

**Notice of a public
Decision Session - Executive Leader (incorporating Finance
& Performance)**

To: Councillor Carr (Executive Member)

Date: Thursday, 6 April 2017

Time: 3.30 pm

Venue: The Craven Room - Ground Floor, West Offices (G048)

AGENDA

Notice to Members – Post Decision Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by **4:00 pm on Monday 10 April 2017**.

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent which are not subject to the call-in provisions. Any called in items will be considered by the Corporate and Scrutiny Management Policy and Scrutiny Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **Tuesday 4 April 2017 at 5.00 pm**.

1. Declarations of Interest

The Executive Leader is asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which he might have in respect of business on this agenda.

2. Minutes (Pages 1 - 10)

To approve and sign the minutes of the Executive Leader (incorporating Housing and Safer Neighbourhoods) Decision Session held on 23 January 2017 and the minutes of the Executive Leader (incorporating Finance and Performance) Decision Session held on 13 March 2017.

3. Public Participation

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is at **5.00 pm on Wednesday 5 April 2017.**

Members of the public may register to speak on:-

- an item on the agenda
- an issue within the Executive Leader's remit;

Filming, Recording or Webcasting Meetings

Please note this meeting may be filmed and webcast and that includes any registered public speakers, who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts>.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at:

http://www.york.gov.uk/download/downloads/id/11406/protocol_f_or_webcasting_filming_and_recording_of_council_meetings_20160809.pdf

4. Application for Community Right to Bid under the Localism Act 2011 - The Carlton Tavern (Pages 11 - 26)

This report presents an application to list the Carlton Tavern Public House, 104 Acomb Road, York, as an Asset of Community Value (ACV).

5. Application to Vary Restrictive Covenant at 3-4 Patrick Pool, York (Pages 27 - 42)

This report sets out details of an application received by the owners of 3-4 Patrick Pool, to vary a restrictive covenant on a currently vacant retail property in the city centre.

6. Urgent Business

Any other business which the Executive Leader considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Jayne Carr

Contact Details:

Telephone – (01904) 552030

Email – jayne.carr@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی میا کی جا سکتی ہیں۔ (Urdu)

 **(01904) 551550**

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City of York Council

Committee Minutes

Meeting	Decision Session - Executive Leader (incorporating Housing & Safer Neighbourhoods)
Date	23 January 2017
Present	Councillor Carr (Executive Leader)

17. Declarations of Interest

At this point in the meeting the Executive Leader was asked to declare if he had any personal prejudicial or disclosable pecuniary interest in the business on the agenda. He declared he had none.

18. Exclusion of Press and Public

Resolved: That the press and public be excluded during the consideration of annexes to Agenda Item 9 (Affordable Housing Commuted Sum Dispute) on the grounds that they are classed as exempt under paragraphs 3 and 5 respectively of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006.

19. Minutes

Resolved: That the minutes of the Decision Session held on 17 October 2016 be approved and then signed by the Executive Leader as a correct record.

20. Public Participation

It was reported that there were no registrations to speak under the Councils Public Participation Scheme.

21. 2016/17 Tenant Satisfaction Survey Results

The Executive Leader considered a report that highlighted the outcomes of the 2016/17 annual Tenant Satisfaction Survey which was the biggest single gauge of satisfaction across landlord services by tenants of council owned housing stock. Officers gave an update and confirmed the survey had taken place between September and November 2016 and was primarily carried out by post. The number of questions asked in the survey had been reduced from 44 to 25 and it was sent to 2800 tenants generating a 23% response rate.

Officers discussed the analysis and confirmed:

- the 2016/17 results were statistically significant to within +/- 3.69%.
- it was not possible to compare City of York Council's performance with other providers until later in 2017 due to the time lag in data collection and analysis.
- satisfaction had increased across four of the six Housemark core questions.
- satisfaction regarding complaints had decreased in all areas.
- satisfaction within the four housing themes Your Property, Your Place, Your Service and Your Say had generally improved in most areas with a significant increase in the availability of storage space.
- the Estate Improvement Grant would be allocated in April 2017 and would bring a range of changes including a renewed focus on targeting ward priorities identified through the survey.
- the results would be used to inform a restructure of housing services which would move towards a new staffing model to address tenants preference to have a single clear point of contact within housing services.

In answer to the Executive Leaders questions and concerns regarding the decline in satisfaction within complaints handling, officers confirmed they would be investigating the issues raised with the Customer Complaints and Feedback Team.

The Executive Leader thanked officers for their update.

Resolved:

- (i) That the results of the 2016/17 Tenant Satisfaction Survey be considered and that the officer comments regarding future actions be noted.
- (ii) That an update report highlighting the actions taken to improve the process of making a complaint be brought to a future Executive Leader (incorporating Housing and Safer Neighbourhoods) Decision Session.
- (iii) That a Tenant Satisfaction Survey for 2017/18 be agreed.

Reason: To ensure that City of York Council had up to date information regarding customer satisfaction, enabling landlord and building services to target resources and improvements to those services prioritised by customers, and to feed into the annual Housemark benchmarking return.

22. Sheltered Housing: Be Independent Charges

The Executive Leader considered a report that provided an update on the background and current situation with regard to the subsidy provided to Council sheltered housing tenants of the Be Independent service.

Officers gave an update and confirmed the proposal to remove the current blanket subsidy to tenants in Council sheltered housing and instead adopt a means tested approach, that was currently used in all other tenures, would achieve a more equitable position. They explained that Be Independent offered an out of hours emergency response service to customers in sheltered housing at a reduced charge of £4.30 per week compared to £7.00 per week in a general needs property.

In answer to the Executive Leaders questions officers confirmed:

- customers on a low income would receive financial support to cover the cost of this service which was in line with customers in other tenure types.

- consultation with tenants would be undertaken and would include site visits where 1-1 meetings would be offered to any tenants affected in order to discuss their financial circumstances and identify any impact or concerns.

The Executive Leader thanked officers for their report and noted that the charges were in line with general needs council housing and other sheltered housing properties.

Resolved: That the proposal to charge customers in sheltered housing schemes for using the Be Independent service be approved.

