

COMMITTEE REPORT

Committee: West & City Centre Area **Ward:** Guildhall
Date: 21 December 2006 **Parish:** Guildhall Planning Panel

Reference: 06/01641/FUL
Application at: 42 Stonegate York YO1 8AS
For: Variation of condition 4 of planning permission 03/00590/FUL to extend opening hours of internet lounge from 1000-2300 (Mon-Sat) and 1100-2230 (Sun) to 1000-2400 (Mon-Thurs), 1000-0100 (Fri and Sat) and 1100-2400 (Sun) and extension of off-licence hours from 22.30-23.00(Sun).
By: Ian Loftus
Application Type: Full Application
Target Date: 6 December 2006

1.0 PROPOSAL

1.1 The recent amendment (April 2005) to the Use Classes Order places Internet cafes within A1 use. Circular 03/2005 confirms that provided the use of the Internet is the primary use and that the cafe is an ancillary element, the serving of hot and cold drinks does not invalidate the A1 status. This is a change from previous stances on internet (or cyber) cafes which were previously not specifically included in the Use Classes Order and were considered to either be sui generis or a dual A2/A3 use. It was on the basis of this former stance that the property was granted A2/A3 use in three separate applications (for the ground, first and second floors) in 2000, 2002 and 2003.

1.2 A condition of the first consent for the change of use of the first floor from retail (Class A1) to dual use (Class A2 & A3) as internet facility and internet cafe lounge was that the hours of operation be restricted to between 10.00 and 17.30 Monday to Saturday and 11.00 and 17.30 on Sundays. In 2002, planning permission was granted for the variation of this condition to allow opening between 10.00 to 23.30 Mondays to Saturdays and 11.00 to 23.00 on Sundays. These hours of opening were imposed on the subsequent consents for the use of the upper floors for the same use.

1.3 An application, (Ref. 05/01742/FUL) seeking consent to extend the opening hours further from 08.00 to 03.00 Monday to Saturday and 09.00 to 03.00 on Sundays, was refused planning permission on 29 September 2005. An appeal against this decision was dismissed on 2 August 2006.

1.4 In the intervening period, an application (Ref. 05/02224/FUL) seeking consent to extend the opening hours to 08.00 to 01.00 Monday to Thursday, 08.00 to 03.00am Friday to Saturday, and 09.00 to 01.00 Sunday was refused planning permission on 6 December 2005.

1.5 This application seeks consent for an extension of the off-licence hours from 2230 to 2300 on Sundays. This would be similar to the agreed closing times for the rest of the week and would match the retail off-licensing hours of 2300, daily as agreed by the licensing committee. The applicant has also applied to extend the operating hours of the Internet lounge to 1000-2400 Monday- Thursday (1 hour longer), 1000-0100 Friday- Saturdays (2 hours longer), and 1000-2400 Sunday (1.5 hours longer). The application is also supported by additional information that describes the business in further detail and explains the dispersal policy that has been adopted to cope with people leaving the premises late at night.

1.6 The property is a Grade II listed Building situated in the Central Historic Core Conservation Area.

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

Listed Buildings Grade 2*; 44 Stonegate York YO1 2AS 0865

Listed Buildings Grade 2; 42 Stonegate York YO1 8AW 0866

Listed Buildings Grade 2; Ye Olde Starre Inne 40 Stonegate York YO1 2AS 0869

2.2 Policies:

CYS6

Control of food and drink (A3) uses

CYHE3

Conservation Areas

3.0 CONSULTATIONS

Internal

3.1 Environmental Protection - The Environmental Protection Unit have no objections to this application. Previous applications have been treated with caution due to a perceived problem with noise from customers entering and leaving the premises late at night and disrupting residents living nearby. However the Environmental Protection Unit has not received any complaints about customers at

the Evil Eye causing a noise nuisance in Stonegate. There are now three pubs operating in Stonegate in addition to the Evil Eye Lounge. As this application is for a small increase in opening hours, we have no grounds for objecting.

3.2 Highway Network Management - no objections

3.3 Urban Design and Conservation - Stonegate is a narrow historic street situated within the Central historic Core Conservation area, and closing hours should be compatible with its existing restaurants and public houses.

