

COMMITTEE REPORT

Committee: West/Centre Area
Date: 19 April 2007

Ward: Guildhall
Parish: Guildhall Planning Panel

Reference: 07/00266/FUL
Application at: Temporary Moorings Museum Street York YO1 7DJ
For: Proposed mooring of floating coffee bar with waiter serviced seated area on the river bank (April- September, inclusive)
By: Mr Andrew Gill
Application Type: Full Application
Target Date: 24 April 2007

1.0 PROPOSAL

1.1 Councillor Brian Watson has requested that this application be referred to the West/ Centre Planning Sub- Committee for a determination given the sensitivity of the site, the impact on the area, and the conflict with visitor moorings.

1.2 This is a revised application for the proposed seasonal mooring of a floating coffee bar with a waiter-serviced area on the riverbank on Esplanade at the Museum Gardens, north west of Lendal Bridge. The floating cafe would be moored at the Council moorings on the River Ouse from April until September, operating from 0800-1800 provided the river conditions are acceptable. The proposed area on the embankment (50 squ. m) would be cordoned off with a demountable post and rail fence and would accommodate 10 tables and chairs that would be removed from the site at night. Similarly, it is intended that the vessel would be moored outside the city centre on a private mooring outside the proposed operating hours. The applicant has indicated that there would be no loss of mooring as boats can moor alongside the cafe boat and 1.5m platforms to either end of the boat would allow safe access to the riverbank. In the event of the moorings nearing capacity, private boaters would have priority, and the cafe would temporarily cease to trade. The applicant has also indicated in supporting information that 2 full time staff and 4 part- time staff would be employed, recycling litterbins would be provided and removed daily, there would be no delivery of supplies, and there would be no permanent structure, fixtures or fittings to the river bank.

1.2 The main revisions to the refused scheme are-

- a. The boat size has been reduced from 10.00m x 5.00m to 10.00m x 2.5m
- b. There would be no public access on to the boat or the lower bank
- c. The proposed operating hours have been reduced from 0700-2100 to 0800- 1800 (April to September).

1.3 The site lies in the Central Historic Core Conservation Area adjacent to the Museum Gardens which is a Grade II Garden of Special Historic Interest.

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:

CYHE12
Historic parks and gardens

CYHE2
Development in historic locations

CYHE3
Conservation Areas

CYHE4
Listed Buildings

CYGP4
Environmental sustainability

CYGP15
Protection from flooding

CYV1
Criteria for visitor related devt

CYL4
Development adjacent to rivers

3.0 CONSULTATIONS

3.1 PUBLICITY DATES/ PERIODS

Neighbour Notification- Expires 20.3.2007

Site Notice- Expires 21.3.2007

Press Advert- Expires 28.3.2007

8 WEEK TARGET DATE 24.4.2007

3.2 INTERNAL CONSULTATIONS

HIGHWAY NETWORK MANAGEMENT- Esplanade is not a public highway and there is no highway objection to the principle of the application provided the details of mooring and servicing the boat would be acceptable.

ENVIRONMENTAL PROTECTION UNIT- Consider that the opening hours should be reduced (1000-1600 hours) on Sundays and Bank Holidays to prevent loss of amenity for nearby residents.

URBAN DESIGN AND CONSERVATION- Advise that the character of this part of the conservation area is one of tranquillity and informal recreation in contrast to the markedly different character created by the commercial water-based activity on the staiths below Ouse Bridge. It is considered that the sale of food and drink adjacent to the Esplanade and the Museum Gardens would harm the informal recreational character of this part of the conservation area with an activity that would be more suited to the former harbour area. There are a number of planning applications in and around the southern part of the Museum Gardens, each of which alone may not be harmful but the character of the area could be harmed by cumulative changes. The proposed site on the riverbank lies in an area just beyond the Grade II registered Museum Gardens and would be likely to disrupt its visual relationship with the river corridor and harm the tranquillity of its southern boundaries.

PUBLIC RIGHTS OF WAY- Esplanade is a public right of way, not recorded as such on the Definitive Map, but accepted as such by the public at large. It would appear that the proposal would not affect the public right of way, and at no time should the operation obstruct the path. The Authority would be duty bound to remove and prevent any obstruction.

LIFELONG LEISURE AND LEARNING- Consider that the applicant has consulted with other river users and found broad support for the proposal, and given due consideration to other users of the boat/riverbank in the design and the use of the boat/ riverbank, especially its impact on visitor moorings. Proposal would accord with policy. The use of the riverbank would be subject to a licence from the Council and if problems arise with other boat users it would be possible to restrict or cancel the operation of the cafe through the necessary licence. There are no plans to progress with an application for additional moorings north of Scarborough Bridge due to the potential navigation difficulties that moorings in this area may cause.

