

DELEGATED REPORT

Date: 5 December 2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 12/03296/FUL
Application at: Il Paradiso Del Cibo 40 Walmgate York YO1 9TJ
For: Use of the highway for tables and chairs to serve Il Paradiso Del Cibo and installation of french doors and canopy to side
By: Il Paradiso Del Cibo
Application Type: Full Application
Target Date: 12 December 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 This application relates to the use of the highway for the siting of tables and chairs to the side elevation of the restaurant "Il Paradiso Del Cibo" at 40 Walmgate. Retrospective planning permission is also sought for the installation of French doors and a retractable awning to the side elevation of the premises.

1.2 The site is within the Central Historic Core conservation area on a side street leading into a residential development of former warehousing off Walmgate. The application property is bounded by commercial uses in the Enterprise Complex to the north west, including Bayliss Mobility and York Boxing Club and on the south east side by Dixon's Yard, a residential development of townhouses and apartments. The grade 1 listed church of St Deny's is nearby on Walmgate.

1.3 The proposals for external seating, French doors and a retractable awning, would be adjacent to a high modern brick wall which now forms part of a single storey extension to the rear of 40 Walmgate. The frontage building is an unlisted three storey 19th Century brick building which once formed part of a residential terrace but now stands alone. The upper floors are occupied as staff accommodation with access via a doorway on the Dixon's Yard elevation. Its blank brick side wall, relieved only by buttresses, is highly visible from Walmgate. The canopy, new door and seating would be located approximately 16 to 20m back from the entrance off Walmgate. The seating area would be contained within an angle between two relatively plain buildings.

1.4 Planning consent was granted in September 2006 for the change of use of 40 Walmgate from retail (Class A1) to a mixed use comprising a sandwich bar (A1), cafe (Class A3) and hot food takeaway (Class A5). Currently the premises are operating solely as a restaurant.

1.5 The application has been brought to Committee at the request of Cllr Watson due to concerns relating to the safe passage of pedestrians and the potential for nuisance to residents due to noise.

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

Floodzone 2 GMS Constraints:Floodzone 2

Floodzone 3 GMS Constraints:Floodzone 3

2.2 Policies:

CYHE3 Conservation Areas

CYS6 Control of food and drink (A3) uses

CYT2 Cycle pedestrian network

CYGP18 External attachments to buildings

CYGP1 Design

CYS7 Evening entertainment including A3/D2

3.0 CONSULTATIONS

Internal

Design, Conservation and Sustainable Development

3.1 This proposal would not be appropriate on the main street in this location. However due to its distance from Walmgate, and the relatively poor quality of the immediate surroundings, this small intervention would not appear to harm the character and appearance of the conservation area. Also it would not be seen in views of St Deny's Church and therefore it would not adversely affect its setting.

Highway Network Management

3.2 No highway objections. The remaining footway width is 1.5 metres, which is sufficient for the level of pedestrian activity and accommodates a pushchair or wheelchair. The applicant is also advised that separate to the granting of planning consent, a pavement cafe licence is also required.

Environmental Protection Unit

3.3 No objections. However recommend a condition that there shall be no outside speakers for the purpose of playing music.

External

Safer York Partnership

3.4 In respect of "designing out crime", no comments or issues to raise. I have consulted with the Safer Neighbourhood Police Officer for Walmgate and our Police Licensing Officer and they have no issues or concerns with the proposal.

Guildhall Planning Panel

3.5 Support the application.

Local Publicity

3.6 A letter of objection has been received from a local resident which raises the following issues;

- (i) the business has already installed the French doors and canopy and the tables and chairs have been in situ for many years
- (ii) the business has outgrown the premises, if it is permitted to get busier it will be more of a nuisance to residents. The restaurant is already overflowing and filled to capacity. Should be moved to an area more suited to and in an area less populated than Dixons yard. We do not want to hear what could surmount to drunken behaviour whilst in our homes.
- (iii) many of the staff and the owner park illegally.
- (iv) we often see bins overflowing attracting pigeons and possibly rodents.

4.0 APPRAISAL

4.1 Key Issues

- vitality and viability of the city centre
- impact on residential amenity of surrounding occupants
- impact on the appearance and character of the conservation area

Planning Policy

4.2 The National Planning Policy Framework advises that planning should positively promote competitive city centres and enhance their vitality and viability. The NPPF forwards the principle that planning should seek to ensure a good standard of amenity for all existing and future occupants of land and buildings. Planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder and the fear of crime, do not undermine

quality of life or community cohesion. Planning decision should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

4.3 The Development Control Local Plan was approved for Development Control purposes in April 2005: its policies are material considerations where they reflect the National Planning Policy Framework. 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 Policy S7 seeks to promote the introduction of new evening entertainment uses provided there is no adverse impact on the vitality and viability of the city centre and no adverse impact on residential amenity.

