

COMMITTEE REPORT

Date: 16 February 2017 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 16/01769/FUL
Application at: Proposed Floating Arts Venue, South Esplanade, York
For: Mooring of Ouse Barge converted to create floating arts venue
adjacent to Tower Gardens/Skeldergate Bridge
By: Arts Barge Project
Application Type: Full Application
Target Date: 26 September 2016
Recommendation: Refuse

1.0 PROPOSAL

THE SITE

1.1 The application site is on the eastern bank of the River Ouse adjacent to Tower Gardens and Skeldergate Bridge within the Central Historic Core Conservation Area. The old Tollhouse for Skeldergate Bridge is located immediately next to the site and has been converted to a cafe with outdoor seating. The area is close to a number of varied and important heritage assets such as the City Wall (listed at Grade 1), Davy Tower (Grade 11*), Tower Place houses (Grade 11), the late 19th Century Skeldergate Bridge, toll house and walls (Grade 11) and across the River Ouse, the Bonding Warehouse (Grade 11).

1.2 Tower Gardens contains mature trees and the river path forms part of the busy pedestrian link from the car park on St George's Field into the city centre along South Esplanade and King's Staith, or eastwards towards York Castle, or southwards along the planned early 18th riverside promenade of New Walk Terrace.

THE PROPOSAL

1.3 It is proposed to create a permanent mooring for a 1950s barge called 'Selby Tony', to be converted to become an arts and performance venue. Selby Tony is a historic barge that has been used to transport freight from Hull to York on the River Ouse. The barge was purchased in 2013 following fundraising and a series of Arts Barge festivals and events within Tower Gardens and on a hired barge in 2011. The hull of the barge is approximately 31 metres long and 6 metres wide and is moored in dry dock in the Foss Basin for initial welding repairs. The hull would be roofed over to provide an indoor lower deck with a large performance and seating area of approximately 80 square metres served by a bar and kitchen. Ancillary facilities such as WCs, wash up and bunk room would be located in the bow of the barge. A

new housing of approximately 30 square metres would be formed on a new upper deck to contain a ticket control point and/or moveable bar, an additional WC and a platform lift. The deck area itself would remain open as an external seating area. The overall height of the hull and upper deck housing would be approximately 6 metres with the majority above the waterline level.

1.4 The boat would be permanently moored through pilings into the riverbed and would be held on 3no new steel river piles sited 2.5 metres from the bank on which it would rise and fall. The piles would project approximately 6 metres above embankment level. The gangways would take off from a single access point on the embankment.

1.5 Refuse would be stored within the barge and taken off by prior arrangement with a private contractor. Dray deliveries would also remove empty bottles kept in the cellar at the bows of the barge.

1.6 The Design and Access statement explains that the proposal would provide a permanent base for many community arts and performance related events and outreach projects across the range of art forms including (but not limited to) music, theatre and visual arts. The project is run by four founding volunteers, an advisory board and supported by a wider group of artists. An example schedule of a sample week of activities suggests that activities would commence at 7.30 am with yoga/ dance movement wake up or a business breakfast. Day time activities would include school visits, teaching art making techniques, parents and tots “make and play” sessions, afternoon tea dances , “TV dinners” (art house film with dish of the day), book club, and “a play and a pint” (local theatre companies trying out their work in progress in front of an audience). Examples of evening activities include community theatre making, community band (no amplification) visual art making sessions, acoustic jazz and salsa dance band. The example programme suggests activities would cease at 11pm with a closing time of 12pm.

1.7 The application submission details that the Arts Barge Project has a six year track record of delivering social events and activities during which time it has worked with over 500 arts practitioners, reaching total audience figures of over 20,000 with events centred on promoting participatory arts and promoting the work of artists and performers. In addition to providing community arts related events, the project has established an arts therapy service to support vulnerable client groups in York and offer a multi modal Arts Therapies service to York schools. It would offer 12 full time and 3 part time posts and freelance contracts.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

- Areas of Archaeological Interest GMS Constraints: City Centre Area 0006
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- Conservation Area GMS Constraints: Central Historic Core CONF
- City Boundary GMS Constraints: York City Boundary 0001
- Floodzone 2
- Floodzone 3

2.2 Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66 states that the local planning authority shall have special regard to the desirability of preserving the setting which a listed building possesses.

Section 72(1) with respect to any buildings or other land in a conservation area, places a duty on Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

2.3 National Planning Policy Framework (March 2012)

2.4 2005 Draft York Local Plan (4th set of changes). Relevant policies include:

CYSP3 - Safeguarding the Historic Character and Setting of York

CYSP7B - York City Centre and Central Shopping Area

CYHE2 - Development in historic locations

CYHE3 - Conservation Areas

CYC1 - Community Facilities

CYNE2 - River and Stream Corridors, Ponds and Wetland Habitats

CYNE8 - Green Corridors

CYS7 - Evening Entertainment

CYL4 - Development Adjacent to Rivers

2.5 Draft York Local Plan (2014) Publication Draft – relevant policies include:

- SS4 – York City Centre

- CF1 – Community Facilities
- D1 – Landscape and Setting
- D2 - Placemaking
- D4 – Conservation Areas
- D8 – Historic Parks and Gardens
- GI1 – Green Infrastructure
- GI2 – Biodiversity and Access to Nature
- ENV4 – Flood Risk

3.0 CONSULTATIONS

INTERNAL

PLANNING AND ENVIRONMENTAL MANAGEMENT (CONSERVATION)

3.1 Skeldergate Bridge was designed with Tower Gardens around 1879. Its extended stone walls embrace the landscaped area which enhanced the planned 18th Century river walk already in existence beyond the bridge. The river walk was primarily designed for pleasure (promenade) to enable people to escape the city and enjoy the natural environment in a leisurely way.

3.2 The gardens mark a transition zone in the urban fabric and current uses around the area are mostly residential. The proposed new use for the mooring as a permanent performance, arts and entertainment venue would harm the existing character by introducing a use more typical of the city centre into the gardens and residential zone.

3.3 The immediate area is surrounded by a variety of richly detailed historic buildings and structures, including Skeldergate Bridge. Due to its proximity to those heritage assets, its exceptional size and scale, the modern appearance of the proposed high level additions and through blocking the river bank, the proposed barge would harm the setting of those assets and adversely affect views within and across the conservation area.

Further Comments (in response to additional/revised information received)

3.4 The further information supplied does not provide much reassurance on how the commercial activity can be contained especially at night. Whilst the aims of the project are laudable there will be reliance on a degree of commercial activity, with associated deliveries, waste disposal and comings and goings of people. Proposed hours of opening are very long and the effect of the changes on existing diurnal patterns of use in this small garden area is still difficult to judge, especially at night. Existing uses across the river and adjacent to the gardens are now mostly residential and the river area is quite dark.

