

COMMITTEE REPORT

Committee: West & City Centre Area **Ward:** Guildhall
Date: 30 January 2007 **Parish:** Guildhall Planning Panel

Reference: 06/02690/FUL
Application at: 2 Clifford Street York YO1 9RD
For: Removal of condition 6 of planning permission 06/00372/FUL to allow 24 hour opening Mon-Sun (Current hours 0800 - 0100 hrs Mon - Thurs and 0800 - 0300 hrs Fri - Sun)
By: Wayne Dixon
Application Type: Full Application
Target Date: 1 February 2007

1.0 PROPOSAL

1.1 The application relates to Subway sandwich franchise that was granted permission in June 2004 (04/1592/ful). In granting permission the Local Planning Authority restricted hours of operation, requiring the premises to open only between 08.00 and 00.00 each day. A full planning history of the permitted hours can be found in 4.1.

1.2 The application proposes to align the allowed opening hours with those granted by the Licensing Act 2003. The premises would be able to open 24 hours each day of the week.

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
Listed Buildings Grade 2; 6 Clifford Street York 0485
Listed Buildings Grade 2; 4 Clifford Street York 0486
Listed Buildings Grade 2; 2 Clifford Street York YO1 1RD 0487

2.2 Policies:

CYS6 Control of food and drink (A3) uses
CYHE3 Conservation Areas
CYHE4 Listed Buildings

3.0 CONSULTATIONS

3.1 Internal

- Highway Network Management - No objection.
- Environmental Protection Unit (EPU) - No objection.
- Urban Design and Conservation - No objection.

3.2 External

- Planning Panel - Object - Consider that 24 hour opening would harm residential amenity.
- Safer York Partnership (Police) – No response.
- Theatres Trust – No response.

Publicity - Two letters in objection from 15 King's Staith and 5 South Esplanade, reasons as follows,

- detrimental to residential amenity,
- additional nuisance, litter and anti-social behaviour,
- applicant does not comply with licensing conditions (this came to light at the 20.11.06 hearing) - specifically, failed to join pub watch, door staff not always on duty when required to be,
- Problems would be exacerbated in summer when people are more likely to remain in the surrounding area.

4.0 APPRAISAL

4.1 Planning history

- 06/372/ful requesting to open until 01.00 the following day on Mondays to Thursdays, until 03:00 the following day on Fridays, Saturdays and Sundays - approved on 16.5.06.
- 05/1259/ful requesting a temporary permission to open until 01.00 the following day on Saturdays and Sundays - refused.
- 04/03318/ful requesting to open until 03.00 the following day Monday - Saturday and until 02.00 Sunday - refused.

4.2 Key issues

- Impact on the character and function of the area, which is a conservation area
- Crime and disorder
- Amenity
- Effect on the special historic interest of the listed building

Relevant policy

4.3 Planning Policy Statement 6: Planning for Town Centres (2005) contains current government guidance on a range of development in town centres. 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 that 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. Local Planning Authorities should 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.

4.4 The Council's Statement of Licensing policy sets out the procedure for determination of license applications. 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. A license is granted subject to conditions, which take steps to mitigate the effect of late night opening, however there are limited powers to deal with noise originating from customers entering or leaving premises.

4.5 Policy S6 of the City of York Draft Local Plan relates to the control of food and drink uses. The policy permits the extension of such premises subject to no adverse impact on the amenity of surrounding occupiers. Opening hours are to be restricted where necessary to protect the amenity of surrounding occupiers.

4.6 The key difference between licensing and planning is that a premises license can be revoked if problems arise at a premises. 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 parties (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 extension of hours and the potential for harm as well as any known problems specific to the site.

4.7 The host building is listed and within a designated conservation area (Central Historic Core). Within such areas, the Council has a statutory duty to consider the desirability of preserving or enhancing the character or appearance of the area. Policy HE3 states that within Conservation Areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area. Policy HE4 seeks to ensure proposals have no adverse effect on the character, appearance or setting of the building.

Appraisal

Impact on the character and function of the area, which is a conservation area

4.8 It is considered that the proposal to extend the opening hours would have little, if any, impact on the character of the conservation area. The application site is in an area with a number of late night uses. These include the gallery night club and also public houses, taxi offices and restaurants / takeaways which open late into the night. No alterations are proposed that would affect the appearance of the area.

Crime and disorder

4.9 In previous applications submitted prior to the Licensing Act 2003 there were significant objections from the police architectural liaison officer (ALO). However since the Licensing Act 2003 (which takes steps to mitigate the effects of late night opening) there has been no objections from the police regarding crime and disorder. Conditions are attached to the premises license such as the requirement for door staff (until at least 03:00 on Fridays - Sundays) and 24 hour CCTV coverage. If crime and disorder were to result at the premises, the premises license could be revoked. There is no evidence at present that crime and disorder occurs specifically at the premises, or as a consequence of it. As such there are insufficient grounds to refuse the planning application on such basis. This would also apply to anti-social behaviour.