Outside Seating

4.5 The proposal would comprise a triangular area with a length of 5.0 metres and a maximum depth of 2.2 metres. The enclosed area would accommodate two small tables each with two chairs. It would be enclosed by a barrier comprising of 700mm high stainless steel or chrome plated posts with upper and lower horizontal bars. The applicant states that the tables would be used as a waiting area for diners before entering the restaurant and therefore would be vacated by 21.45 (Monday to Saturday) and 19.45 (Sundays).

Vitality and viability of the city centre

4.6 In principle, the proposed use of an area of pavement adjacent to the side elevation of El Paradiso del Cibo for the siting of tables and chairs to use in association with the restaurant at 40 Walmgate would be consistent with the aim of retaining and promoting the vitality of the city centre as advised in the NPPF and supported by local planning policies S6 and S7. In general there is support for pavement cafes provided they do not harm retail vitality, the living conditions of nearby residents and public safety.

4.7 Walmgate is not a Primary Shopping Street and the property is located outside of the Central Shopping Area as defined in the Local Plan. Due to the location of the proposed seating area on a side street outside of the Central Shopping Area and given that the building has permission to be operated as a mixed use premises

including a restaurant, Officers consider that this proposal would not have a material effect on the vitality and viability of this part of the city centre.

Amenity of surrounding residents

4.8 The pavement cafe involves an area of approximately 4.5 square metres which the applicant states would accommodate two small tables each with two chairs. As detailed above, the tables would be vacated by 21.45 (Monday to Saturday) and 19.45 (Sundays).

4.9 Although 40 Walmgate is bound by commercial uses to the north west, the cul de sac to which the seating area fronts is essentially residential in character since the redevelopment of the old industrial buildings in Dixon's Yard. The closest residential properties to the proposed area of outside seating are those in Gibson House and the Guardhouse, approximately 15 and 22 metres away. Beyond this cul de sac, the immediate surroundings are a mixture of commercial uses, retail and cafes/restaurants and residences.

4.10 Given that the area proposed for outside seating is limited in size and would only accommodate 2 tables, it is considered that persons using the outside seating would be unlikely to create undue noise disturbance (i.e. no more than which is already experienced in the area). The rear part of the building to which the French doors have been installed and where the seating would be located is an overspill area to the restaurant, which the applicant states is only used if the main part of the restaurant is full providing four tables (8 seats). The applicant confirms that no music is played in this area. Last orders on weekdays throughout the restaurant are 21.45 and the premises are vacated by 23.00 Monday to Saturday, and 21.00 on Sundays.

4.11 Officers consider it would be prudent to apply conditions to prevent the playing of music within the rear part of the building (to prevent noise escaping through the French doors) and to require that there shall be outside speakers for the playing of music. Conditions requiring that the outside tables are vacated by 21.45 (Monday to Saturday) and 19.45 (Sundays) and a maximum of two tables to be sited outside, are also recommended.

4.12 Concerns have been raised with respects to refuse storage at the restaurant. The applicant states that three domestic sized wheelie bins are used. These are sited to the left of the door to the flat on the south east elevation, further up towards Walmgate from the proposed seating area. Collection is daily Tuesday to Saturday and twice on Mondays.

4.13 In view of the limited scope of the external seating area, it is considered that the proposed use would be reasonably compatible with the neighbouring uses if appropriately controlled to ensure that nearby residential amenity is not unduly

affected. It would also accord with Policies HE3, S6 and S7 of the Local Plan and guidance within the NPPF that seeks to promote a vibrant local economy whilst protecting the local distinctiveness that contributes to the character and appearance of the conservation area.

Impact on the character and appearance of the conservation area

4.14 The National Planning Policy Framework advises that local planning authorities should support a strong town centre economy and conserve and enhance the historic environment. It states that considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed by or lost through alteration or destruction of the heritage asset or development within its setting. Policy HE3 of the Local Plan relates to Conservation Areas and states that proposals will only be permitted where there is no adverse effect on the character and appearance of the area. Policy GP18 refers to external attachments and states that permission will be granted where their design, location, materials and colouring do not significantly detract from the visual appearance of the building or the character and appearance of conservation areas.

