

COMMITTEE REPORT

Date: 18 October 2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 12/02355/FUL
Application at: 78 Low Petergate York YO1 7HZ
For: Change of use from shop (Use Class A1) to restaurant and cafe
(Use Class A3) and alterations to shopfront.
By: York Hogroast Ltd
Application Type: Full Application
Target Date: 31 August 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 Planning permission is sought for the change of use of an A1 retail shop to a cafe / restaurant with ancillary take-away (Class A3) at 78 Low Petergate. Located on the corner of Low Petergate and Goodramgate, the property is Grade II listed and is situated on a Primary Shopping Street within the Central Historic Core Conservation Area. Formerly a book shop, the property is currently vacant.

1.2 The proposal would involve the use of the property as a cafe/restaurant for approximately 38 customers with seating at ground and first floor. The proposed external alterations would be limited to a new projecting painted sign fixed to an existing bracket, new hand painted lettering on the Low Petergate and Goodramgate fascia's and painted lettering on the solid panel which fronts Low Petergate together with the installation of obscure glazed privacy panels to the lower part of the display windows. The associated listed building application is also on this month's agenda.

1.3 The intended occupants of the property are York Hogroast, which have an existing outlet on Stonegate and one adjacent to the application site at 82-84 Goodramgate. Should planning permission be granted for the change of use of 78 Low Petergate, the applicant intends to continue to run a 13 year lease on the Goodramgate property with an alternative business and to take on a 20 year lease on 78 Low Petergate. The applicant states that this 20 year lease would provide the landlord with confidence and funds to invest into 78 Low Petergate, which requires attention internally and externally.

1.4 The application has been brought to Committee at the request of Cllr Watson due to concerns relating to the effect of non retail businesses in this part of the City Centre.

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

Listed Buildings GMS Constraints: Grade 2; 78 Low Petergate York YO1 2HZ 0766

Listed Buildings GMS Constraints: Grade 2; 76 Low Petergate York YO1 2HZ 0767

2.2 Policies:

CYS3 Mix of use in certain shopping streets

CYS6 Control of food and drink (A3) uses

CYS7 Evening entertainment including A3/D2

CYHE3 Conservation Areas

3.0 CONSULTATIONS

INTERNAL

Integrated Strategy Unit

3.1 As the concentration of non A1 uses would be 2% under the threshold on this primary shopping street following the change of use, the application is in line with policy S3a of the Local Plan.

Design, Conservation and Sustainable Development

3.2 The revised proposals have been informed by, and have responded to the evaluation of the special interest of the building. Please refer to the associated listed building application (12/02359/LBC) for more detailed comments.

Environmental Protection Unit

3.3 No objections but recommend conditions requiring submission of details of all new machinery, plant and equipment to be installed and details of the extraction plant or machinery required.

EXTERNAL

Guildhall Planning Panel

3.4 No objections

4.0 APPRAISAL

4.1 The key issues are:

- The principle of the change of use, considering the retail function of what is a primary shopping street.
- The amenity of surrounding occupants.
- Any impact on heritage assets - the listed building and the Central Historic Core conservation area.

The vitality and viability of the street and the city centre as a whole

4.2 The National Planning Policy Framework stipulates that local planning authorities should define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations.

4.3 The Development Control Local Plan was approved for Development Control purposes in April 2005: its policies are material considerations where they reflect the National Planning Policy Framework. Policy S3a of the Local Plan identifies Low Petergate as a primary shopping street, where non retail uses will only be permitted when they will not dilute the retail function of the street, or the centre as a whole. Factors to consider in assessing the impact will be: location and prominence of the premises, the amount of non-retail uses (as a guide a maximum of 35% non-retail premises are given), the level of activity associated with the proposed use, and the proportion of vacant premises in the area.

4.4 The non A1 frontage of Low Petergate includes a fish and chip shop and several restaurants. There are currently 3 vacant units. The change of use of 78 Low Petergate would bring the level of non retailing uses to 33%.

4.5 78 Low Petergate is on the corner of a crossroads and is considered to occupy a prominent location within the Conservation Area. Officers note that there is a cluster of A3, A4 and A5 uses close to the crossroads of Low Petergate, Church Street, Goodramgate and St. Sampson's Square including the existing York Hogroast (adjacent to the application site), adjacent to which is the Old White Swan, the fish and chip shop opposite the site together with a cluster of A3, A4 and A5 units at the end of Church Street. Whilst outside the scope of planning control, and not related to the retail provision of the street but more relevant in an assessment of the character of the area, there are also 4 No. mobile take away units in the vicinity of the application site including two in St. Sampson's Square.

4.6 Notwithstanding the above, it is considered that it would be difficult to object to the proposed use on the grounds of undue detrimental impact on the retail function of the street. This conclusion is based on the consideration that the non retailing proportion of Low Petergate is 2% below the 35% threshold, that there are three vacant units in Low Petergate, which Policy S3A states should be taken into account, and the consideration that the proposal would result in opening the first floor of the property up to the public, which would add to the sense of activity and interest in this part of the city centre. Officers also note that 78 Low Petergate has been actively marketed since January 2012 and a letter has been provided confirming that there has been no interest in the unit from any other potential users other than from York Hogroast.

