

COMMITTEE REPORT

Date: 6 June 2013 **Ward:** Fishergate
Team: Major and **Parish:** Fishergate Planning
 Commercial Team Panel

Reference: 13/00379/FUL
Application at: Royal Dragon 16 Barbican Road York YO10 5AA
For: Change of use of Upper Floors from Bed & Breakfast
 Accommodation (Class C1) to form Additional Dining Areas and
 Karaoke Rooms (Sui Generis) in association with Ground Floor
 Restaurant (resubmission)
By: Mr Z. L. Chen
Application Type: Full Application
Target Date: 23 April 2013
Recommendation: Approve

1.0 PROPOSAL

1.1 Planning permission is sought for the use of the first and second floors of 16 Barbican Road as karaoke rooms and additional dining facilities, to be used in connection with existing ground floor restaurant.

1.2 The site is prominently located on the Barbican Road frontage facing the city walls, located within the Historic Core conservation area. The building is not listed but is identified as a building of merit in the Walmgate Character Appraisal. The building is a three storey structure with restaurant to the ground floor and bed and breakfast accommodation to the upper levels and private living accommodation within the north east rear part of the building. To the rear of the site is a private car park associated with the site and a separate pay and display car park.

1.3 The proposal will provide 3 separate dining rooms for pre-booked parties on the first floor with reception area, 5 karaoke rooms and toilet facilities and 6 further karaoke rooms on the second floor with separate utility space. The proposals do not include any external works to the property, or any significant internal changes to the room compartments. The hours of operation sought are 10:00hrs to 01:30hrs

1.4 The application is supported by an acoustic report and a planning support statement covering sustainability, planning considerations, the licensing regime and heritage issues.

Planning History

1.5 A certificate of Lawfulness in respect of the pay and display car park to the rear of the site was granted in 2007. (Planning ref: 07/01082/CLU)

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1.6 Planning permission was granted in 2008 and subsequently renewed in 2012 for the erection of a three storey building providing ten flats and two maisonettes to the rear of the site. Planning ref: 08/02081/FULM and Planning ref: 11/03261/FULM.

1.7 A certificate of Lawful Development in relation to the establishment of the current use of the buildings was granted in 2012 planning ref: 12/02657/CLU. The certificate of lawfulness established the site to be in mixed use (Sui Generis) which included restaurant, bed and breakfast, managers accommodation and separate living accommodation to the north east side of the buildings.

1.8 An application for the karaoke rooms was withdrawn in December last year to allow further noise monitoring to be undertaken.

1.9 A premises licence has been granted for the karaoke use. The licence was granted for Monday to Sunday 10:00hrs to 3:30hrs. The licence is subject to operational restrictions.

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

Contaminated Land GMS Constraints:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

2.2 Policies:

CYS7

Evening entertainment including A3/D2

CYGP1

Design

CYGP3

Planning against crime

CYHE3

Conservation Areas

3.0 CONSULTATIONS

INTERNAL

3.1 Environmental Protection - No objections subject to conditions including closing time to be 01:30 and no noise to be audible outside the building.

