

COMMITTEE REPORT

Date: 18/10/2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
 Commercial Team

Reference: 12/03023/FUL
Application at: Bora Bora 5 Swinegate Court East Grape Lane York YO1 8AJ
For: Variation of condition 3 of planning permission 12/01249/FUL to extend opening hours until 02:30 every day
By: Mr Bora Akgul
Application Type: Full Application
Target Date: 16 November 2012
Recommendation: Grant temporary consent for proposed hours

1.0 PROPOSAL

1.1 The application relates to the Bora Bora bar situated at 5 Swinegate Court East.

1.2 At West and Centre Planning Committee in August the premises was granted planning permission retrospectively for a change of use to a drinking establishment. Members saw fit to restrict the permitted opening hours. Condition 3 of the permission required the premises to close at midnight each day of the week.

1.3 This application is made to vary condition 3. It is asked that the premises be allowed to operate until 02:30 the following day, on each day of the week. The applicants contend the business would be unviable otherwise.

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

2.2 Policies:
CYS6 Control of food and drink (A3) uses
CYHE3 Conservation Areas

3.0 CONSULTATIONS

Environmental Protection Unit

3.1 No objection. The premises holds a Premises Licence with suitable conditions which have been agreed. EPU has received no justifiable noise complaints regarding the operation of this premises.

Police Architectural Liaison Officer

3.2 Officers raise no objection to the application. Officers advise the premises have a license to operate until 03:00 and this license was endorsed by the police and the Council licensing department.

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3.3 Asked for comments by 17.10. No response to date.

Publicity

3.4 The deadline for comments was 24.10.2012. Objections have been received from the Lund's Court Residents Association, residents in Grape Lane and Minster View, commercial premises in Grape Lane and Little Stonegate. The grounds of objection are as follows:

- Opposition to the introduction of late night drinking establishments in the area. The area was conceived as a mixed use development and has increasingly been populated by bars. Noise and disturbance now has an adverse impact on residential amenity and the ability of residents to sleep. The midnight closing time should be maintained. It is also noted that the midnight closing time imposed at committee in August has not been upheld.
- Noise from Swinegate Court causes undue disturbance after midnight through the week as Bora Bora and Lucias have outside drinking areas. Other premises nearby with external areas close these after 11pm/midnight in order to restrict noise disturbance.
- Increased anti-social behaviour, noise, litter, crime and vandalism in the area since the introduction of late night drinking establishments, which has a detrimental impact on the character and appearance of the area, and existing businesses have had to pay to repair damaged premises.
- The area used to be attractive, and where commercial and residential premises co-existed harmoniously. There is concern that an increased amount of late night drinking establishments will lead to residents moving out of the city centre and prevent new residential development. The area could become the next 'Micklegate' where noise disturbance and vacant retail premises are an issue for that area.

4.0 APPRAISAL

Key issues

4.1 The main issues are the impact on residential amenity as a consequence of the proposed operating hours and the vitality of the city centre.

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. A core planning principle within the National Planning Policy Framework is that in making decisions planning should always seek to secure a good standard of amenity for existing and future occupants of land or buildings.

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.

4.4 Dwellings form an integral part of city centres and their character, vibrancy and vitality. The National Planning Policy Framework recognises that town centres are 'the heart of communities', that 'residential development can play an important role in ensuring the vitality of centres' and planning policies should 'encourage residential development on appropriate sites'. Local Plan policies GP12, H11 and H12 also encourage residential development in the city centre and advise such development can make a vital contribution to housing need in the city.

Assessment

4.5 At the August Committee officers had recommended a condition giving a temporary permission for opening beyond midnight, to assess the impact on the area. Many objections were regarding the general character of the area and music/noise from Lucia's rather than Bora Bora. Music played at Bora Bora could be restricted by an appropriate condition and the Environmental Protection Unit raised no objection to the proposals, advising they had received no complaints about music from Bora Bora and that the premises had a license with agreed stipulations.

4.6 Members decided to grant retrospective planning permission for a change of use of the host premises to a drinking establishment imposing a midnight closing time. The opening hours of the premises were restricted as Swinegate Court is a compact part of the historic core where there are residential properties close-by, residents form an important part of the vitality and viability of the city centre and their continued presence should be encouraged. Midnight was deemed a reasonable

closing time because as 60% of the capacity of the host premises is external, noise disturbance from both music and customers is likely to occur.

4.7 There are a number of premises situated in the Swinegate Quarter that operate as bars. Consequently there is late night activity in the area and attributed to it a degree of noise, disturbance and anti-social behaviour. The bars and their opening times are listed below:

Premises	Closing time - licensing	Closing time – planning
1331 Grape Lane	02.00	None
Wildes Grape Lane	00.30	None
Oscars	02.30	02.00 Outside area 02.30 fri & sat 20.00 sun – thurs
Biltmore	02.30	02.00 Outside area 02.30 fri & sat 20.00 sun – thurs
Vudu Lounge	04.30	03.00 fri & sat 02.00 sun – thurs (for 1 year then revert to 01.00)
Slug & Lettuce	02.30 fri & sat pm 00:30 sun – thurs	None
Stonegate Yard	02.20	None
Kennedy's	02.30	None
La Tasca	No restrictions	Midnight Outside area 22.00

4.8 In determining the application the key test is whether the surrounding occupants would suffer an undue loss of amenity as a direct consequence of Bora Bora trading between midnight and 02:30.

4.9 The closest residential building to the application site 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. Noise from amplified music can be controlled through an appropriately worded condition (provided the condition is adhered to). As such and because of the intervening buildings and streets between the application site and surrounding residential premises officers consider it likely that persons using the outside area would not create undue noise disturbance (i.e. not materially more than that which is already experienced in this area). As with the previous application, officers recommend allowing the later opening hours for a

temporary period, so they can be re-considered and revert to midnight if the 02:30 closing time leads to disturbance.

5.0 CONCLUSION

5.1 Officers recommend that a temporary permission is granted to allow the later hours applied for, for a trial period. Conditions can control amplified music and restrict times when glass/bottles are taken out to control noise from the premises.

5.2 As granting permission would lead to a fresh permission for the premises a comprehensive list of conditions will be necessary, in the interests of the amenity of surrounding occupants.

6.0 RECOMMENDATION: Approve

1 The premises shall only be open to customers between the following hours: 08.00 to 02:30 the following day. By 1/11/2013 the premises shall not be open to customers beyond 24:00 (midnight) each day of the week.

Reason: To monitor noise associated with the host premises in the interests of residential amenity.

2 The development hereby permitted shall be carried out in accordance with the following plans:- Location plan and site layout received 07.09.2012.

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

3 All electronically amplified music shall be controlled by a noise limitation device. The device shall set maximum noise levels which shall be approved in writing by the local planning authority before any such music is played at the premises (positions at the site where music from the within the premises shall be inaudible at all times are to be agreed). The maximum noise levels shall not be exceeded for the lifetime of the development. The noise limitation device shall be installed within 1 month of this permission.

Reason: To protect the amenity of the locality from noise generated by the use hereby approved.

4 Bottles and glass shall not be placed into bottle bins between the hours of 24.00 hours (midnight) and 08.00 hours on any day.

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan.

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.

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