



Notice of meeting of

West & City Centre Area Planning Sub-Committee

- To:** Councillors Horton (Chair), Sue Galloway (Vice-Chair), Crisp, Steve Galloway, Galvin, Gillies, Looker, Reid and Sunderland
- Date:** Tuesday, 16 September 2008
- Time:** 3.00 pm
- Venue:** The Guildhall, York

AGENDA

Site visits for this meeting will commence at 10.30 am on Monday 15 September at 19 Tanner Row.

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 5 - 16)

To approve and sign the minutes of the meeting of the West & City Centre Area Planning Sub-Committee held on 17 July 2008 and 14 August 2008.

3. Public Participation

It is at this point in the meeting that members of the public who have registered their wish to speak can do so. The deadline for registering is by 5pm the working day before the meeting. Members of the public can speak on specific planning applications or on other agenda items or matters within the remit of the committee.

To register please contact the Democracy Officer for the meeting, on the details at the foot of this agenda.

4. Plans List

Members will consider a schedule of reports of the Assistant Director (Planning and Sustainable Development), relating to planning applications with an outline the proposals and relevant policy considerations and the views and advice of consultees and officers.

a) 11A Tower Street, York, YO1 9SA (08/01843/FUL) (Pages 17 - 24)

Variation of condition 2 of 7/05/737/ARI/TP to allow opening of the premises Monday - Thursday: 16.00 - 01.00 the following day, Fridays & Saturdays: 16.00 - 02.00 the following day, Sundays: 16.00 - 24.00 [*Guildhall Ward*]

b) 40 Goodramgate, York, YO1 7LF (08/01546/FUL) (Pages 25 - 40)

Retention of patio, construction of enclosing brick wall, construction of brick kitchen flue, installation of new door in existing opening [*Guildhall Ward*]

c) 40 Goodramgate, York, YO1 7LF (08/01548/LBC) (Pages 41 - 48)

Construction of brick walls and brick kitchen flue, installation of replacement timber sliding sash-type door in existing opening, retention of timber decking [*Guildhall Ward*]

d) Monkbar Hotel, St Maurices Road, York, YO31 7JA (08/01647/FULM) (Pages 49 - 62)

Four storey extension to rear to create additional bedrooms and conference rooms and alterations to existing hotel [*Guildhall Ward*]

- e) **Salt And Peppers, 19 Tanner Row, York, YO1 6JB (08/01750/FUL)** (Pages 63 - 88)

Removal of condition 1 of planning permission (06/00253/FUL) to allow 24 hour opening [Micklegate Ward]

- f) **Thorntons Plc, 15 Parliament Street, York, YO1 8SG (08/01139/FUL)** (Pages 89 - 96)

Change of use from retail shop (use class A1) to financial and professional services (use class A2) [Guildhall Ward]

- g) **The Orchard, Tyn Garth, Acaster Malbis, York, YO23 2LX (08/01177/FUL)** (Pages 97 - 104)

Replacement of 3no. moorings [Bishopthorpe Ward]

5. Any other business which the Chair considers urgent under the Local Government Act 1972

Democracy Officers:

Name: Catherine Clarke and Louise Cook (job share)

Contact Details:

- Telephone – (01904) 552030
- E-mail – catherine.clarke@york.gov.uk and louise.cook@york.gov.uk

(If contacting us by e-mail, please send to both democracy officers named above)

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

Contact details are set out above.

WEST AND CITY CENTRE AREA PLANNING SUB COMMITTEE**SITE VISITS****Monday 15th September 2008****Meet at 19 Tanner Row at 10:30, the bus will depart from Museum Gardens at 10:45**

TIME (Approx)	SITE	ITEM
10:30	Salt and Pepper, 19 Tanner Row 08/01750/FUL	4e
11:10	The Orchard, Tyn Garth, Acaster Melbis 08/01177/FUL	4g
11:50	Monkbar Hotel, St. Maurices Road 08/01647/FULM	4d
12:10	40 Goodramgate 08/01546/FUL	4b
12:10	40 Goodramgate 08/01548/LBC	4b
12:30	Thorntons PLC, 15 Parliament Street 08/01139/FUL	4f

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Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	WEST & CITY CENTRE AREA PLANNING SUB-COMMITTEE
DATE	17 JULY 2008
PRESENT	COUNCILLORS HORTON (CHAIR), CRISP, GALVIN, GILLIES, REID AND MOORE (SUBSTITUTE)
APOLOGIES	COUNCILLORS SUE GALLOWAY, STEVE GALLOWAY, LOOKER AND SUNDERLAND

15. INSPECTION OF SITES

The following sites were inspected before the meeting:

Site	Attended by	Reason for Visit
60 Nunthorpe Crescent	Councillors Crisp, Galvin, Gillies, Horton and Reid	As an objection had been received and the recommendation was to approve.
1 Albany Street	Councillors Crisp, Galvin, Gillies, Horton and Reid	To familiarise members with the site.
Church of St James The Deacon, Sherringham Drive	Councillors Crisp, Galvin, Gillies, Horton and Reid	As the application had been brought before the Sub-Committee due to the volume of objections from local residents.
14 Braeside Gardens	Councillors Crisp, Galvin, Gillies, Horton and Reid	At the request of Councillor Crisp.
Argent Barn, Burlands Lane, Upper Poppleton	Councillors Crisp, Galvin, Gillies, Horton and Reid	To familiarise Members with the site.

16. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

Councillor Crisp stood down from the Committee for Plans Item 4b (14 Braeside Gardens) under the provisions of the Planning Code of Good Practice and spoke from the floor as Ward Councillor, after which she left the room and took no part in the debate thereon.

Councillor Crisp also declared a personal and prejudicial interest in Plans Item 4c (1 Albany Street) and as she had opposed the initial planning application. She left the room and took no part in the debate thereon.

17. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That the Press and Public be excluded from the meeting during consideration of the annexes to agenda item 5 (Enforcement Cases Update) on the grounds that they contain information classed as exempt under paragraph 6 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006. This information, if disclosed to the public, would reveal that the authority proposes to give, under any enactment, a notice under or by virtue of which requirements are imposed on a person or that the Authority proposes to make an order or directive under any enactment.

18. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme on general issues within the remit of the Sub-Committee.

19. PLANS LIST

Members considered a schedule of reports of the Assistant Director (Planning and Sustainable Development), relating to the following planning applications, outlining the proposals and relevant policy considerations and setting out the views and advice of consultees and officers.

19a Argent Barn, Burlands Lane to Burlands Farm, Upper Poppleton, York, YO26 6QL (08/00504/FUL)

It was reported that a full application, submitted by Mrs A Gioello, for the erection of a 17.7m high micro wind generator on land adjacent to Argent Barn, had been withdrawn by the applicant.

19b 14 Braeside Gardens, York, YO24 4EZ (08/00462/FUL)

Members considered a full application from Mr Bill Redhead for the conversion of a garage to create a dwelling with a single storey front extension and single storey pitched roof front conservatory and the erection of a pitched roof detached garage.

Representations were received from the applicant in support of the application. She advised Members that they would be willing to build a garden shed instead of the proposed garage. Furthermore they would endeavour to make the development as environmentally friendly as possible.

Representations were also received from Councillor Crisp, Ward Member, in objection to the application. She voiced her concerns as follows:

- Shading of the neighbour's garden.
- That the boundary hedge would be difficult to maintain and add to the feeling of being enclosed
- Proposed development would create built up appearance and is overdevelopment.
- Inadequate plans submitted so unable to determine exactly how much forward of the existing house the proposed dwelling would come.
- Proposed dwelling would have no traditional windows – only roof light.
- Lack of amenity
- That no sustainability statement had been submitted

Councillor Galvin moved and Councillor Gillies seconded a motion to defer the application. On being put to the vote this motion was lost.

RESOLVED: That the application be refused. ¹

REASON: 1 The proposed conversion of the garage to a dwelling by virtue of its scale, location, and residential paraphernalia would appear cramped and overdeveloped and would appear incongruous when compared to the existing scale, pattern and form of development within Braeside Gardens and the surrounding streets and therefore would be contrary to design guidance in PPS1 (Delivering Sustainable Development) and Policies GP1, GP10, H4a, and H5a of the City of York Council Development Local Plan (2005).

2 The proposed lack of traditional windows would create an unsatisfactory living environment for occupier/s of the proposed dwelling would result in an unacceptable standard of residential accommodation and amenity. As such this would not comply with Central Government advice relating to design quality contained within PPS1 (Delivering Sustainable Development) and PPS3 (Housing).

3 The proposed plans submitted are not drawn to a recognised scale and inaccurate and as such cannot be fully and accurately assessed by the Local Planning Authority.

4 No sustainability statement has been submitted, without this document the Council cannot judge the sustainability of the scheme against this Policy GP4a and therefore the proposal is contrary to Policy GP4a of the City of York Council Development Local Plan (2005).

5 The proposed side door opening onto amenity space belonging to 14 Braeside Gardens would result in a loss of privacy to the occupants of this dwelling and would cause harm to their residential amenity and therefore is contrary to Policies GP1 and GP10 of the City of York Council Development Local Plan (2005).

Action Required

1. To issue the decision notice and include on the weekly planning decision list within agreed timescales. SL

19c 1 Albany Street, York, YO26 4YG (08/01472/FUL)

Members considered a full application by Mr Peter Docwra for a first floor rear extension and the conversion of an existing end terrace property to form 3 one-bed apartments. (revised scheme, resubmission).

The Planning Officer circulated further information which had been received from the applicant's agent regarding some points which had been raised in the Officer's report.

Representations were received from the applicant's agent in support of the application. He distributed some examples (including photographs and plans) of precedents of flat conversions in the same area. He stated that, although he understood that some people would prefer the provision of a family house over flats, due to the north facing rear yard and in order to make best use of the existing structure, this property would be better suited to 1 bed starter homes.

Representations were received in objection to the application from Councillor Bowgett, Ward Member. She spoke on behalf of the residents of Leeman Road. She stated that there was a need for more family homes and not city centre flats and this application, if granted, would result in the loss of a family home. She also raised the issue of the security /safety risk with access to one of the proposed flats being from a back lane. She also pointed out that if permission was granted for flats, this would increase the number of cars parked in the street.

RESOLVED: That the application be approved subject to the conditions listed in the report. ¹

REASON: The proposal, subject to the conditions listed in the report, would not cause undue harm to interests of acknowledged importance, with particular reference

the residential amenity of the neighbours, the visual amenity of the locality, highway safety. As such, the proposal complies with policies H3c, H4a, H5a, T4 and GP1 of the City of York Local Plan Deposit Draft; national planning guidance contained in Planning Policy Statement 1 (Delivering Sustainable Development) and Planning Policy Statement 3 (Housing).

Action Required

1. To issue the decision notice and include on the weekly planning decision list within agreed timescales. SL

19d Church of St James The Deacon, Sherringham Drive, York, YO24 2SE (08/01305/FUL)

It was reported that a full application, submitted by The Parochial Church Council for a single storey extension to the existing elevation to create a church hall, had been withdrawn by the applicant.

19e 60 Nunthorpe Crescent, York, YO23 1DU (08/01228/FUL)

Members considered a full application from Mr G Anderson for a single storey pitched roof extension to the side.

RESOLVED: That the application be approved subject to the conditions listed in the report. 1

REASON: The proposal, subject to the conditions listed in the report, would not cause undue harm to interests of acknowledged importance, with particular reference to the impact on the residential amenity of neighbours or the impact upon the street scene. As such the proposal complies with Policies H7 and GP1 of the City of York Local Plan Deposit Draft.

