

COMMITTEE REPORT

Date: 16 August 2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 12/01910/FUL
Application at: Lucia Bar And Grill 9 - 13 Swinegate Court East Grape Lane
York YO1 8AJ
For: Change of use to mixed use ground floor restaurant and first
floor bar (retrospective)
By: Mr Osman Doganozu
Application Type: Full Application
Target Date: 3 August 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 This application seeks retrospective planning permission for the change of use of 9 -13 Swinegate Court East, also known as "Lucia Wine Bar" from a restaurant (Use Class A3) to a mixed use restaurant and drinking establishment (Use Class A3/A4).

1.2 Planning permission was granted for the use of the ground floor as a restaurant in the 1990s. In July 2011, the upper floor of the property became vacant and permission was granted for the restaurant to expand onto the first floor. Neither permission restricted the opening hours of the restaurant. There is an outside seating area associated with Lucia's with canopies and external heatlamps to encourage its use.

1.3 The use of the first floor of the property has not been implemented in accordance with the 2011 permission as an expansion of the restaurant and is operating as "Bar Esperanza". Whilst under the same ownership of Lucia's, the bar is marketed to attract its own customers together with custom from Lucia's. Permission is therefore sought to regularise the operations at 9-13 Swinegate Court East and to seek permission to allow the A3 element of the business to open until 1am and the A4 element to 3am (Mondays to Sundays). This would tie in with the opening hours granted under the Premises Licence.

1.4 The application is brought to committee at the request of Councillor Watson to assess the impact of the number of drinking establishments in the immediate area.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

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Areas of Archaeological Interest GMS Constraints: City Centre Area 0006
Conservation Area GMS Constraints: Central Historic Core CONF
Listed Buildings GMS Constraints: Grade 2; 71 Low Petergate York 0820
Listed Buildings GMS Constraints: Grade 2 Star; 73 Low Petergate York YO1 2HY
0819

2.2 Policies:

CYS6
Control of food and drink (A3) uses

CYS7
Evening entertainment including A3/D2

CYHE3
Conservation Areas

3.0 CONSULTATIONS

INTERNAL

Environmental Protection Unit

3.1 Concerned regarding the impact on the amenity of the area, however following the commissioning of an acoustic report, officers are satisfied that it should be possible to operate Bar Esperanza/Lucia's in a manner that will not affect nearby dwellings. The premises have permission to play music outside in the courtyard, but the levels are maintained at background level and the external music is not currently a source of noise complaints.

3.2 A number of noise complaints have been received by the Environmental Protection Unit in relation to (i) the noise of external chiller units and also (ii) late night bass beat emanating from the Esperanza Bar. The noise assessment concluded that the current levels of the chiller units were too high but that the noise levels could be reduced by a combination of increasing the mass between the units and the air gap between the buildings in addition to increasing the sound absorptive material in the enclosed space where the external chiller units are located.

3.3 The noise assessment undertaken also monitored the level of music within the nearest residential property and was able to record elevated levels of low frequency noise in the range of 40 - 100Hz when the volume was turned up to "artificially high levels". The noise assessment concluded that most of the noise was escaping from out of the roof, but that implementing mitigation measures in the roof would be

difficult and impractical, and concluded that limiting the levels internally would be the most successful method of reducing noise from escaping.

3.4 In view of the above, EPU would recommend conditions requiring the submission of a scheme (including noise mitigation measures) for all the machinery, plant and equipment installed and for an electronic noise limiter to be installed within Bar Esperanza.

City Centre Management

3.5 No objections

EXTERNAL

Safer York Partnership

3.6 In respect of "designing out crime", no issues to raise. These premises already have in place a Premises Licence which the Police and the Council's Licensing department have endorsed.

Guildhall Planning Panel

3.7 No objections but hope the previous thoroughfare will be restored.

Neighbour notification/publicity

3.8 Eight letters of objection have been received from residents and businesses which raise the following planning issues;

(i) Noise and disturbance to residential properties. Even before the opening of the bar, residents were faced with disturbance and noise of works from 7am to 12am. Since opening in March 2012, the wine bar has introduced a high level of noise from amplified music on the premises, increased the opening hours until 3am and attracted a much greater number of clientele who tend to be more boisterous outside the premises. It is a fully fledged bar / club with manned door staff which has seriously eroded our quality of life and it is difficult to sleep with the noise pollution.

