

## COMMITTEE REPORT

**Date:** 16 August 2012      **Ward:** Guildhall  
**Team:** Major and      **Parish:** Guildhall Planning Panel  
Commercial Team

**Reference:** 12/01249/FUL  
**Application at:** Bora Bora 5 Swinegate Court East Grape Lane York YO1 8AJ  
**For:** Change of use from cafe (use class A3) to drinking establishment (use class A4)  
**By:** Mr Bora Akgul  
**Application Type:** Full Application  
**Target Date:** 3 August 2012  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 The application relates to the ground floor premises at 5 Swinegate Court East, behind 12 Swinegate. The host premises was originally a shop, it was granted permission in 2003 for a change of use to cafe (class A3). Retrospective consent is sought to allow the premises to be used as a drinking establishment (class A4) with opening hours until 03:00 each day of the week.

1.2 The application is brought to committee at the request of Councillor Watson, to assess the impact of the number of drinking establishments in the immediate area.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006  
Conservation Area Central Historic Core

2.2 Policies:

S6 Control of food and drink (A3) uses  
HE3 Conservation Areas

### **3.0 CONSULTATIONS**

#### Design, Conservation and Sustainable Development

3.1 No objection.

#### Environmental Protection Unit

3.2 No objection.

#### Safer York partnership (Police Architectural Liaison Officer)

3.3 No objection.

#### Guildhall planning panel

3.4 Object – will lead to an over intensification which will spill out onto the street.

#### Publicity

3.5 Seven letters of objection have been received. Grounds of objection are as follows:

- Noise and disturbance to nearby residential property due to the increasing number of late night drinking establishments in the area. It is reported the Council's Noise Team have been contacted over disturbance in the area. Letters comment that it is recognised this area has a mix of uses, with numerous goings on but there is a concern this area is in danger suffering the same problems as those associated with Micklegate.
- Increasing anti-social behaviour, damage to commercial property, litter.
- Whilst the commercial development that has taken place in Grape Lane and Swinegate has been positive, the mix between residential, retail units and bars/restaurants is shifting in favour of late night drinking.

### **4.0 APPRAISAL**

#### 4.1 Key issues

- Vitality and viability of the city centre
- Amenity of surrounding occupants

- Any impact on conservation area

### Relevant policy

4.2 The National Planning Policy Framework advises planning should positively promote competitive city centres and enhance their vitality and viability. The National Planning Policy Framework notes that residential development can play an important role in ensuring the viability of town centres. Amenity for future and existing occupants is material consideration.

4.3 Local Plan policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted provided:

- There is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.
- Opening hours are restricted where this is necessary to protect the amenity of surrounding occupiers.
- Where security issues have been addressed.

### Vitality and viability of the city centre

4.4 The street in which the application site is a passageway between Swinegate and Grape Lane. Swinegate Court East is not a primary shopping street. As such it is a street where non-retail uses, including drinking establishments, are appropriate according to planning policy, provided the impact on vitality and viability is acceptable. Due to the discreet location and size of the host premises, a drinking establishment here would not have a material effect on the vitality and viability of this part of the city centre.

### Amenity of surrounding occupants

4.5 There are houses nearby, in Lund's Court, Norman Court and along Petergate (the nearest being upper floor flats at 65 & 71), although there are intervening buildings between these dwellings and the application site. There are other outside areas associated with restaurants nearby, at the rear of Strada (75 Low Petergate) and Lucia's in Swinegate Court East.

4.6 The proposed opening hours are until 03:00 and 60% of the capacity of the host premises is external (there can be up to 40 persons outside according to the premises license). The outside seating area is covered by canopies and there are external heat lamps to encourage its use. There is the potential for noise disturbance from amplified music and from raised voices from customers using the outside area.

4.7 The application site is within the City centre where late night uses are to be expected and noise from persons in the street at night and anti-social behaviour cannot be attributed to any single premises. The closest residential building is Lund's Court. The rear of the building can be seen from Swinegate Court East and there is only one window on the rear which is a relatively small opening. As such and because of the intervening buildings and streets between the application site and surrounding residential premises it is deemed that persons using the outside area would be unlikely to create undue noise disturbance (i.e. no more than that which is already experienced in this area). However it is considered it would be prudent to give a temporary consent for the opening hours of the external area, so this can be re-considered if the 03:00 closing time leads to disturbance. It is deemed necessary to require through a condition that amplified music is controlled so it is not audible externally.

4.8 Matters of crime and disorder/security are predominantly dealt with through licensing. The Premises has license which has been endorsed by the Police.

#### Any impact on conservation area

4.9 The application is for a change of use only. There would be no effect on the conservation area.

## **5.0 CONCLUSION**

5.1 Conditions are proposed to allow monitoring of the impact of the external seating area and to ensure amplified music is inaudible outside the premises. It is deemed these conditions suitably mitigate possible noise disturbance. There would be no undue harm to the vitality and viability of the city centre and the character and appearance of the conservation area. Approval is recommended.

## **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION:** Approve

1 The development hereby permitted shall be carried out in accordance with the following plans:- Location plan and site layout date stamped 07.06.2012.

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

2 No amplified recorded or live music shall be played which is audible outside the host building.

Reason: To protect the amenity of surrounding occupants and in the interests of the character of the conservation area.

3 The use shall only be open to customers between the following hours: 08.00 to 03.00 the following day.

From 1 September 2014 the outside area shall not be open to customers between 24:00 midnight and 08.00 each day of the week unless a further planning permission has been granted to extend or remove this restriction.

Reason: To monitor noise associated with the outside area and to protect the amenity of nearby residents from noise associated with the premises.

## **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 character and appearance of the conservation area and the amenity of surrounding occupants. As such the proposal complies with Policies HE3 and S6 of the City of York Development Control Local Plan.

### **Contact details:**

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