



**NOTICE OF RELEVANT REPRESENTATION FOR A PREMISES
LICENCE (New Grant)
UNDER THE LICENSING ACT 2003**

We:

North Yorkshire Police	Name:
Fire Authority	Name:
Environmental Health	Name:
Health & Safety	Name:
Planning Authority	Name:
Social Services	Name:
Trading Standards	Name:
Interested Party	Name: John Wallace Operations Director of Judges Court Hotel

- a) ~~a person living in the vicinity of the premises:~~
- b) ~~a body representing persons living in the vicinity of the premises:~~
- c) a person involved in business in the vicinity of the premises:
- d) ~~a body representing persons involved in business in the vicinity of the premises:~~

Maritime Authority Name:

Hereby give notice of objection to the Premises Licence as listed below:

Postal Address of premises or club premises:

**Revolution de Cuba
(Former BHS Store)
New Street
York
YO1 8ND**

This Notice of Objection relates to the following licensing objective:

(Please tick one or more boxes)

- 1) the prevention of crime and disorder
- 2) public safety
- 3) **prevention of Public Nuisance**
- 4) the protection of children from harm

GROUNDNS FOR RELEVANT REPRESENTATION

We hereby give notice that we object to the application for a Premises License on the following grounds:

-New Street lies within the Council's Cumulative Impact Area, and enabling the premises to sell alcohol until late at night would be totally detrimental to its aims and objectives.

-**Noise from New Street.** New Street and Coney Street are already noisy with revelers and cause frequent disturbance to our residents and employees of Judges Court. These streets are often threatening places to walk along in an evening and late at night. A further large bar attracting many hundreds of extra patrons to the area (we note that provision for 420 seats is shown on the planning application with additional guests likely to stand) cannot fail to add to the nuisance already suffered by our customers and staff.

-**Noise from within the building.** Our business, Judges Court, neighbors the rear and side of the proposed bar; we are concerned about the potential for noise breakthrough from within the bar. At it's closest point our building is only 1.8m from the exterior of 11 New Street. Our closest single glazed bedroom windows (we are a listed building with restrictions imposed) are only 2.0m from the side elevation of the proposed bar with seven of our fifteen bedrooms facing this way. We note that the proposed operator already runs a similar establishment (Revolution Bar off Coney Street). That current operation and the operator's own website and publicity material provide an indication of the likely environment that will be generated in the proposed bar with music and late night drinking featuring heavily and long after food service has ceased.

-**Noise and smells plus light disturbance from the bar and kitchens should the emergency access doors be opened.** The plans show the resurrection of the use of double doors just 2.6m from our nearest bedroom single glazed window as emergency access doors. These doors open into the ground floor kitchen which is then open into the main ground floor bar. Should these doors be opened our resident guests and staff cannot fail to suffer nuisance and will likely feel like they are in the bar themselves. We have no objection to these doors being opened in a true emergency but if they begin to be used as a way to ventilate and cool the kitchen or provide access to an outside space for smoking etc then there is nothing between our hotel bedrooms and the interior of the bar.

-**Noise from the roof terrace.** It is almost inevitable that noise from the roof top bar will adversely affect the hotel. Nine of our fifteen bedrooms have single glazed windows between just 8m and 12m from the edge of this terrace. Should this terrace be brightly lit we are further concerned about the disturbance this may cause to our customers who may be trying to sleep.

Please provide as much information as possible to support this relevant representation: (e.g. please list any additional information, eg dates of problems which are included in the grounds for review)

-Firstly we believe that Revolucion de Cuba is little more than a night club certainly by the time that evening comes. We would like to suggest that the Licensing Committee should attend a Revolucion de Cuba and witness this first hand before granting any licence. Short of visiting a Revolucion de Cuba we would suggest viewing the below websites to gain an insight into the operation that is seeking this license:

www.revoluciondecuba.com/ Official website

<https://www.youtube.com/watch?v=BhMycnFllhA> An official publicity video uploaded by Revolucion de Cuba

<https://www.youtube.com/watch?v=DlsS3Be7pxk> An official publicity video showing a condensed day in the life of a Revolucion de Cuba.

-Noise from within the building. We enclose photographs detailing the proximity of the two buildings. We enclose a copy of the Planning approval granted approving the change of use; it affords Judges Court no protection in it's conditions from the noise of the patrons and music inside the bar other than insisting upon sound limiters for the music system. We note that in the Delegated Report associated with this planning permission that 'Public Protection officers do not consider that noise breakout from the ground and first floor building façade closest to the Judge's Court Hotel is likely, as there are no openings other than a pair of emergency doors' but this has yet to be proven and we would like to be afforded some protection should the bar noise emanate through the walls.

-Noise, smells and light disturbance from the bar and kitchens should the emergency access doors be opened. We enclose photographs showing the closeness of these doors to our building and bedroom windows. Other than the existence of these doors being dismissed in the Delegated Report as detailed above (copy attached) there are no further references or conditions attached or protection afforded should the doors offer little sound protection or be misused and opened other than in an emergency.