Reason: This will create an equitable position where all customers receive a subsidy based on an assessment of means, rather than some customers receiving a subsidy as a result of the type of housing they live in.

23. The Future of Customer Focussed and Sustainable Housing Management in Sheltered Housing.

The Executive Leader considered a report that provided an update on the way in which tenants in sheltered housing and sheltered with care housing would be affected by the proposed housing re-structure.

Officers gave an update and confirmed there were 11 sheltered housing and sheltered with care schemes in York that provided self contained accommodation with access to communal areas and an element of on site staffing. They explained the variety of schemes available to tenants that provided safe, appropriate and sustainable homes for those who needed supported housing.

The Executive Leader noted that currently 7 sheltered housing schemes had an housing officer on site for 24 hours per week and the proposal to reduce the hours at Barstow House and Gale Farm Court, to bring them in line with other sheltered housing schemes, would provide a holistic housing management service with continued regular welfare checks and emergency response.

In order to support the new approach officers explained how an Active Communities Officer role would be created. This role would develop volunteering, community activity and community cohesion across the housing stock with particular reference to sheltered housing schemes. The Executive Leader agreed this new role would

benefit tenants and would actively involve local people to reduce social isolation and develop strong communities.

In answer to the Executive Leaders questions officers confirmed they would write to and consult with all tenants as a group or individually to ensure they were aware of and understood the new arrangements.
Resolved:

- (i) That the proposal for providing housing management services to tenants in sheltered housing as part of a re-focussed housing landlord service be approved.
- (ii) That following appropriate consultation with tenants, the on site service provision in Gale Farm Court and Barstow House be changed to bring them in line with other sheltered housing schemes.

Reason: To bring these schemes in line with the other sheltered schemes and support the proposals to restructure the landlord service.

24. Replacement of the Estate Improvement Grant with the Housing Environmental Improvement Programme

The Executive Leader considered a report that sought approval to replace the existing Estate Improvement Grant (EIG) Scheme and introduce a Housing Environmental Improvement Programme (HEIP) that would continue to directly benefit council tenants by improving housing assets. It was noted that added value would be achieved by blending the use of the Housing Revenue Account money with that of the ward monies, and increase the engagement with ward committees.

Officers gave an update and confirmed that over the last 25 years the Estate Improvement Grant had been offered every year to the Residents Associations (RA's) within council housing areas. With it being an annual allocation the amount of funding available to tackle significant issues such as parking and storage had been restricted. The RA's sought views of tenants annually to determine what improvements the funding would provide and the Executive Leader noted the various estate improvement schemes the EIG had funded including those that were not necessarily strategic or were unachievable due to insufficient funds.

Officers stated that the tenancies in council estates had fallen over the years due to the right to buy schemes resulting in mixed tenure estates. Given that the EIG budget had to demonstrably benefit councils tenants this had become more difficult to justify with the rise of privately owned homes. They clarified that under the new proposals the HEIP funding would be allocated on a 4 year basis, across all wards, with the final decisions being made by the HEIP panel which would include ward councillors, officers, interested tenants/residents and resident association representatives. The £30,000 currently allocated to the federation would continue to be prioritised by the federation. It was noted that this approach would allow the potential to combine ward and HEIP funding streams to enable larger schemes to be delivered that would have a more significant impact on the estates and allow the funding to benefit tenants and residents.

In answer to the Executive Leaders questions officers confirmed:

- the development of larger schemes in mixed tenure estates would be split between the HEIP and other ward based funding or grant bids.
- they had consulted with the Federation of Tenant and Residents Association.
- the consultation did not bring up any substantive objections but some residents groups did show some dissatisfaction to aspects of the new proposals, however, they understood the new approach would still give them the opportunity to feed into potential schemes at ward committees.
- the Communities and Equalities team would support Ward Councillors through the new proposals.

The Executive Member noted that the new approach was more democratic, more flexible and more sustainable which would make a tangible difference in some areas.

Resolved: That the Housing Environmental Improvement Programme (Annex A of the report) and spending criteria (Annex B of the report) from April 2017 be agreed.

Reason: This scheme takes a more strategic approach to environmental improvements, it is less bureaucratic, can combine with other funding schemes to provide better schemes that reflect the needs across the whole council stock.

25. Affordable Housing Commuted Sum Dispute

The Executive Leader considered a report that provided an update on a legal matter between the council and a developer regarding the obligation to pay a commuted sum in lieu of onsite affordable housing.

Resolved:

- (i) That the proposals to pursue legal action against the developer as necessary, including arrangements for the Assistant Director of Housing and Community Safety, in consultation with the Assistant Director of Legal & Governance to apply delegated powers to reach a final negotiation within the best interests of the Council be endorsed.
- (ii) That officers proceed to negotiate a settlement within the best possible interest of the Council for this long running dispute subject to the further formal approval of the Executive Leader (incorporating Housing & Safer Neighbourhoods) and that the final settlement figure be formally presented at a future Executive Leader (incorporating Housing & Safer Neighbourhoods) Decision Session.

Reason: To protect the authority's position in relation to developers honouring their obligations under Section 106 Agreements and ensure the authority maximises its position regarding commuted sums.

Cllr Carr, Executive Leader

[The meeting started at 3.05 pm and finished at 3.55 pm].

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Meeting	Decision Session - Executive Leader (incorporating Finance & Performance)
Date	13 March 2017
Present	Councillor Carr

30. Declarations of Interest

The Executive Leader was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests that he may have in respect of business on the agenda. No additional interests were declared.

31. Minutes

Resolved: That the minutes of the Decision Session held on 13 February 2017 be approved and signed by the Executive Leader as a correct record.

32. Public Participation

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

33. Application for Community Right to Bid under the Localism Act 2011 - The Deramore Arms Public House, Heslington

The Executive Leader considered a report that presented an application to list the Deramore Arms Public House, Heslington, York as an Asset of Community Value (ACV). The nomination had been made by Heslington Parish Council.

The Executive Leader stated that, having considered the contents of the report, he supported the recommendation that the application be approved.

Resolved: That the listing of the Deramore Arms Public House, Heslington, York as an Asset of Community Value (ACV) be approved.