3.5 The additional photographic visualisation makes the boat look attractive; however it is not a verified view and the actual drawings show an altogether more “boxy” structure on top of the new deck. This structure would be exceptionally close to the toll house and bridge spandrels (within 10m). The shell appears to be of a very rudimentary character in close proximity to the highly decorative bridge and it would affect appreciation of the bridge as it is within its setting. We query whether the masts are required.

3.6 Whilst the hull of the barge is of some historic interest, the superstructure and masts (up to 12m high) would be uncharacteristic of the traditional workmanlike character of the barge. Similar barges shown in the historic photos are quite low lying, and the proposal would be more authentic and have less impact on the setting of the bridge if the upper deck were smaller, or located away from the bridge, and the masts were omitted.

3.7 The bridge would be a fixed structure, not a moveable one in the usual sense of a boat. We have had some reassurance from the architect/agent that people using the gardens would still be able to gain access to the river as the open deck will be made available for anyone to visit regardless of whether they are a client/customer of the Arts Barge or not.

3.8 Additional information provided also sets out reasons why the previously supported location in a wider stretch of the river close to commercial uses would be unfeasible.

Comments received in response to submission of Heritage Statement by Purcell (February 2017)

3.9 The following comments are based on the revised proposal i.e. barge without masts;

Physical impact on appearance (positives and negatives)

3.10 The barge hull only is being reused and by omitting the previously proposed masts the barge would be less compromised as a heritage asset. By adopting the paint colours of the British Oil and cake Mills Co there would also be a minor increase in heritage significance.

3.11 By omitting the masts there would also be a slight reduction in the visual impact of the structure on open views of the small park and Castle area across the river (view 2a) and on the setting of the bridge in general. There would also be less likelihood of the temptation to use the lines for advertising and lighting (note non previously proposed).

3.12 The visual impact of the proposed upper housing still remains a concern as it is proposed as a much enlarged and “box-like” version of a wheel-house, and it would be very close to the toll house itself. None of the images in the report show the actual structure proposed or the proximity and size of the housing in relation to the elements of the bridge. Views of Skeldergate Bridge would still be adversely affected by having a bulky glazed modern housing, albeit with steel structure painted a grey, so close to the toll house. Daytime and night-time views would be affected.

Impact on character of area

3.13 Two aims of the scheme are set out in section 6 of the Heritage Statement. The first one relates to Art activities with which officers agree. The second one relates to providing “*to York residents, visitors and artists an opportunity to engage with the river again*”. This second aim would remove a public benefit i.e. free public access, views and openness between the park, river bank and the river; and replace with private access.

3.14 Disagree with the report where it states that the busy commercial area of public houses, theatre and opera house continues along to the bridge because of the cafe/bar at the Skeldergate Motor House. The cafe/bar area is very small and the openness of the park is unaffected.

3.15 The report contradicts the previous comment where it says that there is a “*discernible difference in character as the open quayside is replaced by the green enclosed space of the gardens*”. The ambience of the park with the grass and mature trees continues the more relaxed and quieter atmosphere of New Walk under the bridge towards the residential block (Tower Place to Peckitt Street). The presence of the city wall provides another visual marker between the openness and urban development along this non commercial riverside path.

3.16 The report refers to potential evening activities amongst which is a focus on “*European cafe culture*”. The extent to which this activity would change the

character of the park is a matter of fact and degree. If approval is granted to this income generating aspect of the scheme, limits on the activity to preserve the ambience of the park and the amenity of nearby residents would be recommended.

PLANNING AND ENVIRONMENTAL MANAGEMENT (LANDSCAPE)

3.17 No objections

PUBLIC PROTECTION

Comments further to receipt of revised noise assessment

3.18 The anticipated levels of noise likely to arise from the carrying out of live music are now considered to be 90.6 dB(A) Leq inside the proposed arts barge rather than the previous 96.6 dB(A).

3.19 At this level internally, the anticipated level of sound at the nearest residential properties, without any consideration of sound reduction provided by the barge structure itself, would be 56.9 dB(A) at façade. With an open window in the barge it is considered that a sound reduction of at least 10 dB and up to 15 dB could realistically be achieved, thereby resulting in an anticipated sound level of between 42 to 47 dB(A) at the façade of the nearest residential property. Compared to the existing background L90 of 47dB(A) the anticipated level is up to 5dB lower.

3.20 In practice it is likely that the barge structure will provide additional noise attenuation and so the levels would be lower. Within the noise assessment noise levels of 32 dB (A) are predicted when windows are open, which is approximately 13dB lower than the existing background noise levels at the nearest properties.

3.21 As a result, Officers are satisfied that the level of noise arising from live music and people within the barge are unlikely to result in the loss of amenity to nearby residential receptors.

3.22 In terms of noise associated with people noise from the use of external seating, the submitted noise assessment indicates that the noise levels from such use would not result in any loss of amenity, with predicted levels being approximately 9dB below the existing background L90 of 45dB(A).

3.23 Again Officers are satisfied that the noise arising from people seated on the roof of the barge are unlikely to result in the loss of amenity to nearby residential receptors. A condition is recommended to prohibit playing of music externally on the barge and to prohibit use of the external seating areas after 23:00

FLOOD RISK MANAGEMENT

3.24 The Flood Risk Management Team has no objections subject to the conditions requested by the Canal & River Trust (relating to pile details) and the Environment Agency (relating to permit for works within their 8m easement) together with a condition seeking the submission for approval of a robust emergency evacuation plan by our Emergency Planning Team to include measures taken on receipt of flood warnings and the signing up to the EA flood warning scheme.

EXTERNAL

ENVIRONMENT AGENCY

3.25 Provided the proposed development is in accordance with the submitted Flood Risk Assessment, and will rise and fall with the river (and therefore not cause an obstruction to flows) then the Environment Agency has no objections to the application.

3.26 This development will require a permit under the Environmental Permitting (England and Wales) Regulations 2010 from the Environment Agency for any proposed works or structures, in, under, over or within eight metres of the top of the bank of the River Ouse, designated a 'main river'.

CANAL AND RIVER TRUST

3.27 Supports proposals that increase the use and enjoyment of the waterways. However, all proposals must ensure that they do not have an adverse impact on the navigational safety of the waterways. As the navigation authority for the River Ouse, our advice is that a suitably worded condition is necessary to address this matter.

3.28 The condition should ensure that the pile details are submitted and approved prior to works commencing in order that it can be demonstrated that the piling system can withstand flows associated with the river. This will help to ensure that the barge and pontoons remain in situ and do not break free from their mooring which could create a navigational safety issue for other river users.

3.29 Recommend that navigation lights are installed on the barge to warn other river craft that are navigating the river at night. Also advises the applicant that they should have procedures in place to manage and remove river borne debris that may become trapped by the barge. An evacuation plan of the barge should also be considered in flood conditions.