-Noise from the roof terrace. We enclose photographs showing the location of the roof terrace overlooking our bedroom windows. We enclose a copy of the Planning Approval for this roof terrace; should all of the conditions imposed be met, the noise nuisance limited by as predicted and the terrace closed at 11pm as instructed then we hope to have few grounds to complain . However we would again seek some protection to be granted to prevent unexpected noise and/or light nuisance occurring particularly since some of our resident guests may wish to be able to sleep before 11pm and we'd suggest that they should be allowed to do so.

Suggested Conditions that could be attached to the Licence to address these issues:

-Firstly we strongly believe that the License for this operator should be refused. We have no objection to the building being used for sensible restaurant or bar use but for the venue to turn into little more than a night club in the evening is too much for us to really countenance as a neighbouring business reliant on providing a night's sleep to our customers.

Should the Licence be approved we would like to suggest some conditions to protect our business, customers and staff and to limit the damage to the area late at night:

-Noise from New Street. As a hotel next to this proposed bar we consider that our clientele would be reasonably tolerant in most instances of a little increased disturbance until 11pm mid-week and a little later at a week-end.

We would like to propose that the license, if granted, for both Live/Recorded music and Late Night refreshment be limited to 11pm on Sunday to Thursday nights then until midnight on Fridays and Saturdays. (We note that the Opening/Closing times on the Licensing Application contain an error and should presumably read 10-02.30 for Friday and Saturday rather than Sat-Sun since Sunday is already listed and Friday is omitted.)

We object to an additional hour on the evenings preceding a Bank Holiday as this will increase late night disturbance for our guests at our busiest points in the year.

We object to an additional hour being granted when BST begins to disapply it's effect; as a hotel our customers are already losing an hours sleep on this night and to grant a further hours potential disturbance will prove unacceptable to them.

We note that a representative of Revolucion de Cuba stated that 'the business would not be viable if it was restricted to a midnight closing time' when Reading Council restricted the hours requested at a Licensing Hearing. We also note that the Glasgow branch of Revolucion de Cuba opened in 2016, is presumably viable yet closes by midnight on every day of the week (www.revoluciondecuba.com/bar/glasgow/), numerous other branches also operate with far earlier closing times than those requested for York.

We would propose that later hours could fairly be looked at following a reasonable period after opening when any disturbance can accurately be evaluated rather than calculated from presumptions and guesswork.

-Noise from within the building. We would like to be afforded protection from unforeseen noise emanating from the structure by way of having sound limiters positioned by our façade and bedroom windows ensuring that noise nuisance doesn't breach acceptable levels. Short of this we would hope that sound levels for the music system be set with consideration to the noise audible from our property and with allowance for the noise to be generated by bar patrons.

-Noise, smells and light disturbance from the bar and kitchens should the emergency access doors be opened. We would like the emergency access doors to be alarmed so that they are only used for their proper use as outlined in the planning application or perhaps for them to automatically switch off the sound system should they be opened; surely wise anyway in emergency situations. We would also like to request that the sound proofing of these doors be guaranteed to be of a suitable level bearing in mind they are just 2.6m from a bedroom window and afford our guests their only protection from the noise inside the bar.

Noise from the roof terrace. If the conditions detailed in the planning approval and calculations upon which they are based are adhered to and accurate then disturbance from this area should hopefully have been reduced to tolerable levels for our customers especially since the roof terrace is to be shut by 11pm. We would like to see some further protection and consideration for our property afforded in any license granted should noise nuisance prove to be worse than anticipated, perhaps again by sound monitoring at our noise sensitive facades and by setting the sound levels with consideration to our guests and staff.

Signature:

Date: 14th January 2018

Contact Name and address for correspondence: John Wallace, Judges Court, Coney Street	
Post Town: York	Post Code: YO1 9ND
Telephone number (if any)	
If you would prefer us to correspond with you using an e mail address your e mail address: jdw@judgescourt.co.uk	



A photograph showing the proximity of Judges Court and its bedroom windows to the outer (red brick) walls of the proposed bar. The emergency access door from the bar can be seen in the corner (blue)