- Reasons:
- (i) The application meets the required criteria.
 - (ii) To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Executive Leader (incorporating Finance and Performance)

[The meeting started at 3.00 pm and finished at 3.03 pm].



**Executive Leader inc Finance and
Performance Decision Session****6 April 2017**

Report of the Corporate Director - Economy and Place

Applications for Community Right to Bid under the Localism Act 2011**Summary**

1. This report presents an application to list the Carlton Tavern Public House, 104 Acomb Road, York, as an Asset of Community Value (ACV), for consideration by the Council.

Recommendations

2. The Executive Member is asked to:

Agree to the listing of the Carlton Tavern, 104 Acomb Road, York as an Asset of Community Value (ACV), because it meets the required criteria.

Reason: To ensure the Council meets its legislative requirements of the Localism Act 2011 and promotes community access to community facilities.

Background

3. An application has been received, for a decision by the Executive Member in the Council's statutory capacity as an Asset of Community Value (ACV) listing authority.
4. The purpose behind these provisions is to ensure that property (land and building) assets which are currently used to the benefit of the local communities are not disposed of without the local community being given a fair opportunity to bid for these assets when they are put on the open market. This right is not simply to accommodate 'public assets' but also private assets, the test is whether such assets are viewed as 'assets of community value'. These assets therefore could be currently owned by the public, private or voluntary sector.

5. The definition of 'land of community value' is set out in section 88 of the Localism Act 2011. To be considered as an asset of community value the land or property must satisfy either of the following criteria:
 - a. an actual current non-ancillary use of the building or other land furthers the well-being or social interests of the community and whether it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social well-being or social interests of the local community

Or

 - b. there is a time in the recent past when an actual non-ancillary use of the building or other land furthered the social well-being or social interests of the local community and it is realistic to think that there is a time within the next 5 years when there could be non-ancillary use (whether or not the same use as before) that would further the social well-being or social interests of the local community
6. There is no exhaustive list of what is considered to be an asset of community value but cultural, recreational and sporting interests are included. Excluded specifically are residential type properties (such as hotels, housing in multiple occupation and residential caravan sites) and operational land of statutory undertakers.
7. It should also be noted that changes to the General Permitted Development Order have been made with effect from the 6th April 2015, which means that where a pub is listed as an asset of community value a planning application is required for a change of use or demolition of the pub building. However this should not be a factor in determining any application for listing of a pub as an Asset of Community Value.

The process

8. The regulations set out how potential assets can be listed which in brief is as follows:
 - Nomination – this can be by a voluntary or community body with a local connection. Includes parish councils, neighbourhood forums, charities, community interest groups but excludes public or local authorities (except parish councils).

- Consideration – the local authority have 8 weeks to make the decision. Under the Council’s procedures the Executive member is the decision maker. If the nomination is successful the asset details are entered onto the ‘Community Value list’ – see below – and also the local land charges register. If unsuccessful then the details are entered onto an ‘unsuccessful nominations’ list for a period of 5 years to prevent repeat nominations. The owner can request a review of the decision which must be completed within 8 weeks and the owner can further appeal within 28 days of the review outcome to a Tribunal.
- Disposal of assets on the list – if a building or piece of land which is on the list is going to be sold with vacant possession then the owner of the asset needs to give notice to the local authority. There is then a 6 week moratorium period for any community group to express interest in writing and if they do then a 6 month period for that group to prepare it’s bid. After that period the owner can market the property and any bid from the community group will be considered with bids from other interested parties. There is no guarantee that the offer from the community group will be successful as the owner of the asset will dispose of the property in accordance with its own criteria for disposal. There are a number of exceptions contained within the legislation that mean that this moratorium period does not apply and the owner does not need to give notice of it’s intention to sell. This includes when there is a legally enforceable requirement, which pre-dates the listing, to sell to a specific party.
- Compensation – the presence of the land or building asset on the community value list may result in additional expenditure or a loss to the owner and therefore the owner can apply for compensation from the local authority. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

The Carlton Tavern, 104 Acomb Road, York

9. The freehold of The Carlton Tavern is owned by Marstons plc. The nomination is being made by the Friends of the Carlton Tavern. Legal Services have confirmed that a nomination must be considered by

the Council if the nominator is someone who meets the eligibility criteria specified in the relevant legislation and if the nomination form includes the information specified in regulation 6 of the ACV Regulations 2012. The Friends of the Carlton are an eligible body.

10. The Friends of the Carlton state in the nomination form that The Carlton Tavern is a valuable asset that enhances the social well being of and interests of the local community that they want to protect and cherish not just for now, but for future generations. There is no other pub nearby that offers the facilities that the Carlton has, including a disabled ramp and disabled toilet facilities. The large garden with protected trees brings in families from across the community.
11. The pub is used as meeting place for various local community groups including St Paul's Young at Heart Group and the West bank project. In addition, the pub and its regulars have charity fundraising days and have raised thousands for charity.
12. Holgate Windmill and the nearby War Bunker heritage sites use the car park facilities free of charge.
13. Full details are provided in the nomination form attached in Annex 1.
14. In accordance with the regulations, the freehold owner of the property has been informed in writing that the application has been made. They have been invited to make representations regarding the nomination. A response has been received from their solicitors and is as follows.
15. The owner strongly objects to the nomination on the basis that the property is currently of insufficient local community value to warrant inclusion in the list. The property's main purpose is as a carvery and food provider, rather than a traditional public house, and doesn't offer the range of facilities provided by other public houses in the area. They name eight other pubs in the area that are better equipped than the Carlton Tavern.
16. The owners cast doubt on the use of the public house by local groups and that they meet elsewhere as well as the Carlton Tavern. The Landlord is not aware of the West bank project and their use of the property. The landlord holds a Northern Soul evening once a month,

but is considering discontinuing the event due to declining attendance.