External

3.4 The Guildhall Planning Panel object as -

- a) Disturbance to adjoining and nearby residential property
- b) Spoils 'conservation' character of the Stonegate

3.5 Adjacent properties were consulted by letter and the application advertised by site and press notice. The consultation period expires on 20 December 2006. Five responses have been received from residents/ businesses in the area. The points raised can be summarised as follows:

- Stonegate is a leading historic street and this would not be an appropriate activity given the special character and tourist value of the street.
- there is enough licensed activity in the area; an increase in drinking hours should not be supported
- many people live in the area and the extra noise and disturbance would be most unwelcome, especially after 11pm
- there is already vomit, broken glass and cigarette ends on the street which shopkeepers clear away each morning
- anti-social behaviour will increase, and safety and security will decrease if hours are extended.
- premises operate principally as a cocktail bar and restaurant

4.0 APPRAISAL

4.1 The key issues are considered to be:

- policy background
- authorised use
- crime and anti-social behaviour
- character and function of area
- residential amenity

POLICY BACKGROUND

4.2 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 nighttime economy. Local Authorities are encouraged to develop policies, which encourage a range of complimentary evening, and nighttime 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.

4.3 Local Plan Policy S6 relates to the control of food and drink uses. This policy permits the extension, alteration or development of such premises subject to no adverse impact on amenity of surrounding occupiers, openings hours to be restricted where necessary to protect amenity of surrounding occupiers and security issues (re. consumption of alcohol) are addressed.

4.4 Policy HE3 of the City of York Development Control Local Plan- Incorporating the 4th Set of Changes and Policy E4 of the North Yorkshire County Structure Plan aim to protect historic and visually important buildings and areas from development/alterations that would detract from these qualities.

AUTHORISED USE

4.5 The authorised use of the premises as an internet cafe and shop/off licence would suggest that there should not be large numbers of people coming to and from the site. When consent was granted for the previous extension of hours a condition was imposed that stated that the serving of drinks and snacks during the extended hours should be restricted to Internet users. The applicant has submitted an application to relax this condition, and is pending a decision. The premises have a large ground floor bar area and the website for the premises offers Sunday lunches, screening of football matches and cocktails as well as Internet use. Given the large bar area and the other activities being promoted on the site, it is considered reasonable to assume that the premises could attract more customers over extended hours than a basic Internet cafe with a small number of terminals.

4.6 Members should note that the existing approved A1 use at the front of the premises allows the off-licence element to open until 23.00 hours every evening with the exception of Sunday evening (22.30 hours) under Condition 4 of the original consent. In addition to the proposed extension of Internet lounge hours, the applicant seeks consent for the off-licence to be open for an additional 30 minutes on a Sunday evening.

CRIME AND ANTI -SOCIAL BEHAVIOUR

4.7 It is generally considered that the new licensing act offers a robust response framework to deal with crime and disorder, noise, and nuisance issues stemming from particular premises. Whilst it is appreciated that any extension of hours would extend nighttime activity into the late evening, it would be expected that any problems specific to these premises could be resolved through the licensing legislation. For Member's interest, the approved opening hours of the three other premises on Stonegate under licensing legislation are as follows-

Yorkshire Terrier- Opening until 01.00 Monday- Sunday

Old Starre Inne- Open until 01.00 Monday- Thursday, Sunday
Open until 02.00 Friday/ Saturday

Punch Bowl- Open until 24.00 Monday- Thursday, Sunday
Open until 01.00 Friday/ Saturday

Under planning legislation, there are no planning conditions that have been imposed on any of these three uses that restrict opening hours.