Action Required

1. To issue the decision notice and include on the weekly planning decision list within agreed timescales. SL

20. ENFORCEMENT CASES UPDATE

Members considered a report which provided them with a continuing quarterly update on the number of enforcement cases currently outstanding for the area covered by this Sub-Committee.

RESOLVED: That the report be noted.

REASON: To update Members on the number of outstanding enforcement cases within the Sub-Committee area.

Councillor D Horton, Chair

[The meeting started at 3.00 pm and finished at 4.10 pm].

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MEETING	WEST & CITY CENTRE AREA PLANNING SUB-COMMITTEE
DATE	14 AUGUST 2008
PRESENT	COUNCILLORS HORTON (CHAIR), SUE GALLOWAY (VICE-CHAIR), CRISP, STEVE GALLOWAY, GALVIN, GILLIES, LOOKER, REID AND SUNDERLAND

21. INSPECTION OF SITES

The following sites were inspected before the meeting:

Site	Attended by	Reason for Visit
Junior School Bungalow, 16 Low Green, Copmanthorpe	Councillors Crisp, Sue Galloway, Gillies, Looker, and Reid	As objections had been received and the recommendation is to approve.
Woodlands, Wetherby Road, Rufforth	Councillors Crisp, Sue Galloway, Gillies, Horton, Looker and Reid	At the request of Councillor B Hudson

22. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business of the agenda.

Councillor Horton (Chair) declared a personal and prejudicial interest in agenda item 4c (Junior School Bungalow, 16 Low Green, Copmanthorpe) as he was a Governor at Copmanthorpe Primary School. He withdrew from the meeting for this item and Councillor Sue Galloway (Vice Chair) took the Chair.

23. MINUTES

RESOLVED: That the minutes of the meetings held on 19 June 2008 and 1 July 2008 be approved and signed by the Chair as a correct record.

24. PUBLIC PARTICIPATION

It was reported that nobody had registered to speak at the meeting under the Council's Public Participation Scheme on general issues within the remit of the Sub-Committee.

25. PLANS LIST

Members considered a schedule of reports of the Assistant Director (Planning and Sustainable Development), relating to the following planning applications, outlining the proposals and relevant policy considerations and setting out the views and advice of consultees and officers.

25a Tancred House, Main Street, Hessay, York, YO26 8JR (08/01220/FULM)

It was reported that a major full application, submitted by Mr Chris Digby for a 30m by 50m ménage including 6 floodlights and access road and change of use of agricultural land to paddock, had been withdrawn by the applicant.

25b Woodlands, Wetherby Road, Rufforth, York, YO23 3QF (08/00836/FUL)

Members considered a full application from Professor J Jones for a erection of a dormer bungalow, revised access and the creation of parking and turning area.

The Case Officer advised Members that an objection had been received from the Drainage team. They had reported that Rufforth had suffered from flooding including both foul and surface water. They advised that, as the proposed method of surface water disposal was via soakaway, this should be shown to work through an appropriate assessment carried out under BRE Digest 365, carried out in wet weather, to prove that the ground has sufficient capacity to accept surface water discharge and to prevent flooding of the surrounding land and the site itself. The applicant must prove that no adverse effects would arise from the proposal however insufficient information had been received from the applicant to determine this. The Planning Officer proposed that, as this was not a matter that could be conditioned, this be added as an extra reason for the officer recommendation of refusal of the application.

Representations were received from the Agent, in support of the application. He advised Members that that there had been notable changes in this part of the village over recent years. He stated that the plot was not considered an important space within the street scene and that, in his opinion, views would not be adversely affected. He stressed that this was a small scale development with only 2 bedrooms and sufficient space for a useable garden. He pointed out that there had been no objections from Highways regarding the access road and spoke briefly about methods of drainage.

Members commented that, having visited the site, there didn't appear to be an evident plot for an additional residential dwelling and also expressed concerns over exacerbating the existing drainage problems in Rufforth.

RESOLVED: That the application be refused ¹

REASON: 1. The introduction of this property to this constrained driveway site would be out of character with the existing spaces around surrounding properties towards the edge of Rufforth village and would create an awkward relationship with Highfield House. It would result in the loss of separation gaps and create a more dense pattern of development which would be out of character with the semi rural pattern of development . The proposal would therefore be contrary to Policies GB2, GP10 and GP1 of the City of York Development Control Local Plan 2005 and guidance issued in the Rufforth Village Design Statement. The proposal would also be contrary to national guidance issued in PPG 2 'Green Belts' and PPS 1 'Delivering Sustainable Development'.

2 Approval of the property would involve the creation of a new residential access link within the designated Green Belt , outside the Defined Settlement Limit which would be contrary to Policy GB1 of the City of York Development Control Local Plan 2005 and guidance contained within PPG2 'Green Belts'.

3 Rufforth has suffered from flooding and drainage problems. Insufficient information has been submitted to show that the proposed soakaway method of surface water would be acceptable and would not exacerbate existing problems. This is contrary to PPS 25 and Policy GP 15A of the City of York Development Control Local Plan 2005.

Action Required

1. To issue the decision notice and include on the weekly planning decision list within agreed timescales. SL

25c Junior School Bungalow, 16 Low Green, Copmanthorpe, York, YO23 3SB (08/01311/GRG3)

Members considered a General Regulations (Reg3) application by the City of York Council for a change of use from caretaker's dwelling to out of school club.

The Case Officer reported that the School had submitted a statement in support of the application. A copy of the full statement was circulated to Members and the Planning Officer summarised the statement as follows:

“The School sees the proposal as an opportunity to further its partnership with the community and particularly to benefit children in the village. The school has been encouraged to follow government initiatives for extended day facilities, especially in providing for the transition of younger children into school. Many other schools in City of York already provide these facilities. The school encourages pupils and parents to walk to school and the school has recently received a bronze eco mark. Parents would be encouraged to walk their child to the bungalow and this philosophy would form part of the selection process for the provider of the unit.”

The Case Officer reported that five residents from Low Green had objected to the proposal and that two further e-mails had been received from the objectors requesting that residents parking restrictions should be imposed on Low Green to alleviate problems with traffic and parking and that conditions should be imposed in respect of noise levels. Residents also raised concerns that the operation of the club could be contracted out.

The Case Officer reported that in respect of parking provision, Highways Network Management commented that this application did not warrant additional traffic controls and that any existing problems should be reported directly to the Traffic Section with a view to being included in the annual review of Local Traffic Regulations.

The Planning and Development Officer, in the Learning Culture and Children’s Services Directorate, attended the meeting to answer any questions Members had on the application.

Members raised concerns that providing a drop off point could encourage parents to use cars instead of walking their children to school. They also enquired about the provision of car parking spaces. The Planning and Development Officer responded to Members concerns and advised that the car parking spaces were intended for use outside school hours.

Members welcomed the opportunity to re-use the caretakers dwelling, which if left alone could become derelict, and to clear up the area around the building. They agreed that the out of hours club would benefit from being in a purpose built building and allow it space to develop.

Members agreed that there was no reason to prevent use of the building on Saturdays and agreed to amend conditions 4, 5 and 6 to remove restrictions on Saturday use.

RESOLVED: That the application be approved subject to the conditions listed in the report and the following amended conditions¹:

Amended Condition 4

The hours of operation of the school club shall be confined to 07:30 - 18:00 Mondays to Saturdays, with no operation of the school club on Sundays and Bank Holidays.

Reason: To safeguard the amenities of nearby neighbours.

Amended Condition 5

The hours of operation of the evening classes shall be confined to 18:00 to 21:00 Mondays to Saturdays only.

Reason: To safeguard the amenities of nearby neighbours.

Amended Condition 6

The use permitted of external areas for educational or play purposes associated with the school club shall be confined to the following hours: Monday to Saturday 08:30 to 18:00 with no use on Sundays and Bank Holidays.

Reason: To safeguard the amenities of nearby neighbours.

REASON: The proposal, subject to the conditions listed in the report and the amended conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to residential amenity, highways issues, visual amenity and impact upon crime. As such the proposal complies with Policies ED1, HE2, GP1, GP11, of the City of York Development Control Local Plan 2005 and national guidance contained within PPS 1 'Planning and Sustainable Development' and PPG 13 'Transport'.

Action Required

1. To issue the decision notice and include on the weekly planning decision list within agreed timescales. SL

Councillor D Horton, Chair

[The meeting started at 3.00 pm and finished at 3.25 pm].

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 September 2008 **Parish:** Guildhall Planning Panel

Reference: 08/01843/FUL
Application at: 11A Tower Street York YO1 9SA
For: Variation of condition 2 of 7/05/737/ARI/TP to allow opening of the premises Monday - Thursday: 16.00 - 01.00 the following day, Fridays & Saturdays: 16.00 - 02.00 the following day, Sundays: 16.00 - 24.00
By: Mr Ali Gurgur
Application Type: Full Application
Target Date: 15 September 2008

1.0 PROPOSALApplication site

1.1 This application relates to a hot food takeaway (A5 use) trading under the name 'Ali G Pizza'. The site is located on Tower Street, which is within the Central Historic Core Conservation Area. The site is within a terrace which includes, retail, restaurant and leisure uses at ground floor level. Of note, the Jade Garden and The Olive Tree restaurants to each side of the host and also Castle Snooker Club. There is a mix of offices and residential above. There are residential units nearby on Tower Place, South Esplanade and Peckitt Street.

Proposal

1.2 The application requests to extend the permitted opening hours, to open between the following hours -

16:00 to 01:00 the following day Monday to Thursday
16:00 to 02:00 the following day Fridays and Saturdays
16:00 to 24:00 (midnight) Sundays

1.3 The hours requested would be in line with those permitted by the Premises License.

1.4 The premises has planning permission currently to open as follows -

Mondays to Thursdays 16:00 to 23:30
Fridays and Saturdays 16:00 to 24:00 (Midnight)
Sundays 16:00 to 23:00

1.5 The premises were granted temporary planning permission to trade until the hours now requested at planning committee on 17.8.2006. That temporary permission has now lapsed and a fresh permission is thus required.

1.6 The application comes to planning committee at the request of Councillor Brian Watson. The grounds being impact on nearby residents.

Site history

1.7 Permission was granted on appeal in 1983 for a hot food takeaway at the site subject to conditions restricting the permission to a 3-year temporary consent and restricting the hours of opening from 9:00 to 22:00 on any day. The use was granted permanent permission in 1987.

1.8 An application to extend the opening hours to 24:00 (midnight) was refused in 1990 on the basis that the extension of hours at the premises would cause noise and disturbance to local residents.

1.9 An application to open the hot food takeaway later on Friday and Saturday nights (until 0200 hours the following day) was refused by the Local Planning Authority in June 2003, on the grounds that the proposal would be detrimental to the amenity of nearby residents. An appeal was made against the decision (APP/C2741/A/03/1124677) and dismissed. The inspector considered that the proposal was not acceptable, as there would be an undue adverse effect on residential amenity.

1.10 An application to extend opening hours to 23:30 Mondays to Thursdays, to 24:00 Fridays and Saturdays and 23:00 Sundays was approved in April 2004 (reference 04/00102/FUL).

1.11 Application to extend opening hours to 24:00 Sunday to Thursday and to 02:30 the following day on Fridays and Saturdays was refused by planning committee 2.3.2006. However, the premises were granted temporary planning permission to trade until the hours now requested at planning committee on 17.8.2006 after it had secured a premises license for those hours.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Conservation Area Central Historic Core 0038

2.2 Policies:

CYHE3	Conservation Areas
CYS6	Control of food and drink (A3) uses
CYS7	Evening entertainment including A3/D2

3.0 CONSULTATIONS

Design, Conservation and Sustainable Development

3.1 No comment, as no alterations are proposed that would affect the conservation area.

Environmental Protection Unit

3.2 No objection on the basis that they have not received any complaints regarding the premises. However do express a concern for the amenity of nearby residents due to noise caused by customers visiting the takeaway. Noise would be in the

forms of car doors slamming, music from stereos and raised voices. These short, high volume noises are likely to disturb people's sleep and thus have a detrimental impact on their quality of life.