17. It is the intention of the owners to sell the property for redevelopment as a care home. A high quality development is proposed that meets an identified need in the area. The home will be designed to encourage the wider community to share in the new facilities, which will include activity rooms, bar and cafe. It is intended that the new building will act as a community hub within the local area.
18. The full details of the owner's response are provided in the letter attached at Annex 2.
19. There is significant precedent set elsewhere in the country from other authorities who have accepted pubs onto the list, even where they are currently run as commercial businesses.
20. The application meets the basic criteria for listing. It is therefore recommended that the Carlton Tavern, 104 Acomb Road should be listed on the ACV register.

Implications

21. **Financial** – Compensation may be payable by the Council to the owner of any property which is listed. The figure is limited to costs or losses incurred only whilst the asset is on the list and could include such items as legal expenses for appeals, costs relating to the delay in the sale (such as maintenance, security, utility costs, loss of value).

Human Resources (HR) – none

Equalities, Crime and Disorder and IT - none

Legal – Legal advice has been incorporated within this report.

Property – All property issues included in the report

Other – none

Risk Management - There are no significant risks to this application.

Contact Details

Author:

Tim Bradley
Asset Manager
Asset and Property Management
Tel No. (01904) 553355

Chief Officer Responsible for the report:

Tracey Carter
Assistant Director
Regeneration and Asset Management
Tel. No. (01904) 553419

**Report
Approved**

Date 29 March
2017

All

Ward Affected: Holgate

For further information please contact the author of the report

Annexes

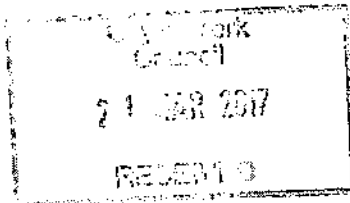
Annex 1 – The Carlton Tavern Public House – Application to add to the List of community assets

Annex 2 – Letter from Shoosmiths (solicitors acting for Marstons plc)

Annex 3 – Current list of assets of community value

Abbreviations

ACV - Assets of Community Value



ASSETS OF COMMUNITY VALUE NOMINATION FORM

If you need assistance completing this form, then please refer to the guidance document which can be downloaded from the website www.york.gov.uk/assetsofcommunityvalue or alternatively call 01904 553360.

Section 1

About the property to be nominated

Name of Property:	The Carlton Tavern
Address of Property:	104 Acomb Road York
Postcode:	YO24 4HA

Property Owner's Name:	Marston's
Address:	Marston's Plc Marston's House, Brewery Road, Wolverhampton,
Postcode:	WV1 4JT
Telephone Number:	01902 711811
Current Occupier's Name:	Matthew Sidebottom

Section 2

About your community organisation

Name of Organisation:	Friends Of The Carlton
Title:	Mr
First Name:	Steve
Surname:	Kilner
Position in Organisation:	Head Of The Friends Of The Carlton
Email Address:	[REDACTED]
Address:	[REDACTED]
Postcode:	[REDACTED]
Telephone Number:	[REDACTED]

Organisation type:

Click in field for options

UNINCORPORATED COMMUNITY GROUP

Organisation size

How many members do you have?

Section 3

Supporting information for nomination

Any information entered in this section only may be copied and passed onto the owner of the property you are nominating. Definition of an asset of community value can be found in the guidance document.

Why do you feel the property is an asset of community value? Please give as much information as possible.

The Carlton is a valuable asset that enhances the social wellbeing and interests of the local community that they want to protect and cherish not just for now but for future generations.
The pub needs protecting as there is nothing in the near by community with the facilities that it offers, to both the younger and older generations of the community.
With a large garden with protected trees and a park the pub brings families from all over the community together. It is used as a meeting place for St Paul's Young at Heart Group on the 2nd Wednesday of every month. Other groups such as Westbank project, Hamilton Panthers, Westfield school also use the facilities as a meeting house.
The pub and its regular customers have charity fundraising days and have raised thousands for charities such as Help the heroes, British Royal Legion, a local school to fund a camping trip to name just a few.
Local English Heritage sites the War Bunker and Holgate Windmill use the large car parking facilities free of charge.
The pub has the only disabled ramp to allow access and disabled toilet in the area.

Section 4

Boundary of Property

What do you consider to be the boundary of the property? Please give as much detail/be as descriptive as possible. Please include a plan.

see attached leaflet - which was not distributed until after the meeting had been held meaning that the local community and the friends of the Carlton were unable to feedback on the proposal.

Section 5


Attachment checklist

- Copy of group constitution (if you are a constituted group)
- Name and home address of 21 members registered to vote in nomination area (if group is not constituted)
- Site boundary plan (if possible)

Section 6

Declaration

I can confirm that to the best of my knowledge the information contained in this nomination form is complete and accurate.

Signed 

Dated:

Please e-mail your completed form to property.services@york.gov.uk or post to:
Asset and Property Management
City of York Council
West Offices
Station Rise
York
YO1 6GA

Name	Address
Tom Church	7 Wensley House, Baithwaite Drice Acomb, YO26 4TE
Holly Rowell	28 Eastfield Walk, Tadcaster, LS24 8BD
David Bailey	27 Baildon Close, Acomb, York YO26 4LR
Gemma Weeks	12 Dodgson Terrace York YO26 5HW
Scott Weeks	12 Dodgson Terrace York YO26 5HW
Chloe Lawton	23 Oldhan Court, York YO26 3NA
Stephen Kilner	9 York Road, York YO24 4LW
Tracey Richardson	6 Grantham Drive, York YO26 4UA
John Richardson	6 Grantham Drive, York YO26 4UA
Zoe Smith	52 Westfield Place, Acomb YO24 3HW
Eddie Land	85 Lindley Street, YO24 4JG
Kayleigh Sweeney	7 Wensley House, Baithwaite Drice Acomb, YO26 4TE
Sam Lawton	20 Nursery Drive, YO24 4PE
Molly Watson	20 Nursery Drive, YO24 4PE
Daniel Jackson	20 Nursery Drive, YO24 4PE
Saundra Lawton	20 Nursery Drive, YO24 4PE
Jo Bailey	39 Monarch Way Acomb York YO26 5TB
Martin Oliver	6 Salmond Road YO24 3JN
Simon Richardson	146 Chaloners Road York YO24 2TA
Thomas Yates	70 Woodlea Avenue York YO26 5JU
Elaine Yates	70 Woodlea Avenue York YO26 5JU
Lisa Garner	18 Marquis Court York YO26 5TE
Alex Richardson	6 Grantham Drive, York YO26 4UA