The amenity of surrounding occupants

4.7 Local Plan Policy S6 relates specifically to the control of food and drink uses and states that planning permission for the extension, alteration or development of premises for A3 uses (food and drink) will be granted in York City Centre provided that a) there is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise smell or litter; b) the opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers; c) car and cycle parking meets standards referred to in the Local Plan, and d) acceptable external flues and means of extraction have been proposed. Policy S7 states that proposals for new leisure uses (including use classes A3 and D2) that complement York City Centre will be permitted provided that a) there is no adverse cumulative effect on the vitality and viability of the Centre, and b) there is no unacceptable effect on residential amenity.

4.8 It is not considered that the change of use of the property to a cafe / restaurant would generate environmental problems which in turn would affect the character and appearance of the conservation area. There are residential properties in the vicinity of the application site including a recent approval for 3 No. flats at 12 Church Street and at the Golden Lion Pub on Church Street, however given the existing uses in the area, it is not considered that the proposal would significantly impact on the residential amenity of local residents. The applicants are applying for a premises licence, which is required for the business to operate after 11pm at night and such a licence would cover issues relating to CCTV, notices requesting the public to respect the needs of local residents, a general litter pick up and tidy of the general area on closing, and security. The hot food takeaways operating in close proximity to the application site comprise 14 St. Sampson's Square and 10 Church Street, the planning approvals for which imposed no opening hours restrictions. The proposal for a restaurant is therefore considered to accord with Policies S6 and S7.

4.9 The original scheme proposed that extraction would be connected to the outside through the existing chimney stack on upper floors. These plans have been superceded by a proposal to use a Rationale cooker system which drains into a

waste pipe connected to drainage. Comments from the Environmental Protection Unit with respects to this system are awaited and Members will be updated at the meeting.

Impact on Heritage Assets

4.10 The National Planning Policy Framework advises that local planning authorities should support a strong town centre economy and conserve and enhance the historic environment. It states that considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed by or lost through alteration or destruction of the heritage asset or development within its setting. Policy HE4 of the Local Plan relates specifically to listed buildings and states that changes of use will only be granted where there is no adverse effect on the character, appearance or setting of the building. Policy HE3 states that within conservation areas, proposals will only be permitted where there is no adverse effect on the character and appearance of the area.

4.11 The proposed external alterations would be limited to a new projecting painted sign fixed to an existing bracket, new hand painted lettering on the Low Petergate and Goodramgate fascia's and painted lettering on the solid panel which fronts Low Petergate together with the installation of obscure glazed privacy panels to the shopfront to the lower part of the display windows. Officers consider these alterations to be sympathetic to the character and appearance of the listed building and its setting within the wider Conservation Area. A condition requiring details of the obscure glazed privacy panels is recommended. The associated listed building application addresses the internal alterations required as part of this proposal.

5.0 CONCLUSION

5.1 Officers do not consider that the proposal would cause harm to the vitality and viability of the city centre or to the character and appearance of the Conservation Area and as such the application for the change of use of 78 Low Petergate is considered to accord with the National Planning Framework and Policies HE3, S3a, S6 and S7 of the Local Plan. Approval is recommended subject to the following conditions.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years -

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

Received 28.9.2012

Dig No: 001 Rev A (Location Plan)

Dwg No: 002 Rev A (Block Plan)

Dwg No: 005 Rev D (Existing & Proposed Elevations)

Dwg No: 004 Rev E (Proposed Floor Plans)

Dwg No: 006 Rev A (Existing & Proposed Elevations - Goodramgate)

Design & Access Statement Revision B

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

3 Full details of the proposed method and materials for obscuring the lower part of the display windows shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development and the works shall be carried out in accordance with the approved details.

Reason: So that the Local Planning Authority may be satisfied with these details in the interests of the character and appearance of the Central Historic Core Conservation Area.

4 Details of all new machinery, plant and equipment to be installed in or located on the use hereby permitted, which is audible outside of the site boundary when in use, shall be submitted to the local planning authority for approval. These details shall include maximum ($L_{Amax}(f)$) and average sound levels (L_{Aeq}), octave band noise levels and any proposed noise mitigation measures. 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 fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenity of residents from noise.

5 There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenity of future residents and local businesses.

Note: It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition.

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 impact on the character and appearance of the conservation area and the listed building, and the amenity of neighbours. As such the proposal complies with the provisions of the National Planning Policy Framework and Policies S3, S6, S7, HE3 and HE4 of the City of York Development Control Local Plan.

2. INFORMATIVE:

If, as part of the proposed development, the applicant encounters any suspect contaminated materials in the ground, the Contaminated Land Officer at the council's Environmental Protection Unit should be contacted immediately. In such cases, the applicant will be required to design and implement a remediation scheme to the satisfaction of the Local Planning Authority. Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the council may consider taking action under Part IIA of the Environmental Protection Act 1990.

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for

"Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturer's instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

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