Planning Panel

3.3 No response to date.

Safer York Partnership

3.4 No response to date.

Publicity (neighbour notification letters, press and site notice)

3.5 The deadline for comments is 3 September. To date no objections have been received.

4.0 APPRAISAL

Key issues

4.1 The key issues are as follows -

- Residential amenity
- Anti-social behaviour and crime and disorder
- Impact on the Conservation area
- Highway safety

Relevant policy

4.2 Planning Policy Statement 6: Planning for Town Centres (2005) paragraphs 2.23 to 2.26 provide advice on managing the evening and night-time economy. Local Authorities are encouraged to develop policies which 'encourage a range of complimentary evening and night-time economy uses which appeal to a wide range of age and social groups'. Key issues LPA's should consider in assessment of impact are the 'cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents'. LPA's are encouraged to adopt an integrated approach so that planning policies and proposals complement their Statement of Licensing Policy and the promotion of licensing objectives under the Licensing Act 2003.

4.3 The Council's Statement of Licensing policy sets out the procedure for determination of license applications. Particular consideration is given to location and impact of licensed activity, type of use and numbers likely to attend, proposed hours of operation, available public transport, car and cycle parking, scope for mitigating any impact and how often the activity occurs. A license is granted subject to conditions, which take steps to mitigate the effect of late night opening, however there are limited powers to deal with noise originating from customers entering or leaving premises. The premises license can be reviewed when representations are made and if necessary revoked if problems arise at the premises.

Policies of the CYC Draft Local Plan

4.4 Policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted in York City Centre provided i) there is no unacceptable impact on the amenities of surrounding

occupiers as a result of traffic, noise, smell or litter, ii) the opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers, iii) car and cycle parking meets the standards defined in the Local Plan, iv) acceptable external flues and means of extraction have been proposed and v) where security issues have been addressed.

4.5 Policy S7 states that proposals for new leisure uses (including takeaways) that complement York City Centre will be permitted provided that there is no adverse cumulative effect on the vitality and viability of the Centre, and there is no adverse effect on residential amenity.

Residential amenity

4.6 There are residential flats above ground floor level on Tower Street and also houses to the west toward the river. In this part of Tower Street the two restaurants are permitted trade until midnight, the Castle Snooker Club can be open to members until 03:00 apart from Sundays when it is required to close by 01:00. The Gallery Nightclub is around 150m northwest of the site.

4.7 Although extended hours at this site have been refused and upheld on appeal, this was before the 2005 Licensing Act, which has allowed premises to trade until later at night. More recently (August 2006) planning committee did allow the hours proposed in this application, but for a temporary (trial) period only, so the impact on residential amenity could be assessed.

4.8 The main concern over extending the permitted hours of operation has been that noise from persons using the takeaway would lead to harm to residential amenity, as set out in the comments made by the Environmental Protection Unit. The conditions of the premises license require a litter pick to be undertaken by the applicants and that CCTV be installed. These conditions are intended to take the necessary steps to control the appearance of the area and crime and disorder. Furthermore there is no evidence that demonstrates a direct link between premises selling food and crime and disorder.

4.9 The site is just outside the central shopping centre, as allocated in the Local Plan. There are commercial uses at ground floor level, in Tower Street and within 200m of the application site, which are able to open to the public beyond midnight. Tower Street is one of the main vehicle routes to/from the city centre from the south and also for persons leaving the centre by foot. As such it is likely that persons will be coming and going along Tower street at night, possibly causing a certain amount of noise disturbance, thus having a detrimental affect on residents at Tower Street. This would occur whether the host premises were open or not. With regards surrounding streets, such as Tower Street and South Esplanade, if there is noise disturbance in these areas it is equally likely that it would be caused by persons frequenting other nearby premises, opposed to the application site. There have been no objections to this proposal from occupants of the houses or flats on Tower Street, either to this application, or the previous temporary permission for these hours of operation.

4.10 Overall it is considered that the application site has not caused demonstrable harm to residential amenity, by extending its hours of operation (during the trial

period) and therefore it is considered reasonable to allow the requested opening hours on a permanent basis.

Impact on the Conservation area

4.11 The impact on the conservation area would be neutral. There are no building works or alterations proposed that would affect the appearance of the area.

Highway safety

4.12 There is adequate parking near the premises, on Tower Street and in the Castle public car park. As such it is expected that persons will not stop in unsafe locations to pick up food from the takeaway, which would be detrimental to highway safety.

5.0 CONCLUSION

5.1 Because of the location of the application site it is likely that occupants on Tower Street are occasionally affected by noise and disturbance, as the street is a main route to and from late night amenities in the city centre. It is considered there would not be a material impact on this situation were the application premises allowed to open until the desired hours.

5.2 It is recommended the premises be permitted to open during the day also (as of 9am, 10am Sundays). Due to the location of the site, it would be appropriate to allow the premises to trade during the day, which would benefit the vitality and viability of Tower Street, and the surrounding area.

6.0 RECOMMENDATION: Approve

1 The premises shall not be open to customers outside the following hours:

Monday to Thursday 09:00 to 01:00 the following day
Fridays and Saturdays 09:00 to 02:00 the following day
Sundays 10:00 to 24:00 (midnight)

Reason: In the interests of amenity, in accordance with policies S6 and S7 of City of York Draft Local Plan.

7.0 INFORMATIVES:

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the character and appearance of the conservation area, crime and disorder, residential amenity and highway safety. As such the proposal complies with Policies HE3, S6 and S7 of the City of York Local Plan Deposit Draft.

Contact details:

Author: Jonathan Kenyon Development Control Officer
Tel No: 01904 551323

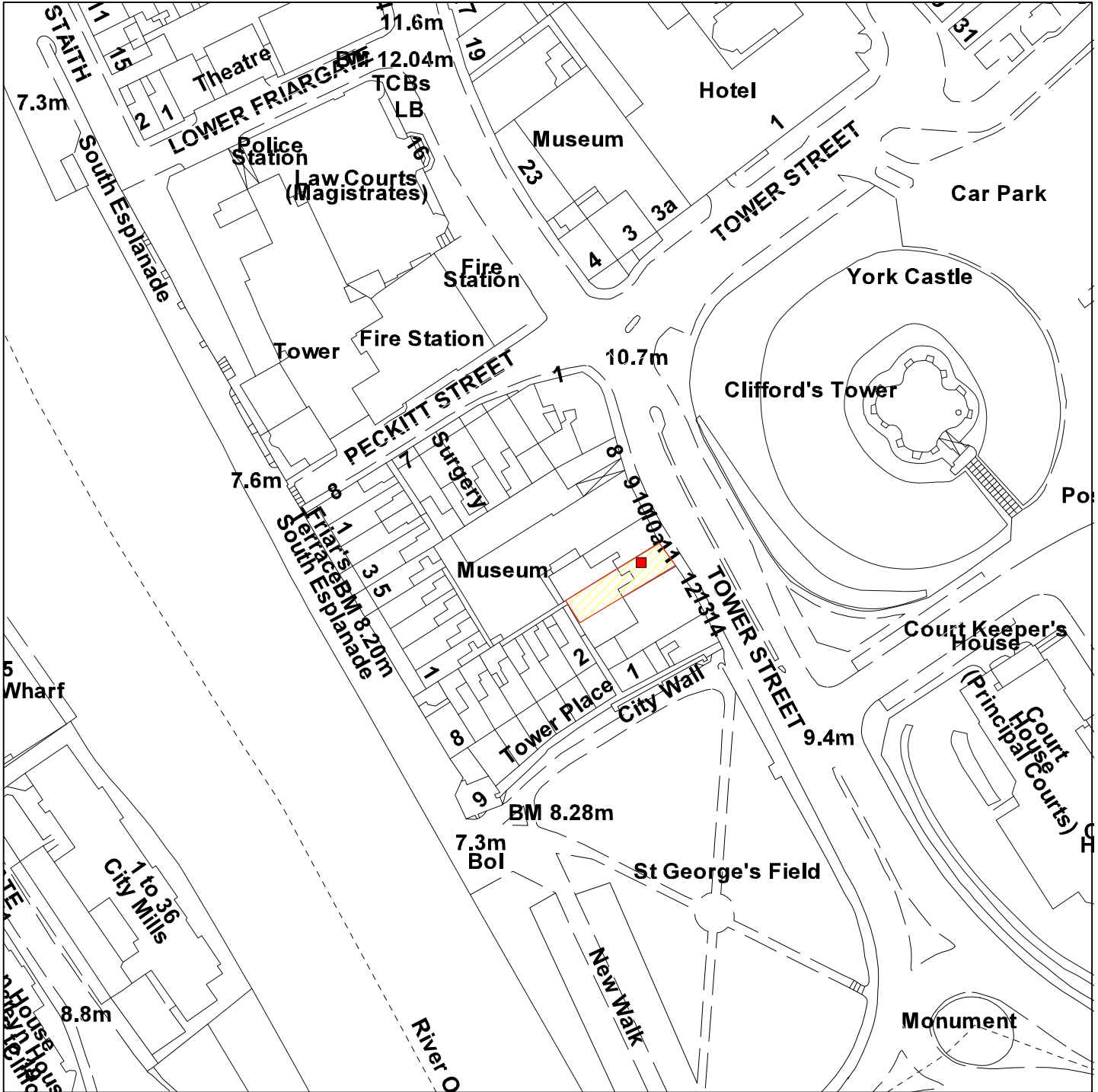
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08/01843/FUL

11A Tower Street



GIS by ESRI (UK)



Scale : 1:1250

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Organisation	Not Set
Department	Not Set
Comments	Application Site
Date	03 September 2008
SLA Number	Not Set

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 September 2008 **Parish:** Guildhall Planning Panel

Reference: 08/01546/FUL
Application at: 40 Goodramgate York YO1 7LF
For: Retention of patio, construction of enclosing brick wall, construction of brick kitchen flue, installation of new door in existing opening
By: Mr Simon Evans
Application Type: Full Application
Target Date: 4 September 2008

1.0 PROPOSAL

1.1 This planning application relates to a mid-terraced property on the west side of Goodramgate. Planning permission is sought for -

- a) the retention of unauthorised decking at the rear of the property that forms a first floor patio for customers of the premises, and
- b) revisions to the flue, access door and boundary treatment on the decking as a result of a decision by the Planning Inspectorate to dismiss an appeal against a Listed Building Enforcement Notice that was served on 28 June 2007. A copy of the Appeal Decision from the Planning Inspectorate is attached as Appendix 1.

1.2 The building is a Grade II listed building within the Central Historic Core Conservation Area. It is listed with its neighbour No 38 Goodramgate, which together were formerly one house and are now two shop units. The listing description dates the building to approximately C15, with a late C17 extension. The building was then refronted in the late C18. The building is timber-framed, with a painted brick front elevation and a rear elevation of orange-brown brick in random bond and orange brick in stretcher bond. The frontage of No. 40 Goodramgate is two storeys high with a single eight over eight sash window at the first floor level above a plain shopfront with plate glass windows, glazed and panelled doors, and integral sunblinds. The rear of No. 40 Goodramgate is twin gabled, two storeys high with an attic. There is a 12-pane sash window on the first floor and a small shuttered opening in attic. The building has no rear yard as the building has been extended into the previously existing outdoor space.