CONSERVATION AREAS ADVISORY PANEL

3.30 No objection to the principle of utilising a former barge as an arts facility

however it was felt that its use would detract from the Conservation Area, and the particular residential nature of the area. Concern was expressed about the possible noise pollution from the barge, particularly when being used as a music venue. It was noted that a previous proposal had been to locate the barge adjacent to the North Street Gardens (although associated with additional occasional moorings). It was felt that this would have been a better location.

YORK CIVIC TRUST

3.31 States, the Arts Barge will create a lively and positive ambiance along our river front and will add to the economic and cultural assets of our city. We support the application.

3.32 There are clearly concerns from residents about noise levels and antisocial behaviour. Re the professional noise consultants' report states it does not seem credible that the noise attenuation from the barge to the Bonding Warehouse should be as high as 40dB - attenuation closer to 13dB over this span is contended. The noise estimates should be carefully considered. These issues (noise and behaviour) should be positively addressed by conditions on the consent; and by enforcement of those conditions.

SAFER YORK PARTNERSHIP

3.33 No comments to make in respect of “designing out crime”.

3.34 In respect of the sale of alcohol and the provision of entertainment, these will be discussed when a Premises Licence is applied for.

PUBLICITY

Objections

3.35 There have been 110 objections to the scheme, the majority of which are from local residents who live close by and feel that it will have a detrimental impact upon the quality of their living environment. They object on the following grounds:

Public Disorder

- Outside drinking on the river bank, similar to that experienced at Kings Staithe will lead to public disorder.
- It will cause antisocial behaviour such as drunkenness.
- When the Arts Barge was moored at the Bonding Warehouse there were instances where residents were threatened by drunken revellers leaving the venue.

Flood Risk

- It will be an inappropriate development in an area where high river levels and flooding of the river bank are a regular occurrence, as it will make entering and leaving the site dangerous.
- The street furniture, bins etc associated with the site may be swept away by flooding.

Environmental Considerations

- There are concerns with the methodology used to predict the level of noise that will be generated by the site. It does not take into consideration factors such as how sound travels over water and lack of sound insulation when hatches etc are open for ventilation. Request the Council require further investigation of sound levels, for example, the duration of the noise levels used to give the background reference when compared to the periods of lower and absence of traffic noise.
- There are concerns that if the level of noise generated by the site are above those predicted by the Noise Impact Assessment, no enforcement action will be taken by the council to moderate it.
- The revised Noise Impact Assessment is based on calculations that are now based on a random lower internal music noise level. This is a blatant manipulation of data for the purpose of providing a more palatable 'Assessment'. It is also nonsense to purport that the proposed noise will not be heard over the existing traffic noise. The proposed beat and bass of music in an uninsulated structure floating on hard water, together with the spikes of drunken voices and laughter on deck, are completely different from, and incomparable to, the existing background hum of traffic noise.
- If this application is approved, it is bound to lead to a constant source of environmental complaints from residents about noise nuisance. The Council will look stupid if they have not set noise limits both within the barge and on deck, and they will look even more stupid if the 'predicted' noise levels are exceeded. If this application were to be permitted, then this dB level must be determined now by the Local Planning Authority before any decision is made.
- Tower gardens will become a toilet in the evenings, making it not a nice place for children to play. When previously moored by the Bonding Warehouse people urinated up against the walls of residential properties in the vicinity.
- It will cause a lot of litter.
- There will be an adverse impact by delivery and refuse collection vehicles using and obstructing a popular public riverside path.
- The river banks, pathways and grass areas in Tower Gardens following flooding will be churned up even more by allowing pedestrian access, parking for cycles, delivery vehicles, collection of waste etc. Where will staff cars be

parked? What measure will be taken to ensure they do not end up parked within Tower Gardens?

- If the Environment Agency come up with a plan to build some form of flood defences along the river side to help protect properties in the future, the barge will totally compromise this.

Residential Amenity

- The site is not suitable as it is not compatible to moor an entertainment venue on the river within a residential area. It will be detrimental to the peace and tranquillity of the area.
- The amount of noise it will create will be unreasonable to the residents who live in the vicinity, causing serious harm to their residential amenity. When the arts barge was previously moored by the Bonding Warehouse there was a problem with loud music late at night, and when late night revellers left the venue they tended to linger and make a lot of noise. Music till 11 and 12pm is not for families. Suggest it closes at a much earlier hour to cater for the families and keep the area a quiet residential part of York.
- Temporary events in the area already cause problems. To have a permanent live music venue at this site will be invasive upon the quality of life for local residents. The noise from the temporary Arts Barge Project in Tower Gardens was loud and disruptive, particularly a deep bass which vibrates through properties close by.

Impact upon Character of Conservation Area

- The installation of large new moorings / gangways / signs / the barge itself/ electrical connections, waste pipes, sewerage, bin stores etc will be detrimental to the visual amenity of the conservation area.
- The size of the barge will have a detrimental impact upon the setting of Skeldergate Bridge and the Gate House which is Grade 2 listed.
- It will block the outlook from Tower Gardens and the terrace of Dyls Cafe. When the arts barge was moored at the bonding Warehouse it was an eye sore.

Safety

- It is not compatible with the agenda of making the river a safer place after a number of young people have recently lost their lives after falling into the river. There are health and safety issues / concerns for people leaving the site who are drunk and who could fall into the river and drown.
- The position of the barge so close to the upstream side of a bridge is dangerous should it break its moorings and collide with the bridge, particularly when the river is in flood.

- The size and positioning of the barge so close to Skeldergate Bridge will be an impediment to other river users.

Other Issues

- To describe the venue as an arts barge is considered to be disingenuous as the sale and consumption of alcohol and the playing of live music appear to be the commercial driver for the project.
- Concerns that an area of public river bank will be lost when set aside for seating for a commercial enterprise.
- It will put Dyls Cafe; a family run business in serious jeopardy and threat of closure because it will be detrimental to the ambience that this establishment creates.
- A number of the comments made in support of the application seem to be standardised and we would question the approach that has been adopted by the Arts Barge Project in obtaining them.
- In view of the proposed permanence of the siting of the barge, the application is more a kin to an application to build such a venue. The fact that it is to be situated on the river is irrelevant, an application to construct a new commercial building would take into account matters such as noise insulation to protect adjoining communities and the fact that it is a barge should not mean that a proper assessment of the impact on the associated park and residents along the quayside is avoided

In Support

3.36 There have been 156 responses received in support of the proposal. They raise the following points;

- For some time, there has been no city centre participatory arts venue. The programme proposed by the Arts Barge is not only of high quality, it will complement and extend the range of the arts currently on offer and will make a significant contribution to the cultural and artistic life of York.
- It will provide an alternative, distinctive, interesting and exciting small scale arts venue for the city. It has already brought diverse groups of people together to participate in or be an audience for various cultural events. The permanent venue would consolidate the project.
- It will add to the attractiveness and interest of the riverside. A welcome addition to a grossly underutilised riverscape.
- The Arts Barge project have demonstrated time and commitment to supporting local arts, they have proved they are capable of running well organised and popular events and have a track record of support and involvement from local

residents. It will be good for the city to have a location that is not under the control of a brewery or large conglomerate company from outside the city. The Barge will be run by a collective of arts, music and performance enthusiasts all of whom are from the city of York and have the city's interests at heart.