DAVE ROWELL | 28 EASTFIELD WALK, TADCASTER, LS24 8BD

PAUL ARCHER 24 KEMPTON

SARAH BUSHBY 12 MILNER ST ACOMB

VAL BUSHBY 70 OSMAN RD ACOMB

SUE PECK 33 VIKING ROAD ACOMB

PETE CAMMIDGE 14 ASCOT WAY

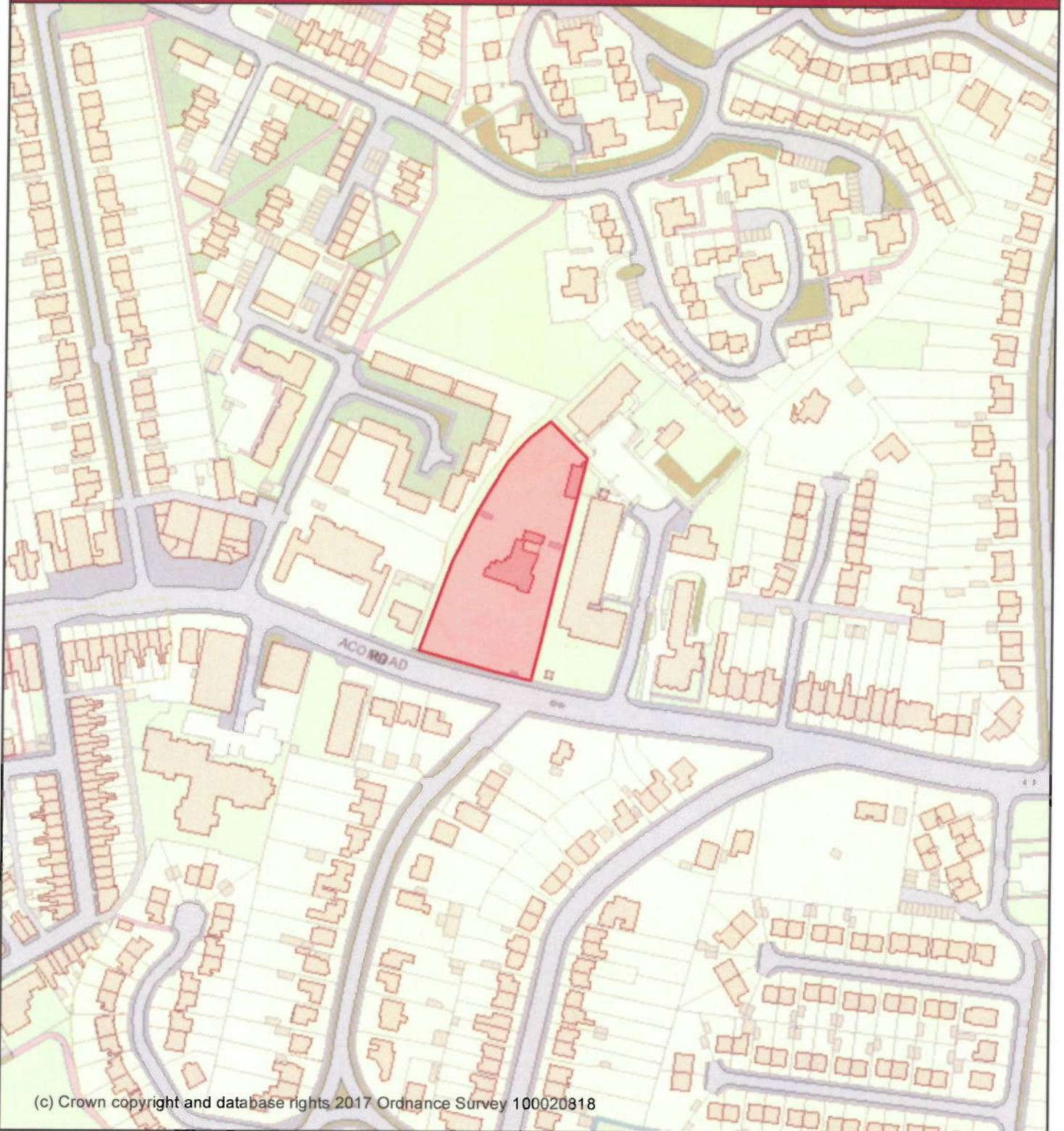
TONY PICKARDS 83 LINDSEY AVE

BARLEY CARTER 9 THE REEVES

STEPHEN REDDONS 108 THORNTON ROAD

LIAM CLOUGH 2 BRIDLE WAY

TONY MAUD	42	MOORGATE	(
Karen Turner	42	MOORGATE	A
PHIL SANDERSON	81,	GLAZENWOOD	F
Jackie Dawson	2A	Beaconsfield	E
MARC SHIPLEY	81	MUNRO ST	V
GARY SHIPLEY	81A	MUNRO ST	G
Sarah Lawson	23	Oldman Court	S
Jarven Appleyd	102	BRAMHAM ROAD	(
SO HARPER	102,	BRAMHAM	;
AMY FAIRLY	19,	DIJON AVE	#
DAVE FAIRLY	19,	DIJON AVE	-
DIANE WHITEHEAD	4,	HOTHAM AVE	-
JOHN WHITEHEAD	4,	HOTHAM AVE	-
SHELIA HUGHES	50,	OUSEBURN AVE	-
ELAIN HUGHES	34,	MURRAY ST	-
DAVE HUGHES	34,	MURRAY ST	-
DAVE KILNER	9	YORK ROAD	Q
PAUL HURBY	52	FOUR AVE	U
BARRY	26	SOWERBY	V
ROSEMARY	"	"	U



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Map Notes:

Date: 27/03/2017

Author:

Scale: 1:2,500



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SHOOSMITHS

Tim Bradley
 Asset Manager
 City of York Council
 Economy and Place Directorate
 West Offices, Station Rise
 YORK
 YO1 6GA

HQ Building
 Old Granada Studios
 2 Atherton Street
 Manchester
 M3 3GS
 DX 14393 Manchester 6

T 03700 86 5600
 F 03700 88 5601

Our Ref KJ.JF.M-00582914
 Date 23 March 2017

By post and
 email:tim.bradley@york.gov.uk

Dear Mr Bradley

**ASSET OF COMMUNITY VALUE NOMINATION - THE CARLTON TAVERN, 104 ACOMB ROAD,
 YORK YO42 4HA ("PROPERTY")
 OUR CLIENTS: MARSTONS PUBS LIMITED**

We have been provided with a copy of your letter dated 9 March 2017 notifying our clients about the above nomination. We understand that the nomination will be determined by the Council's Executive Leader (Finance and Performance) at a decision session on 10 April 2017. We ask that the representations contained in this letter be presented to the session and taken into account in the decision making process.