1.3 The building is currently used as a restaurant/café and has a significant planning history that is outlined in Appendix 2. The most relevant applications (LPA Refs. 06/01095/LBC and 06/01094/FUL) sought listed building consent and planning permission in 2006 to retain the existing unauthorised works at the rear of the building. Both applications were refused permission and the Local Planning Authority served a Listed Building Enforcement Notice on the applicant that required the

removal of the unauthorised works. The applicant's appeal against the Listed building Enforcement Notice was dismissed on 18 March 2008, following an Informal Hearing. The decision from the Planning Inspectorate required the removal of the unauthorised works that currently remain on site.

1.4 The existing unauthorised works consist of a patio area on the roof of the ground floor extension which is used as a first floor level roof terrace. The roof terrace is accessed via an opening which once contained a sash window, and is presently a door. Access is achieved by steps that have been attached to the listed building. The terrace is enclosed by a fence and there are picnic tables and a parasol for customers. A metal painted flue exits through the decking at the rear of the terrace. The current application proposes to replace the existing door with a sash window, replace the boundary fence with a brick wall, and replace the existing metal flue with a brick built flue.

1.5 There is a related application for listed building consent (LPA Ref. 08/01548/ LBC) that is the following item on the agenda.

1.6 This application is presented to the Members of the West/ Centre Planning Sub-Committee for a determination at the request of Councillor Janet Looker as the application raises matters that are of some interests to a number of businesses in the area in the light of new smoking legislation as the patio allows the applicant to provide an area for customers who wish to smoke.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Listed Buildings Grade 2; 40 Goodramgate York YO1 2LF 0759

Listed Buildings Grade 2; 42 Goodramgate 0760

2.2 Policies:

CYHE3

Conservation Areas

CYHE4

Listed Buildings

CYHE2

Development in historic locations

CYGP18

External attachments to buildings

3.0 CONSULTATIONS

INTERNAL

3.1 DESIGN CONSERVATION AND SUSTAINABLE DEVELOPMENT- Objections to the works

3.2 ENVIRONMENTAL PROTECTION UNIT- No objections subject to comments

3.3 HIGHWAY NETWORK MANAGEMENT- No objections

EXTERNAL

3.2 GUILDHALL PLANNING PANEL- No objections

The application was appropriately advertised by site notice, press advertisement and letters to neighbours and no representation have been received as a result of this publicity.

4.0 APPRAISAL

KEY ISSUES

- Land use
- Visual impact on the listed building and the conservation area
- Impact on the occupiers of the neighbouring property

POLICY CONTEXT

4.1 PLANNING POLICY STATEMENT 1 "Planning for Sustainable Development" aims to protect the quality of the natural and historic environment. 'The Planning System: General Principles', the companion document to PPS1, advises of the importance of amenity as an issue.

4.2 Central Government advice in relation to listed building control is contained within PLANNING POLICY GUIDANCE NOTE NO. 15 : "Planning and the Historic Environment" (PPG15). This states that whilst the listing of a building should not be seen as a bar to all future change, the starting point for the exercise of listed building control is the statutory requirement on local planning authorities to "have special regard to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses".

4.3 PPG24: Planning and Noise sets out national policy on noise issues related to developments

4.4 POLICY HE2 of the City of York Development Control Local Plan (Fourth Set of Changes), approved for development control purposes on 13 April 2005 states that within or adjoining conservation areas, and in locations which affect the setting of listed buildings, development proposals must respect adjacent buildings, open spaces, landmarks and settings and have regard to local scale, proportion, detail and materials.

4.4 POLICY HE3 seeks to protect the character and appearance of Conservation Areas. The policy states that proposals for development in conservation areas should reflect street proportions, which are given to floor heights, door and window sizes and disposition. Supporting text of the policy further states that the elevational treatment of all sides of any development and roofscape are important, not simply the street frontage.

4.5 POLICY HE4 states that consent will only be granted for development to a listed buildings where there is no adverse effect on the character and setting of the building. Supporting text of this policy further states that, it is important that extensions preserve and enhance the special architectural or historic character of conservation areas and complement the character of listed buildings. Alterations will be expected to be of an appropriate design, using traditional natural materials. The proposal should also be in scale with the original building and respect its character.

4.6 POLICY GP1 is a general design policy in the Local Plan that, inter alia, seeks to ensure that new development respects its surroundings.

4.7 POLICY GP18 advises that care should be taken in siting external attachments to buildings and would only be acceptable if they are well designed and integrated so as not to detract from the building or the street.

ASSESSMENT

LAND USE

4.8 Members are advised that the pre-existing decking and the previous flue did not have either planning or listed building consent. This application seeks permission to retain timber decking that has been laid over the original roof covering of the rear single storey extension.

4.9 It is clear from recent site visits that the first floor outdoor space acts as an extension of the cafe/ restaurant use. It is also serves as area for smoking customers since 2006. Although the ground floor properties to either side of No. 40 are commercial properties and there are no residential properties in the near vicinity of the site, it is considered that the principle of a first floor rear terrace would not be supported by the Local Planning Authority because the decking and associated modern appendages would harm the character of the Listed Building. The Inspector concluded that" (the patio's) location at first floor height to form a high level

outside cafe amenity area is different from nearby ground level external sitting and drinking areas " and that... " the presence of customers on the patio, together with such paraphernalia as brightly coloured umbrellas for shading tables in summer, would add to the damage to the setting of the listed building. " Para. 12.

4.10 The applicant makes reference to the outdoor smoking provision at the Cross Keys public house, also on Goodramgate. Whilst this provision is visible from the public realm, the shelter is at ground floor level and is an entirely separate structure from the listed public house. The structure is contained within the rear yard of the public house, and is seen as a separate provision within an existing external space. The impact on this listed building is therefore greatly reduced. This case can be distinguished from the application site which has created new outdoor space at first floor level; a height uncharacteristic and inappropriate given the character of the existing rear elevation.

VISUAL IMPACT

4.11 Members are advised of the Planning Inspector's decision regarding the unauthorised works to the listed building. He clearly states in para. 16 that-

"nothing less than the total removal of the first floor patio, fencing, kitchen flue and access door to the patio would overcome the harm to the character of the listed building.."

In addition, the Inspector advises that the existing internal steps that are attached to the listed building and allow access to the rear patio area would not be necessary if the patio was removed. He therefore advises the removal of the steps that the removal of the access door to the patio to be replaced with a new window of a similar design to the window that was previously removed.

As the applicant is reluctant to lose the rear patio. he seeks to address the issues raised by the Planning Inspector in the following revised proposals.

4.12 DOOR- It is now intended that the door to the rear patio would have the appearance of the previous sash window, but it would function as a door to the terrace. The existing side-hinged single flush unit divided into four panes window/door to the rear terrace would revert to a timber, staggered (but fixed leaves) window door in its previous glazing format. By virtue of the window not being an actual working sash window and it being used as an access to a roof terrace, the proposal would alter the character of the listed building. Although the removed window was original to the building it was a traditional timber sliding sash in character with the building. There is no evidence that this building had a door opening in this location, and the installation and use of a door at first floor level would be at odds with the character of the rear elevation and the internal character of the room.

4.13 BRICK WALL- Boundary treatment at first floor level is required in order for the rear terrace to function as an external area for the existing restaurant use. The agent now proposes to replace the existing 2 metre lap panel fences with a 1.3 metre wall

in clamp bricks. Whilst the proposed brick wall may visually improve the domestic appearance of the existing fence, the wall would be visually intrusive and unsympathetic to the character of the rear elevation. The rear elevation dates to the late C17 and the enclosure of its rear gable and creation of a roof terrace at first floor level would be wholly uncharacteristic of the age and the type of building. The boundary treatment would obscure the majority of the first floor, and the rear window would no longer be seen in its context on the building. The wall would interrupt the building's relationship with the neighbouring properties and would change its context and setting in a negative way. The installation of any boundary treatment would be harmful to the character and special interest of this building and would be unacceptable.

4.14 BRICK FLUE- The original metal flue was replaced in 2005 by a wider and higher metal flue (150mm wide and 2.2 m high) that has been painted red to blend in with adjacent roof tiles. It is now intended that the flue is removed and is replaced with a 2.4m high brick flue in the same location that would better meet the requirements of the Environmental Protection Unit. It has been redesigned to be a 600mm square flue that would take the form of a brick built chimney. This more traditional appearance would blend into the local vernacular of this backland area. Whilst a flue in this location is unusual, there are advantages as it would be located in the modern extension away from the main listed building itself. The area is generally obscured from the wider public realm by the smoking provision at the Cross Keys public house.

4.15 The Environmental Protection Unit has been asked whether the height and circumference of the proposed flue is necessary to meet their requirements as it would be larger and higher than the existing unauthorised flue. The existing flue is sited in a corner of the roof terrace exiting through the roof of the modern kitchen extension. It is intended that the flue would be built to a height of 2.6m to better satisfy the requirements of the Environmental Protection Unit as the department advises that in general flues should extend 1 metre beyond the eaves level of the property and should not have a cowl fitted to ensure that fumes are emitted at high level to ensure that the amenity of any neighbours would not be compromised by extraction fumes and odour. Following a recent site inspection, the Environment Protection Officer advises that the increase in height and the open location would allow for better dispersal of cooking odours. There are other flues visible at the rear of Goodramgate, and on balance, it is possible that the proposed larger and higher flue would not be unduly intrusive or uncharacteristic in this part of the conservation area.

4.16 The combined visual impact of the unlawful alterations was clearly not supported by the Planning Inspector in the recent appeal decision. The Planning Inspector noted in para. 13, that the unauthorised works at the rear of the building were visible from Deangate and College Street, from nearby upper floor windows of dwellings and offices, and from the Tower of York Minster which is open to the public and considered that the unlawful works would not enhance the character of the conservation area as required by planning legislation. This remains the case as the proposed revised works would still be visible from these locations. The rear roof patio has a modern domestic appearance that would detract from the character and

appearance of the conservation area contrary to Policies GP18, HE2 and HE3 of the Local Plan and related national guidance.

ADJACENT AMENITY

4.16 The site is located close to the city centre, on a busy street site, and is surrounded by other commercial properties some of which have upper residential uses. At the present time, there are views from the decking towards the roofs of the adjacent properties. The larger concentration of residential units are sited on the eastern side of Goodramgate, and behind in St Andrewgate, Bartle Garth, Bedern which are screened from overlooking by frontage development. Similarly, the rear terrace offers no direct views to neighbouring windows or amenity areas to the rear of the adjoining buildings some of which are in residential use. It is therefore concluded that the amenity of the users of nearby buildings would not be harmed by the proposals in terms of overlooking/ loss of privacy.

4.17 The works at the rear of the building raise two issues that could impinge on the amenity levels of neighbouring properties, namely the impact of the flue and the impact of the use of the patio.

4.18 As stated above, the existing flue is sited in a corner of the roof terrace exiting through the roof of the modern kitchen extension. It is intended that the flue would be built to a height of 2.6m to better satisfy the requirements of the Environmental Protection Unit. The department advises that in general flues should extend 1 metre beyond the eaves level of the property and should not have a cowl fitted to ensure that fumes are emitted at high level to ensure that the amenity of any neighbours would not be compromised by extraction fumes and odour. Neither the existing or proposed flue height would meet this standard. However, the Environmental Protection Unit advises that both the existing and proposed flue would be sited in an open position that would allow good circulation for the dispersal of odour and noise with few rebounding areas nearby, some 5.5 metres from the rear elevation of the property. It is therefore considered that the height of the flue would not be absolutely critical in this instance and height could possibly be retained at the existing height. The proposed cowl would not be acceptable as it would act to pull down odour at window height level. On balance, the proposed higher flue would be more efficient at dispersing cooking odours, and conditions could be effectively applied to any permission to ensure that this is achieved.