It measures 2.6m from the emergency access door to the closest bedroom window



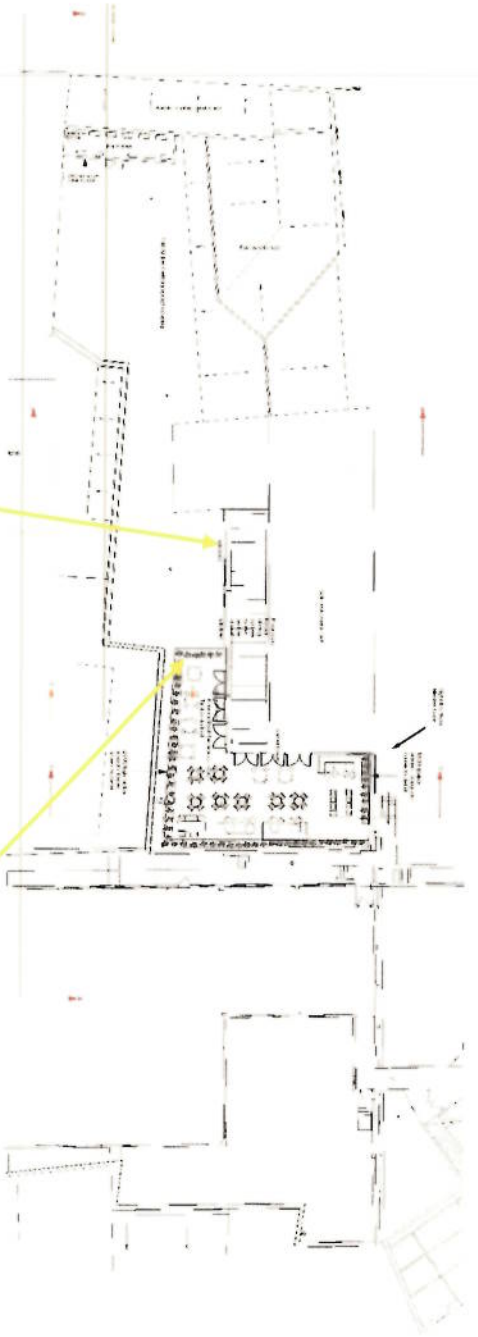
A photograph showing the proximity of the proposed bar and emergency access door to Judges Court's side windows



A photograph from a bedroom window showing the proximity of the roof top bar and location of the terrace

To be converted into the roof top bar

Location of roof top terrace



Proposed Bar

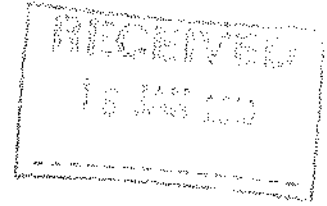
Proposed Terrace



A photograph showing the proximity of Judges Court's windows to the roof top bar and terrace



CITY OF
YORK
COUNCIL



Approve Planning Permission

TOWN AND COUNTRY PLANNING ACT 1990

To:

Mr Mark Shearman
Firstplan
Bramah House
65-71 Bermondsey Street
London
SE1 3XF

Application at: 11 New Street York
For: Formation of roof bar and terrace and installation of external plant and acoustic screening.
By: Revolution Bars Group
Application Ref No: 17/01590/FUL
Application Received on: 31 July 2017

CONDITIONS OF APPROVAL:

1 The development shall be begun not later than the expiration of three years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

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

103GG Received 13 November 2017
101HH Received 26 October 2017
Acoustic Report Dated August 2017 Ref: 170604-R002B

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

3 The external terrace hereby permitted shall not be used except between the hours of 11:00 - 23:00 daily.

Reason: To protect the amenity of nearby properties.

4 Prior to the external terrace being brought into use, an operational management plan outlining how the use of the terrace will be managed, particularly when the use of the terrace ceases at 23:00 hours daily, shall be submitted and approved in writing by the local planning authority. The terrace shall be operated in accordance with the measures outlined in the operational management plan for as long as terrace remains in use.

Reason: To protect the amenity of nearby properties.

5 No music shall be played on the external terrace at any time.

Reason: To protect the amenity of nearby properties.

6 The number of customers on the external terrace shall not exceed 84 at any one time.

Reason: To protect the amenity of nearby properties.

7 The doors contained within the south western and south eastern elevation of the rooftop bar shall be kept fully closed at all times other than for access and egress and shall be fully closed between 23:00-11:00 daily, except in an emergency.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

8 The windows contained within the south western elevation of the rooftop bar and the patent glazing contained within the south western facing roofslope of the rooftop bar shall be non-openable.

Reason: To protect the amenity of nearby properties.

9 Prior to the use of the external terrace, details of the colour and finish of the 2.6m high timber acoustic screen hereby permitted shall be submitted to and approved in writing by the local planning authority. The acoustic screen shall be painted and finished in accordance with the approved details within a period of two months of being installed and shall be maintained according to those details.

Reason: In the interests of the character and appearance of the Central Historic Core Conservation Area.

10 The external terrace shall not be occupied by customers until the acoustic screen has been installed as shown on the approved drawing 101HH.

Reason: To protect the amenity of nearby properties.

11 Prior to the use of the rooftop bar, a cross section (scale 1:10) through part of the south western facing roofslope and patent glazing shall be submitted and approved in writing by the local planning authority. The patent glazing shall be installed in the south western roofslope in accordance with these approved details prior to the use commencing.

Reason: To protect the amenity of nearby properties.

12 Prior to the use of the external terrace, details of the living wall (including plant species and fixings) and a management plan shall be submitted and approved in writing by the local planning authority. The living wall shall be installed and maintained in accordance with the approved details and management plan for as long as the rooftop bar and terrace remains operational.

Reason: In the interests of the character and appearance of the Central Historic Core Conservation Area.

13 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

14 No item of plant installed within the plant area shall become operational until the acoustic screen has been installed as shown on the approved drawing 101HH.