- The Arts Barge festivals held in the gardens have proved that it is not about drinking to excess but family fun run by organisers that care about the community as well as being part of that same community. It is likely to be used by mature adults and families who are unlikely to disrupt neighbours as they leave.
- By inviting more family groups to make more use of the riverside, it will counter the tendency for the city centre to be dominated by alcohol consumption by large groups. There is currently very little on offer for young families in York in the evenings, when the centre of town becomes dominated by drinking.
- After dusk this area becomes a dark and quiet corner that can feel intimidating and inaccessible, preventing many people from using it to get around. Locating the Arts Barge here would help animate this area making it feel safer and enabling more walkers and cyclists to continue using these routes after dark.
- Increasingly tourists look for places that offer authentic cultural experiences when deciding where to visit. Projects like the Arts Barge offer this type of visitor experience and help keep York relevant as a tourist destination for a new generation of visitors.
- The Arts Barge would provide a new reason for people to visit the Skeldergate Bridge area, and this increased footfall would be expected to have a positive impact on all local businesses and will make a significant contribution to the vibrancy and diversity of the city. It would give a range of people an opportunity to contribute to the local economy.
- There are already numerous boats of all sizes, including big riverside cruises, making their way up and down the Ouse and the Skeldergate area remains a busy pedestrian thoroughfare throughout the day into the evening and well past 11pm. Selby Tony will not add in any great way to increased noise or disturbance over and above what is already there. If you live in a city, you must expect some level of noise.
- As the venue will be contained within the boat, the noise will be well controlled.
- Evidence based research shows that music, dance and drama is used as therapy to rehabilitate vulnerable groups in society - work the Arts Barge has been given grants by the Joseph Rowntree foundation to undertake.

- The site has good access and access arrangements.
- The concept is used in the Netherlands where these barges produce a great environment demonstrating how good it is to meet and share music and dance.
- It will offer opportunities for people to build confidence around the use of the river, how to enjoy the river safely and provide information and education about the history and heritage of the boat and river use.
- The operators and customers of the barge will increase the number of eyes and ears focused on the river particularly after dark. They could provide life saving information to the emergency services and York Rescue Boat.
- It will enhance the area, transforming Tower Gardens from a drab thoroughfare into a landmark destination. It should also help to rejuvenate and enliven this somewhat neglected area of the city.
- At a time of continuing cuts to the Arts, this local project would be a welcome and creative addition to the performing arts scene in York. A group that are prepared to raise the money themselves should be fully supported.
- The location is excellent as it is away from the mainstream drinking and carousing activities of the city and will be a welcome escape from the crowded city drinking bars with loudly amplified music.
- The inventive re use and conversion of a piece of cultural heritage in the form of an old River Ouse working barge is a fitting tribute not to the history of one of the most significant rivers in the U.K.
- The Arts Barge offers the public genuine and affordable access to arts.
- The conversion plans for the Barge itself are innovative and of high quality and when it is finished would add and not detract from the local area.

4.0 APPRAISAL

4.1 The key issues to be considered as part of this application are:-

- Principle of proposal
- Impact on Heritage Assets
- Impact on Residential Amenity
- Flood Risk
- Navigational capacity of the river

POLICY CONTEXT

4.2 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. There is no development plan for York other than the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS") saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013 which relate to York's Green Belt and are therefore not relevant to this application. In the absence of a formally adopted local plan the most up-to date representation of key relevant policy issues is the NPPF and it is against this Framework and the statutory duties set out below that the application proposal should principally be addressed.

Sections 66 and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

4.3. Section 66 of the 1990 Act requires that in determining planning applications for development which would affect a listed building or its setting the LPA shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

4.4 Section 72(1) of the 1990 Act refers to any buildings or other land in a conservation area and places a duty on Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

National Planning Policy Framework (NPPF, March 2012)

4.5 Central Government guidance is contained in the National Planning Policy Framework. Paragraph 7 of the NPPF says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Paragraph 14 requires a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking, but a footnote states the presumption does not apply where more restrictive policies within the NPPF apply – including to designated heritage assets and to areas at risk of flooding.

4.6 Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking, such as seeking high quality design and a good standard of amenity for all and to proactively drive and support sustainable economic development to deliver the homes and businesses that the country needs.

4.7 Section 2 of the NPPF "Ensuring the vitality of town centres" seeks to promote competitive town centre environments and at paragraph 23 states that local planning

authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.

4.8 Section 7 of the NPPF requires good design. At paragraph 56, it says that good design is a key aspect of sustainable development is indivisible from good planning and should contribute positively to making places better for people.

4.9 Section 12 of the NPPF relates to the conservation and enjoyment of the historic environment. Paragraph 128 says that local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting, and the heritage assets assessed using appropriate expertise where necessary. Paragraph 129 says that Local Planning Authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including any development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

4.10 Paragraph 134 says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefit of the proposal, including its optimum viable use. However, it should be noted that lawful application of the statutory tests in the 1990 Act requires considerable importance and weight to be given to any harm to a listed building or conservation area, in the planning balance. The exercise is still one of planning judgement but it must be informed by that need to give considerable importance and weight to the desirability of preserving the heritage asset, more weight than if it were simply a factor to be taken into account along with all other material considerations.

City of York Draft Local Plan (2005)

4.11 Although there is no formally adopted local plan, the City of York Draft Local Plan (DLP) was approved for development control purposes in April 2005. Whilst it does not form part of the statutory development plan for the purposes of S38, its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are in accordance with the NPPF.

4.12 Related policies are listed in section 2.1 above. However policies considered to be compatible with the aims of the NPPF and relevant to the development are; SP3 (Safeguarding the Historic Character and Setting of York), SP7b (York City Centre and Central Shopping Area), HE2 (Development in Historic Locations), HE3 (Conservation Areas), NE2 (River and Stream Corridors, Ponds and Wetland Habitats), S7 (Evening Entertainment) and L4 (Development Adjacent to Rivers).

Emerging Local Plan

4.13 At this stage, policies in the 2014 Publication Draft Local Plan are considered to carry very little weight in the decision making process (in accordance with paragraph 216 of the NPPF). However, the evidence base that underpins the proposed emerging policies is capable of being a material consideration in the determination of planning applications.

PRINCIPLE OF PROPOSAL

4.14 Established in 2009, the Arts Barge Project was formed with an aim to revive York's community arts scene (in the absence of a dedicated Arts Centre) by creating a unique, floating community arts venue in the city centre. Since its establishment, the project has created different ways in which to showcase the work of communities and young people; some geared to residents and others aimed at visitors. The project has established collaborative opportunities across age groups and has delivered a large number of creative events within the city and locality.

