



- 13-14 Fossgate York YO1 2TA 0843
- 10 Fossgate York YO1 2TA 0841
- 11-12 Fossgate York YO1 2TA 0842

## 2.2 Policies:

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

## 3.0 CONSULTATIONS

### DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT

3.1 Officers support the scheme. Overall the proposed alterations, subject to agreement on detailed design, preserve the special architectural or historic interest of the building, and its value as an integral part of the street scene.

- The proposed shop front (revised drawing) adds visual interest and complements the ornamentation of the host building. Whilst the forward pair of double doors flatten the frontage to some degree, these will be in the open position for the majority of the day. There is a mix of shop front styles in the vicinity, and the incorporation of a traditional recessed entrance would create access and delivery difficulties.
- Addressing concerns over noise transmission through the large glazed canopy by the addition of secondary glazing can be achieved without detracting from the attractive appearance of the structure. Details of the secondary glazing could be required by condition.
- Officers do not object to the internal changes, which are detailed in the companion LBC application.

### ENVIRONMENTAL PROTECTION UNIT

3.2 Officers had asked for a noise assessment, to consider the potential impact on neighbours. Considering the assessment submitted, officers recommend that the proposal can be permitted, subject to conditions that the recommended works to reduce noise breakout are undertaken and that there are no other alterations to the building undertaken without permission that would affect the buildings noise

insulation capabilities. It is also asked that the kitchen has adequate equipment to deal with cooking smells/odours.

#### YORK CONSERVATION TRUST

3.3 Object to the scheme. The trust is concerned about noise affecting residential amenity, as they own flats above the premises at 14, 15 and 16 Fossgate.

#### GUILDHALL PLANNING PANEL

3.4 No objection.

#### POLICE ARCHITECTURAL LIAISON OFFICER

3.5 No objection. Officers have commented with regards crime and anti-social behaviour. Key comments are as follows –

- There are no grounds for objecting to this proposal, particularly when there is already a Premises Licence in place for the sale of alcohol.
- Fossgate is already used as a main arterial route into and out of the city for revellers, particularly for those living to the east of the city.
- There are already two public houses on Fossgate and there is no evidence that these have caused crime or anti-social behaviour on the street. If anti-social behaviour/crime were attributed to a premises, then the Police could request a review of the Premises Licence.
- A Dispersal Order is currently being applied for by the Police and Local Authority to cover a large part of the city, including Fossgate. This allows the police to disperse groups of two or more people from areas where there is persistent anti-social behaviour or take home any young person under 16 who is out on the streets in a dispersal zone between 9pm and 6am and not accompanied by a parent or responsible adult.

#### PUBLICITY

3.6 Nine objections have been received. Grounds of objection are as follows:

##### NOISE

- Residents at Morrell Yard and 13/14 Fossgate have objected on the grounds of noise disturbance. It has been noted there were noise issues with the restaurant that formerly occupied the site. It is inevitable this use will lead to more noise and disturbance. In particular noise has been raised as a concern due to the limited attenuation the glass roof will provide and as a function room was shown at first floor level, when there is a flat next door. Also the premises licence advises that there will be live music played.

Comments have been received since the noise report, that it is considered the insulation proposed (secondary glazing) will be inadequate.

#### CRIME AND DISORDER

- There are already problems with crime, litter, and anti-social behaviour in the street, which will escalate if there is another drinking establishment.

#### CHARACTER OF THE AREA

- There would be too many drinking establishments in the area, and there is a concern the character of the area is changing. There would be 6 licensed premises within close proximity to each other if this proposal and the former Army and Navy scheme were to be implemented. There is concern the street could become another 'Micklegate' which has been over-dominated by drinking establishments in the past.

### 4.0 APPRAISAL

#### 4.1 KEY ISSUES

- Principle of the proposed use
- Amenity of surrounding occupants
- Impact on heritage assets

#### PROPOSED USE

4.2 The application site is on a non-primary shopping street within the central shopping area. National and local planning policy advises that the proposed use is appropriate in principle in such areas provided there is no undue harm to the vitality and viability of the locality and the city centre.

4.3 The premises were previously a restaurant which predominantly traded during the evening, with a licence to operate until midnight. As such there would not be a material impact on vitality and viability between the proposed and previous use. Potentially the premises could attract more custom consistently through the day in comparison to the former restaurant use. There remains a healthy amount of retail premises in the street also. Overall the proposed use does not conflict with land use planning policy.

#### AMENITY OF SURROUNDING OCCUPANTS

4.4 The National Planning Policy Framework asks that developments always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

This is explained in Local Plan policies GP1, S6 and S7 which require that the proposed use does not have an undue adverse impact considering noise disturbance and cooking smells/odour.

4.5 There are residential properties adjacent the site. There is residential on the upper floors at 13/14 Fossgate and Morrell Yard to the south comprises of a group of houses around a courtyard.