Reason: To protect the amenity of nearby properties.

15 Notwithstanding the details shown on Section AA Drawing No 103EE, and prior to the use of the rooftop bar and external terrace, details of the proposed method of screening (including height, materials, colour treatment and finish) for the windows contained within the south western facing elevation shall be submitted and approved in writing by the local planning authority. The screen shall be installed and maintained in accordance with these approved details for as long as the rooftop bar and terrace remains operational.

Reason: In the interests of the character and appearance of the building and the Central Historic Core Conservation Area.

16 All electronically amplified music emitted from the rooftop bar shall be played or reproduced through loud speakers and a tamper proof noise limitation device. The device, the levels set and the installation shall be approved in writing by the local planning authority before the use hereby approved commences. Thereafter the approved levels, equipment, installation, position and type of speakers shall be maintained in accordance with the planning permission; at no time shall they be modified without the written approval of the local planning authority.

Reason: To safeguard the residential amenity of neighbouring properties.

Date: 24 November 2017



M. Slater
Assistant Director for Planning and Public
Protection

FOR RIGHTS OF APPEAL, SEE OVERLEAF

Notes to Applicant

1. 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:

- Negotiation on the design aspects including extent of terrace area, and external alterations to the rooftop bar.
- Negotiation on the hours of operation for the external terrace.

Appeals to the Secretary of State

- . If you are aggrieved by the decision of the City Council to attach conditions to the grant of planning permission, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.
- . If you want to appeal, then you must do so within SIX months of the date of this. You must use a form which you can get from The Planning Inspectorate, at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (tel: 0303 444 5433) or which can be downloaded from their web site (<https://www.gov.uk/appeal-planning-inspectorate>).
- . The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- . The Secretary of State need not consider an appeal if it seems to him that the City Council could not have granted planning permission for the proposed development, or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under the Order.
- . In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

Purchase Notices

- . If either the City Council or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state, nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- . In these circumstances, the owner may serve a purchase notice on the City Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Compensation

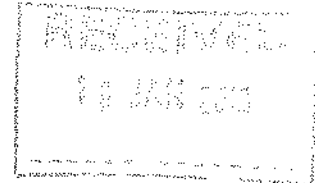
- . In certain circumstances, compensation may be claimed from the City Council if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.
- . These circumstances are set out in Section 120 and related provisions of the Town and Country Planning Act 1990.

Note

This permission does not absolve you from the need to obtain approval under the Building Regulations, or to obtain approval under any other Bye-Laws, Local Acts, Orders, Regulations and statutory provision in force, and no part of the proposed development should be commenced until such further approval has been obtained.



CITY OF
YORK
COUNCIL



Approve Planning Permission

TOWN AND COUNTRY PLANNING ACT 1990

To:

Mr Andrew Astin
Indigo Planning
Toronto Square
Toronto Street
Leeds
LS1 2HJ

Application at:

BHS 11 New Street York

For:

Subdivision and flexible change of use of part of
the existing retail unit (A1) to Restaurant (A3)
and/or drinking establishment (A4)

By:

Lloyds Bank SF Nominees C/o Aberdeen Asset
Management,

Application Ref No:

16/02639/FUL

Application Received on:

17 January 2017

CONDITIONS OF APPROVAL:

1 The development shall be begun not later than the expiration of three years from the date of this permission.

Reason: To ensure compliance with Sections 91 to 93 and Section 56 of the Town and Country Planning Act 1990 as amended by section 51 of the Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following plans and other submitted documents:

'Proposed - Unit 3 Ground Floor drawing no. PO1' received 30th March 2017
and 'Unit 3 Proposed - First Floor'

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

3 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

4 There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained and serviced thereafter in accordance with manufacturer guidelines.

Note: It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition. The applicant shall provide information on the location and level of the proposed extraction discharge, the proximity of receptors, size of kitchen or number of covers, and the types of food proposed. A risk assessment in accordance with Annex C of the DEFRA guidance shall then be undertaken to determine the level of odour control required. Details should then be provided on the location and size/capacity of any proposed methods of odour control, such as filters, electrostatic precipitation, carbon filters, ultraviolet light/ozon treatment, or odour neutraliser, and include details on the predicted air flow rates in m³/s throughout the extraction system.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

5 The transfer of bottles from internal areas to the bin store shall only take place during the hours of 09:00 to 21:00.

Reason: In the interests of protecting the amenities of the occupants of surrounding properties.

6 All electronically amplified music emitted from the premises shall be played or reproduced through loud speakers and a tamper proof noise limitation device. The device, the levels set and the installation shall be approved in writing by the Local Planning Authority before the use hereby approved commences. Thereafter the approved levels, equipment, installation, position and type of speakers shall be maintained in accordance with the planning permission; at no time shall they be modified without the written approval of the Local Planning Authority.

Reason: To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 of the York Development Control Local Plan.