4.15 The principle of such a use within the city centre is supported. It is in accordance with the NPPF and the 2005 Draft Local Plan which seek to both enhance the vitality and viability of the city centre and promote the provision of new community facilities in locations which are well served and linked by public transport and easily accessible by walking and cycling. The NPPF states that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. At Paragraph 70, the NPPF advises that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared space, community facilities such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.

4.16 In the context of the NPPF and Local Plan Policy, Officers are therefore supportive of the broad principle of the creation of a community arts venue in the city centre. The key issue instead is whether the proposed mooring of the Arts Barge adjacent to Tower Gardens is appropriate in terms of the impact on the character and appearance of the Conservation Area, on the setting of heritage assets and the impact on residential amenity.

IMPACT ON HERITAGE ASSETS

4.17 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('1990 Act') imposes a statutory duty on local planning authorities, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving

the listed building or its setting or any features of special architectural or historic interests which it possesses. Section 72(1) of the 1990 Act imposes a statutory duty on local planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas when determining planning applications.

4.18 The Courts have held that when a local planning authority finds that a proposed development would harm a listed building or a conservation area the authority must give considerable importance and weight to the desirability of avoiding such harm to give effect to its statutory duties under sections 66 and 72 of the 1990 Act. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted. The presumption in favour of sustainable development set out at paragraph 14 of the NPPF does not apply in these circumstances.

4.19 The legislative requirements of Sections 66 and 72 are in addition to government policy contained in Section 12 of the NPPF. The NPPF classes listed buildings, conservation areas and scheduled monuments as 'designated heritage assets'. Section 12 advises that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Paragraph 131, in particular, states that local planning authorities should take account of the desirability of sustaining and enhancing an asset's significance, the positive contribution it can make to sustainable communities and the positive contribution new development can make to local character and distinctiveness. Paragraph 132 establishes the great weight that should be given to a designated heritage asset's conservation with a clear and convincing justification being provided to justify any harm or loss.

4.20 Paragraph 137 of the NPPF states that local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably. Draft 2005 Local Plan policies HE2, HE3 and HE4 reflect legislation and national planning guidance. In particular, Policy HE2 states that within conservation areas and in locations which affect the setting of listed buildings, scheduled monuments or nationally important archaeological remains, proposals must respect adjacent buildings, open spaces, landmarks and settings and have regard to local scale, proportion, detail and materials.

Impact on the Character and Appearance of the Conservation Area

4.21 **Significance of Heritage Asset:** A Heritage Statement has been prepared which seeks to understand the elements within the proposed setting of the Arts

Barge and the significance of the proposed alteration to this location. As part of this assessment, a views analysis has been undertaken considering key views and the impact the proposals will have on their significance. Key views are those identified in the Conservation Area Appraisal from Skeldergate Bridge and from Clifford's Tower and those from Ouse bridge looking east.

4.22 This part of the Central Historic Core Conservation Area includes varied and important heritage assets such as the City Wall (listed at grade 1), Davy Tower (grade 11*), Tower Place houses (grade 11), the late 19th Century Skeldergate Bridge, toll house and walls (grade 11) and the Bonding Warehouse (grade 11). The gardens contain mature trees and the river path forms part of the busy pedestrian link from the car park on St George's Field into the city centre along South Esplanade and King's Staith, or eastwards towards York Castle, or southwards along the planned early 18th Century riverside promenade of New Walk Terrace.

4.23 The special character of an area is created not only by the buildings and spaces forming its townscape appearance, but also by its ambience which is the sum of many factors such as prevailing uses/activities, communication patterns, orientation and landscape, key views and vistas.

4.24 The site of the proposed floating arts venue adjacent to Tower Gardens and Skeldergate Bridge is at the periphery of the city centre and is considered to be a transitional area between the built up core of commercial streets and the quieter residential areas located along and just off the river banks. The gardens themselves are considered to be a well used green space and whilst the gardens sometimes host events including erection of marquee tents, they for the most part, offer a resting place and / or a quieter pedestrian route away from the noise and disturbance of the surrounding road network.

4.25 The Heritage Statement explains that "*Tower Gardens was created by the building of Skeldergate which cut this small area of land off from the open landscape of St. George's Field. The area was landscaped to provide an extension to New Walk to the south and a small public park for the people of York. The area therefore has historic significance for its connection to the building of Skeldergate Bridge and the overarching design of the area. Views across to Tower Gardens are characterised by the growth of mature trees in the area which highlight it as green space to the viewer. The site is defined within the Conservation Area Appraisal as being an extension of the "dense historic commercial core" from Kings's Staith. However, there is certainly a discernible difference in character as the open quayside is replaced by the green enclosed space of the gardens*"

4.26 **Assessment of Impact on Character:** The Heritage Statement concludes that the introduction of an industrial barge in this location is compatible with the historic character of the area as one of commercial river activity whilst its proposed use as a performance venue is compatible with this historic use of the river walk as

a pleasurable leisure activity.

4.27 The proposed Arts Barge, with opening hours extending from early morning until midnight and its offer of a range of community art and performance related events, is effectively in character a city centre “entertainment” use with its ability to cover its fixed costs reliant on income from the bar and cafe. It would be deemed to be an appropriate use in a busier city centre location which would have the potential to complement retailing uses and enhance the vitality and viability of the centre. Its permanent mooring alongside Tower Gardens, however, would be considered to alter the parkland ambience of the area for many of the people who use and pass through it as a result of additional noise and disturbance from the permanent activity on the barge, from increased and different patterns of movement and from the more intensive servicing needs to those of the small scale river related uses already in this location. The submitted Heritage Statement refers to the intention that evening activities will focus a ‘*European cafe culture*’, suggesting use of the seating on outdoor upper deck at these times. The night-time character of the area would also be considered to change as the new upper housing is highly glazed and it would be illuminated from within.

4.28 Assessment of Impact on Appearance: The barge to be used as the base for the ArtsBarge project is the 62 year old “Selby Tony”, a historic working barge that has been used on the Rivers Humber and Ouse as far upstream as Selby. Whilst significant in scale measuring approximately 31 metres long and 6 metres wide, the applicants make the point that “*it is a normal barge as used in York historically*”.

4.29 In terms of views, the Heritage Statement notes that the main impact will be on views when looking directly along King’s Staith towards the bridge and from Skeldergate across the river to the site. The assessment details that due to the height of the barge, only the deck house is likely to be visible from Tower Gardens. The assessment concludes that “*in the view across the river, it would have a moderate impact, causing minor harm to aesthetic value of Skeldergate Bridge, although the industrial character of the barge would be in keeping with the historic use of the river in this area*”. The Heritage Statement deems the impact on the key view from the bridge, identified within the Conservation Area Appraisal, to be negligible.