(ii) Noise problem from the external electrics positioned to the rear of the flat at No.2 Grape Lane, two metres from the small courtyard garden. Permission was never granted for this installation and they are active 24 hours a day.

(iii) Positive commercial development has taken place in Petergate, Grape Lane and Swinegate since 1967 however the balance between residential, retail shops

and bars/ restaurants is shifting in favour of late night drinking. The area is in danger of becoming another Micklegate.

(iv) Increased opening hours for premises selling alcohol will result in an increase in anti social behaviour, litter, damage to commercial property.

4.0 APPRAISAL

4.1 Key Issues

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

Planning Policy

4.2 The National Planning Policy Framework advises that planning should positively promote competitive city centres and enhance their vitality and viability. The NPPF advises that residential development can play an important role in ensuring the viability of town centres. It forwards the principle that planning should seek to ensure a good standard of amenity for all existing and future occupants of land and buildings. Planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder and the fear of crime, do not undermine quality of life or community cohesion. Planning decision should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

4.3 Local Plan Policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted provided:

- There is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.
- Opening hours are restricted where this is necessary to protect the amenity of surrounding occupiers.
- Where security issues have been addressed.

4.4 Policy S7 seeks to promote the introduction of new evening entertainment uses provided there is no adverse impact on the vitality and viability of the city centre and no adverse impact on residential amenity.

Vitality and viability of the city centre

4.5 In principle, the proposed mixed A3 / A4 use of 9-13 Swinegate Court East would be consistent with the aim of retaining and promoting the vitality of the city centre as advised in the NPPF and supported by local planning policies S6 and S7.

In general there is support for drinking establishment uses provided they do not harm retail vitality, the living conditions of nearby residents and public safety.

4.6 Swinegate Court East is not a Primary Shopping Street but a passageway between Swinegate and Grape Lane. Due to the discreet location and given that the building has permission to be operated as a restaurant, Officers consider that this proposal for a mixed A3 / A4 use would not have a material effect on the vitality and viability of this part of the city centre.

Amenity of surrounding residents

4.7 There are houses nearby in this area including a flat at No.2 Grape Lane, which is adjacent to and shares a party wall with the application site together with houses in Lund's Court, Norman Court and Petergate. There are other outside areas associated with cafes, bars and restaurants nearby, at the rear of Strada (75 Low Petergate) and Bora Bora in Swinegate Court East.

4.8 The proposed opening hours are until 01:00 for the A3 restaurant use and until 03:00 for the A4 use. According to the premises licence, the following capacity figures/seating arrangements shall be in place:

- Ground Floor (inside) - a minimum of 42 seated covers.
- Ground Floor (outside) - a maximum occupancy of 30 people. Customers shall remain seated at all times while consuming alcohol outside
- Upstairs - a maximum occupancy of 130 people with a minimum of 60 seated covers.

4.9 The noise complaints received by the Environmental Protection Unit in relation to Lucia's / Esperanza have related to noise from the external chiller units and the late night bass beat emanating from the Esperanza Bar. The acoustic report submitted with the application concluded that the current levels of the chiller units were too high but that the noise levels could be reduced by a combination of increasing the mass between the units and the air gap between the buildings in addition to increasing the sound absorptive material in the enclosed space where the external chiller units are located.

4.10 With respects to music noise, the noise assessment monitored the level of music within the nearest residential property and was able to record elevated levels of low frequency noise in the range of 40 - 100Hz when the volume was turned up to "artificially high levels". The report concluded that limiting the levels internally would be the most successful method of reducing noise from escaping.

4.11 With conditions requiring noise mitigation measures for the plant and machinery at the premises and for an electronic noise limiter to be installed within

Bar Esperanza, the Environmental Protection Unit are satisfied that Bar Esperanza / Lucia's can be operated in a manner which would not affect nearby dwellings.

4.12 Aside from assessing the impact on residential amenity from the "inside" of the premises, Officers acknowledge that the external seating area has the potential for noise disturbance from music and from raised voices. The applicant has confirmed that this seating area is used in association with the bar as well as the restaurant and therefore should this application be approved, this area could be used until 3am by up to 30 persons.

