

COMMITTEE REPORT

Date: 14 February 2013 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 12/02985/FUL
Application at: Army and Navy Stores 54 - 56 Fossgate York YO1 9TF
For: Change of use from shop (Use Class A1) to mixed use comprising retail, restaurant/cafe and drinking establishment.
By: Mr And Mrs Rachel Greaves
Application Type: Full Application
Target Date: 29 October 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 This application seeks planning permission for the change of use of the vacant Army and Navy Stores, Nos. 54-56 Fossgate to a mixed retail, restaurant and cafe, drinking establishment (Use Classes A1/ A3/A4). The building floorspace is 133 sq. m, and, whilst a mixed use permission is sought the applicant has indicated the following floorspaces:

- Shop - 30 sq.m
- Restaurant/cafe - 266 sq.m
- Drinking establishment - 103 sq.m

1.2 The applicant has advised that the intention is to establish a quality bar with retail and food. Initially the level of hot food/ cooking would be minimal. The applicant proposes that a commercial extraction system would not be required at this stage.

1.3 The proposed internal layout comprises:

- Basement- storage.
- Ground Floor- retail/ food/drink. The amount of floor space given over to retail would be approximately 15%. The retail area would be formed in the front section of the property, adjacent to the junction of Pavement and Fossgate. It is envisaged that the retail area would principally sell bottled beer etc. to compliment the business. Toilets and kitchen accommodated within a later addition to the rear.
- First floor - food and drink.

- Second floor - mainly be storage/ unused with the exception of the front room of No. 54 adjacent to Fossgate to be used as a staffroom.
- Attic- storage

1.4 Waste would be stored in the basement. The operational hours would be from 10:00 to 24:00 hours, Monday to Sunday. The business would result in 5 no. full-time jobs and 7 no. part time jobs. There are no details of any external or internal alterations associated with the proposals.

CONTEXT

1.5 The premises consist of three buildings that are of special architectural, historical and visual interest. The property at No.54 is a Grade II * Listed Building and Nos. 55 and 56 are listed at Grade II. The listing for Nos. 55 and 56 also include No. 30 Pavement as it was formerly a row of three houses (dating from circa 1796) which became one shop. The shopfronts at Nos. 55 and 56 Fossgate date from circa 1955. No. 54 Fossgate dates from the mid -seventeenth century, is timber framed, and its shopfront is continuous with Nos. 55 and 56 Fossgate, and the ground floor of No. 54 was refitted circa 1932. The Statutory List description for Nos. 55 and 56 states that the interior of the shop contains early twentieth century shop fittings.

1.6 The properties are situated in a prominent location at the corner of Fossgate and Pavement in Central Historic Core Conservation Area No. 1. The premises are situated on a secondary shopping street in an area of mixed retail, restaurants and public house uses on the ground floor, and residential uses adjacent at upper floor level and nearby. The neighbouring uses are Yummy Chicken (A5 use) on the ground floor fronting Pavement. There are 5 No. flats above the takeaway on its upper floors, the Blue Bell Public House(A4 use) on Fossgate with a management flat on the upper floor, the Terrace Public House on the opposite corner of Fossgate and Pavement. There are nearby upper residential properties on Fossgate and to the rear of Fossgate that have access from a lane that also leads to the rear of the application site.

1.7 The applicant is presented to the West/ Centre Planning Sub- Committee at the request of Cllr. Brian Watson because of the impact of the change of use on the building and on the locality.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006
Conservation Area GMS Constraints: Central Historic Core CONF

Listed Buildings GMS Constraints: Grade 2 Star; Bluebell Inn 53 Fossgate York
Listed Buildings GMS Constraints: Grade 2; 28 Pavement York
Listed Buildings GMS Constraints: Grade 2; 54-56 Fossgate York
Listed Buildings GMS Constraints: Grade 2; 24 Pavement York
Listed Buildings GMS Constraints: Grade 2; 55 - 56 Fossgate York

2.2 Policies:

CYHE3 Conservation Areas
CYHE4 Listed Buildings
CYS6 Control of food and drink (A3) uses
CYGP1 Design
CYS5 Non-retail uses in shopping streets
CYS7 Evening entertainment including A3/D2

3.0 CONSULTATIONS

INTERNAL

Design, Conservation and Sustainable Development

3.1 No objections to the impact on the conservation area but further details are required to assess the impact of the change of use on the listed building.