4.30 Notwithstanding the fact that the Selby Tony is a normal barge as used in York historically, the permanent mooring of such a large vessel would block access for the general public to the remaining stretch of open river bank in this location and would be considered to cause views of and across the river to be permanently interrupted. With respects to access to the bank, the executive summary of the Central Historic Core Conservation Area Appraisal states; “*the rivers are an underutilised asset; more could be done to extend access to their banks and improve the quality of public spaces along them*”. It is noted that the other landings

for small boats are located below the level of the bank. As detailed on the submitted sectional drawing, a significant proportion of the housing on the upper deck of the Selby Tony would be above the river bank.

4.31 With regard to the housing which would be visible above the river bank, the elevational drawings detail a new structure of approximately 30 square metres. This is considered to be uncharacteristically large but the applicant confirms it cannot be reduced in size due to requirements to provide an accessible WC, stairs, platform lift and ticket control point. The design has been improved since original submission with the replacement of the patio door to the front of the deck housing changed to a pair of opening doors, the removal of both masts and the proposal to paint the existing hull and hatch coamings in the original colours i.e. black hull, red band and light blue above. To differentiate the new deck housing from the original, the new steelwork would be painted in grey. An additional photographic visualisation has also been submitted which is considered to make the appearance of the boat look more pleasing (although officers note that this visualisation is not a verified view and that the actual drawings detail a more “boxy” structure on top of the new deck). The applicant contends that “*her simplicity of design is a feature of her working life and the design of the superstructure is intended to reflect that simplicity and allow a high level of visibility through it*”. The Heritage Statement notes that the current design is loosely based on the original wheelhouse.

4.32 Despite the improvements to the design since submission, officers remain of the view that the design lacks visual interest and design quality due to its scale and the highly glazed modern appearance of the tall steel housing.

4.33 Officers acknowledge that an argument could be made that as this proposal relates to ‘a boat on a river’, weight should not be given to issues relating to the interruption of views and poor design. Indeed an argument could be advanced that precisely because it is a boat, the development should be supported as it represents a means to increase activity levels on the river to the benefit of the character of the conservation area.

4.34 Officers recognise the importance of enhancing the use of the river for all residents and visitors and the desirability of opening up and increasing activity levels on the river as a means to enhance the character of the conservation area. However, it is also considered that a distinction needs to be made between a boat utilising the mooring with normal patterns of movement and this proposal for the permanent mooring of the Arts Barge. The static permanence of the Arts Barge would be considered to be akin to that of a new building, and therefore an argument that it would increase activity levels on the river is not accepted. Similarly, by virtue of its proposed permanence, it is considered appropriate to apply the same principles of design as one would with the siting of a new building in the Conservation Area. The current views of and across the river are available when no boat is moored would be compromised in perpetuity.

4.35 The applicant has provided the historical context to the proposed development, commenting that *“throughout the Victorian times through to the 1960s, barges transported goods into York and yet there is almost nothing left of this historic feature except the iron gantry on Queens Staith, the staithes themselves and some converted warehouses. The Selby Tony represents the end of a long line of commercial craft that has made York what it is today”*.

4.36 The Heritage Statement notes *“Selby Tony worked from Hull into Goole, Leeds, Selby and York and carried bulk loads including grain, molasses and coal tar from York gasworks. The boats were moored alongside many other barges of similar size and larger, along York city centre’s riverbanks. The Selby Tony is one of the last remaining cargo barges from that fleet remaining with others surviving by being converted into houseboats”*.

4.37 Whilst the hull of the barge is of some historic interest, it is considered that the superstructure would be uncharacteristic of the traditional workmanlike character of the barge. Similar barges shown in the photograph submitted with the application are low lying and it is considered that the proposal would be more authentic and have less impact on the setting of the bridge if the upper deck were smaller, or located away from the bridge. The proposed adaptations to the Selby Tony are therefore considered to bring into question the historic relevance of the proposed development.

Impact on the setting of Skeldergate Bridge

4.38 **Significance of Heritage Asset:** The Heritage statement details that the significance of Skeldergate bridge stems from its connections to the expanding City of York in the Victorian era. It explains that the bridge was built to relieve the pressures that York’s two other bridges were under and to provide better access for the people living in the new growing suburbs. The bridge was designed at the time to allow for the large cargo barges that brought goods to the industrial areas of the City and the two staithes to the north, being lifted from the tollhouse when required. The Bridge is listed for its design and historic connection and as such has innate heritage significance.

4.39 In assessing the significance of Skeldergate Bridge, Officers note that it is the most highly decorative bridge of York’s inner city bridges and its design can be fully appreciated from Tower Gardens or from the landing adjacent to the Bonding Warehouse. It has three spans supported by ashlar piers with semi-octagonal embattled masonry towers corbelled out from the piers. The cast iron balustrade is pierced with quatrefoil openings over a band of heraldic shields and the central one of the traceried spandrels incorporates the City Arms of York and the Keys of St Peter. The toll house sits on Tower Gardens and it has an unusually sculptural

form, having an octagonal tower and a projecting circular stair-tower and leaded light windows.

4.40 Assessment of Impact on Skeldergate Bridge: The Heritage Statement determines that the proximity of the barge to Skeldergate bridge constitutes a low adverse impact to aesthetic value stating that “*the large, plain surfaces of the barge are a marked contrast to the richly detailed arches of the bridge*”. It also advises that “*the proposals would have a negligible impact on historic value due to the compatible and symbiotic historic uses of both the bridge and the barge as a traditional form of river transport*”.

4.41 The Selby Tony would be located approximately 6 metres from the Skeldergate bridge structure and 3 metres from the toll house. By virtue of the barges’ uncharacteristic large housing on the upper deck and its proximity to the toll house and bridge spandrels (within 10 metres), Officers consider that the permanent presence of the barge would prevent the highly decorative design of the bridge and toll house being fully appreciated thus adversely affect the setting of the bridge and views of it from both banks.

4.42 In terms of wider views of the bridge, the gardens and open landings on each side of the river were designed in conjunction with the bridge in 1879-1881. The extended walls of the bridge encompass the whole area from Skeldergate/Cromwell Road junction to Tower Street. By virtue of its sheer scale and height, the barge would be considered to interrupt bank level views across this integrated historic complex.

SUMMARY OF IMPACT ON HERITAGE ASSETS

4.43 An assessment as to the impact of the proposed development on the appearance and setting of the various important heritage assets which surround it such as the City Wall, Davy Tower, Tower Place houses, Skeldergate Bridge, toll house and walls and the Bonding Warehouse, and on the character and appearance of the Central Historic Core Conservation Area, concludes that the proposed development would cause some harm to the designated heritage assets. This is due to the effect on the existing character of the gardens through the introduction of a use more typical of a busier city centre location and due to the impact on the setting of heritage assets and views within and across the conservation area through its proximity to the heritage assets and due to the size and scale of the barge, the modern appearance of the high level additions, and through it blocking the river bank.