EXTERNAL

3.2 Ten letters of objection have been received covering the following points:-

- The noise monitoring submitted used small room with few windows which is unrepresentative of all other rooms, who controls the volume of the machine.
- The noise report states interior noise levels will be 70 db - this is less than the interior of a BMW travelling at 80 MPH - who sings karaoke at less than the interior noise of a car.
- The adjacent guest house will be badly affected by late night revellers - the proposal is effectively a night club.
- Hotel guests maybe intimidated by groups of people smoking on the pavement.
- Proposal to have door person after midnight to prevent blocking of the pavement will be inadequate. What will happen before midnight?
- The noise that smokers and those arriving and departing make has not been addressed
- There is a church and bible school near the site which will be subject to noise and disturbance
- The Royal Dragon has not had a fire risk assessment since 2006
- Astounded that licence has been granted until 4am
- Good to see building used again but remember closing time was 11pm not 4am
- Light in new downstairs restaurant is already bright colours; they are next to traffic lights and could be a hazard.
- This is a totally residential area and the use is unsuitable to such an area.
- Kitchen window of adjacent flat and lounge and bedroom are alongside the boundary of the site - concerned about noise in the property. The noise report gives no comfort dates for monitoring within it are muddled and the monitoring relates to one room with minimal external walls. The approval could be for 11 karaoke rooms working simultaneously
- Concerned about people and traffic movements close to adjacent flat late at night
- Concerned about people looking into flat from rooms in the first floor of the building
- Purchased flat in 1996 has only been a restaurant never a pub in this time
- Other flats in block are rented out so unlikely to get an objection.
- The karaoke rooms are already in use and concerns are raised about the noise from the karaoke facility in the restaurant below

4.0 APPRAISAL

4.1 key Issues:-

- Policy background
- Principle of the development
- Impact on residential amenity
- Impact on the conservation area

Policy Background

4.2 The site is located outside the city centre inset identified in the development Control Local Plan (DCLP) but within the built up area. The site is located within the Central Historic Core Conservation Area.

4.3 At the heart of the National Planning Policy Framework (NPPF) is a presumption in favour of sustainable development. Paragraph 14 states that for decision taking this means approving proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the framework indicate development should be restricted.

4.4 Paragraph 17 of the NPPF sets out the core land use planning principles which should underpin decision taking; these include the principle that planning should not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives; always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings; take account of the different roles and character of different areas, promoting the vitality of our main urban areas; take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

4.5 Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development including through the use of conditions; recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason. (Paragraph 123)

4.6 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation (para.132). Where development proposals will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use (para134)

4.7 Relevant policies in the DCLP are:-

Policy S7 'evening entertainment' states that new leisure uses that complement York City centre will be permitted provided that there is no adverse cumulative effect on the vitality and viability of the centre, there is no unacceptable effect on residential amenity, and the public order and safety aspects have been addressed.

Policy GP 1 'Design' includes the expectation development should ensure that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

Policy GP3 'Planning Against Crime'

4.8 Policy HE 3 'Conservation Areas' states that within conservation areas demolition, external alterations and changes of use that are likely to generate environmental or traffic problems will only be granted where there is no adverse effect on the character and appearance of the area.

4.9 The Central Historic Core Conservation Area character assessment for Walmgate Bar notes the Royal Dragon as a building of merit and a building at risk. The opportunities section of the character appraisal says that the building is not listed but is in need of a new tenant and some maintenance.

Principles

4.10 The site has a history as commercial premises. The building has been a public house with first floor accommodation and more recently restaurant with hotel or bed and breakfast accommodation at upper levels. The commercial operations at the site pre-date much of the new residential accommodation adjacent to it. The building itself is in a prominent location along a main route into York and the use and maintenance of the building is clearly beneficial to maintaining the quality and appearance of this part of the historic core conservation area. The re-opening of the restaurant at ground floor level and the general repairs that have taken place to the exterior of the structure have already improved the appearance of the building and it is in the interests of the visual quality of the area and the commercial viability of the site that a new use is sought for the upper parts of the building. The principles of achieving a viable commercial use for the site and maintenance of the quality of the conservation area are fully supported by advice within the NPPF.

4.11 The recent Certificate of lawfulness established that the building is a mixed use. The proposal is to use the upper levels for karaoke in connection with the restaurant this will result in a larger proportion of the building being used for 'entertainment' as opposed to the previous uses which has involved pub or restaurant at ground floor and hotel or similar at the upper levels. Given the connection between the use of the restaurant and the use of the karaoke rooms, officers consider that the proposed use as a whole would form one planning unit and would be a "sui generis use" (of its own kind, not falling within any category specified within the Use Classes Order 1987). Officers also consider that the proposed development will lead to an intensification of the use of the site for entertainment purposes. Whilst the principle of the reuse of the site for an entertainment use is supported the acceptability of the proposal largely depends upon whether the operation of the karaoke rooms can be adequately conditioned to protect the amenity of adjacent residential properties.