Environmental Protection Unit

3.2 Insufficient information submitted initially. Following site visits and receipt of further information, no objections subject to conditions

EXTERNAL

Guildhall Planning Panel

3.3 Object to the further loss of retail floor space and consider York cannot afford to lose more retail space, and further restaurants and coffee houses should be discouraged. Crucial information lacking such as the number of covers.

Local Publicity

3.4 Objection received from the occupier of the next door property and owner of nearby food shop on grounds of the impact on business, and the proximity of the use harming their living conditions. Explain that their living and sleeping accommodation is immediately adjacent to the application site and they would be disturbed by the proposed 0200 and 0300 closing times (Officer note: the applicant has altered the proposed closing times to 24.00 Midnight)

4.0 APPRAISAL

4.1 Key issues:

- Impact of change of use, including loss of retail and impact on the vitality and viability of the area and the city centre
- Amenity of surrounding occupants
- Impact on heritage assets - the listed building and the Central Historic Core conservation area.

PLANNING POLICY CONTEXT

National Policy Guidance

4.2 The National Planning Policy Framework has a stated presumption in favour of sustainable development. Relevant specific policy topics include ensuring the vitality of town centres, conserving and enhancing the historic environment, and encouraging good design.

Local Planning Policy

4.3 The Development Control Local Plan was approved for Development Control purposes in April 2005: its policies are material considerations where they reflect the National Planning Policy Framework. The relevant policies are;

4.4 Policy GP1 'Design' of the City of York Council Development Control Local Plan includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

4.5 Policy HE3 'Conservation Areas' states that within conservation areas, proposals for the following types of development will only be permitted where there is no adverse effect on the character and appearance of the area: demolition of a building (whether listed or not); external alterations; changes of use which are likely to generate environmental or traffic problems.

4.6 Policy HE4 'Listed Buildings' states that consent will only be granted for the following types of development where there is no adverse effect on the character, appearance or setting of the building: development in the immediate vicinity of listed buildings; demolition; internal and external alterations; change of use; erection of satellite antenna.

4.7 Policy S5 supports retail and service uses on non-primary shopping streets where they would not harm the vitality and viability of the city centre as a whole.

4.8 Policy S6 'Control of Food and Drink Uses' states that planning permission for the extension, alteration or development for food and drink uses will be granted providing: any likely impact on the amenities of the surrounding occupiers as a result of traffic, noise, smell or litter would be acceptable; the opening hours of hot food takeaways and premises where alcohol is consumed are to be restricted where this is necessary to protect the amenity of surrounding occupiers; car and cycle parking meets the standards outlined in Appendix E; acceptable external flues and means of extraction have been proposed; and security issues where consumption of alcohol is involved have been addressed.

4.9 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.

ASSESSMENT

Land Use

4.10 The premises are presently vacant and to bring the buildings back into use would be compliant with the National Planning Policy Framework which seeks to promote city centres and enhance their vitality and viability. The thrust of local plan policies also steers commercial and leisure developments to previously developed land/buildings within defined city centres. In principle, restaurants and drinking establishments on non-primary shopping streets are supported by Policies S5, S6 and S7 of the Local Plan and guidance within the NPPF which seeks to promote a vibrant local economy whilst protecting local distinctiveness, provided there is no harm to retail vitality, the living conditions of nearby residents, and public safety.

4.11 Fossgate is not a primary shopping street and is a street where the principle of non-retail uses and other commercial uses, including restaurant/cafe/drinking establishments are appropriate according to planning policy provided the impact on the vitality and the viability of the area is acceptable. The proposed mixed use would not detract from the vitality and viability of this part of the city centre. The area surrounding the application property has a mix of retail/ city centre residential/ takeaway/ public bar and restaurant uses, and it is considered that the proposed use would be reasonably compatible with the neighbouring uses if appropriately controlled to ensure that nearby residential amenity would not unduly affected. Indeed the change of use would bring a vacant retail unit back into use, adding to the vitality and viability of the area in land use terms with a vibrant city centre use in a sustainable location.

