

## COMMITTEE REPORT

**Committee:** West & City Centre Area    **Ward:** Micklegate  
**Date:** 27 February 2007                    **Parish:** Micklegate Planning Panel

**Reference:** 07/00152/FUL  
**Application at:** McMillans 1 Rougier Street York YO1 6HZ  
**For:** Variation of condition 3 of application 04/01534/FUL to extend hours of use of pavement cafe as an outside smoking area until 02:00 Sunday to Thursday and 03:00 on Fridays and Saturdays (existing hours 11:00 to 20:00 on all days)  
**By:** McMillan (York) Ltd  
**Application Type:** Full Application  
**Target Date:** 21 March 2007

### 1.0 PROPOSAL

1.1 On 5 August 2004, planning permission was granted for the change of use of part of the pedestrian footway outside McMillans Bar to a pavement cafe. The approved drawing indicates that the area occupied by the pavement cafe would measure 8 metres in length by 7 metres in width at its widest point (adjacent to Tanner Row), narrowing to approximately 2.7 metres at its northern end, adjacent to an existing bus shelter. The cafe area would provide seven tables with twenty-eight "covers" and would be enclosed by rigid barriers. Condition 3 of the planning permission restricts the use of the pavement cafe to between the hours of 1100 hours and 2000 hours, the stated reason being " To protect the amenity of local residents". A further condition requires all barriers and furniture to be removed no later than 15 minutes after the permitted opening hours and stored clear of the public highway. Officers are not aware that the proposal has ever been implemented, although the consent remains valid until August 2009.

1.2 Members will be aware that new legislation that prohibits smoking in public places comes into force in July 2007, and with this in mind an application has now been submitted for a variation of condition 3 to extend the hours of use of the pavement cafe in order to create an outside smoking area. The proposed hours of use would correspond with the opening hours of the adjacent bar, i.e. until 0200 hours (on the following day) on Sundays to Thursdays and until 0300 hours on Fridays and Saturdays. The site is within the Central Historic Core conservation area and the application has been appropriately advertised.

1.3 The application is brought to the Committee at the request of Councillor B. Watson.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Floodzone 2 Flood Zone 2 CONF

Floodzone 3 Flood Zone 3

2.2 Policies:

CYHE3

Conservation Areas

### **3.0 CONSULTATIONS**

#### 3.1 INTERNAL

HIGHWAYS - Comments awaited

URBAN DESIGN AND CONSERVATION

1. The site is within one of the principal commercial areas of the city, visible from the city walls.
2. Having a smoking area in such a public place would be harmful to the conservation area and more private areas should be found for this activity.
3. Street furniture would probably increase (litter bins etc).
4. The smoking ban in Scotland has caused amenity problems associated with noise and pollution and it has changed the character of some streets.

ENVIRONMENTAL PROTECTION - Comments awaited

#### 3.2 EXTERNAL

MICKLEGATE PLANNING PANEL - Comments awaited

POLICE ARCHITECTURAL LIAISON OFFICER - Comments awaited

ADJACENT OCCUPIERS - Comments awaited

### **4.0 APPRAISAL**

#### 4.1 Key Issues

- effect on character and appearance of the conservation area
- pedestrian safety
- impact on residential amenity through noise and disturbance
- crime and disorder

4.2 The site is within a designated conservation area (Central Historic Core) wherein the Council, when determining planning applications, is under a statutory duty to consider the desirability of preserving or enhancing the character and appearance of the area. This is reflected in Policy HE3 of the City of York Draft Local Plan, which states that proposals for development involving a change of use will only be permitted where there is no adverse effect on the character and appearance of the area. Additionally, Policy E4 of the Approved North Yorkshire structure Plan states that buildings and areas of special townscape, architectural or historic interest (e.g. conservation areas) will be afforded the strictest protection.

4.3 The practice of using the public highway outside licensed premises to accommodate pavement cafes is well established in York City Centre, where late night activity is to be expected, and is indeed generally encouraged. Planning permission for the operation of the pavement cafe outside McMillans has already been granted with a condition restricting its use beyond 2000 hours, although many pavement cafes within the City Centre operate well beyond this time. For example, a recent appeal decision relating to "Dusk" in New Street granted consent (for a temporary "trial" period of three years) for its associated pavement cafe to remain open until 0230 hours, pointing out that similar facilities at the adjacent "Starbucks" and "Blue Fly" bar also open late into the night. It is not considered that the additional opening hours proposed would adversely affect the character or appearance of the conservation area, particularly bearing in mind the significant amount of activity and pedestrian flows that already exist in the area. In addition, it is proposed that all furniture and barriers associated with the pavement cafe would be removed when not in use, a matter which could be controlled through the imposition of an appropriate condition.