4.44 The harm to the heritage assets is assessed as less than substantial but in these circumstances the council's statutory duty under Sections 66 and 72 gives rise to a strong presumption against planning permission being granted, and

considerable importance and weight must be given to the harm in the planning balance, despite it being less than substantial.

Public Benefits

4.45 Given that the assessment as to the impact of the proposed development, concludes that some harm would be caused to the designated heritage assets, the LPA has to weigh the proposal against the public benefits of the proposal, as prescribed in Paragraph 134 of the NPPF. As detailed in paragraphs 4.14 to 4.16 of this report, the principle of a community arts venue is supported and such a use can be considered to be a public benefit. However, in relation to such a proposal for the mooring of a barge to be used as an arts and performance venue as opposed to a use or alterations proposed for an existing building, officers contend that it should also be demonstrated that the public benefits of the proposal can only be secured through the creation of the venue on a boat (as opposed to a building) and in the location proposed. Otherwise it could be argued that the proposed Arts Venue could be created elsewhere without the harm to its heritage assets, either within an existing building or elsewhere along the river, in a location which provides the public benefits to the City.

4.46 The applicant has provided a statement as to why a barge was selected, reviewing alternative mooring positions on the River and providing the reasons as to why Tower Gardens is considered an appropriate place for the mooring. The applicant states;

“The Arts Barge venue is a community focused venture but, nevertheless, it does not wish to rely on charitable donations for its continued running costs and wishes to be financially independent. To this effect, the Barge has to be moored in a suitably visible public space within the central regions of York – too far to the north-west or to the south-east would have a seriously detrimental effect on its viability.”

4.47 The applicant details the other mooring positions explored; North Street gardens was discounted as it would involve significant structures including substantial gangways in order to deal with the 4.5 metre height difference between water level and North Street. The costs of this was deemed to be prohibitive as well as the difficulties of dealing with accessible access. The City Screen site was also discounted as the existing deck level and access point is very high above the water level. Queens Staith to the Bonding Warehouse was deemed unsuitable due to its residential character. The applicant notes that the new Guildhall development is a site that cannot be considered currently.

4.48 The applicant details the advantages of the Tower Gardens site by stating that it has a very simple and virtually level access, allowing full accessibility. The nearby St. Georges Field car park allows for parking and deliveries and the proposed location is easily accessible for pedestrians and cyclists and is visible by the public.

It is close to other cultural destinations such as the Castle Museum and links in with the Bishopthorpe Road area.

4.49 In terms of the background as to why a barge was selected, the applicant states;

“The Arts Barge project was initially conceived because of the lack of an Arts Centre in York. The reason that the York Arts Centre closed down was due to high costs of running the building, small income and high costs of arts provision and the local council withdrawing regular funding in favour of funding building of the Barbican. We looked into the cost of renting a city centre venue as compared to buying a barge which could be moored centrally to provide a city centre arts space – the cost of renting and running a comparably sized and located building is considerably higher and would not have inspired the public support that the barge has. It is not the arts alone that are of public benefit in this project – it is a combination of the arts and the barge – this has been our aim from the start of the project in 2008.

The benefit of the barge aspect is considerable in terms of cost (relatively low), position (high profile city centre), enjoyable experience (of being on the river), conservation of a decommissioned local heritage vessel, regenerating use of the river and sustainability (relatively low running costs)“.

4.50 Officers recognise that the proposal to create an Arts Centre offers a number of public benefits and further to this, acknowledge the advantages for the project of securing a venue on the river in this highly visible, central location. However, in the context of the identified harm to the designated heritage assets, it is not considered that the applicant has demonstrated that a permanent base for community arts and performance related events and outreach projects, could not be provided from an existing building in the city. Indeed the focus since the inception of the project in 2008 has been to combine arts with a barge, and therefore it is doubtful whether alternatives to find an existing venue from which to offer community arts events without harm to the city’s heritage has been fully explored. On this basis, officers do not consider the public benefits would outweigh the perceived harm to the designated heritage assets.

IMPACT ON RESIDENTIAL AMENITY

4.51 One of the core principles of Planning outlined in the NPPF is to seek a good standard of amenity for all existing and future occupants. Local Plan policy GP1 (Design) requires that development proposals ensure that residents living nearby are not duly affected by noise disturbance, overlooking, overshadowing or from over-dominant structures.

4.52 The site of the proposed Arts Barge at the periphery of the city centre, is considered to be a transitional area between the built up core of commercial streets

and the quieter residential areas located along and just off the river banks. The nearest residential property is Davy Tower which is located approximately 54 metres to the north of the application site with the terraced properties of Tower Place sited between 65 metres and 85 metres away. The Bonding Warehouse is located approximately 40 metres on the opposite side of the river.

4.53 As detailed previously, it is intended that the proposed arts venue would be open from 7.30 am until 12.00 am. The submission estimates maximum visitor numbers per opening period over three years of a maximum of 70 on board in Year 1, 90 in Year 2 and 120 in Year 3 (although the applicant states that these numbers are expected to steadily rise as their reputation becomes established). The lower deck performance and bar area combined could accommodate a maximum of 160 persons (including 4No kitchen/bar staff).

4.54 A number of concerns relating to noise from activities on the barge and associated anti social behaviour resulting from individuals leaving the venue late at night, have been raised by local residents from Tower Place, South Esplanade, the Bonding Warehouse, Postern Close, Lady Anne Court (Skeldergate), Emperors Wharf and City Mills. It is noted that prior to the submission of this application, the Arts Project ran several temporary events within Tower Gardens to which Public Protection received complaints from local residents. The applicant is keen to stress that this proposal is not a continuation of the Artsbarge York Festival performances in Tower Gardens.

4.55 A noise assessment (revised since the original submission) has been submitted to demonstrate the anticipated levels of noise likely to arise from an event operating inside of the barge at the nearest residential properties. As noted within paragraphs 3.18 to 3.23, noise levels inside the arts barge likely to arise from the carrying out of live music would be anticipated to be 90.6 dB(A) Leq. At this level internally, the anticipated level of sound at the nearest residential properties, without any consideration of sound reduction provided by the barge structure itself, would be 56.9 dB(A) at façade. With an open window in the barge, an anticipated sound level of between 42 to 47 dB(A) at the façade of the nearest residential property could be achieved. Within the noise assessment, noise levels of 32 dB(A) are predicted when windows are open, which is approximately 13dB lower than the existing background noise levels at the nearest properties. On this basis, Officers are satisfied that the level of noise arising from live music and people within the barge are unlikely to result in the loss of amenity to nearby residential receptors.

4.56 In terms of noise associated with people noise from the use of external seating, the submitted noise assessment predicts levels being approximately 9dB below the existing background L90 of 45dB(A) and therefore Officers are satisfied that the noise arising from people seated on the roof of the barge are unlikely to result in the loss of amenity to nearby residential receptors. This is on the basis that conditions be applied to prohibit playing of music externally on the barge and to prohibit use of

the external seating areas after 23:00.