The amenity of surrounding occupants

Use

4.12 The proposed mixed use would be situated in a part of the city centre where there are higher ambient noise levels from the existing mixed uses in the area-residential, public houses, restaurants, takeaways, taxi rank. Whilst there are no significant concerns regarding the general impact of the use in the area, there are specific concerns due to the potential for loss of amenity to the local residents that occupy the adjacent buildings and the surrounding buildings area from noise. The applicant has revised the hours of operation of the business from 10:00 to 24:00, rather than the previously requested hours which finished at 02:00am, with the business operating during these hours seven days a week. Information has also been received detailing the proposed layout of the uses within the building (para. 1.3).

Noise Transference

4.13 The applicant envisages that the business would not be a nightclub or a noisy public house, and music would be kept at low level to allow customers to converse. However there are still concerns over the potential for loss of amenity or noise nuisance as a result of the proposed use, particularly the class A4 drinking establishment use. The site is directly adjacent to a number of residential flats and residential accommodation above the Blue Bell public house next door. The noise concerns principally relate to noise from music, people drinking/talking/shouting and plant/machinery noise.

4.14 The sound insulation values of the party walls with the adjacent residential properties and room layouts are unknown and the submitted noise impact analysis recommends that wall linings on these elevations are provided to reduce sound transmission to an acceptable level. The proposed specification for such walls comprised wall linings (with two layers of 12.5mm plasterboard supported on a timber or metal frame with a minimum distance of 10mm between the frame and existing wall with the void filled with quilt mineral fibre of at least 35mm thickness and a density of 10kg per cubic metre) should reduce noise from the proposed use to an acceptable level in the adjacent properties if the noise level inside the public house does not exceed 82dB(A). If the required sound attenuation measures cannot be implemented, then additional noise monitoring of the sound insulation provided by the existing party walls will be necessary, and further restrictions may be necessary, including reduction in the hours of operation. These issues could be controlled by planning conditions if Members support the application.

Plant and Machinery Noise

4.15 It is indicated that any plant and machinery would be designed to a criteria of 5dB below the background sound level. The adoption of this approach would be acceptable and would be required to be conditioned to protect against noise nuisance or loss of amenity due to plant and machinery noise.

Odours

4.16 Further information submitted by the applicant indicates that the initial low level of cooking would not require a commercial extraction unit in the first two years of trading. There is an openable window in the kitchen, and the proposed hood style fan would be adequate for the extraction from the proposed domestic size cooker. Any future changes to the types of food, numbers of covers etc served may necessitate ventilation, extraction and abatement. Any planning permission would require the final details to be agreed with the Local Planning Authority in order to ensure that adequate odour control is provided. Replacement kitchen extraction/ventilation would require a further planning permission.

4.17 On balance, it is considered that the measures that are required to prevent the living conditions of the neighbours being harmed can be achieved, and there is no conflict with Policy GP1 and S6 of the Local Plan.

Impact on Heritage Assets

4.18 Fossgate is a significant street within the city centre and is a popular route providing leisure/ residential/ retail uses. There are a number of restaurants and public houses in the immediate area that are open in the evening similar to the proposed opening hours of the business. It is considered that an additional restaurant use in the area would not result in an over-concentration of such uses which would detrimentally affect its mixed city centre character. The appearance of the conservation area would not be affected by the use as it would be physically contained within the building. As neither the appearance nor the character of the conservation area would be harmed, there would be no conflict with Policy HE3 of the Local Plan.

4.19 It is intended that a full and detailed assessment of the impact of the change of use on the Grade II and Grade II* Listed buildings will be covered in an application for Listed Building consent. However, under s.66 of the Planning (Listed Building and Conservation Areas) Act 1990 the local planning authority must have special regard to the desirability of preserving the building or any features of special architectural or historic interest in respect of alterations to enable the change of use to be implemented.

4.20 The list descriptions for the properties identifies the interiors as being significant, particularly exposed timbers, shop fittings, fireplaces and the staircase at no. 54. The main intervention at this stage to allow the change of use to be assessed would be the requirement for acoustic wall linings etc adjacent to the Bluebell Public House and flats at 26-28 Pavement; and minor alterations to the existing kitchen and toilets.

4.21 It is considered that the works required could be implemented without affecting significant historic fabric, or unduly harming the integrity of the listed building. Works could be undertaken on the upper floors without harm to significant features and the insertion of wall linings could be designed to be reversible. The works in the kitchen area would take place in a modern extension at the rear of No.54, avoiding significant intervention in the Grade II* listed building. The detail of these works could be secured by condition and a listed building consent application would also be required.