Residential Amenity

4.12 The premises licence for the use of the site was granted in November 2012. The licensing hours are 10:00hrs to 03:30hrs. The licence application sought to extend the licensing hours from 00:30 to 3:30 for selling of alcohol and for live and recorded music and associated activities. The licence was granted subject to a number of restrictions, these include:-

- Prominent clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and leave the premises and area quietly.
- After 24:00hrs the only door to be used to enter the premises shall be the main door onto Barbican Road.
- Last public entry into the premises shall be 24:00hrs
- After 24:00hrs customers who have left the venue to smoke shall be monitored by a door supervisor who shall ensure noise is kept to a minimum
- Two door supervisors shall be provided at the venue from 24:00hrs until the close of business
- A refusals register and an incidents register shall be kept
- Sorting and disposal of waste at the rear bin storage area will only be undertaken during sociable hours
- Users of the karaoke rooms must have had a meal in the restaurant before moving upstairs
- The capacity of the venue is limited to 100 persons with a maximum of 30 on the first floor and 20 on the second floor
- Fire exits and openings shall be kept shut during hours of operation.

4.13 Licensing decisions are made under a different statutory regime than planning. Decisions under the Licensing Act can only be made on the basis of four licensing objectives set out in the Act, which are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. It is also important to note that the licensing system is much more flexible than the planning system. Licences can be reviewed on the application of a responsible authority or a member of the public which can result in conditions being altered. By contrast planning conditions can only be imposed for land use planning reasons and there is far less flexibility for them to be reviewed once planning permission has been granted.

4.14 The main concern this application raises is the impact of the use on adjacent residential properties. The potential for impact in Officers view can be split in to two areas, i.e. concerns about the noise generated by the karaoke activities and the more general concerns about the coming and goings of users of the site

Noise generated by the karaoke operation

4.15 The application is supported by a noise report. The report concludes that there is likely to be a significant increase in the average ambient sound levels in the nearest residential properties due to the karaoke rooms. Mitigation measures are therefore advised. A system of sound insulation has been trialled in situ and it is considered that the noise with the mitigation measures will be inaudible. The Environmental Protection Officer has considered the submitted report and does not raise any objections to the application but requires a number of conditions including details of mitigation measures to be submitted and implemented before the use commences, restrictions on the opening times of the premises and the use of the karaoke rooms and restriction on delivery times to the site. On the issue of noise from the karaoke rooms it appears that Environmental Protection are satisfied that the noise levels can be made inaudible to the surrounding properties provided the use ceases at 01:00am.

Comings and goings

4.16 Members will note that the hours sought within the application are 01:00am for the cessation of the music and 1:30am for the closure of the building. These times are advised by the Environmental Protection Unit based on the noise report submitted by the applicant.

4.17 The area immediately adjacent to the site is predominantly residential. Permission was granted in the car parking area to the rear of the site for the construction of a three storey residential building for 10 flats and two maisonettes in 2011. This permission remains extant. To the front of the site is one of the main roads into the city and this road remains busy throughout the day and in to the evening. The location of the site is edge of city centre.

There is some commercial activity in the locality and the adjacent main roads are obvious walking routes to and from the city centre for those living in the Heslington Road Hull Road, Lawrence Street areas. One might expect then that there will be some late night movement in the area from those coming home from the city centre but on the whole the area is considered to be relatively quiet once the road to the front of the site becomes less busy later in the evening. The building is set against the back edge of the footpath, whilst houses to the east (Lawrence Court) are set back from the road and those to the south west are closer to the footpath frontage but are set away from the front door of the building and slightly round the corner. The flats to the south west have kitchen windows facing the access road into the Pay and Display car park and the private car park to the rear of the site.

