Fridays and Saturdays 16:00 to 24:00(Midnight)
Sundays 16:00 to 23:00

Unless planning permission has been obtained from the Local Planning Authority for the continuation of the hours hereby permitted.

Reason: In the interests of amenity, so the Local Planning Authority may assess the impact of this use, in accordance with policy S6 of City of York Draft Local Plan.

- 2 The premises operators shall carry out a litter patrol of Tower Street and the Clifford's Tower and St George's Field areas twice a day. One of the aforementioned patrols shall occur at the end of the operating hours specified in condition 1 on each day.

Unless an alternative agreement is agreed to in writing by the Local Planning Authority.

Reason: In the interests of protecting the general amenities of the area in accordance with policy S6 of the City of York Draft Local Plan.

7.0 INFORMATIVES:

Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to amenity, crime and disorder and the character and appearance of the conservation area. As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies HE3, S6 and S7 of the City of York Local Plan Deposit Draft.

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