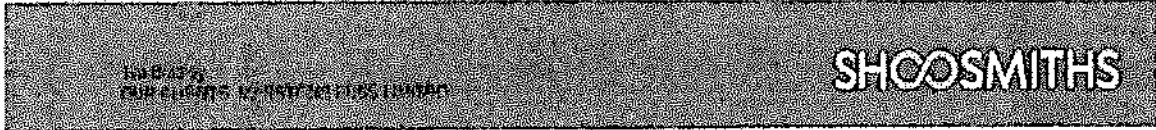
Our clients strongly object to the inclusion of the Property on the List of Assets of Community Value. It is our view that the Property is currently of insufficient local community value to warrant inclusion in the List.

The Property's main business is as a carvery and food provider, rather than as a traditional public house and the Property doesn't offer the range of facilities enjoyed by other more popular public houses in the area – for example the Fox has a large children's play area and the Quaker Wood also provides more family friendly areas.

In general the area is very well provided for in terms of community focused public houses (the Fox, the Ainsty, John Barras, Quaker Wood, Marcia Grey, Inn on the Green, the Sun and the Puss in Boots), which are all better equipped to service the needs of the local population than the Property.

Whilst our clients and the landlord are aware of a couple of local groups that meet in the Property, this usage is extremely limited. We understand that the St Paul's Young at Heart Group meet there once a month but that they also use other places to meet. The Hamilton Panthers now have their own club house so don't use the Property anymore and Westfield School use it twice a year for their staff Christmas dinner and a prom night for one year group. The landlord of the Property is not aware of the Westbank Project and their use of the Property. We understand that local heritage sites (the War Bunker and Holgate Windmill) use of the Property is limited to the use of the car park and not the Property itself. Finally the landlord holds a Northern Soul evening at the Property once a month but attendance is dwindling and the landlord is looking to discontinue this event due to declining attendance.





Our clients propose to sell the Property to enable the site to be redeveloped as a care home. This will be a high quality development that meets an identified need for new care provision for the elderly in the area. The care home providers and their design team are approaching the design and operation of the care home to ensure that it does not become a gated community, closed off to the wider community. Instead the care home will be designed to embrace the strong, established ties residents will have with local family and friends and will encourage the wider community to share in the new facilities, which will include activity rooms, bar and café. It is intended that the care home building will act as a community hub within the local area and provide a focal point for the local community.

We ask that the Property not be listed to enable this much needed development to come forward.

Please can you confirm safe receipt of this letter

Yours sincerely,



KATHRYN JUMP
Partner
SHOOSMITHS LLP



Current list of Assets of Community Value

1. The Golden Ball Public House, 2 Cromwell Road, York - approved March 2014.
2. The Fox Inn, 166 Holgate Road, York – approved July 2014
3. The Mitre Public House, Shipton Road, York – approved July 2014
4. The Winning Post Public House, 127-129 Bishopthorpe Road, York – approved November 2014
5. New Earswick and District Bowls Club, Huntington Road, York – approved November 2014.
6. Holgate Allotments, Ashton Lane, Holgate – approved June 2015
7. The Swan, Bishopthorpe Road, York – approved October 2015
8. The Bay Horse, Murton Way, Murton, York – approved February 2016.
9. The Derwent Arms, 29 Osbaldwick Village, Osbaldwick – approved March 2016.
10. The Jubilee Hotel Public House, Jubilee Terrace, York – approved July 2016.
11. The Minster Inn, 24 Marygate, York – approved July 2016.
12. The Wenlock Arms Public House, 73 Main Street, Wheldrake – approved July 2016.
13. Costcutter Shop, 58 Main Street, Wheldrake, York – approved July 2016.
14. Wheldrake Woods, Broad Highway, Wheldrake – approved July 2016.
15. The Blacksmiths Arms, Naburn York – approved September 2016.
16. The Grey Horse Public House, Main Street, Elvington – approved December 2016.
17. The Lord Nelson Public House, Nether Poppleton, York – approved January 2017.
18. The Deramore Arms Public House – approved March 2017

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**Executive Leader inc Finance & Performance
Decision Session**

6 April 2017

Report of the Corporate Director of Economy and Place

Application to Vary a Restrictive Covenant at 3-4 Patrick Pool, York

Summary

1. This report sets out details of an application received by the owners of 3-4 Patrick Pool, to vary a restrictive covenant on a currently vacant retail property in the city centre. The property was previously owned by the Council but was sold by the Council in 2007.

Recommendation

2. The Executive Member is asked to agree to vary the restrictive covenant which was imposed when the property was sold so that the property can be used as a public house use detailed within this report, in exchange for a one-off consideration of £25,000.

Reason: To provide the Council with a one off consideration in exchange for agreeing to a variation of the covenant.

Background

3. 3-4 Patrick Pool was sold by the Council on 27 April 2007. On sale the Council imposed a restrictive covenant prohibiting use of the property as a sex shop or public house. The Council has been approached by the owners of 3-4 Patrick Pool who want the Council to vary the covenant so that the property can be used as a public house.
4. Whilst the property is currently vacant, it has been used most recently as a hairdressers. There are two privately owned flats at upper floor level. The owners of the property are intending to use the ground floor space as a restaurant/cafe and drinking establishment.