PROPERTY SERVICES- Applicant is advised that the necessary lease agreement would be required from the Council and a trading licence may be required. A

mooring could not be reserved or guaranteed as this stretch of the river is used for 48 hour visitor moorings that are policed by British Waterways. There is little scope to increase this limited provision in the city. In line with the Scrutiny Board which looked into encouraging the use of the river, Property Services has a remit to support any furtherance of use of the river provided it meets the navigation requirements of British Waterways, complies with Environment Agency recommendations and all necessary consents/permissions are in place.

3.3 EXTERNAL CONSULTATIONS

GUILDHALL PLANNING PANEL- No objections subject to appropriate upgrading of the boat.

CAAP- Considered this to be the wrong site for the scheme and would change the nature of the Conservation Area. The panel felt that this impinged on one of the classic views of York.

ENVIRONMENT AGENCY- No objections subject to compliance with the submitted flood risk assessment.

BRITISH WATERWAYS- On the basis of the revisions that reduce the width of the boat and operational hours of the coffee bar, combined with increased manoeuvrability and agreement to move off the moorings if required by visiting boats, there are no objections to this proposal.

INLAND WATERWAYS ASSOCIATION- no objections provided the café owners place a notice on the river side of their pontoon clearly indicating that boaters be allowed to moor alongside. The application would be supported on this basis.

YORK ACCESS GROUP- No objections provided the tables are wheelchair accessible and seats not fixed. Would advise menus to be in large type, staff has disability training, and hearing loop would be beneficial.

YORK TOURISM BUREAU- Support this type of independent business that sets York apart from other cities, greater use of the river is encouraged, and anything that enhances visitor's enjoyment of this great asset is to be welcomed.

OTHER REPRESENTATIONS-

A representation has been received from the Helmsley Group on behalf of the Lendal Tower Partnerships application to extend the Engine House, resulting in the possible relocation of the public toilets. Would this use restrict or inhibit the relocation of the toilets, would their loss have an impact for the cafe, and would the applicant be expected to financially contribute to the possible relocation of the toilets?

1 other representation has been received that considers that the proposal would be a great asset to the river bank, compliment the lively boat- oriented atmosphere in that

part of York, there is a need for a communal cafe, cannot understand that there would be doubt in granting the application.

4.0 APPRAISAL

4.1 RELEVANT SITE HISTORY

06/00282/FUL Proposed mooring of floating temporary coffee bar and waiter serviced seated area on riverbank REFUSED 31.3.2006

4.2 ADDITIONAL PLANNING POLICY

Policy E4, North Yorkshire County Structure Plan

PPS 1 " Delivering Sustainable Development "

PPG15 " Planning and the Historic Environment "

PPS 25 " Development and Flood Risk "

4.3 KEY ISSUES

1. Planning background
2. Principle/ land and river use
3. Visual impact
4. Residential amenity
5. Refuse/ access
6. Impact on navigation
7. Flood risk

4.4 ASSESSMENT

1. PLANNING BACKGROUND

It is considered that this application relates to the physical works on the land that are associated with the floating cafe rather than the vessel itself. Therefore the design, dimensions and external treatment of the vessel are not considered in this application, as planning legislation does not cover them.

2. PRINCIPLE OF USE OF RIVER

4.5 In June 2003 a report was submitted to the Leisure Scrutiny Board's 'Making use of York's rivers and river banks - a report'. One of the recommendations of the report was 'that when planning permissions are considered for new development by rivers,

CYC ensure they will enhance the use of the river for all residents and visitors'. It was also stated that any developments around or on the rivers must minimise negative environmental impact and be expected to contribute to the protection and enhancement of the environment. One of the main thrusts of the report is the desirability of opening up the rivers and surrounding areas to the public, whilst preserving the environment and habitat and minimising disturbance to existing residents.

4.6 Policy L4 of the Development Control Local Plan relates to development adjacent to rivers and states that planning permission will only be granted where there is no loss to established interests, the use would complement existing recreational uses and the character of the area, the navigational capacity of the river would not be decreased, and existing walkways and cycleways along the riverbank are retained and where possible enhanced.

4.7 It would therefore appear that the principle of the proposal would be acceptable provided it would comply with all other relevant policies, and provided there is no harm to any other interests. The proposal would introduce a seasonal use, using the asset of the River Ouse to provide a tourist facility, if river conditions are suitable. It should also be noted that if Members wish to approve the application, the mooring of the river café cannot always be guaranteed. Although the Council own the moorings at this part of the river, they are reserved for visiting craft and are policed by British Waterways. The applicant would not be able to reserve a slot and thus there would be no guarantee that a mooring site would be available at all times. The applicant has advised that in such circumstances the river cafe would not operate.