Date: 6 April 2017



M. Slater
Assistant Director for Planning and Public
Protection

FOR RIGHTS OF APPEAL, SEE OVERLEAF

Notes to Applicant

1. 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:

Revised plans were submitted in which the proposed roof bar and pavement cafe were removed from the application.

Account has been taken of all relevant national guidance and local policies and with the attachment of conditions the proposal is considered to be satisfactory

2. FOOD PREMISES REGISTRATION

As this application relates to a business that will sell or supply food and/or drink (including alcohol), the proprietor of the business should contact by email at public.protection@york.gov.uk or by telephone on 01904 551525 at their earliest opportunity to discuss registering the business as a food premises (a legal requirement) and to obtain advice on food hygiene & standards, health & safety, odour extraction etc.

Appeals to the Secretary of State

If you are aggrieved by the decision of the City Council to attach conditions to the grant of planning permission, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal, then you must do so within SIX months of the date of this. You must use a form which you can get from The Planning Inspectorate, at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (tel: 0303 444 5433) or which can be downloaded from their web site (<https://www.gov.uk/appeal-planning-inspectorate>).

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the City Council could not have granted planning permission for the proposed development, or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under the Order.

In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

Purchase Notices

If either the City Council or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state, nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the City Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Compensation

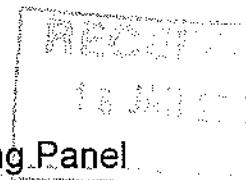
In certain circumstances, compensation may be claimed from the City Council if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 120 and related provisions of the Town and Country Planning Act 1990.

Note

This permission does not absolve you from the need to obtain approval under the Building Regulations, or to obtain approval under any other Bye-Laws, Local Acts, Orders, Regulations and statutory provision in force, and no part of the proposed development should be commenced until such further approval has been obtained.

DELEGATED REPORT



Date:
Team: Major and Commercial Team

Ward: Guildhall
Parish: Guildhall Planning Panel

Reference: 16/02639/FUL
Application at: BHS 11 New Street York
For: Subdivision and change of use part of existing retail unit (use class A1) to restaurant/bar (use class A3/A4)
By: Lloyds Bank SF Nominees c/o Aberdeen Asset Management
Application Type: Full Application
Target Date: 31 March 2017
Recommendation: Approve

1.0 PROPOSAL

THE SITE

1.1 New Street is located within the Central Historic Core conservation area in the heart of the central shopping area. There is a mix of retail and other commercial uses on the ground and first floors in the surrounding area including restaurants and bars.

THE PROPOSAL

1.2 The application is for consent for a change of use of part of the existing retail unit (use class A1) to restaurant (use class A3) and/or drinking establishment (use class A4). Class V, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 allows an applicant to apply simultaneously for more than one use for a property and switch between these uses within a ten year period from the date of the decision.

1.3 The application property is the former BHS store, which has frontages onto Coney Street and New Street and another entrance on Feasegate. The part of the building it is proposed to change to A3/A4 use relates to ground and first floors that face onto New Street and involves a total floorspace of 760 sqm. The majority of the former store would remain in retail use.

SITE HISTORY

1.4 None relevant to consideration of application.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Application Reference Number: 16/02639/FUL

Item No:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006

Conservation Area GMS Constraints: Central Historic Core CONF

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: Central Area 0002

2.2 Policies:

CYGP1
Design

3.0 CONSULTATIONS

INTERNAL

Public Protection

Noise

3.1 In terms of noise associated with the development noise is likely to occur primarily as a result of plant/machinery, people noise, music noise, and delivery noise. From initial investigations it would appear that there are few if any residential properties in the area. In addition there are already a number of existing bar/restaurants in the vicinity, with All Bar One and the Blue Fly Café Bar adjacent to and opposite the proposed development site. It is also worth noting that having reviewed Public Protection's complaint database I am unaware of any existing or historic complaints about the existing bars/restaurants on New Street.

3.2 Within the application it is stated that the exact details of any plant or machinery are unknown and will be determined by the final occupier of the property, if permission were granted. Having reviewed the plans it would appear that eight condenser units are proposed on the second floor rear flat roof in addition to air intake and extract fans associated with ventilation for the first floor kitchen.

3.3 Such plant could have an adverse impact on the amenity of the area and also on the nearby hotel located at Judge's Court Hotel. Whilst noise from plant and equipment does have the potential to cause adverse impact I am satisfied that any noise could be adequately controlled through the provision of mitigation measures, such as acoustic enclosures or barriers, and so would recommend that a condition be attached to any permission granted to address this.

3.4 There are slight concerns over the potential for noise breakout affecting the amenity of the area. A possible occupier is Revolution de Cuba (RDC), which is a

chain where live music is likely to take place on a regular basis. Noise breakout from the ground and first floor building façade closest to the Judge's Court Hotel would be unlikely as it would appear that there are no openings. The only concern then relates to the potential for noise from use of the second floor external roof. It is requested that details be provided on the levels of noise anticipated and the level of breakout noise which is likely to occur. It is also requested that the background noise level is established in order to assist in determining the potential impact from plant and machinery. *(CASE OFFICER NOTE: The roof bar and pavement cafe have been removed from the application and, as a result, Public Protection does not consider that a noise report is now required as details of noise with regard to external plant can be dealt with by condition)*

3.5 I would want to ensure that any noise associated with amplified music from the site does not result in loss of amenity to the area as a whole, I would request that a condition controlling amplified music on the premises be attached to any approval granted.