4.15 The application seeks retrospective permission to retain French doors and a retractable canopy installed to the side elevation of the premises. The doors provide improved access to the rear of the restaurant and the kitchen and are of timber construction with glazed upper panels. The canopy consists of a unit 5.0 metres wide positioned over the French doors. When extended, it projects 1.8 metres beyond the side elevation. The canopy is made from a nylon type fabric in a pattern that represents the colours of the flag of Italy.

4.16 Although Officers consider that this proposal would not be appropriate on the main street within the Conservation Area, due to its distance some 16 to 20 metres back from Walmgate, and the relatively poor quality of the immediate surroundings, this small intervention is not considered to be harmful to the character and appearance of the conservation area. It is noted that the alterations cannot be seen in views of St Deny's Church and therefore the proposal would not adversely affect the setting of this Grade 1 listed building.

Highway Safety

4.17 Local Plan Policy T2 states that permission will not be granted for any development that would prevent the use of any part of the existing pedestrian and cycle networks, or compromise the safety of users thereon, unless alternative routes will be provided that are similar or better in quality, safety, convenience and length.

4.18 The siting of tables and chairs as proposed, would provide the required minimum 1.5 metres of unobstructed footway between the barrier and the carriage way. This is considered sufficient for the level of pedestrian activity in this area and accommodates a pushchair or wheelchair.

Crime and Disorder

4.19 Matters of crime and disorder/security are predominantly dealt with through the licensing legislation. It is noted that the licence for 40 Walmgate currently does not allow any alcohol to be taken off the premises and consequently the applicants would have to apply to vary the licence to allow alcohol at the outside tables.

4.20 No objections have been raised by the Police Architectural Liaison Officer following consultation with Safer Neighbourhoods.

5.0 CONCLUSION

5.1 Given that the area proposed for outside seating is limited in size and would only accommodate 2 tables, it is considered that persons using the outside seating would be unlikely to create undue noise disturbance (i.e. no more than which is already experienced in the area). Furthermore, the proposal would not have a material effect on the vitality and viability of this part of the city centre, is visually acceptable and does not compromise highway safety or management. There would be no conflict with Policies HE3, S6, S7, T2a, GP1 and GP18 and related national planning guidance contained in the NPPF. Approval is therefore recommended subject to the following 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:-

Proposed Elevation, Plan and Section received 16 October 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 No door shall be fitted so as to open outwards over the adjacent public highway.

Reason: To prevent obstruction to other highway users.

4 There shall be no amplified, recorded or live music played in the rear section of the restaurant and no outside speakers for the purpose of playing music to the external seating area.

Reason: In order to protect the amenity of residents and in the interests of the character of the Conservation Area.

5 The tables and chairs associated with the use hereby approved shall be stored within No. 40 Walmgate when not in use.

Reason: In the interests of the safety and rights of way of users of the public footway, and in the interests of the visual amenity of the conservation area.

6 Prior to the commencement of the use hereby permitted, details of the design of the safety barriers shall be submitted and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with the approved details and there shall be no variations from the approved details without the approval of the Local Planning Authority;

- a) Tables and chairs.
- b) Means of enclosure.

The means of enclosure shall be as open as possible and shall contain no advertising unless agreed in writing by the local planning authority.

Reason: In the interests of visual amenity of the conservation area and the safety and rights of way of users of the public footway.

7 The hours of use of the outside seating shall be confined to;

Mondays- Saturdays: 11.00 - 21:45

Sundays: 11:00 - 19.45

Reason: In the context of the applicant's intention that the outside tables are to be used as a waiting area rather than for dining, it is considered reasonable to restrict the use of the outside seating in the interests of safeguarding residential amenity.

8 No more than two tables and four chairs shall be provided within the outdoor seating area hereby approved.

Reason: The premises are within an historic mixed use area with a significant residential population which contributes to the character and appearance of the conservation area. The number of tables is limited by the space available without causing obstruction to the footway and in order to protect the living conditions of

nearby residential properties from the effects of noise and disturbance 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, causes no undue harm to interests of acknowledged importance, with particular reference to the vitality and viability of the city centre, the visual amenity and character of the conservation area, highway safety and residential amenity. As such, the proposal complies with Policies S6, S7, HE3, T2a, GP1 and GP18 of the City of York Development Control Local Plan (2005); and national planning guidance contained in the National Planning Policy Framework.

2. INFORMATIVE:

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Cafe Licence - Section 115 - Heather Hunter or Anne-Marie Howarth (01904) 551418

Contact details:

Author: Rachel Tyas Development Management Officer (Wed - Fri)
Tel No: 01904 551610