4.19 In 2006, a previous planning appeal decision granted extended approved opening hours of the restaurant premises until 02.00 every evening for a trial period of a year. There have been no further applications for planning permission to authorise the operational hours. It would appear that the Environmental Health Section has received complaints about noise levels associated with live music within the building but no specific complaints have been received about the use of the patio. Given the close proximity of the elevated patio to residential properties and the potential loss of amenity to the residents of these properties, it is this officer's opinion that the patio should not be approved for use in the later evening. Noise from the use of the patio and break-out noise in the evening would be particularly disturbing at this time of night. The additional use of the first floor terrace as a smoking area could raise serious concerns for residents as congregating smokers are likely to disturb

residents at a time when they would reasonably expect a quieter environment. It is therefore considered that if the use of the patio is not restricted there would be a poor level of residential amenity for neighbouring properties contrary to GP1 of the Local Plan and national planning advice contained in PPS1. If Members were minded to approve the application it is recommended that the hours of use of the patio be restricted until 21:00 hours and that there should be no external music on the patio. The patio is at a high level that is likely to be closer to bedroom windows, and differs from ground level amenity areas.

5.0 CONCLUSION

5.1 There is no officer support for this application given the strength of the appeal decision in relation to the retention of the unauthorised patio, timber fencing to the boundary, enlarged flue, and alteration of a window to a door on the rear elevation of the listed building in the conservation area. The proposed revisions to the component works would have limited success in overcoming the major concerns outlined above. In addition, the business arguments put forward by the applicant would not outweigh or justify the harm to the listed building or the wider conservation area. The very use of the roof terrace at first floor level, combined with the visual enclosure of the rear gable and the functional paraphernalia installed would negatively impact upon the character and special interest of the listed building and the conservation area contrary to the planning policies outlined above and national planning guidance contained in Planning Policy Guidance Note No.15 which requires that development proposals respect or enhance the special historic interest and visual amenity of the listed building and the conservation area. It is recommended that planning permission is refused.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 It is considered that the first floor patio, brick walling, and enlarged flue would create visible additions to the listed building and combined with the prominence of the modern additions and the incongruous domestic nature of the terrace as a high level amenity area use would detract from its traditional appearance, and the character and appearance of this part of the conservation area. Thus the proposal conflicts with Policy GP1(a), GP18, HE2, HE3, and HE4 of the City of York Development Control Local Plan; and national planning guidance as contained in Planning Policy Guidance Note No. 15 " Planning and the Historic Environment " which states that development proposals will be expected to respect or enhance the conservation area and the special interests of listed buildings.

7.0 INFORMATIVES:

Contact details:

Author: Fiona Mackay Development Control Officer (Tues - Fri)
Tel No: 01904 552407

FILE 007V

APPENDIX 1.**Appeal Decision**

Hearing held on 18 March 2008

Site visit made on 18 March 2008

by Francis Farrimond DipTP MRTPI

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

The Planning Inspectorate
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Temple Quay House
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Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date:
31 March 2008**

Appeal Ref: APP/C2741/F/07/2052340**40 Goodramgate, York, YO1 7LF.**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Simon Evans against a listed building enforcement notice issued by City of York Council.
- The Council's reference is 06/00094/LBUILD.
- The notice was issued on 28 June 2007.
- The contravention of listed building control alleged in the notice is the installation of a first floor patio, fencing, kitchen flue, access door and steps to the patio.
- The requirements of the notice are (1) Remove from the building the first floor patio, fencing, kitchen flue, access door and steps to the patio. (2) Make good any works necessary to restore the building to the condition that prevailed immediately before the carrying out of the unauthorised works.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 39(1) (c) (d) (e) & (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. I dismiss the appeal and uphold the listed building enforcement notice. I refuse listed building consent for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Site & surroundings

2. The appeal site is part of a mid-terrace property on the west side of Goodramgate, a historic street, formerly a main thoroughfare from the city centre, through Monk Bar, to the north. The building was originally a house. It is currently divided into a retail shop (No 38) and the appeal site (No 40) a cafe. From the evidence of its listing the building is probably 15th century, being extended in the 17th century and re-fronted in the 18th century. It is timber framed with a painted brick front. The rear is of orange brown bricks in random bond and orange brick in stretcher bond. In addition to its Grade II listing No 40 lies within York Central Historic Core Conservation Area No 1.

Site history

3. Planning permission was granted for the change of use of the appeal premises from a retail shop to use for the sale of food and drink in September 2004. An appeal against a refusal of planning permission to extend the hours of

operation of the restaurant was allowed in June 2006 for a trial period of one year. Following investigation of a complaint about the notice works to the appeal building applications for retrospective planning permission and listed building consent were submitted. When those applications were refused in November 2006 and January 2007 the appeal notice was issued.

Reasons

The appeal on ground (c)

4. The Appellant claims that listed building consent is not needed, in part, because the works do not affect the character of the listed building. Although it is accepted that the fencing is new it is argued that the timber decking to the patio, the access door to the patio and the flue existed before and the current works represent like-for-like replacement of those pre-existing works. And, the access steps are internal and only fixed to the building by 2 screws.
5. However, in addition to there being no record of any permission for similar works to the rear of the building, the patio decking appears completely new as is the casement access door replacing, from the evidence, a former sliding sash timber framed window with 12 lights. What is more, planning permission for use of the appeal building as a café was only granted in September 2004. And, the use of the patio is for customers of the café rather than for the building occupier's use only. The Appellant's planning application for the works indicate they were primarily to provide an outdoor area for smokers following introduction of indoor smoking restrictions in July 2007. On that basis, I consider that, as a matter of fact and degree, the current operations to form a patio with enclosing fencing and a new access door, comprise new works rather than repair or replacement of any pre-existing development. Furthermore, it is conceded that the flue is different from earlier flues in being taller (about 2.4 metres high above the decking) and of wider bore (about 25 centimetres) to meet the Council's Environmental Health requirements.
6. The works described in the notice, because (save for the internal access steps to the door) they are external and attached to the rear elevation of the restaurant they do affect the character of the listed building. Therefore, the appeal on ground (c) fails.

The appeal on ground (d)

7. For an appeal on ground (d) to succeed it is necessary for the Appellant to demonstrate that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building. In addition, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter. And, that the works carried out were limited to the minimum measures immediately necessary.
 8. I have no evidence that the works were urgently necessary for the preservation of the building or in the interests of safety or health. Furthermore, although the former 12 glazed light timber framed sliding sash window may have been in need of replacement (and may well not have been an original window) that could have been done with a like for like new replacement rather than a different timber framed casement door with 4 larger lights. The works specified
-

in the notice relate solely to either new operations or claimed replacement or repair operations. They are all modern appendages not necessary for the urgent preservation of the original building.

9. The appeal on ground (d) fails.

The appeal on ground (e)

10. In considering this ground of appeal, that listed building consent ought to be granted for the notice works, sections 66(1) & 72 (1) of the Planning (Listed Buildings & Conservation Areas Act) 1990 require me to have special regard, in the determination of this appeal, to the desirability of preserving the setting of the Listed Building and both preserving and enhancing the character or appearance of the Conservation Area.
11. The Appellant argues that the works, located to the rear of the building, are small in scale and screened by the unobtrusive fencing. Furthermore, the building is adjoined at the rear by various industrial and commercial uses, including some with extract flues and other non-original and utilitarian features of a different character from the street frontage of Goodramgate. Moreover, there is only a single potential public viewpoint from Deangate and College Street to the north through a narrow gap between the Cross Keys public house and York Minster Workshops. From that viewpoint the fencing and flue, which has been painted to colour match adjacent roofing tiles, may be glimpsed against the surrounding roofscape rather than in profile. The access door is a replacement for a non-original window in the same position which also functioned as a door. The outdoor patio is also necessary for the continuing success of the Appellant's business resulting from the impact of the inside smoking ban and the difficulties for businesses in Goodramgate resulting from local parking restrictions. Advice in Planning Policy Guidance Note 15 *Planning & the Historic Environment* (PPG15) indicates the need for appropriate new uses for old buildings to secure their preservation.
12. I observed that the patio, fencing and flue have formed visible additions to the listed building. The patio also has 2 timber bench style picnic tables and a timber slatted bench. The timber panel domestic garden style fencing (about 1.6 metres high above the decking) and the commercial appearance of the extract flue are not sympathetic to the design and materials of the original timber framed and brick appeal building. Furthermore, their location at first floor height to form a high level outside café amenity area is different from nearby ground level external sitting and drinking areas. Together, the notice works harm the character of the original building. And, the presence of customers on the patio, together with such paraphernalia as brightly coloured umbrellas for shading tables in summer, would add to the damage to the setting of the listed building.
13. In addition to the harm to the integrity of the building itself, although located to the rear, the new works are visible from Deangate and College Street, from nearby upper floor windows of dwellings and offices and from the tower of York Minster which is open to the public. Nor is the harm outweighed, in this case, by the Appellant's business needs. That harm to the character and setting of the original building conflicts with the objectives of local planning policies GP18, HE2 & HE4 of the City of York Draft Local Plan, Policy E4 of the North Yorkshire

County Structure Plan and Government advice in PPG 15 which require that development proposals will be expected to respect or enhance the special historic interest and visual amenity of listed buildings and conservation areas.

14. The appeal on ground (e) fails.

The appeal on ground (g)

15. The Appellant claims that the steps said to be required for restoring the building to its original condition are excessive because restoration to the prior condition of the building would serve no useful purpose. Nor can it be achieved as the rotten timber decking and the non-original window, together with the former flue, have all been disposed of.

16. But, nothing less than the total removal of the first floor patio, fencing, kitchen flue, and access door to the patio would overcome the harm to the character of the listed building that I have identified. Furthermore, the steps, although internal, would not be necessary if the patio is removed. The notice requirements would be complied with by restoring the access door with a new window of a similar design to that removed. Since I have no evidence that any pre-existing decking or flue were authorised or lawful it is not necessary to replace them other than works to make the building good where the current unauthorised works have been removed.