4.22 Overall the scheme would secure a viable use for a currently vacant listed building and subject to approval of details could be implemented without harm to the special interests of the listed building, thus complying with Policy HE4 of the Local Plan.

5.0 CONCLUSION

5.1 It is considered that the change of use of the building to the proposed use would secure a viable economic use for the Listed Building which is currently vacant. The historic environment would be secured by the reuse of the building; additional employment opportunities would be provided, and the range of leisure facilities for residents and tourists would be extended in a sustainable location. The mixed use could be provided without harmful environmental problems, subject to appropriate planning conditions. The loss of retail use of the premises would not significantly detract from the quality of retail provision within the city centre. It is therefore concluded that there is no conflict with policies GP1, HE3, HE4, S5, S6, of the Local Plan and national planning guidance contained in the National Planning Policy Framework.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years -

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

Drawing No. 014412-01, Revision A, Proposed layout plan, received on site on 30 January 2013

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 shall not commence until full particulars and details of a scheme to insulate the premises against the transmission or airborne and impact sound has been submitted to, and approved by, the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any approval given.

Reason: To protect the amenities of adjacent residents and prevent noise disturbance to nearby properties.

4 No amplified noise or music, other than soft background music, shall be played in the premises at any time. Background music is defined as music with a sound level of no greater than 60dB(A) and any such music shall be played via a sound limiter.

Reason: To protect the amenities of adjacent residents and prevent noise disturbance to nearby properties.

5 All speakers mounted on the building fabric shall incorporate anti- vibration mountings, the details of which shall be submitted to, and approved by, the Local Planning Authority and the development shall not be carried out otherwise than in accordance with any approval given.

Reason: To protect the amenities of adjacent residents and prevent noise disturbance to nearby properties.

6 The use shall not be carried on outside the hours of 10:00 - 24:00.

Reason: To protect the living conditions of adjacent residential occupiers in accordance with Policies S6 and GP1 of the Development Control Local Plan.

7 Details shall be submitted to demonstrate that the noise level from plant, equipment and ducting shall be 5 dB (A) or greater below the measured background-noise level (L90) at the nearest noise-sensitive premises, these details shall be submitted to and approved in writing by the Local Planning Authority before installation. 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.

Reason: To protect the living conditions of adjacent residential occupiers and the amenities of local businesses in accordance with Policies S6 and GP1 of the Development Control Local Plan.

8 Adequate facilities shall be provided for the treatment and extraction of odours, fumes and gases created by cooking in association with the development, such that there is no adverse impact on the amenities of local residents by reason of

fumes, odour or noise. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for approval; once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the living conditions of adjacent residential occupiers and the amenities of local businesses in accordance with Policies S6 and GP1 of the Development Control Local Plan.

7.0 INFORMATIVES:- Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the vitality and viability of the city centre; the character and appearance of the Central Historic Core Conservation Area; and the amenity of surrounding residents. As such the proposal complies with Policies GP1, S5, S6, HE3 and HE4 of the City of York Development Control Local Plan (2005) and national planning guidance contained in the National Planning Policy Framework (2012).

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 an acceptable outcome:

- Responses to the applicant following receipt of letter/emails concerning the request for additional information/ processing of the application
- Request for and receipt of a Noise Impact Analysis (Report by S and D Garritt Ltd, dated 19.11.2012)
- Receipt of survey drawings of the existing building, received 13.12.12
- Site meetings with agent and Council officials on 8 and 18 January 2013 following receipt of application
- Agreed general layout of proposed uses with the agent
- Agreed approach to sound insulation following on-site meeting with the agent

2. LISTED BUILDING CONSENT REQUIRED

For the avoidance of doubt, no works, including those required by the above conditions should be carried out without the applicant having first been granted a listed building consent. This includes works to, or removal of the shop fixtures and fittings. Should stripping out be required prior to the submission of an application for listed building consent you are advised to contact the local planning authority for advice beforehand. Unauthorised work to a listed building which affect its character as a building of special architectural or historic interest is an offence under section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. CONDITION NO.8

It is recommended that the applicant refers to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems for further advice on how to comply with this condition.

For the avoidance of doubt any material alterations to the external appearance of the building cannot be approved under this condition and will require a further planning application.

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