4.6 The plans have been revised since their original submission and the upstairs of the frontage building will now only be a manager's flat, rather than a function room. The use of this area can be restricted through a planning condition. The single storey link with a glazed roof between the original building and what was an outbuilding at rear is therefore the main area from where noise could potentially spill out of the premises. A noise report has been undertaken which estimates potential noise breakout from the building should live/amplified music be played. The report concludes that additional measures would be required to ensure no perceivable change in noise levels. It is recommended that secondary glazing be added to the single storey glass roof building, and this can be secured through a planning condition.

4.7 The application seeks opening hours of 00.30 through the week and 23.30 Sundays. This is comparable with the conditioned hours at 54-56 Fossgate opposite (midnight closing time), which have recently been given permission for a change of use to cafe/bar. Given the city centre location there are already evening uses nearby and associated noise/activity. The possibility that there would be more activity in the area late at night is not grounds to refuse the application as such activity is to be expected in the city centre. The applicants have applied to update the premises licence, and have proposed the closing times of 23.00 Sunday – Wednesday and midnight Thursdays, Fridays and Saturdays. The application is currently under consideration. At the time of writing (22 May), there had been no objections made to licensing.

4.8 There are two existing drinking establishments along Fossgate – The Terrace & The Blue Bell and the former Army and Navy store (54-56) has planning permission to be a drinking establishment. Given the city centre location there are already evening uses nearby and associated noise/activity. The possibility that there would be more activity in the area late at night is not grounds to refuse the application as such activity is to be expected in the city centre.

4.9 There was previously a kitchen to the restaurant at the rear of the premises. The kitchen location would be re-used and the extant flue duct that terminates above the roof. The flue may need some modification but a condition can require that it is fit for purpose. It can also be a condition that any additional internal plant that would be required does not cause unacceptable noise disturbance.

## IMPACT ON HERITAGE ASSETS

4.10 The National Planning Policy Framework advises it is desirable development proposals sustain or enhance heritage assets and put them to uses consistent with their conservation. Where proposals will have a harmful impact, in order to be acceptable, the harm must be out-weighted by public benefits.

4.11 The scheme involves a sympathetic restoration that retains fabric which is of interest and will have no adverse effect on the historic and architectural importance of the building. The replacement of the C20 shop front will improve the building's appearance. The works would have a positive impact on the listed building and the conservation area.

## 5.0 CONCLUSION

5.1 The proposed use is acceptable in principle, it would enhance the historic and architectural interest of the host building and the conservation area and there would be no undue impact on residential amenity. As such the proposals do not conflict with policy.

## COMMITTEE TO VISIT

### 6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

2 PLANS1 Approved plans  
Proposed shop front 1306.5A and 9A  
Floor plans 1306.6A and 7A  
Section 1306.8A

3 The use hereby permitted shall not be open to customers outside the hours of 07.00 and 24.00 (midnight).

Reason: To protect the amenity of surrounding occupants.

4 Music emanating from the premises shall be inaudible outside the premises and within adjoining buildings.

The noise mitigation measures (secondary glazing to the roof), as proposed in the Dragonfly Noise Impact Assessment dated May 2013 shall be implemented in accordance with the assessment, prior to first use of the use hereby approved.

Reason: to protect the amenity of surrounding occupants and in the interests of the character of the conservation area.

5 Any kitchen extraction system fitted in association with the use hereby approved must be adequate for the treatment and extraction of fumes so that there is no adverse impact on the amenities of nearby occupants by reason of fumes, odour or noise. The following details of external plant/machinery shall be approved by Local Planning Authority and the equipment installed in accordance with the approved details:

a) Details of the extraction plant or machinery and any filtration system required. The extraction system shall be installed in accordance with the approved plans prior to first operation of the use hereby permitted, appropriately maintained thereafter and fully removed once its use has ceased.

b) Details of all machinery, plant and equipment, which would be audible outside the site, and any proposed noise mitigation measures. These details shall include maximum (L<sub>Amax</sub>(f)) and average (L<sub>Aeq</sub>) sound levels (A weighted), and octave band noise levels they produce. The report shall be undertaken by a specialist noise consultant or suitably qualified person and conducted in accordance with BS4142:1997. The report shall assess the impact of the additional noise sources on nearby properties and include any mitigation measures that are required.

c) If a replacement kitchen extract duct is proposed, the external appearance of the kitchen extract shall be provided (to ensure there would not be an adverse effect on the appearance of the conservation area).

Reason: in the interests of the amenity of surrounding occupants, visual amenity and the appearance of the conservation area.

6 The area shown as 'manager's flat' on drawing number 1306.6A shall not be used as a bar area, eating area or function area without the prior written permission of the local planning authority following the submission of a planning application.

Reason: To protect the amenity of surrounding occupants and in the interests of the character of the conservation area.

## **7.0 INFORMATIVES:**

### **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: pre-application advice and through the use of planning conditions.

## 2. 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 impact on heritage assets and residential amenity. As such the proposal complies with Policies S3, S6, GP1, HE3, and HE4 of the City of York Development Control Local Plan.

### **Contact details:**

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