Deliveries

3.6 Noise associated with deliveries, waste collection and bottle emptying have the potential for cause noise and result in loss of amenity. It would appear, however, that the proposed bin storage area will be internal to the building and also away from the Judge's Court Hotel façade. As a result it is my opinion that noise from use of this area would be unlikely to result in adverse impact due to noise. However, it may be worth considering restricting hours during which bottle emptying may be carried out to the hours of 09:00 to 21:00. In terms of deliveries I am aware that existing restrictions in the area will determine, to a large extent, the hours during which deliveries can occur. As a result I would anticipate that delivery hours will be controlled by this. In addition any deliveries would likely take place along New Street into the loading bay located on New Street.

Odour

3.7 In terms of odour treatment for the kitchen extraction limited information has been submitted with the application. As a result I would therefore request that a condition be attached to any approval for further details to be provided.

Food Informative

3.8 A Food informative dealing with advice on food hygiene & standards, health & safety, odour extraction etc should be attached to a planning consent

EXTERNAL

Operator of Dusk (bar), 8 New Street

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3.9 We have lost so much trade due to the fact that none of our regular clientele wish to enter the city on a Saturday and this proposal will add anti social problems on New Street. This is huge bar - the flow of people will increase dramatically and change the feel of the street from being a side street with a couple of independent bars to a destination street which attracts trouble.

3.10 The outside seating area will mean that the space between the areas will be full of people making it almost impossible for taxis and, more importantly emergency services to be able to operate safely. Construction will adversely affect our business for a sizable period of time. Make the development one that is a restaurant only not a massive bar.

Operator of Axis Barber Shop, 19 New Street

3.11 Will have negative impact on the City Centre, specifically drunken and nuisance behaviour. Another Bar is the last thing our street needs let alone York in general. The amount of drunkenness and inflatables in poor taste is a disgrace and is putting people off from coming into York on a Saturday to do shopping. It's having an effect on every decent business.

Three Residents of York (one from Heslington and two from Clifton area)

3.12 Object on the following grounds - there are more than enough bars/restaurants in that area of York; we need more small retail units. It will have negative impact, specifically drunken and nuisance behaviour. The city centre is becoming a no-go area, this will matters worse

Judges Court Hotel

3.13 Object on the following grounds;

- Noise from within building - music features heavily in the proposed operator's offer and there is concern about noise breakthrough from the bar particularly as hotel has single glazed windows
- Noise from pavement cafe, roof bar, kitchen, bar staff in rear courtyard and a/c units on roof - a noise report should be submitted without this and assessment of operating hours cannot be made.
- Roof bar will overlook hotel bedroom windows
- The addition of another bar in the area could cause unsustainable and dangerous levels of crowds in the street
- The roof bar and condenser units on the roof will have a material physical impact on the setting of the listed building

- Even if the developers incorporate noise attenuation the unpredictable nature of noise disturbance could decimate the viability of the hotel operation.
- The application form has the following omissions:
 - a. No indication of how waste is stored or collected
 - b. It indicates that land is contaminated but does not explain its nature
 - c. It states it does not involve loss of non-residential floorspace which is incorrect
 - d. No information on opening hours
 - e. No information on timing and frequency of deliveries – a potential disturbance issue for hotel guests

North Yorkshire Police (NYP)

3.14 NPPF paragraphs 58 and 69 state that planning policies and decisions should aim to ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. National Planning Practice Guidance (paragraph 010 Ref ID: 26-010-20140306) states that, “Designing out crime and designing in community safety should be central to the planning and delivery of new development. Section 17 of the Crime and Disorder Act 1998 requires all local authorities to exercise their functions with due regard to their likely effect on crime and disorder, and do all they reasonably can to prevent crime and disorder”.

3.15 In addition, ‘Safer Places - The Planning System and Crime Prevention’ states that ‘the siting and design of potential ‘honeypots’ (places where people congregate and linger) and ‘hotspots’ (places where criminal and anti-social behaviour is concentrated) require particular attention so as not to bring crime to particular types of area. In circumstances it may be easier to manage a concentration of such places, so long as such concentration is not excessive’.

3.16 Over a 12 month period there were 28 crimes and 34 incidents in New Street between 18.00 and 06.00, which show how the night time economy is having a detrimental impact on crime and disorder. The inclusion of further licensed premises in this street has a realistic potential to increase problems of disorder and public nuisance. *(CASE OFFICER NOTE – the Police also raised concerns about a proposed pavement cafe in the application but this aspect has now been withdrawn from the scheme)*

4.0 APPRAISAL

KEY ISSUES

4.1 The key issues in the assessment of this proposal are the principle of the proposed change of use and the impact upon the character and appearance of the building and the conservation area and the amenities of nearby occupants.