17. The appeal on ground (g) fails.

Conclusions

18. For the reasons given above I conclude that the appeal should fail.

Francis Farrimond

INSPECTOR

APPENDIX 2.**Planning History of 40 Goodramgate**

Planning reference	Proposal	Decision
04/03013/FUL	Change of use from retail to food and drink (Class A3)	Approved 28.09.2004
04/03015/LBC	Internal alterations as part of change of use to food and drink (Class A3)	Approved 28.09.2004
05/01751/FUL	Variation of condition 5 of planning permission (04/030113/FUL) to increase approved opening hours of 0900-2300 (Mon-Sat) and 10.00-22.30 (Sunday) to 08.45-02.00 (Mon- Sat) and 10.00-02.00 (Sunday).	Refused 19.10.2005
06/00009/REF DOE Ref. APP/C2741/A/06/2009485/NWF	Variation of condition 5 of planning permission (04/030113/FUL) to increase approved opening hours of 09.00-23.00 (Mon-Sat) and 10.00-23.30 (Sunday) to 08.45-02.00 (Mon-Sat) and 10.00-02.00 (Sunday)	Allowed 21.06.2006
06/01094/FUL	Construction of patio to first floor including new fencing and access door; kitchen extract flue	Refused 12.01.2007
06/01095/LBC	Internal and external alterations including construction of patio to first floor, new fencing, door and kitchen extract flue	Refused 13.11.2006

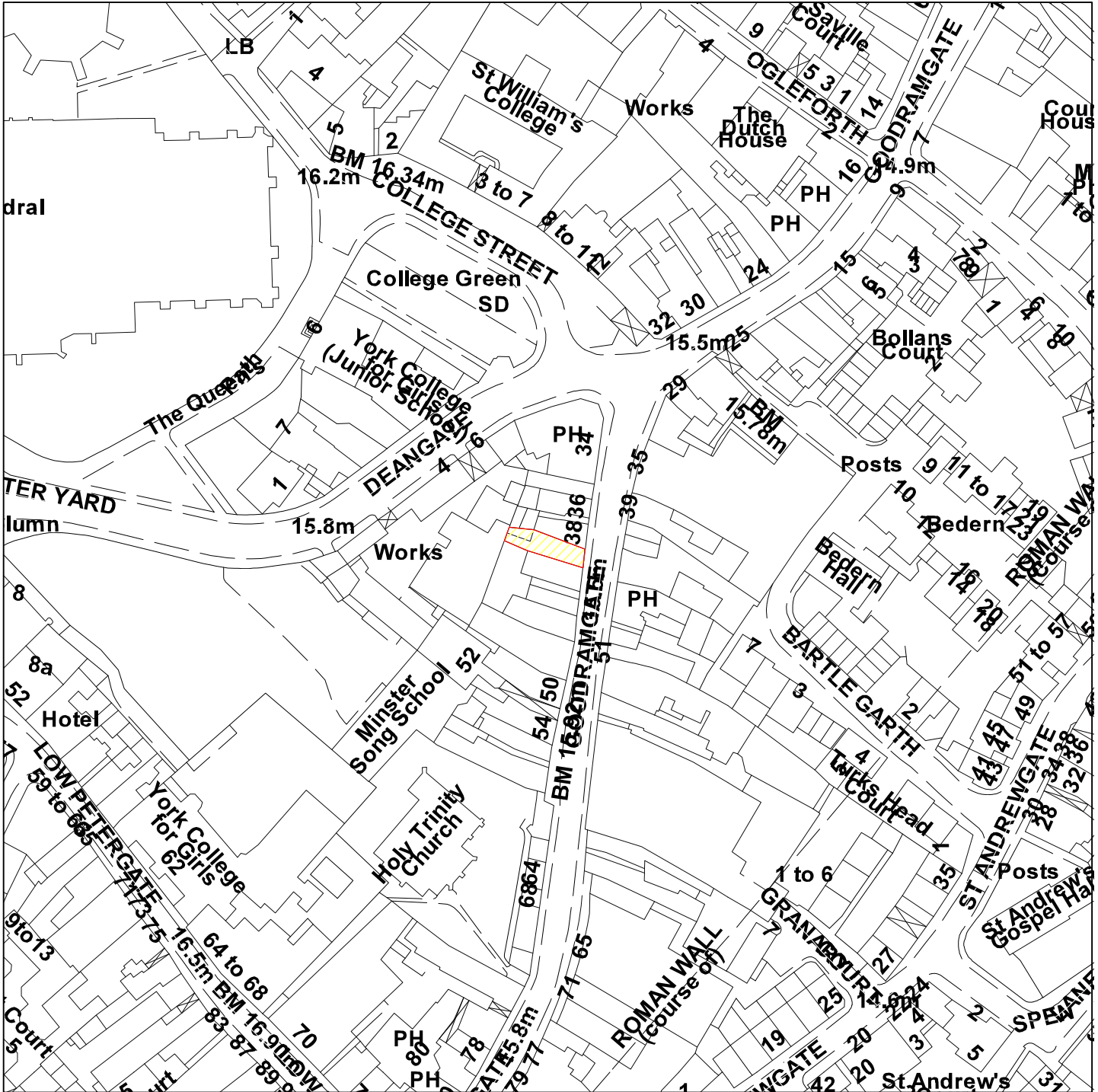
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08/01546/FUL

40 Goodramgate



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Organisation	Not Set
Department	Not Set
Comments	Application Site
Date	03 September 2008
SLA Number	Not Set

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 September 2008 **Parish:** Guildhall Planning Panel

Reference: 08/01548/LBC
Application at: 40 Goodramgate York YO1 7LF
For: Construction of brick walls and brick kitchen flue, installation of replacement timber sliding sash-type door in existing opening, retention of timber decking
By: Mr Simon Evans
Application Type: Listed Building Consent
Target Date: 4 September 2008

1.0 PROPOSAL

1.1 This is a related application for Listed Building consent for the previous item on the agenda (LPA Ref. 08/01546/FUL).

1.2 See previous report for the details of the site and proposal.

1.3 This application is presented to the Members of the West/ Centre Planning Sub-Committee for a determination at the request of Councillor Janet Looker as the application raises matters that are of some interest to a number of businesses in the area in the light of new smoking legislation.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Listed Buildings Grade 2; 40 Goodramgate York YO1 2LF 0759

Listed Buildings Grade 2; 42 Goodramgate 0760

2.2 Policies:

CYHE4
Listed Buildings

CYGP1
Design

3.0 CONSULTATIONS

INTERNAL

3.1 DESIGN CONSERVATION AND SUSTAINABLE DEVELOPMENT- Objections to the works

EXTERNAL

3.2 GUILDHALL PLANNING PANEL- No objections

The application was appropriately advertised by site notice, press advertisement and letters to neighbours and no representation have been received as a result of this publicity.

4.0 APPRAISAL

KEY ISSUES

- Impact on the character and amenity of the Listed Building

POLICY CONTEXT

4.1 PLANNING POLICY STATEMENT 1 "Planning for Sustainable Development" aims to protect the quality of the natural and historic environment. 'The Planning System: General Principles', the companion document to PPS1, advises of the importance of amenity as an issue.

4.2 Central Government advice in relation to listed building control is contained within PLANNING POLICY GUIDANCE NOTE NO. 15 : "Planning and the Historic Environment" (PPG15). This states that whilst the listing of a building should not be seen as a bar to all future change, the starting point for the exercise of listed building control is the statutory requirement on local planning authorities to "have special regard to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses".

4.3 POLICY HE4 states that consent will only be granted for development to a listed buildings where there is no adverse effect on the character and setting of the

building. Supporting text of this policy further states that, it is important that extensions preserve and enhance the special architectural or historic character of conservation areas and complement the character of listed buildings. Alterations will be expected to be of an appropriate design, using traditional natural materials. The proposal should also be in scale with the original building and respect its character.

4.4 POLICY GP1 is a general design policy in the Local Plan that, inter alia, seeks to ensure that new development respects its surroundings.

ASSESSMENT

4.5 Members are advised of the Planning Inspector's decision regarding the unauthorised works to the listed building. He clearly states in para. 16 that-

"nothing less than the total removal of the first floor patio, fencing, kitchen flue and access door to the patio would overcome the harm to the character of the listed building..". In addition, the existing internal steps that are attached to the listed building would not be necessary if the patio was removed and therefore should be removed. The applicant is also required to restore the access door with a new window of a similar design to the window that was removed.

This application seeks to address the issues raised by the Planning Inspector in the following revised proposals.

4.6 DOOR- In response to the Inspector's decision on the recent appeal, the proposed door has been designed to have the appearance of the previous sash window that would function as a door to the terrace. It is proposed that the existing side-hinged single flush unit divided into four panes window/door to the rear terrace would revert to a timber, staggered (but fixed leaves) window door in its previous glazing format. By virtue of it not being an actual working sash window and being used as an access to a roof terrace, the proposal would alter the character of the listed building. Although the removed window was original to the building it was a traditional timber sliding sash in character with the building. There is no evidence that this building had a door opening in this location, and the installation and use of a door at first floor level would be at odds with the character of the rear elevation and the internal character of the room.

4.7 BRICK WALL- The installation of a boundary treatment at first floor level is required in order for the rear terrace to function as a smoking area/ extension to the existing use. The agent now proposes to replace the existing 2 metre lap panel fences with a 1.3 metre wall in clamp bricks. Whilst the proposed brick wall may visually improve the domestic appearance of the existing fence, the wall would be visually intrusive and unsympathetic to the character of the rear elevation. The rear elevation dates to the late C17 and the enclosure of its rear gable and creation of a roof terrace at first floor level would be wholly uncharacteristic of the age and the type of building. The boundary treatment would obscure the majority of the first floor, and the rear window would no longer be seen in its context on the building. The wall would interrupt the building's relationship with the neighbouring properties and would change its context and setting in a negative way. The installation of this boundary

treatment would be harmful to the character and special interest of this building and would be unacceptable.

4.8 BRICK FLUE- The original metal flue was replaced in 2005 by a wider and higher metal flue (150mm wide and 2.2 m high). It has been painted red to blend in with adjacent roof tiles. The applicant proposes to remove this flue and replace it with a 2.4m high brick flue in the same location that would be 600mm square. As the building has an approved restaurant use it is appreciated that a flue in some form is necessary. Whilst a flue in this location is unusual, there are advantages that it would be located in a modern extension and away from the main listed building itself. The proposed flue would take the form of a brick built chimney that would blend into the area given the local vernacular of this backland area. The area is generally obscured from the wider public realm by the smoking provision at the Cross Keys public house.

4.9 The Environmental Protection Unit has been asked whether the height and circumference of the proposed flue is necessary to meet their requirements as it would larger and higher than the existing unauthorised flue. The existing flue is sited in a corner of the roof terrace exiting through the roof of the modern kitchen extension. It is intended that the flue would be built to a height of 2.6m to better satisfy the requirements of the Environmental Protection Unit as the department advises that in general flues should extend 1 metre beyond the eaves level of the property and should not have a cowl fitted to ensure that fumes are emitted at high level to ensure that the amenity of any neighbours would not be compromised by extraction fumes and odour. Following a recent site inspection, the Environment Protection Officer advises that the increase in height and the open location would allow for better dispersal of cooking odours. There are other flues visible at the rear of Goodramgate, and on balance, it is possible that the proposed larger and higher flue would not be unduly intrusive or uncharacteristic in this part of the conservation area.

4.10 The combined visual impact of the unlawful alterations on the Listed Building was clearly not supported by the Planning Inspector in the recent appeal decision. The rear roof patio has a modern domestic appearance that would detract from the traditional character and special interest of the Listed Building contrary to Policies GP1 and HE4 of the Local Plan and related national guidance in Planning Policy Guidance Note No. 15 " Planning and the Historic Environment. ".

5.0 CONCLUSION

5.1 There is no officer support for this application given the strength of the recent appeal decision in relation to the retention of the unauthorised patio, timber fencing to the boundary, enlarged flue, and alteration of a window to a door on the rear elevation of the listed building. The proposed revisions to the component works would have limited success in overcoming the major concerns outlined above. In addition, the business arguments put forward by the applicant would not outweigh or justify the harm to the listed building. The very use of the roof terrace at first floor level, combined with the visual enclosure of the rear gable and the functional paraphernalia installed would negatively impact upon the character and special

interest of the listed building contrary to the planning policies outlined above and national planning guidance contained in Planning Policy Guidance Note No.15 which requires that development proposals respect or enhance the special historic interest and visual amenity of the listed building. It is recommended that listed building consent is not granted.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 It is considered that the first floor patio, brick walling, and enlarged flue would create visible additions to the listed building and combined with the prominence of the modern additions and the incongruous domestic nature of the terrace as a high level amenity area use would detract from the special historic and visual interest of the listed building. Thus the proposal conflicts with Policy GP1(a) and HE4 of the City of York Development Control Local Plan (Incorporating the Proposed 4th Set of Changes) and national planning guidance as contained in Planning Policy Guidance Note No. 15 " Planning and the Historic Environment " which states that development proposals will be expected to respect or enhance the special interests of listed buildings.

