

COMMITTEE REPORT

Date: 4 September 2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 12/01223/FUL
Application at: Vudu Lounge, 39 Swinegate York YO1 8AZ
For: Change of use of upper floors of Nos. 37 and 39 from mixed use restaurant and drinking establishment (Use classes A3/A4), to drinking establishment (Use class A4) (retrospective)
By: Mrs Pavlou
Application Type: Full Application
Target Date: 11 July 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 This application is presented to the West and Centre Planning Sub- Committee at the request of Cllr. Brian Watson. It is one of three recent planning applications related to drinking establishments in the Swinegate area which cumulatively could impact on the character of the area. The applications are located at Mr Chippy, No 37 Swinegate; Bora Bora, 5 Back Swinegate Court, and Lucia's, 9-13 Back Swinegate Court.

PROPOSAL

1.2 The application seeks retrospective planning permission for the change of use of the upper floors of Nos. 37 and 39 Swinegate (Vudu Lounge) from a mixed use restaurant and drinking establishment (Use Classes A3/A4) to a drinking establishment (Use Class A4) only. Permission is also sought for extended operating hours until 0400 hours, Monday- Sunday which would tie in with the opening hours granted under the Licensing Act 2003. The property is not listed but is situated within the Central Historic Core Conservation Area.

EXISTING OPERATING HOURS APPROVED BY PLANNING PERMISSION

1.3 Planning permission was granted by Members in 2006 (LPA Ref. No. 05/02066/FUL), and the approved hours under the planning permission are;

0100 (Monday-Friday)
0300 (Saturday and Sunday)

EXISTING LICENSING HOURS

1.4 The permitted opening hours for the premises are 0800-0430 (following day). This was granted on 6.12.2005 with a DPS variation on 15.12.2010.

EXISTING INTERNAL CHANGES

1.5 The ground floor of No. 39 is now rented to My Chippy and is used in association with the fish and chip shop. The previous kitchen within the Vudu Lounge has been converted to a VIP bar. The glazing at the Vudu Lounge has been upgraded to acoustic glazing to provide better sound attenuation.

JUSTIFICATION

1.6 The applicant has advised in supporting information that the restaurant element of the 2005 approved use was uneconomical and the bar business was in demand. The bar trade business has flourished and now employs 6 full- time and numerous part- time staff.

RELEVANT PLANNING HISTORY

1.7 05/02066/FUL Change of use from ground floor shop (A1 use) at 39 Swinegate and the upper floors of Nos. 37 and 39 to mixed A3/A4 use, and alterations to the front entrance at 37-39 Swinegate (Retrospective). PER 06.01.2006.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006

Conservation Area GMS Constraints: Central Historic Core CONF

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: Central Area 0002

2.2 Policies:

CYGP1

Design

CYS6

Control of food and drink (A3) uses

CYS7

Evening entertainment including A3/D2

CYHE3

Conservation Areas

3.0 CONSULTATIONS

INTERNAL

3.1 ENVIRONMENTAL PROTECTION UNIT- No objections subject to a temporary consent with conditions

3.2 EXTERNAL

SAFER YORK PARTNERSHIPS- No objections to Designing Out Crime

GUILDHALL PLANNING PANEL- Objects to the proposal as the application contains little information and would result in the proliferation of late night drinking establishments and the increase in noise and anti-social behaviour with associated disturbance to local residents.

3 Letters of objection have been received from permanent residents in neighbouring properties that raise the following planning issues-

- Excessive noise and disturbance from use of emergency door in Three Cranes Lane producing noise, chatter, smoking area
- Nuisance in Three Cranes Lane every night- bin noise, used as a toilet, local fights, damage to property
- Operating as full blown nightclub contrary to approved use and approved hours of operation; should operate as a Members club with swipe card as approved in planning permission; passageway should be gated; CCTV should be used; the building should be total soundproofed; there should be no bin use between 2400-0800 next day; and there should be an agreed dispersal policy between club and residents.
- Operating hours detrimental to living conditions and would like action taken by Council
- Complaints made about use to other Council departments

4.0 APPRAISAL

4.1 KEY ISSUES

- Principle of Use/ Vitality and viability of the city centre
- Impact on the character and appearance of the conservation area

- Impact on the amenity of the occupiers of properties in the area
- Crime and Disorder

PLANNING POLICY

4.2 National Guidance - The National Planning Policy Framework has a stated presumption in favour of sustainable development. Relevant specific policy topics include ensuring the vitality of town centres, conserving and enhancing the historic environment, and encouraging good design.