4.57 The increased activity resulting from people arriving/ leaving the barge late at night and the potential for noise disturbance to neighbours, particularly in the summer when windows may be open, is more difficult to assess. It is acknowledged however that access and egress from the barge would be from the well used river path which forms part of the pedestrian link from the car park on St George's Field into the city centre along South Esplanade and King's Staith and southwards along New Walk Terrace into the Fishergate area, and as such, there is already a degree of late night pedestrian movement, associated with the night-time and tourist economy which would be difficult to differentiate from individuals leaving the barge.

4.58 Further to this, it is considered that the location of the barge is such that individuals leaving late at night would disperse rather than concentrate on a particular route, for instance, individuals may take the riverside path, walk eastwards across Tower Gardens towards the Castle or over Skeldergate Bridge, thereby lessening the potential impact for disturbance to such a degree that Officers do not consider that the increase in activity from the proposed use would constitute a material change to the existing pedestrian movements.

4.59 It is noted that the Police have no comments to make in respect of "designing out crime" and with regards to the sale of alcohol and the provision of entertainment comments note that should there be any issues or concerns, these will be discussed as and when a Premises Licence is applied for.

FLOOD RISK

4.60 The proposal to create a floating arts venue is a water-compatible use and in accordance with policy, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

4.61 A Flood Risk Assessment has been submitted detailing that at normal summer level on the River Ouse, the upper deck level of the Barge would be 7.45 m. The bank at this point is 7.3 m allowing for almost horizontal accessibility. Access would be provided by a "T" platform with gangways at each end of the T which would rise and fall to accommodate the different river levels. Piled moorings would be used to secure the Barge fore and aft at 2.5 metres from the river bank.

4.62 Maximum flood level has been recorded at 10.4 metres and the pile mooring height has been fixed at 13.15 metres which allows for a 900mm tolerance above

the fixing points on the Barge at maximum recorded flood level to take account of any future increase in maximum flood levels.

4.63 On the basis of the submitted FRA, which demonstrates that the barge will rise and fall with the river (and therefore not cause an obstruction to flows), the Environment Agency raise no objections to the application.

4.64 The applicant has formulated a flood evacuation plan which involves registering with the Environment Agency's flood warning system. Nominated people within the Arts Barge management team would prepare for evacuation and, at the agreed river level being reached, full evacuation of the Arts Barge would take place. The Council's Flood Risk management team recommend a condition be applied requiring the submission of a robust emergency evacuation plan to include measures taken on receipt of flood warnings and the signing up to the EA flood warning scheme.

IMPACT ON THE NAVIGATIONAL SAFETY OF THE RIVER OUSE

4.65 The submission proposes the installation of three piles to the river in order to secure the barge and associated pontoons. In order to ensure that the barge and pontoons remain in situ and do not break free from their mooring which could create a navigational safety issue for other river users, the Canal and River Trust, as the navigation authority for the River Ouse, emphasise the importance of the pile details being submitted and approved prior to works commencing. This will enable the applicant to demonstrate that the piling system can withstand the high and fast flows of the River Ouse.

FOUL WASTE

4.66 The barge would have a small holding tank and internal twin pumping facility which would connect to a flexible hose permanently fixed between the barge and the inlet pipe. There is a main drain running along the walkway adjacent to where the barge would be moored and the intention is to run a new 100mm drain from the existing manhole out through the existing concrete river wall as the inlet pipe. The flexible connection would ensure a watertight connection is maintained from holding tank to existing foul drain irrespective of any flood conditions.

5.0 CONCLUSION

5.1 The application involves the creation of a permanent base for community arts and performance related events and outreach projects across the range of art forms through the conversion of the Selby Tony, a historic working barge and its mooring adjacent to Tower Gardens.

5.2 A number of concerns relating to noise from activities on the barge and associated anti social behaviour resulting from individuals leaving the venue late at night have been raised by local residents. A noise assessment has been submitted and on the basis of this information, officers are satisfied that the anticipated levels of noise arising from live music and people within the barge are unlikely to result in the loss of amenity to nearby residential properties. In terms of the increased activity resulting from people arriving / leaving the barge late, Officers consider that the location of the barge is such that individuals leaving late at night would disperse rather than concentrate on a particular route and therefore the increase in activity would not constitute a material change to the existing pedestrian movements.

5.3 A Flood Risk Assessment has been submitted which demonstrates that the barge will rise and fall with the river and a flood evacuation plan has been formulated. With respects to the navigational safety of the river, three piles would be installed in order to secure the barge and associated pontoons. The Environment Agency and the Canal and River Trust raise no objections to the scheme subject to the attachment of conditions.

5.4 An assessment as to the impact of the proposed development on the appearance and setting of the various important heritage assets which surround it such as the City Wall, Davy Tower, Tower Place houses, Skeldergate Bridge, toll house and walls and the Bonding Warehouse, and on the character and appearance of the Central Historic Core Conservation Area, concludes that the proposed development would cause less than substantial harm to these designated heritage assets. This is due to the effect on the existing character of the gardens through the introduction of a use more typical of a busier city centre location and due to the impact on the setting of heritage assets and views within and across the conservation area through its proximity to the heritage assets and due to the size and scale of the barge, the modern appearance of the high level additions, and through it blocking the river bank.

5.5 Considerable importance and weight is given to the desirability of avoiding such harm. It is considered that the public benefits associated with the proposed development are not sufficient to outweigh the harm to the heritage assets because the applicant has not demonstrated that a permanent base for community arts could not be provided from an existing building in the city. In the overall planning balance, it is therefore the conclusion of officers that the public benefits do not outweigh the identified harm to the designated heritage assets when considerable importance and weight is given to the desirability of avoiding harm to the heritage assets.

5.6 It is considered that in refusing this application the Local Planning Authority would be properly exercising its duty under Section 66 (1) and Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and in accordance with national planning policy set out in the National Planning Policy Framework.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 The proposed permanent floating arts venue, through the introduction of increased and different patterns of movement to and from it, would harm the quieter parkland character of Tower Gardens, to the detriment of the character of the Central Historic Core Conservation Area. Furthermore, the size and scale of the barge, with the modern appearance of the deck house, would harm the setting of nearby heritage assets including adjacent listed Skeldergate Bridge, and detract from views within and across the Conservation Area.

The National Planning Policy Framework requires that this harm should be weighed against the public benefits of the proposal. In this case, the applicant has not demonstrated that a permanent base for a community arts centre could not be provided from an existing building in the city and therefore little weight is attached to the perceived public benefits of the proposed development. In the overall planning balance considerable importance and weight has been given to the desirability of preserving the setting of listed buildings and preserving or enhancing the character or appearance of the conservation area to give effect to the statutory duties under sections 66 and 72 Planning (Listed Buildings and Conservation Areas) Act 1990,

Contact details:

Author: Rachel Tyas, Development Management Officer (Tues - Fri)

Tel No: 01904 551610