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LEGISLATIVE BACKGROUND

4.2 Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in the exercise of an LPA's planning function with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area.

POLICY CONTEXT

4.3 Central Government guidance is contained in the National Planning Policy Framework, March 2012 (NPPF). This sets out the overarching roles for the planning system. In Paragraph 7 it says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Paragraph 14 advises a presumption in favour of sustainable development is at the heart of the Framework. There is, however, a Footnote 9 to Paragraph 14 which contains restrictions where this presumption does not apply and the restrictions include designated heritage assets such as conservation areas. 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 conserving heritage assets.

4.4 Paragraph 23 says that planning policies should be positive and promote competitive town centre environments that provide customer choice and a diverse retail offer that reflects the individuality of town centres. It also says that local planning authorities should define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations. Annex 2 of the NPPF advises that secondary frontages provide greater opportunities for a diversity of uses such as restaurants, cinemas and businesses.

4.5 Paragraph 186 states that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development.

4.6 Paragraph 187 adds that local planning authorities should look for solutions rather than problems and decision takers at every level should seek to approve applications for sustainable development where possible. A core principle set out in paragraph 17 is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

4.7 In terms of the impact on the conservation area, paragraph 132 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.

4.8 Paragraph 58 states that planning decisions should aim to ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

Local Plan

4.9 The Development Control Local Plan was approved for development control purposes in April 2005; its policies are material considerations although it is considered that their weight is limited except where in accordance with the content of the NPPF.

4.10 Policy GP1 requires development proposals to respect or enhance the local environment, be of a design that is compatible with neighbouring buildings and the character of the area and expects new development to ensure that residents living nearby are not unduly affected by noise and disturbance.

4.11 It is considered that retail policies in the 2005 plan that deal with control of uses in shopping streets now have limited weight and that, in terms of the principle of the proposed use, it is the NPPF and Emerging Plan along with its associated evidence base (in particular the Retail Study Update (2014) (RSU) that should be the determining factors.

Emerging Plan

4.12 The Appendices to the RSU include a map that identifies a Primary Shopping Area (PSA) within the city centre where retail development is concentrated. In Paragraph 9.28 the RSU recommends the introduction of primary and secondary shopping frontages in York city centre to allow the Council to support vitality and viability by controlling the use of premises in such locations.

4.13 The PSA map identifies that New Street falls within the secondary shopping frontage. Although the RSU advises that Emerging Plan Policy (EPP) R3 should seek to retain a concentration of retail uses within secondary shopping frontage, it also states that non-retail uses should be considered favourably where they will have a positive impact on the shopping character and function of the street (Paragraph 9.31).

4.14 EPP Policy R3 acknowledges the greater diversity referred to in Annexe 2 of the NPPF and in essence recognises a changing town centre environment, where non A1 uses play a much greater role in a competitive town centre and where shopping activity is becoming more of a leisure activity and A3 and A4 uses complement the retail function. The Policy states that proposals for main town centre uses other than retail (including food, drink and entertainment uses) in the PSA will be supported where they complement the retail function, contribute to the vitality and viability of the city centre, have active frontages and would not have a detrimental impact on the overall character and amenity of the PSA.

4.15 For secondary frontages the Policy says that non-retail uses at ground floor level will be considered favourably where they would:

- not result in an over-concentration of non-retail uses that would have a negative impact on the shopping character and function or lead to amenity problems
- have active and attractive shop frontages and avoid dead frontage during the normal trading day
- be compatible with adjoining land uses and not prevent upper floors from being effectively used

ASSESSMENT

Principle

4.16 Although New Street is identified as secondary shopping frontage it is not considered that it could be regarded as making a strong contribution to the retail activity of the city centre. In the street on the ground floor, other than the application property, there are 3 bars, 2 cafes, 2 hairdressers and a language school. In essence, in retail terms, it acts more as a link between the greater retail concentrations in the primary shopping frontage streets of Coney Street and Davygate. In this context it is considered that it would be difficult to sustain an argument that the loss of this retail unit within New Street would have an adverse impact on the overall character and amenity of the PSA. The proposal would contribute to commercial activity during the day and evening and it is considered that, in principle, the proposed use would be compatible with existing nearby commercial activities.

Noise

4.17 With regard to noise, and in particular the potential impact on the Judges Court Hotel, the proposed roof terrace bar has been removed from the application, as has the pavement cafe, which will make a considerable difference to the potential for external noise creation. Public Protection officers do not consider that noise breakout from the ground and first floor building façade closest to the Judge's Court Hotel is likely, as there are no openings other than a pair of emergency doors, and it is considered that any issues of noise with regard to other potential sources (i.e. external plant or bottle emptying/transfer) can be dealt with by condition. In addition, refuse will be kept in a bin store that is located on the opposite side of the building to the hotel, which should eliminate any potential noise disturbance for hotel guests.