Amenity

4.10 There are no residential units on Nessgate or Clifford Street. The nearest are at 11 King Street, 4 Cumberland Street, Gloucester House on Castlegate and the flats at 2-16 Friargate. The written objections come from 15 King's Staith and 5 South Esplanade, which are at least 100m from the application site. EPU have received no complaints regarding the premises.

4.11 Residents in the city centre, especially around the Gallery nightclub (open until 03.00 the following day during the week and until 04.00 on Friday and Saturday evenings), and also takeaways nearby which people convene around before they disperse, either by foot or when waiting for a taxi, after leaving the nearby pubs and clubs, will suffer from some loss of amenity as a consequence of the late night uses in the area.

4.12 In support of the application the applicant has previously stated that the premises is popular with the emergency services - the nearby fire station and also members of the police and ambulance services. The presence of such 'responsible' customers is likely to assist in deterring noise and nuisance (source Safer Places 2004 ODPM 2.6).

4.13 It cannot be proven that the extended opening of the application unit would bring a substantial number of extra people to the area late at night / early morning. The operation of the application site would thus not materially add to disturbance. Such findings were evident in a similar case approved on appeal - Salt and Peppers (04/2089) where the inspector found that the operation of an A5 use had no significant effect on the surrounding area, "the proposed extended opening hours would not add significantly to existing levels of noise and disturbance or crime and disorder and there would, therefore, be little additional harm to the living conditions of the adjacent residents". Furthermore the Inspector awarded costs after the Local Planning Authority refused the application to extend opening hours.

4.14 It is considered that to allow the premises to potentially open 24 hours a day is unlikely to have a significant effect on existing levels of amenity. Given the extant character of the area it would be difficult to prove that the opening of the sandwich

bar through the night would significantly add to the levels of disturbance that occurs at present.

4.15 As this would be the first example of such hours in the city centre, it is considered to be wise to allow the proposed hours for a temporary period only, to assess impact.

4.16 No flues or means of extraction are in use at the premises. No complaints have been received from EPU since the premises began trading regarding cooking smells. Furthermore there are no residential premises immediately nearby, which would be affected by any smells emanating from the premises. As such it is considered not to be necessary to control cooking times, which has been done previously.

Effect on the special historic interest of the listed building

4.17 The application unit is within a Grade II listed building. No building operations are proposed. The extension of the opening hours would not have any affect on the architectural or historic importance of the building.

Other matters

4.18 The creation of litter can only be controlled to a certain extent, by providing incentives for people to act responsibly. It is a condition of the premises license that bins are provided, customers are encouraged to use them and they are emptied daily. As such litter management need not be duplicated in the planning application.

5.0 CONCLUSION

5.1 It is considered that the application is unlikely to harm residential amenity, and that there would be no undue adverse effect on the conservation area and the listed building. However, it is recommended a temporary permission for two years be granted to assess impact.

6.0 RECOMMENDATION: Approve

- 1 PLANS1 Approved plans
- 2 The hours of operation shall revert to those previously approved in application 06/372/FUL (08.00 to 0100 the following day Mondays to Thursdays, and 08.00 to 03.00 the following day on Friday, Saturday and Sundays) by 01.02.2009 unless prior to that date the consent of the Local Planning Authority has been obtained for alternative hours of operation.

Reason: So that the Local Planning Authority may assess the impact of this use upon the surrounding area.

- 3 The premises shall be used primarily for the sale of cold food purchased and consumed on or off the premises and for no other purpose in Classes A3, A4

or A5 of the Town and Country Planning (Use Classes) Order 2005 or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order.

Reason: So that the Local Planning Authority may re-assess alternative uses which, without this condition, may have been carried out without planning permission.

- 4 Details of all machinery, plant and equipment to be installed in the proposed premises including any means of extraction, and the proposed noise mitigation measures, shall be submitted to the local planning authority. These details shall include maximum ($L_{Amax}(f)$) and average (L_{Aeq}) sound levels (A weighted), and octave band noise levels they produce. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise mitigation measures shall be appropriately maintained thereafter.

Reason: To protect the amenity of nearby occupiers.

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 residential amenity, the character and appearance of the conservation area and the special historic interest of the listed building. As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies S6, HE3 and HE4 of the City of York Local Plan Deposit Draft.

Contact details:

Author: Jonathan Kenyon Development Control Officer
Tel No: 01904 551323