4.8 It is considered that the proposed cafe on the embankment would not conflict with existing and proposed land uses in the area. There is a pending application at the Engine House that may result in the loss/ relocation of the nearby public toilets that could be used by any users of the floating cafe and sitting area. The proposal would not impede this development, and the provision/ need of toilets that may be required in association with this proposal is not a planning matter that has to be considered in the determination of this application.

3. VISUAL IMPACT

4.8 It would appear that the intended seating area on the riverbank would result in the loss of two benches and a former railed site for a tree that has now been felled. These alterations would interrupt the well-established tree line and quiet amenity area along this side of the riverbank. It is likely that lightweight chairs would be used and these tend to be more 'urban' in appearance than the more traditional wooden benches that exist along the riverside. It is unfortunate that the proposal would result in the loss of a bench. The seating/ dining area is likely to create additional activity, and with the physical features of furniture, guard rails, and signage would have a visual impact on the character of this part of the conservation area. In winter, this is a tranquil area of the river corridor, open in character, and distinct from the bustling, commercial riverbank closer to the city centre, especially to the other side of Lendal Bridge. However, in summer months this part of Esplande and the riverbank takes on a busier character. Visiting river craft uses the visitor moorings in the area,

Marygate Landing is used for river cruises, and there is a general increase in tourist activity along this part of the river close to Museum Gardens. Members should also note that there is a pending application for a new restaurant facility within buildings in the Museum Gardens close to the site. It is therefore considered on balance that this temporary seasonal proposal would not be at odds with the character of the area in summertime and would therefore accord with Policies L4b, HE2, HE3 and HE12 of the Local Plan, Policy E4 of the Structure Plan and related government guidance and policy that protects the special character of the area from any adverse effects from such developments.

4. RESIDENTIAL AMENITY

4.9 It is noted that the nearby Lendal Tower has been converted to residential use and noise emanating from the proposed coffee bar and associated seating could impact on the amenity of the occupants of this property. The revised plans now reduce the proposed operational hours and there would be no evening activity after 1800 hours. It is now intended that there would be no deliveries to the site. These revisions in operating hours and associated activity would reduce the potential for disturbance to summer daylight hours when this area is busier. The proposed use would therefore not add significantly to the level of noise or disturbance in the area and it is considered that there would be no adverse impact on the living conditions of the occupants of this property adjacent to this busy approach to the city centre. The proposed cafe operations would also have some impact on the adjacent visitor moorings that are well used in the summer months by houseboats/ cruisers who can moor for up to 48 hours. It is considered that the peaceful enjoyment of these visitors would be affected during operational hours but the main activity that would give rise to noise would take place on the riverbank where customers would be dining, coming and going from the cordoned area. In the evening this use would cease and the visiting craft would enjoy a quieter, peaceful environment. On balance it is considered that the proposal would not be severely harmful to surrounding residential uses.

5. REFUSE/ACCESS

4.10 This revised proposal indicates that there would be no deliveries to the floating cafe and that recycling litter bins would be provided on the site and would be removed daily. It is also intended that there would be no public access to the river boat. This part of Esplanade forms part of an adopted public right of way, York footpath (Guildhall) No. 13 known as Dame Judy Dench Walk. Although the width of the footpath varies along the riverbank, this proposal would appear to have no effect on the width of the public right of way.

6. IMPACT ON NAVIGATION

4.11 The applicant has addressed the previous concern about the impact of the vessel on the right of navigation in this section of the Ouse, which is used frequently by commercial craft, visiting craft, and rowing boats from the club opposite etc. The navigation authority, British Waterways, objected to the previous proposal as it would result in the loss of visitor mooring facilities, reducing the tourist and recreational potential of the river contrary to their remit to promote York as a river

destination by water. It was also considered that the navigational safety on the river would be compromised by the vessel and the potential to moor at either end. In order to overcome these concerns the applicant has reduced the depth of the proposed projection into the river from 5m to 2.46m, ensured that there would be no facility available for boats to moor alongside the cafe boat at right angles, restrict operational hours and public access to the boat, ensure that the cafe boat is more manoeuvrable, and would vacate the moorings is required by visiting boats. On this basis, British Waterways raise no objections to the revised proposal. This proposal that seeks to enhance leisure facilities and activities adjacent to the river would accord with Policies R7 of the Structure Plan and L4 of the Local Plan.