5. The Council owns the property adjacent to 3-4 Patrick Pool and which is known as Pump Court. Pump Court is a service yard which provides access to a number of privately owned adjacent premises as well as the council owned Kings Court, which is let to various office based occupiers. A location plan of the property is attached as annex 1 of this report. The owners of 3-4 Patrick Pool have rights over Pump Court for the purposes of storing bins, bicycles and have an emergency right of access. These rights will not be affected by the proposal.
6. The owner of 3-4 Patrick Pool recently applied for planning permission in respect of the property to allow them to use it for a restaurant/ cafe and drinking establishment. Planning consent was granted on 28 April 2016. The planning officer's report commented that;

“The character of Patrick Pool is as a short, transitional street used to access the market rather than of a street which has a strong retail presence. There is a delicatessen (A1), a sandwich shop (A1), a hardware shop (A1), Pivni (A4) and a financial services use (A2). Within this context, it is considered that a more flexible approach in assessing this change of use proposal is considered appropriate”.

7. A Premises Licence allowing the sale of alcohol on the property was granted permission on 27 February 2017 following a hearing of the Council's Licensing Sub Committee. The Council's licensing team advise that this Premises Licence is granted having regard to the City Centre Special Policy Statement which sets out supplementary guidance to the council's Statement of Licensing Policy within certain areas of the city centre. Patrick Pool sits within one of three city centre areas identified, given it is included within the Back Swinegate/ Fossgate area. These areas, known as the Cumulative Impact Zone (CiZ) have been identified as areas being under stress because of the cumulative effect of the number of premises being concerned in the sale and/or consumption of alcohol which has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses. Within the CiZ there are 243 on licences (bars, restaurants etc) and 26 off licences.
8. Having been granted planning under reference 16/00494FUL (see Annex 2), along with the granting of the Premises Licence the owner can only use the premises as a drinking establishment if the covenant restricting the use of a public house is lifted. Whilst the

Council no longer owns the property, the restrictive covenant reserved to the Council at the time of the sale will need to be lifted and hence this is now what the owners seek of the Council.

9. The planning permission contains conditions which serve to protect the amenity of surrounding residents and businesses by controlling most notably;
 - the hours of business to Mondays to Sundays – 08.00 – 23.00 hours
 - restricting delivery vehicles and waste removal vehicles to Mondays to Fridays – 08.00 to 18.00 hours; Saturdays 09.00 – 13.00 hours and none on Sundays and Bank Holidays.
 - All electronically amplified music emitted from the premises shall be restricted to background music only and shall not be audible at the nearest noise sensitive facade.
10. The owners could apply to the Lands Tribunal to have the covenant lifted and argue that the lifting of the covenant would not cause any detriment to the Council and hence there should be no monetary value attached to the releasing of such. There is a possibility the Tribunal could take this view particularly as planning has already been granted.
11. An application to the Tribunal can be time consuming and as the owner wishes to sell its interest to a new owner for use as a cafe/ public house, it has offered the Council a consideration of £25,000 in exchange for the agreeing to vary the restrictive covenant to allow the property to be used as a public house now.
12. The precedent of receiving a consideration in return for removing restrictive covenants granted in favour of the council has been illustrated historically elsewhere in the city. Restrictive covenants in favour of the council have been released for example at Clifton Moor, albeit for a different use proposal, enabling residential use from a previous office use.

Options

13. If the proposal is not accepted then the applicant could:
 - a) Decide not to proceed with their proposal and re-market the property for an alternative use within the confines of the restrictive covenant.

b) Potentially take the matter to the Lands Tribunal. Legal Services has indicated there maybe a reasonable chance of success that the applicant would be able to remove the covenant (but the outcome would be difficult to predict with any certainty), although the time taken for the Tribunal process and decision would likely be considerable and hence would jeopardise the owners' current proposal and this is why they are prepared to offer a payment for a swift outcome.

14. The option to accept the capital sum offered is recommended and it provides a one off capital receipt for the council, whilst the planning conditions imposed on the premises should protect the Council's other nearby property interests.

Implications

Financial – The variation of the covenant to allow use as a public house realises a capital receipt which reflects the uplift in value of the site after the covenant has been lifted.

Human Resources (HR) – None

Equalities, Crime and Disorder and IT – The owners of the property would have to apply for a licence to sell alcohol from the premises.

Legal – The refusal to lift a covenant can be subject to further legal challenge through the Lands Tribunal if it can be proved that the grounds for the original covenant no longer apply and would not cause detriment to the land owned by the council. Legal Services have advised that the covenant was placed on the property in 2007 at the time of the sale. So far as can be ascertained, no such covenant affected the property during the period of the Council's ownership.

Property – Contained within the Report.

Other – None

Risk Management

15. There is a risk of legal challenge through the Lands Tribunal if the council refused to vary the restrictive covenant to allow use as a public house.

Consultation

16. Ward Councillors have been consulted on this proposal and they object to the lifting of the covenant. Their comments are attached as an Annex 3 to this report.

Recommendations

17. The Executive Member is asked to agree to the request to vary the restrictive covenant affecting 3-4 Patrick Pool so that the property can be used as a public house in exchange for a one -off consideration of £25,000.

Reason: To provide the Council with a one off consideration in exchange for the variation of the covenant.

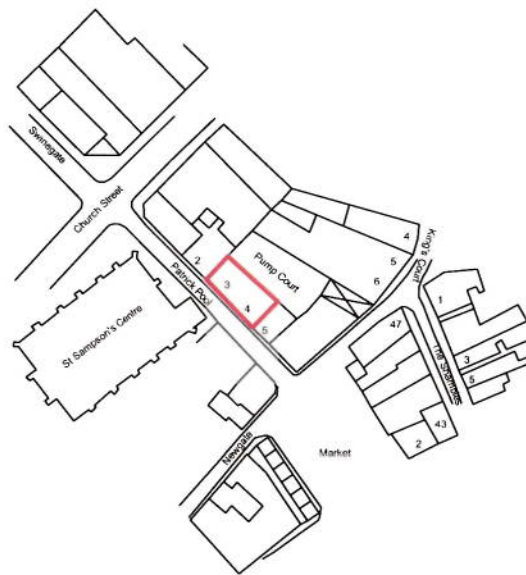
Contact Details	
Report Author: Nick Collins Commercial Property Manager Ext: 2167	Chief Officer Responsible for Report: Neil Ferris Corporate Director – Economy & Place
Specialist Implications Officer(s) Gerard Allen – Senior Solicitor Property Ext: 2004	Report Approved ✓ Date 29 March 2014
Wards Affected: Guildhall	
For further information please contact the author of the report	