CHARACTER AND FUNCTION OF THE AREA

4.8 Stonegate forms part of the historic core of the city, as well as being a primary shopping street and during the day is busy with tourists and residents. The streets of the historic core are attractive and into the evening, tourists can be found wandering in and out of the narrow streets and alleyways which characterise this part of the city. Although there are a number of traditional pubs and some modern bars in this part of the city, generally speaking this part of the city is quieter late in the evening. This is not an area where the late night takeaways and nightclubs in the city are concentrated and it does not serve as a through route to the suburbs around the city. The late night evening entertainment in the City is largely concentrated in the Micklegate/George Hudson Street area and the street pattern of the Stonegate area does not make it a natural 'shortcut' to and from this area. It is considered that, at present, there is little to attract large numbers of people to this part of the city late at night. The function of this part of the city is therefore predominantly in relation to the retail/tourist industry. The Planning Inspector in the recent appeal decision that upheld the Council's decision to refuse planning permission for extended hours till 0300, considered Stonegate to be one of the most significant streets in the historic core of York and to be particularly important in terms of the townscape and character of the Conservation Area. He noted,

" There are two public houses, one of which, Ye Olde Starre, is of considerable historic interest. From my later site visit and, as the Council and several objectors to the proposal point out, although there are other bars in this part of the city, this is not an area characterised by " nightlife". " Para 4

The Inspector then goes on to conclude-

" There is no doubt that this would not only neither preserve nor enhance the character of this part of the Conservation Area, it would have a seriously detrimental impact contrary to established planning policy. " Para 5

4.9 It is considered that to allow this premises to operate until 24.00/01.00 hours would increase nighttime activity, largely associated with the bar use than the internet lounge use. The premises have a substantial bar area, and would have the potential to attract more revellers into this part of the city late at night. It is likely that the noise arising from more comings and goings of customers, with possible congregations outside in Stonegate would detract from its appeal as a tourist street in both the daytime and evening- a shopping and tourist area through the day but with a quiet character in the evening, appreciated by tourists and residents alike. The

proposal would neither preserve or enhance the character of this part of the Conservation Area, but would have a detrimental impact contrary to established planning policy.

RESIDENTIAL AMENITY

4.10 There are a significant number of residents in the historic parts of the city, with both flats and houses situated in Stonegate and the surrounding area. It is considered that although the residents currently will suffer some disturbance in the evening, at present this does not continue late into the night. By allowing the premises to open until midnight and beyond, the residents of the area are more likely to be disturbed by people attracted into this area of the city late at night. This is likely to harm the amenity currently enjoyed by residents of the area, as the noise and nuisance as people move to and from the premises, both when coming from other establishments and leaving at the end of the night, would extend the noise and disturbance significantly into the early hours. It is considered that whilst some degree of disturbance is inevitable in city centre locations, this would increase the potential for noise and nuisance to residents to an unacceptable degree.

4.11 The extension of opening hours of the off- licence on a Sunday evening by 30 minutes from 22.30-23.00 hours would not adversely affect neighbouring amenity.

5.0 CONCLUSION

5.1 The small increase in opening hours of the retail off-licence at the front of the premises would be unlikely to harm the character of the area or the living conditions of the neighbours. However, it is considered that the proposed extension of opening times of the internet lounge would harm the residential amenity of those living around the site as a result of increased noise and disturbance. There are a significant number of residential properties in the area whose occupiers, although subject to some nuisance from existing premises, are not generally disturbed late at night. The loss of amenity that would result from this part of the proposal would be significant and unacceptable.

5.2 Stonegate forms part of the historic core of the city and its primary function is considered to be as a retail and tourist area. The area is not in close proximity to the late night clubs and takeaways in the city and therefore does not attract large numbers of people late at night. It is considered that allowing this premises to open until 2400/0100 hours, would erode the character and function of this part of the city and the conservation area.

6.0 RECOMMENDATION: Refuse

- 1 Stonegate forms part of the historic core of the City and its primary function is considered to be as a retail and tourist area. It is considered that allowing the Internet premises to open until 24.00/01.00 hours would detract from and harm the character of the conservation area by attracting people into the area late at night, contrary to Policies S6, HE3 of the City of York Development

Control Local- Incorporating the 4th Set of Changes (2005) and Policy E4 of the North Yorkshire County Structure Plan. The extension of opening times would also harm the residential amenity of those living around the site as a result of significantly increased noise and disturbance from customers coming and going from the premises at this time of night. The proposal is therefore contrary to the advice given in Planning Policy Statement 6: Planning For Town Centres, which encourages management of the night time economy to give consideration to the character and function of the centre and the amenity of nearby residents.

7.0 INFORMATIVES:

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