Local Plan Policy:

4.3 The relevant development plan is the City of York Council Development Control Local Plan (2005). The Development Control Local Plan was approved for Development Control purposes in April 2005; its policies are material considerations although it is considered that their weight is limited except where in accordance with the National Planning Policy Framework. The relevant planning policies are:

Policy S6 relates to the control of food and drink uses. The policy permits the extension of food and drink premises within York City Centre subject to there being no adverse impact on amenity of surrounding occupiers. Policy S6 recommends that opening hours are restricted, where necessary, to protect the amenity of surrounding occupiers. The Fourth Set of Changes to the Local Plan requires security issues to be addressed where the consumption of alcohol is involved.

Policy S7 seeks to promote the introduction of new evening entertainment uses provided there is no adverse impact on the vitality and viability of the city centre and no adverse impact on residential amenity.

Policy HE3 states that within conservation areas, proposals for changes of use will only be permitted where there is no adverse effect on the character or appearance of the area.

Policy GP1 states that the amenity of new developments/uses must be assessed in the planning application process.

Licensing Policy:

4.4 The Council's Statement of Licensing policy sets out the procedure for determining license applications, including mediation between applicants and persons making representations. Hearings take place when representations are unresolved and particular consideration is given to location and impact of licensed activity, type of use and numbers likely to attend, proposed hours of operation, available public transport, car and cycle parking, scope for mitigating any impact and how often the activity occurs.

4.5 The key difference between planning policy and licensing policy is that under licensing legislation there is the power to revoke consents if problems arise at a property. The Council's Licensing policy specifically states that 'The Licensing Authority may review premises licenses when representations are received from a responsible authority (such as the police or fire authority), or interested party (such as local residents), to indicate that problems associated with crime and disorder, public safety, public nuisance or protection of children from harm are occurring'. However, due to the permanent nature of a planning permission, proposals need to consider both the wider implications of any approved use and its extension of hours, and the potential for harm as well as any known problems specific to the site.

ASSESSMENT

Land Use:

4.6 In principle, drinking establishments are supported by Policies S6 and S7 of the Local Plan and guidance within the NPPF which seek to promote a vibrant local economy whilst protecting local distinctiveness, provided there is no harm to retail vitality, the living conditions of nearby residents, and public safety. The operation of the Vudu Lounge as a drinking establishment until 0400, daily, would be reasonably compatible the neighbouring predominantly restaurant /retail/ public house uses if appropriately controlled to ensure that nearby residential amenity is not unduly affected. These issues are assessed below in more detail.

4.7 Swinegate is not a primary shopping street and as such, is a street where non-retail uses and other commercial uses, including drinking establishments, are appropriate according to planning policy provided the impact on vitality and viability of the area is acceptable. The Vudu Lounge is a drinking establishment that is easily accessible and does not have a material effect on the vitality and viability of this part of the city centre.

Impact on the character and appearance of the conservation area:-

4.8 Swinegate forms part of the historic core of the city centre and is a popular cut-through route for pedestrians in the city centre. The area provides for largely leisure uses, with some retail use, and some residential properties within nearby courtyards and management flats for local businesses. There are a number of restaurants, public houses and a take- away restaurant that are open in the evening, but generally the general Swinegate area is a pleasant and safe environment to visit in the evening.

4.9 At the August West/ Centre Sub-Committee, Members restricted the operating hours of the drinking establishments at Lucia's and Bora Bora to 2400hours. Both businesses have external drinking areas and are situated within the confined

courtyard at Back Swinegate. The Vudu is in a more open location on Swinegate, reasonably distant from Back Swinegate, and would not add to the noise/ disturbance in the area of Back Swinegate. Within Swinegate, the nearest late night drinking establishments at the Biltmore and Oscars operate until 02300. Whilst it is acknowledged that the late evening character of the conservation area is affected by the activity associated by late night drink uses, there is not an overconcentration of such uses within Swinegate that detrimentally affect its mixed city centre character. The impact of the late operating hours of the Vudu Lounge can be absorbed in Swinegate without undermining the balance of uses and activities that define the character of this part of the conservation area. The appearance of the conservation area is not affected by the use as it is physically contained within the upper floors of the building. There would be no conflict with Policy HE3 of the Local Plan.