Operating Hours

4.18 Appeal decisions concerning bar/restaurants in the Swinegate area have maintained that attempting to manage noise disturbance in the city centre location through the control the opening hours of individual premises would be ineffective if

there are other operations in the area are not subject to such control. The conclusion has been that it is only noise from the premises itself that should be the focus of planning control (i.e. in respect of amplified music and/or plant /equipment, etc.).

Application Form Omissions

4.19 With regards to omissions on the application form, the applicant's agent has updated the form and responded as follows:

- a. Waste – (as mentioned above) this will be kept in a bin store that is located on the opposite side of the building to the hotel and will be separated as required and collected by an appointed contractor.
- b. Contamination – amended to confirm that there is no contamination on site
- c. Non-residential floorspace – these figures now provided
- d. Opening hours – these will be addressed in the licensing application
- e. Timing and frequency of deliveries - the operators will be restricted by the local area delivery policy

Servicing

4.20 In respect of servicing, the same limitations apply to all businesses in the city centre footstreets and around the Judges Court Hotel (namely all servicing/deliveries have to be outside the hours of 10.30 to 17.00) and it is not considered that it would be reasonable or acceptable to impose more stringent restrictions on the operator of an A3/A4 user, or indeed any other commercial user, at the application site.

Anti-Social Behaviour and Disturbance

4.21 The applicant's agent has advised that the proposed occupier of the unit (RDC) has since met the Police to discuss the proposal and will be submitting a licensing application which will cover opening hours and the prevention of crime and disorder. He has also advised that RDC will implement a management plan at the premises to help address concerns raised regarding customer dispersal and anti-social behaviour.

4.22 The Police comments are noted, however, their figures indicate that, in New Street, between 18.00 and 06.00, there is an average of just over 2 crimes a month and just below 3 incidents a month and although all occurrences of crime and other incidents are regrettable, it is not considered that the application could be refused on the grounds that it would cause crime and disorder and lead to an undermining of the quality of life or community cohesion. It is also worth noting that Public Protection are unaware of any existing or historic complaints about the existing bars/restaurants on New Street.

Heritage Impact

4.23 As the proposed roof terrace has been removed from the application and the proposal does not include any external alterations, it will not impact on the setting of the adjacent listed building or character of the conservation area. The appearance of any external plant and any necessary screening can be controlled by condition.

Legislative and NPPF Policy Compliance

4.24 In assessing the proposal officers have considered the impact it would have on the significance of the conservation area, as required by Paragraph 132 of the NPPF, and have judged that there will be no harm. In this respect it is considered that the proposals will preserve the character and appearance of the conservation area and if this application is approved the Local Planning Authority will have properly exercised its duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

5.0 CONCLUSION

5.1 The proposals will respect the character and appearance of the conservation area. It is also not considered that they will cause harm to the vitality or viability of the street or city centre as a whole or create crime and disorder and lead to an undermining of the quality of life or community cohesion. As such it is considered that they satisfy national guidance in the NPPF and Development Control Local Plan Policy and are acceptable. It is concluded that planning consent should be granted.

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 and other submitted documents:

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

3 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or

equipment at the site should not exceed the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

4 There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained and serviced thereafter in accordance with manufacturer guidelines.

Note: It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition. The applicant shall provide information on the location and level of the proposed extraction discharge, the proximity of receptors, size of kitchen or number of covers, and the types of food proposed. A risk assessment in accordance with Annex C of the DEFRA guidance shall then be undertaken to determine the level of odour control required. Details should then be provided on the location and size/capacity of any proposed methods of odour control, such as filters, electrostatic precipitation, carbon filters, ultraviolet light/ozone treatment, or odour neutraliser, and include details on the predicted air flow rates in m³/s throughout the extraction system.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

5 The transfer of bottles from internal areas of the premises to the designated bin store shall only take place during the hours of 09:00 to 21:00.

Reason: In the interests of protecting the amenities of the occupants of surrounding properties.

6 All electronically amplified music emitted from the premises shall be played or reproduced through loud speakers and a tamper proof noise limitation device. The device, the levels set and the installation shall be approved in writing by the Local Planning Authority before the use hereby approved commences. Thereafter the approved levels, equipment, installation, position and type of speakers shall be maintained in accordance with the planning permission; at no time shall they be modified without the written approval of the Local Planning Authority.

Reason:- To safeguard the residential amenity of neighbouring properties and to

secure compliance with Policy GP1 of the York Development Control Local Plan.

7.0 INFORMATIVES:

Notes to Applicant

1. 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:

Revised plans were submitted in which the proposed roof bar and pavement cafe were removed from the application.

Account has been taken of all relevant national guidance and local policies and with the attachment of conditions the proposal is considered to be satisfactory

2. FOOD PREMISES REGISTRATION

As this application relates to a business that will sell or supply food and/or drink (including alcohol), the proprietor of the business should contact by email at public.protection@york.gov.uk or by telephone on 01904 551525 at their earliest opportunity to discuss registering the business as a food premises (a legal requirement) and to obtain advice on food hygiene & standards, health & safety, odour extraction etc.

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