7.0 INFORMATIVES:

Contact details:

Author: Fiona Mackay Development Control Officer (Tues - Fri)

Tel No: 01904 552407

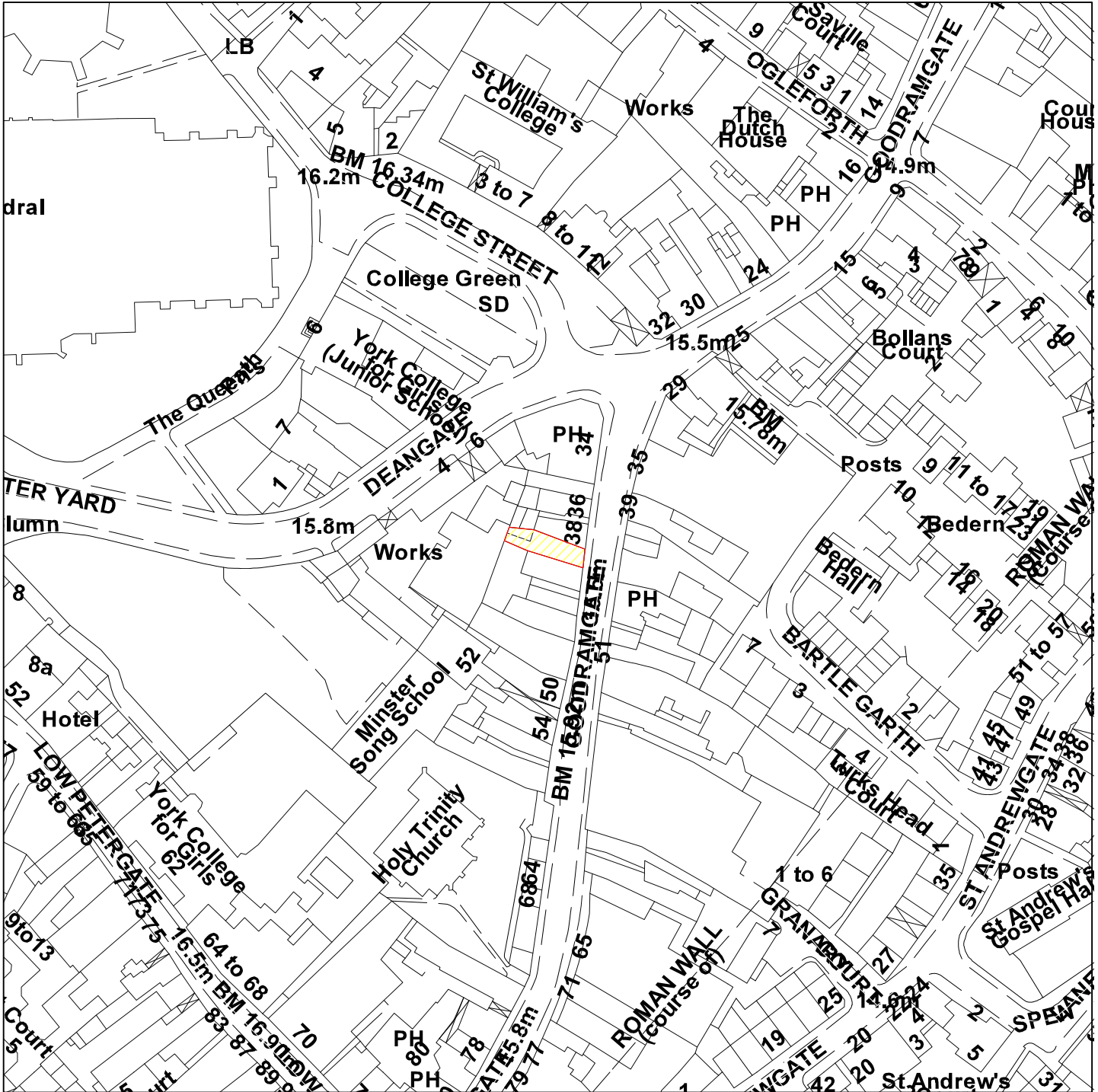
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08/01548/LBC

40 Goodramgate



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Organisation	Not Set
Department	Not Set
Comments	Application Site
Date	03 September 2008
SLA Number	Not Set

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 September 2008 **Parish:** Guildhall Planning Panel

Reference: 08/01647/FULM
Application at: Monkbar Hotel St Maurices Road York YO31 7JA
For: Four storey extension to rear to create additional bedrooms and conference rooms and alterations to existing hotel
By: Mr Rishi Sachden
Application Type: Major Full Application (13 weeks)
Target Date: 13 October 2008

1.0 PROPOSALApplication site

1.1 The application relates to Monkbar Hotel, which occupies the corner of Monkgate and St Maurice's Road. The hotel currently has 99 guest rooms and 8 conference rooms. The facilities are located within the main building, above ground floor level at 18, 20, 22, 24, and 26 Monkgate, at the lodge building (which fronts St Maurice's Road) and in the three two-storey outbuildings/garage blocks to the north and east of the main building.

1.2 The main building is 3.5-storey in height of brick, slate roof and lead dormers. It was first granted permission in the 1980's and was extended in the 1990's. The building is not listed but is in the Central Historic Core Conservation Area.

1.3 The site is surrounded by houses to the north and east; Monkgate Cloisters to the north is three-storey, of a similar design to the hotel. To the east housing on St Maurice's Road and Cloisters Walk is three/two storey in height.

1.4 Nearby grade II listed buildings are the public house (Keystones) on the corner of St Maurice's Road and Goodramgate and at 28 Monkgate, which is commercial/residential. The city walls are also around 45m south of the application site.

Proposal

1.5 The application is for planning permission to add 30 guest bedrooms and 1 conference room. Four of the guestrooms would be in the existing garage block (c) located at the north of the site, otherwise the new facilities would be within a proposed extension in the centre of the site. The extension would have a footprint of 12 by 12.5 metres, with an extra 1m by 3.6m for the associated stairwell. In height, materials, shape and detailing it would replicate the main building. It is also proposed to re-configure the car parking layout on site, the number of car parking spaces on-site would be reduced from 43 to 36. Double height car storage places would be accommodated in two of the garage blocks (a & c). A coach parking space is retained within the site.

Relevant site history

1.6 In January 2001 planning permission was granted for an extension to the hotel on a similar footprint/scale to that proposed in this application. The permission was for a pool/leisure facility at ground floor level and 25 guest rooms above. There would have been 43 car parking spaces available and 20-25 cycle parking spaces, the latter in two dedicated cycle stores.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006
Conservation Area Central Historic Core 0038
City Boundary York City Boundary 0001
DC Area Teams Central Area 0002
Listed Buildings Grade 2; Monkbar Hotel 28 Monkgate York YO31 7PF 0932

2.2 Policies:

CYGP1	Design
CYHE3	Conservation Areas
CYHE2	Development in historic locations
CYV3	Criteria for hotels and guest houses
CYHE10	Archaeology

3.0 CONSULTATIONS

Internal

Design, Conservation and Sustainable Development

3.1 The application site concerns a large hotel, which has a historic frontage onto Monkgate and contemporary development extending back from St Maurice's Road. The application proposes an extension to the existing contemporary development.

3.2 The proposal was the subject of pre-application advice earlier this year and appears to have been submitted in accordance with the advice given. At pre-application stage it was suggested that soft landscaping measures/planting in the car park area would soften the impact of the development in terms of impact on the character and appearance of the conservation area. The Applicants appear to have addressed this with proposed planting to the forecourt of the hotel.

3.3 The development has been designed to replicate the existing building and the materials specification contained on drawing no. AL(0)042 details materials to match existing. The wide visibility splay to St Maurice's Road means that the site is very visible from the conservation area. Generally, the neighbouring developments to the proposed extension are contemporary and are of varying heights but generally, three to four stories. The proposed development will therefore not be out of keeping its surrounds.

Environmental Protection Unit

3.4 Requested a noise assessment to assess the impact of the car storage system, as noise from such may affect guests and surrounding occupants. Also ask for conditions to be attached regarding investigation into any contamination of the site and subsequent remediation requirements.

Highway Network Management

3.5 There was originally concern that the relocated coach parking bay (when proposed at the front entrance to the site) was not provided with a turning circle within the site. As such it would need to perform such a manoeuvre in the highway. St Maurice's Road forms part of the inner ring road and vehicles turning etc in the road here would be harmful to the flow of traffic and detrimental to highway safety. It was requested that the coach parking space be relocated, and provided with a turning circle onsite.

3.6 Due to the location of the site (close to the city centre and transport links) a shortfall in parking provision would not be objected to.

3.7 The subsequently revised layout (drawing 005G) was deemed to be acceptable in terms of the coach parking and turning arrangements. However the proposed cycle storage is only capable of readily holding 12 bicycles, and therefore it is recommended that additional cycle storage for 2 bikes be provided.

Sustainability Officer

3.8 Ask for a condition to require that the scheme achieves a BREEAM 'very good' rating.

External

Planning Panel

3.9 Pending.

English Heritage

3.10 No comment. Ask that the decision be made considering relevant policy and conservation officer advice.

Safer York Partnership

3.11 Suggest the use of CCTV for the car park. Between July 2007 and 2008 there were 24 recorded crimes within a 50m radius of the site, 7 of these related to 'auto-crime' (6 incidents of theft from a vehicle, 1 of vehicle theft).

Visit York

3.12 Pending.

York Drainage Consultancy

3.13 Make the following points and advise that these measures will need to be agreed to by the applicants, they would then be conditions were the application approved.

- The applicant should provide a topographical survey and proposed finished floor and ground levels, to ensure that there will not be any detriment to the drainage of existing properties.
- Additional surface water shall not be connected to any foul / combined sewer, if a suitable surface water sewer or watercourse is available.
- In accordance with PPS25 and in agreement with the Environment Agency and Marston Moor Internal Drainage Board, peak run-off from brown-field sites must be attenuated to 70% of the existing rate. Storage volume calculations, using computer modelling, must accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model must also include an additional 20% allowance for climate change. The modelling must use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required.

Publicity (site notice, neighbour notification and press notice)

3.14 The deadline given for comment was 20 August. 7 objections to date have been received. Comments are as follows -

Highway safety related

- There will be limited access/space for servicing. Comments relate to glass/waste collections, as well as visitors vehicles.
- Limited car parking given the increase in rooms. This will increase noise levels and demand for parking in the surrounding streets. St Maurice's Road is already a busy street, it is part of the inner ring road, and cars struggle to park at the hotel site. The scheme will thus be detrimental to highway safety.
- Suggest that the hotel offer incentives for guests whom do not use a private motor vehicle.
- Coaches attempting to park will create noise and air pollution.

Visual and residential amenity

- The extension would lead to a loss of privacy to the occupants of the dwellings in Monkgate Cloisters.
- Loss of value to houses in Monkgate Cloisters
- The landscaping scheme is unrealistic, as there is inadequate space for trees between car parking spaces.
- The extension is too high/dominant, it constitutes overdevelopment of the site and would harm the appearance of the area.

4.0 APPRAISAL

Key issues

4.1 The key issues are as follows:

- Principle
- Design and visual impact on the surrounding area

- Amenity of surrounding occupants
- Highway safety
- Sustainability
- Flood risk

Principle

4.2 Policy V3 of the Local Plan states planning permission will be granted for extensions to existing premises provided the proposal:

- Is compatible with its surroundings in terms of siting, scale and design.
- Would not result in the loss of residential accommodation which when originally built had less than four bedrooms.
- Would not have an adverse effect on the residential character of the area.
- Is well related in terms of walking, cycling and access to public transport in relation to York City Centre or other visitor attractions.

4.3 In terms of design and location the site is considered appropriate for a hotel expansion. Design and amenity is covered in more depth in paragraphs 4.6-4.7 and 4.9-4.12. The extension does not involve the loss of housing. Overall it is considered the extension accords to policy V3 and is thus acceptable in principle.