Impact on the amenity of the occupiers of properties in the area:-

4.10 The application seeks permission to extend the opening hours of the Vudu Lounge until 0400 daily. Considerable concern has been expressed by the residents that occupy the management flats in the Three Cranes Public House and the Roman Baths Public House at the rear of the application site. The Vudu Lounge has been operating as an unrestricted nightclub open until 0400 daily since approximately 2009. Its late night activity and break- out noise has had a considerable impact on neighbouring residents beyond its approved use as a Members restaurant/ bar with a controlled entry system. - particularly in the early hours of the morning when the area would have been quiet.

4.11. NOISE BREAK- OUT- In relation to break-out noise, the applicant has submitted a Noise Impact Assessment Report (by Dragonfly Acoustics, dated 8th August 2012) assessing the construction of the building, establishing where there are acoustic weaknesses in the building envelope, and proposing measures that could be taken to further sound insulate the premises. In advance of the report the applicant has recently fitted acoustic glazing to all external windows. The noise assessment concluded that most of the noise was escaping from the floor/ceiling area that forms the archway access to the rear yard of the Roman Baths. This concurs with the noise complaints received by the Environmental Protection Unit in relation to late night bass beat emanating from the Vudu Lounge, and music heard by investigating officers. It is recommended that sound insulation measures be concentrated in this area and if works are undertaken to further sound proof the premises, it is considered that the Vudu Lounge could operate in a manner that will not affect the occupants of nearby dwellings.

4.12 Whilst it is highly likely that the measures if implemented could resolve the issue of noise break-out, it is possible that noise escaping from the roof or the windows could still give rise to problems. If planning permission is granted, it is recommended that Members should consider a temporary consent which would enable the efficiency of the measures to be properly assessed (i.e. regular visits to

the area by the noise patrol), and further measures could then requested if it is found to be necessary.

4.13 NOISE/ DISTURBANCE- The application site is within the city centre where late night uses are to be expected, and a certain level of noise from persons in the street at night and anti-social behaviour can be expected which cannot be attributed to any single premises. The closest residential properties are at the rear of the property and are affected by the use of the access from the building to Three Cranes Lane and the use of the lane by the public. If planning permission is granted, it would be prudent to have a management plan that manages the use of this access, which include the prevention of bottle/ glass noise at unsocial hours.

Crime and Disorder:

4.14 Matters of crime and disorder/security are predominantly dealt with through the licensing legislation. The Premises has a current license which has been endorsed by North Yorkshire Police.

5.0 CONCLUSION

5.1 It is considered that Swinegate could absorb the existing use without detracting from the character, and the vitality and viability of Swinegate. The use is reasonably compatible with the neighbouring predominantly restaurant /retail/ public house uses. If appropriately controlled, neighbouring residential amenity would not be unduly affected. The use accords with Policies GP1, HE3, S6 and S7 of the Local Plan and guidance within the NPPF that seeks to promote a vibrant local economy whilst protecting the local distinctiveness that contributes to the character and appearance of the conservation area.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 This use hereby approved shall cease by 13.9.2013 unless prior to that date the consent of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: So that the Local Planning Authority may assess the impact of this use upon the living conditions of neighbouring residents by monitoring the effect of the implemented noise management scheme.

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted details:-

Plans and other submitted details received on 2 April 2012

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Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Within 1 month of the date of this permission, a noise management scheme shall be submitted to the Local Planning Authority for written approval. The requirements contained in the approved noise management scheme shall be fully implemented within 1 month of its approval. The noise management scheme shall include as a minimum, sound insulation measures proposed within the acoustic report by Dragonfly dated 8th August 2012. It shall also address the use of the access from the building to Three Cranes Lane.

Reason: For the protection of the amenity of local residents from noise.

4 The use shall only be open to customers between the hours of 1000 and 0400 hours next day, each day of the week

Reason: In the interests of the amenity of the occupiers of nearby properties and the character of the area.

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 the vitality and viability of the city centre; the character and appearance of the Central Historic Core Conservation Area; and the amenity of surrounding residents. As such the proposal complies with Policies GP1, S6, S7 and HE3 of the City of York Development Control Local Plan (2005) and national planning guidance contained in the National Planning Policy Framework.

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