7. FLOOD RISK

4.12 The area is prone to flooding. The applicant has indicated that the development would not pose a flood risk as it is not intended to operate when the river exceeds 1.00m above its normal summer level and the craft would remain on its mooring outside the city. The Environment Agency raises no objections to the proposal provided the development proceeds in accordance with the submitted flood risk assessment. If the applicant proceeds in accordance with these approved details the proposal would accord with Policy GP15 of the Local Plan and advice contained in Planning Policy Statement 25 that aim to ensure that new developments are safe from flooding and would not add to a risk of flooding.

5.0 CONCLUSION

5.1 This application if approved by Members, would introduce a cafe boat and associated external seating area to part of the conservation area and the river corridor that is visually open and lies adjacent to the historic Museum Gardens. There can be no doubt that the intended use of the river bank for a waiter serviced area for seating would change the character of the area and be visually prominent from the opposite river bank and Lendal Bridge. However the use would not be unsympathetic to the summertime activities that take place nearby on the river front, within the Museum Gardens, and the increased tourist use in this area reduces the openness and tranquil character of the river corridor. There would be no adverse impact on the living conditions of people in the area and the public highway would be unaffected. Provided there is no conflict with users of the river and that the floating cafe would not be deemed to be a flood risk or add to the risk of flooding in the area, it is considered that the proposal would be acceptable subject to the following conditions. If Members are minded to approve the application, it is recommended that a temporary consent for 2 years be granted to enable the impact of the proposal on the river walkway and the operation of the temporary moorings to be assessed.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Application Granted

- 1 The use of the riverbank as a seating area shall cease by 19 April 2009 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 in the interests of the character and visual amenity of the area.

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

Drawing No. AG01, dated 27.1.2007 and the submitted details received 6.2.2007

or any plans or details subsequently agreed in writing by the Local Planning Authority as an 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 The use hereby permitted shall be confined to the following hours:

Monday- Sunday (Including Bank Holidays) 0800-1800 hours

Reason: To minimise the impact that noise could potentially have on the nearby residents.

- 4 The external seating area shall not encroach upon the public highway and all furniture associated with the aforementioned area shall be fully removed when the premises are closed.

Reason: In the interests of the users of the public highway and the visual amenity of the area

- 5 Notwithstanding the submitted details and prior to the commencement of the use hereby approved, the following details shall be submitted for the prior approval of the Local Planning Authority and thereafter implemented-

a) the details of the proposed temporary enclosure that will be used to demarcate and contain the seating area that also includes containing standing customers and also gives clear warning to customers, particularly to people with visual impairments,

b) the design of the seating and tables/ umbrellas if required showing location, materials and colours

Reason: To ensure that the appearance of the development is suitable and that it contributes to the character and appearance of this part of the Central Historic Core Conservation Area in accordance with policy HE3 of the local plan and policy E4 of the structure plan.

- 6 No equipment other than the approved tables, chairs and barriers shall be installed within the seating area without the prior consent of the Local Planning Authority.

Reason: To ensure that the appearance of the development is suitable and that it contributes to the character and appearance of this part of the Central Historic Core Conservation Area in accordance with policy HE3 of the local plan and policy E4 of the structure plan.

- 7 There shall be no public address system or amplified music associated with the cafe boat and the seating area hereby approved.

Reason: In the interests of amenity

- 8 There shall be no primary cooking of unprepared food within the designated seating area hereby approved.

Reason: It is considered that this use would be inappropriate and would detract from the character and appearance of this part of the Central Historic Core Conservation Area and conflict with policy HE3 of the local plan and policy E4 of the structure plan.

- 9 The development shall proceed and operate at all times in accordance with the submitted flood risk statement.

Reason; To minimise the risk of flooding

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 visual amenity and character of the conservation area and the adjacent listed garden

- the use of the river including navigation and safety
- the amenity of the neighbours
- users of the adjacent public highway
- flooding.

As such, the proposal complies with Policy E4 of the North Yorkshire County Structure Plan; Policies HE2, HE3, HE4, HE12, L4, GP15a, and GP1 of the City of York Development Control Local Plan- Incorporating the Proposed 4th Set of Changes; and national planning guidance contained in Planning Policy Statement 1 " Delivering Sustainable Development, " Planning Policy Guidance Note No. 15 " Planning and the Historic Environment., " and " Planning Policy Statement 25 " Development and Flood Risk. "

2. You are to contact the City of York's Highway Network Management as a pavement cafe licence may be required under the Highways Act.

3. The floating coffee bar shall have adequate facilities for the treatment and extraction of fumes so that there is no adverse impact on the amenity of local residents by reason of fumes, odour or noise. Details of the extraction plant or machinery and any filtration system required can be submitted to the Council's Environmental Protection Unit for approval.

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