Annexes

- Annex 1 Location Plan
- Annex 2 Copy of Planning Consent
- Annex 3 Ward Councillors' Comments

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31 STOCKTON LANE, YORK, YO31 1BP
TEL: 01904 424242
WEB: WWW.SKELTONCONSULTANCY.CO.UK



PROPERTY

3-4 PATRICK POOL, YORK

DRAWING

Location Plan

SCALE

1:1250 @A4

DATE

18.02.16

DRAWING NO.

CHD/PP/LP

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Approve Planning Permission

TOWN AND COUNTRY PLANNING ACT 1990

To:

Mr John Skelton
Skelton Consultancy
31 Stockton Lane
York
YO31 1BP

Application at: 3 Patrick Pool York YO1 8BB
For: Change of use from retail (use class A1) to mixed use restaurant/cafe and drinking establishment
By: Mr John Skelton, Chapter House Developments
Application Ref No: 16/00494/FUL
Application Received on: 4 March 2016

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:-

Location Plan received 26.2.2016
Dwg No: CHD/PP/02A (Proposed A3 Plan) received 3.3.2016

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

3 No development shall take place until a detailed scheme of noise insulation measures for the ground floor A3/A4 use has been submitted to and been approved in writing by the Local Planning Authority. The scheme of noise insulation measures shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS 8233:2014 "Sound Insulation and Noise Insulations for Buildings - Code of Practice". The approved scheme shall be implemented prior to the commencement of the use and be permanently retained thereafter.

Reason: In order to safeguard the amenities of adjoining residential occupiers and the details are needed prior to the start of work so that measures can be incorporated into the build.

4 Details of all machinery, plant and equipment to be installed in or located on the use hereby permitted, which is audible at the boundaries of the nearest residential properties when in use, shall be submitted to the local planning authority for approval. These details shall average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. 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.

Note that any external plant not shown on the approved plans will require planning permission.

Reason: To protect the amenity of local residents

5 The use hereby permitted shall not be open to customers outside the following times:

Mondays to Sundays 08:00 to 23:00 hours.

Reason: In the interests of the amenity of future occupants and those of surrounding premises.

6 Upon completion of the development, delivery vehicles and waste removal vehicles to the development shall be confined to the following hours:

Monday to Friday 08:00 to 18:00 hours

Saturday 09:00 to 13:00 hours and not at all on Sundays and Bank Holidays.

Reason: In the interests of the amenity of future occupants and those of surrounding premises.

7 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 prior to the development commencing. 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 future residents and nearby properties.

8 All electronically amplified music emitted from the premises shall be restricted to background music only and shall not be audible at the nearest noise sensitive facade.

Reason: To protect the amenity of occupants of the nearby properties from noise.

Date: 28 April 2016



M. Slater
Assistant Director (Development Services,

Planning and Regeneration)

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:

- the use of conditions

2. WASTE

Section 34 of the Environmental Protection Act 1990 places a duty of care on all producers of controlled waste, i.e. businesses that produce, store and dispose of rubbish. As part of this duty, waste must be kept under proper control and prevented from escaping. Collection must be arranged through a registered waste carrier. It is unlawful to disposal of commercial waste via the domestic waste collection service.

Adequate arrangements are required for proper management and storage between collections.

Section 47 of the Environmental Protection Act 1990 states that the storage of commercial waste must not cause a nuisance or be detrimental to the local area. Adequate storage and collections must be in place. Where the City of York Council Waste Authority considers that storage and/or disposal are not reasonable, formal notices can be served (Section 47 of the Environmental Protection Act 1990). Storage containers cannot be stored on the highway without prior consent of the Highway Authority of City of York Council.

3. MEANS OF EXTRACTION / SIGNAGE

The applicant should be aware that this application has been considered on the basis of there being no requirement for external extraction beyond a domestic type extract fan. Should a future occupant wish to explore alternative options for extraction, it is recommended that the Local Planning Authority is consulted at an early stage, as planning permission may be required.

Similarly, the applicant should consult with the Local Planning Authority with regard to whether advertisement consent would be required for the display of signs at the property.

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.

Clark, Laura

From: Cllr. J. Flinders
Sent: 22 March 2017 10:04
To: Cllr. D. Craghill
Cc: Cllr. J. Looker; Collins, Nicholas
Subject: Re: Forwrd Plan Item

Nick,

I would also have serious concerns about an additional licensed premises within the cumulative impact zone, due to the impact that alcohol-related anti-social behaviour has on city centre residents and visitors to the city.

Cllr James Flinders | Labour Councillor for Guildhall ward
m: 075 9296 5131 | e: cllr.jflinders@york.gov.uk

City of York Council

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On 21 Mar 2017, at 16:41, Cllr. D. Craghill <Cllr.dcraghill@york.gov.uk> wrote:

I would agree with Cllr Looker on this one and be opposed to the variation of the covenant.

Cllr Denise Craghill

Cllr Denise Craghill | Green Party councillor for Guildhall Ward
Tel. 07952 120752 email : cllr.dcraghill@york.gov.uk

City of York Council

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From: Cllr. J. Looker
Sent: 21 March 2017 15:24
To: Collins, Nicholas; Cllr. D. Craghill; Cllr. J. Flinders
Subject: RE: Forwrd Plan Item

Thank you for giving notice of the application to vary the restrictive covenant. I have checked the details as contained in the web link you provided.

It would seem they wish to gain permission to open the premises as a public house; or at least some sort of bar selling alcohol.

I have a significant number of concerns around the growth of alcohol related establishments in the city centre, and have supported the arrangements for a zone to try to curtail the number of bars and pubs in the city centre – I think this area would fall within the zone as it is currently described.

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