4.18 Users of the restaurant can park to the rear resulting in some pedestrian and vehicular movement down this access whilst the premises are open. However it is anticipated that the majority of users of the site will arrive and leave either in taxis or on foot. The conditions required by the premises licence restrict the number of people within the karaoke rooms to no more than 50, none of whom can arrive after midnight. All people leaving after midnight must do so by the front door, and there are various other controls to monitor activities at the site. Under the terms of the license, it will be the responsibility of the supervisors on the doors and within the site to require customers to respect the needs of local residents and leave the premises and area quietly. Officers are satisfied that the conditions on the license that control the need for supervision and signage can be controlled within the licensing regime.

4.19 In planning terms, it is considered that with a restriction on the hours of operation of the use, a requirement that the karaoke rooms shall only be used by people who have eaten in the restaurant first and the use of the front entrance only after midnight will limit the amount of activity adjacent to residential boundaries. Officers consider that with these restrictive conditions and other conditions including restricting delivery times and sorting and disposal of glass at the rear bin storage area the application can be supported.

Impact on the Conservation Area

4.20 The building is identified in the conservation area appraisal for Walmgate as being a building which needs a viable use and is prominent within the area. The proposed use will provide an economic use for the building and with the conditions suggested above it is considered that the activities around the site can be sufficiently controlled so that there will be no detrimental impact on the visual quality of the site and its surroundings.

5.0 CONCLUSION

5.1 The principles of achieving a viable commercial use for the site and maintenance of the quality of the conservation area are fully supported by advice within the NPPF.

5.2 The site is the subject of a premises licence which places restrictions on the use under that regime. A planning permission runs with the land and therefore if there is land use planning reasons why a particular condition should be applied a condition should be applied to the planning permission because the licensing terms may change in the future. In planning terms it is considered that with a restriction on the hours of operation of the use, the requirement that the karaoke rooms shall only be used by people who have eaten in the restaurant first and the use of the front entrance only after midnight will limit the amount of activity adjacent to residential boundaries. Officers consider that with these restrictive conditions applied and other conditions including restricting delivery times and sorting and disposal of glass at the rear bin storage area the application can be supported.

5.3 The development is acceptable within the conservation area subject to conditions.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years -

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

Drawing no. B.R. (16)/01 rev E

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

3 Deliveries to and despatch from site shall be restricted to the following hours:

Monday - Saturday 09.00 hrs to 18.00 hrs
Sundays/Bank Holidays not at all

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National planning Policy Framework.

4 The opening hours of the premises shall be restricted to the following hours:

Monday - Sunday 10.00 hrs - 01.30hrs

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National Planning Policy Framework.

5 All windows of rooms to be used for karaoke shall have mitigation measures implemented, to ensure that noise from the karaoke is inaudible at the exterior of the building. A detailed scheme of mitigation shall be submitted to and approved in writing by the Local Planning Authority and fully implemented to the satisfaction of the Local Planning Authority prior to the implementation of the use hereby approved. Thereafter all mitigation to the windows of the karaoke rooms shall be maintained in such a way that its efficiency does not deteriorate.

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National planning Policy Framework.

6 The use of the karaoke rooms shall be restricted to the following hours:

Monday - Sunday 12:30hrs - 01.00 hrs

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National planning Policy Framework.

7 The karaoke rooms hereby approved shall only be used by customers who have first dined within the restaurant.

Reason: To restrict the numbers of people coming to the site and to ensure that the principle use of the site as a restaurant with ancillary facilities is maintained, in order to protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National Planning Policy Framework.

8 Last entry into the premises shall be 24:00hrs (midnight).

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan and advice within the National planning Policy Framework.

9 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 and advice within the National Planning Policy Framework.

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 principle of the development, the impact on residential amenity, and the impact on the character and appearance of the Central Historic Core Conservation area. As such the proposal complies with Policies S7 and GP1 of the City of York Development Control Local Plan and advice within the National planning Policy Framework.

2. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- Clarification regarding the content of the noise monitoring report
- Clarification of the details of the proposal

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