4.4 It is the applicants intention to use the pavement cafe as an outside smoking area, beyond the existing permitted opening time of 2000 hours. The purpose of the new legislation is to ban smoking within enclosed work places, and staff/customers would already be permitted to smoke outside the premises once the smoking ban comes into force. However, the applicant considers that in addition to providing a better environment for smokers, the use of the pavement cafe would provide a greater degree of control and management to take place, in particular the supervised exit and re-entry of customers to the premises by door staff. It is not the intention of the applicant to allow drinks to be taken out of the premises into this area beyond the existing permitted time of 2000 hours. The Council's Licensing Section have confirmed that the use of the outside area for smoking would not require a licence; this would only be required if the sale of alcohol was involved.

4.5 It is considered unlikely that the proposal would result in any demonstrable increase in ambient noise levels, particularly bearing in mind the high levels of traffic, both vehicular and pedestrian, which already exist in the area. This was established in evidence given at the Salt and Peppers public inquiry, where a noise and footfall survey was carried out (in Tanner Row) on two consecutive Saturday evenings, one with the premises open and one with it closed. The survey demonstrated that there was very little difference in noise levels or pedestrian activity on either occasion. This is not wholly surprising, given the large number of late night premises in the area, together with the presence of a taxi rank. In addition, it should be borne in mind that staff and customers would be obliged to leave the premises (McMillans) in order to

smoke, irrespective of whether the pavement cafe was in existence or not. Thus the proposal is unlikely to attract significant additional numbers either to the individual premises or to the area in general. It is not considered, therefore, that a logical argument could be advanced to the effect that the proposal would adversely affect the amenity of local residents over and above the situation that already exists, or could exist, once the smoking ban comes into force. The original planning permission included a condition preventing the use of outdoor speakers in association with the pavement cafe, and this could be re-imposed.

4.6 The ODPM document "Safer Places" (a companion document to Planning Policy Statement 1: "Delivering Sustainable Development") states that crime prevention is capable of being a material planning consideration, and that the prevention of crime and the enhancement of community safety are matters that a local planning authority should consider when exercising its functions under planning legislation. Although the proposal would be likely to result in the increased congregation of customers outside the premises into the early hours, there is no firm evidence to suggest that the use of the pavement cafe as a smoking area would in itself result in increased levels of crime and disorder, particularly if the area is well managed and supervised by door staff at the premises. However, It is considered that the granting of planning permission for a temporary period of two years (lasting approximately 18 months after the smoking ban comes into force) would be a prudent course of action, and would enable the situation to be monitored and reviewed at the end of the period.

## **5.0 CONCLUSION**

5.1 The extension of the hours of use of the pavement cafe in order to create an outside smoking area is considered to be acceptable, particularly if planning permission is granted for a temporary period of two years, thus allowing the situation to be monitored and reviewed at the end of the period.

## **6.0 RECOMMENDATION:**            Approve

- 1     The use hereby permitted shall not be available to customers outside the following hours:

1100 - 0200 the following day Sunday to Thursday  
1100 - 0300 the following day on Fridays and Saturdays

The use shall operate within these hours only until 28 February 2009 after which the hours of use shall revert to 1100 - 2000 on all days, unless prior to that date the consent of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: So that the Local Planning Authority may assess the impact of this use upon the surrounding area.

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

Drawing number BPM/01 received on 23 January 2007

or any plans or details subsequently agreed in writing by the Local Planning Authority as amendment to the approved plans.

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

- 3 Prior to the commencement of the development hereby permitted, details of the design of the safety barriers around the pavement cafe 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.

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

- 4 The barriers and furniture associated with the development shall be erected no sooner than 15 minutes before and shall be dismantled no later than 15 minutes after the permitted opening hours of the pavement cafe and at all other times shall be stored clear of the public highway.

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

- 5 No outdoor speakers shall be used at any time in association with the use hereby approved.

Reason: To protect the amenity of local residents.

## **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:

- effect on character and appearance of the conservation area
- pedestrian safety
- impact on residential amenity through noise and disturbance
- crime and disorder

As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies HE3 of the City of York Local Plan Deposit Draft.

### **Contact details:**

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