4.13 The licence permits the premises to play music outside in the courtyard but the Environmental Protection Unit comments that the levels are maintained at background level and the external music is not currently a source of noise complaints.

4.14 The application site is within the city centre where late night uses are to be expected and noise from persons in the street at night and anti-social behaviour cannot be attributed to any single premises. The closest residential buildings are the adjacent flat at No.2 Grape Lane whose bedroom fronts Grape Lane which is around the corner from the courtyard seating area. Because of the intervening buildings and streets between the application site and surrounding residential premises, it is deemed that persons using the outside area would be unlikely to create undue noise disturbance (i.e. no more than that which is already experienced in this area). However it is considered it would be prudent to give a temporary consent for the opening hours of the external area, so this can be re-considered if the 03:00 closing time leads to disturbance. It is deemed necessary to require through a condition that music relating to the restaurant/ outside seating area is controlled so it is not audible from within residential properties.

4.15 Matters of crime and disorder/security are predominantly dealt with through licensing. The Premises has a license which has been endorsed by the Police.

Impact on the Conservation Area

4.16 Policy HE3 states that within conservation areas, proposals for changes of use will only be permitted where there is no adverse effect on the character or appearance of the area. The application is for change of use only and involves no external alterations.

4.17 Swinegate forms part of the historic core of the city centre and is a popular cut-through route for pedestrians in the city centre. The area provides for largely leisure uses, with some retail use, and some residential properties within nearby courtyards and management flats for local businesses. There are a number of restaurants, public houses and a take-away restaurant and the Swinegate area is generally a pleasant, safe and quiet environment to visit in the evening.

4.18 There are two other applications on the agenda for late night drinking facilities in the Swinegate area; Mr Chippy at 37 Swinegate and Bora Bora at 5 Back Swinegate Court East. The introduction of three late night drinking establishments would result in additional evening activity and has the potential to generate disturbance that would alter the character of the wider Swinegate area. Although each application has to be determined on its merits, Policy S7 advises that the cumulative impact of such uses can be detrimental to an area if the uses cannot be easily absorbed without harming its character or residential amenity.

4.19 On balance, it is considered that Swinegate could absorb the proposed A4 use at 19 Swinegate Court East without detracting from the character of Swinegate. The use would be reasonably compatible with the neighbouring predominantly restaurant /retail/ public house uses if appropriately controlled to ensure that nearby residential amenity is not unduly affected. It would also accord with Policies HE3, S6 and S7 of the Local Plan and guidance within the NPPF that seeks to promote a vibrant local economy whilst protecting the local distinctiveness that contributes to the character and appearance of the conservation area.

5.0 CONCLUSION

5.1 Subject to conditions to allow monitoring of the external area, to ensure noise mitigation measures are implemented with respects to the plant and machinery and to ensure music is inaudible within nearby residential properties, Officers consider potential noise disturbance to arise from the mixed A3/A4 use would be satisfactorily mitigated. There would be no undue harm to the vitality and viability of the city centre or to the character and appearance of the Conservation Area and therefore approval is recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

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

Floor plans received 22 May 2012

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

2 Within 1 month of permission being granted, a scheme shall be submitted to and approved in writing by the Local Planning Authority for all the machinery, plant and equipment installed. The machinery, plant and equipment and specifically any approved noise mitigation measures shall be fully implemented and operational

within 1 month and shall be appropriately maintained thereafter.

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

3 Within 1 month of this permission being granted, an electronic noise limiter shall be installed within Bar Esperanza. Amplified music shall be played through the device at all times and it shall be set at a level such that no music and/or bass beat is audible within nearby residential properties.

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

4 No amplified, recorded or live music in association with the restaurant and external seating area shall be played which is audible within nearby residential properties.

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

5 The use shall only be open to customers between the following hours: 08.00 to 03.00 the following day.

From 1 September 2014 the outside area shall not be open to customers between 24:00 midnight and 08.00 each day of the week unless a further planning permission has been granted to extend or remove this restriction.

Reason: To monitor noise associated with the outside area and to protect the amenity of nearby residents from noise associated with the premises.

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 character and appearance of the Central Historic Core Conservation Area and the amenity of surrounding residents. As such the proposal complies with Policies S6, S7 and HE3 of the City of York Development Control Local Plan.

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