Design and visual impact on the surrounding area

4.4 GP1 Refers to design, for all types of development. It states that development proposals will be expected to, respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with the surrounding area; use appropriate materials; avoid the loss of open spaces, vegetation and other features which contribute to the quality of the local environment; retain, enhance, or create urban spaces; provide and protect amenity space; provide space for waste storage; ensure no undue adverse impact from noise disturbance, overlooking, overshadowing or from overdominant structures.

4.5 The site is within a designated conservation area (Central Historic Core). Within such areas, the Council has a statutory duty to consider the desirability of preserving or enhancing the character and appearance of the area. Policies HE2 and HE3 of the Local Plan are relevant in this respect. HE2 states that within conservation areas, or locations which affect the setting of listed buildings development proposals must respect adjacent buildings, open spaces, landmarks and settings and have regards to local scale, proportions, details and materials. Proposals will be required to maintain or enhance existing urban spaces, views, landmarks and other townscape elements, which contribute to the character or appearance of the area. Policy HE3 states that within Conservation Areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area.

The extension

4.6 The proposed extension by virtue of its design - size, height, materials and detailing would compliment the main hotel building and the surrounding housing such as Monkgate Cloisters, which are of similar style and design to the hotel. The development respects it's setting, and is of reasonable appearance; it would preserve the appearance of the conservation area.

4.7 The development would block a vista of mature trees, with the bar walls behind from some of the houses on Monkgate Cloisters. The extension would be some 55m from the city walls and 37m from the rear elevation from the Monkgate Cloisters houses. Due to the separation distances and the (considered) appropriate height of the proposed extension, it is considered that the loss of this view would not be contrary to policy HE2 which seeks to 'maintain views, landmarks and other townscape elements'. Of more importance (in planning terms) is that views, setting and openness from the public realm would not be adversely affected, as this is the thrust of policy SP3 of the Local Plan which relates to safeguarding the historic character, setting and distinct environment of the centre of York.

The landscaping

4.8 The layout has been revised, and the coach parking space has been relocated from the front entrance of the site, to its previous/existing location toward the rear of the site, between garage blocks A and B. Also the disabled parking bays have been amended at the other side of the main entrance, so they have a shared access strip (which is acceptable to Highway Network Management). These amendments allow for significantly more soft landscaping/planting to the front entrance of the site. This softens the appearance of the car park and enhances the appearance of the conservation area.

Amenity of surrounding occupants

4.9 Amenity is covered in policy GP1 that advises that developments should not lead to undue adverse impact from noise disturbance, overlooking, overshadowing or from overdominant structures.

4.10 The extension would, at its nearest point, be 10m from the back garden of 1 Cloisters Walk to the east and 31m from houses to the north (Monkgate Cloisters). Facing east there would be a bedroom window on the end elevation at second floor level overlooking the houses' rear garden. Separation distances between rear elevations and back gardens are commonly around 12-14m between units on Cloisters Walk, where buildings are either 2 or 3 storey in height. A distance of 10m is generally considered adequate, in terms of what is appropriate from a window into a garden. Overall it is considered the separation distances proposed are reasonable for a city centre location, where an element of overlooking is to be expected. Also accordingly, and because of the proposed extension's height, the building would not be unduly overbearing or overdominant.

4.11 Noise levels associated with the proposed vehicle stacking system are required to make sure it would not cause disturbance when in use. The stacking system would be located below guestrooms in garage block c, and in close proximity to houses at 1 and 14 Cloisters Walk.

4.12 Condition 8 asks for noise levels of the system. If there were unresolved concerns, the stacking system could be omitted from the proposal, potentially reducing the amount of car parking spaces to 26. Highway Network Management have confirmed they would accept the amount of car parking, should this occur.

Highway safety

4.13 T4 seeks to promote cycling and states that all new development should provide storage for cycles in accordance with the standards in appendix E of the Local Plan.

4.14 A covered cycle parking store is provided within the site for staff. This can accommodate around 12 - 14 cycle parking spaces. According to the Local Plan a minimum of 13 spaces should be provided for a development of this size (1 space per 10 bedrooms). It is suggested a condition requires details of the cycle storage as the space allocated is limited and preferably more space, not the minimum requirement, would be dedicated to cycle storage (around 20 spaces).

4.15 36 car parking spaces are provided on site, which Highway Network Management feel is more than adequate due to the proximity of the site to the city centre and public car parking spaces.

4.16 The coach parking space has been moved back to its existing location, this enables it to turn within the site, thus not blocking St Maurice's Road. As such the development will not affect highway safety.

Sustainability

4.17 It is a requirement of policy GP4a of the Local Plan that a sustainability statement is submitted. The proposed development should meet the requirements of the Council's planning guidance Interim Planning Statement (IPS) on Sustainable Design and Construction, which was adopted for development control purposes on 22.11.07. For commercial developments which involve the creation of 500 sq m + floorspace, it is a requirement that the scheme achieves a BREEAM standard of very good.

4.18 A preliminary BREEAM assessment has been carried out by the applicants which advise that a BREEAM rating of very good could be achieved (score of 55.4% gained, 55% minimum for very good). The requirement that a very good rating could be secured through a planning condition (condition 3). There is scope to improve the preliminary score through producing a travel plan, use of water butts, improving recycling arrangements, and possibly incorporating renewable energy technology.

4.19 A condition is suggested to clarify where the dedicated waste and recycling stores are located, to ensure that they are provided and that they are visually acceptable.

Flood risk

4.20 The site is not in a flood risk area. However to ensure the risk of flooding elsewhere is not enhanced, the conditions requested by the Drainage Consultancy, in paragraph 3.12 can be attached to any permission.

5.0 CONCLUSION

5.1 It is considered the development is in accordance with policy. The extension would appear acceptable and would not harm residential amenity. The development

would be sustainable and there would be no undue impact on highway safety and flood risk.

5.2 Conditions are suggested to ensure amenity is controlled in terms of the vehicle stacking system and details of the bin stores and landscaping. There are also conditions relating to sustainability and the provision/design of cycle stores.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

S6301/AL (0)
005G
006
007
008
041
042

or any plans or details subsequently agreed in writing by the Local Planning Authority as amendment to the approved plans.

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

3 Prior to occupation of the building hereby approved the developer shall submit in writing a formal BREEAM assessment or equivalent, for the Design and Procurement stages for the building hereby approved. All assessments shall be followed by a BREEAM Post Construction review to be submitted after construction at a time to be agreed in writing by the local planning authority. All assessments shall confirm the minimum 'Very Good' rating, or equivalent, anticipated in the preliminary BREEAM assessment submitted with the application, and be agreed to in writing by the local planning authority.

Reason: In the interests of sustainable development, in accordance with the requirements of policy GP4a of the Draft Local Plan and the Council's planning guidance Interim Planning Statement (IPS) on Sustainable Design and Construction.

4 The materials to be used externally shall match those of the existing main hotel building in colour, size, shape and texture, as shown on drawing 042.

Reason: To achieve a visually acceptable form of development.

5 No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a detailed landscaping scheme which shall

illustrate the number, species, height and position of trees and shrubs to be planted and/or retained.

This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site.

6 Prior to development commencing details of the storage space for recyclable materials shall be approved in writing by the Local Planning Authority and retained for such use at all times, unless an alternative arrangement is agreed in writing by the Local Planning Authority.

Reason: To encourage recycling and to maintain visual amenity in accordance with policies GP1 and GP4a of the CYC Local Plan.

7 Prior to the development commencing details of the cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall not be occupied until the cycle parking areas and means of enclosure have been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.

Reason: To promote use of cycles thereby reducing congestion on the adjacent roads and in the interests of the amenity of neighbours.

Informative

The details must demonstrate there is adequate space for at least 14 cycles (and preferably 20). It is considered that the cycle parking allocation as shown on drawing 005G is inadequate as this would not accommodate the minimum requirement.

8 Prior to installation of the vehicle stacking system, details of all machinery, plant and equipment to be installed and any proposed noise mitigation measures shall be submitted to the local planning authority. These details shall include maximum (LA_{max(f)}) and average (LA_{eq}) sound levels (A weighted), and octave band noise levels they produce. All such 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 appropriately maintained thereafter.

Reason: In the interests of the amenity of the surrounding occupants and of the hotel.

Informative

You are reminded that should the required details demonstrate that the system would be unacceptable, then it may not be installed.

9 Prior to development commencing the following details shall be submitted to and approved in writing by the Local Planning Authority. The development shall commence in accordance with the approved details.

- A topographical survey and proposed finished floor and ground levels. To ensure that there will not be any detriment to the drainage of existing properties.

- Demonstrate that peak run-off from the site shall be attenuated to 70% of the existing rate. This should include storage volume calculations, using computer modelling, which must accommodate a 1:30 year storm with no surface flooding, along with no internal flooding of buildings or surface run-off from the site in a 1:100 year storm. Proposed areas within the model must also include an additional 20% allowance for climate change. The modelling must use a range of storm durations, with both summer and winter profiles, to find the worst-case volume required.

Reason: To reduce flood risk, in accordance with PPS25 and in agreement with the Environment Agency and Marston Moor Internal Drainage Board.

10 Additional surface water shall not be connected to any foul / combined sewer, if a suitable surface water sewer or watercourse is available.

Reason: In the interests of mitigating flood risk, in accordance with policy GP15a of the Local Plan.

11 ARCH2 Archaeological watching brief required

12 HWAY14 Access to be approved, details required

13 A desk study shall be undertaken in order to identify any potentially contaminative uses which have or are currently occurring on the site. This shall include a site description and a site walkover and shall be submitted to and approved by the local planning authority prior to development commencing at the site.

Informative: This should where possible date back to 1800.

Reason: For the protection of human health and the wider environment.

14 A site investigation shall be undertaken based upon the findings of the desk study. The investigation shall be carried out in accordance with BS10175: Investigation of potentially contaminated land: code of practice. The results of the investigation shall be submitted to and approved by the local planning authority in writing prior to any development commencing on the site.

Reason: For the protection of human health and the wider environment.

15 A risk-based remedial strategy shall be developed based on the findings of the site investigation. The remedial strategy shall be submitted to and approved by

the local planning authority in writing. The approved strategy shall be fully implemented prior to any development commencing at the site.

Informative: The remedial strategy shall have due regard for UK adopted policy on risk assessment and shall be developed in full consultation with the appropriate regulator(s).

Reason: For the protection of human health and the wider environment.

16 A validation report shall be submitted to and approved by the local planning authority, detailing sample locations and contaminant concentrations prior to any development commencing at the site.

Reason: For the protection of human health and the wider environment.

17 Any contamination detected during site works that has not been considered within the remedial strategy shall be reported to the local planning authority. Any remediation for this contamination shall be agreed with the local planning authority and fully implemented prior to any further development at the site.

Reason: For the protection of human health and the wider environment.

7.0 INFORMATIVES: Notes to Applicant

1. INFORMATIVE:

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Section 62 - General Power of Improvement (Mr Michael Kitchen Tel:1336)

Section 184 - Vehicle Crossing (Mr Stuart Partington Tel: 551361)

Your attention is drawn to the Safer York Partnership comments which suggest that CCTV systems be installed to monitor the car park.

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 character and appearance of the conservation area, residential amenity, highway safety and flood risk. As such the proposal complies with Policies HE2, HE3, HE10 GP1 and V3 of the City of York Local Plan Deposit Draft.

3. The developer's attention should also be drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution

and noise, the following guidance should be attached to any planning approval, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

- All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Not at all on Sundays and Bank Holidays.	

- The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

- All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

- The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

- All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

- There shall be no bonfires on the site.

Contact details:

Author: Jonathan Kenyon Development Control Officer

Tel No: 01904 551323

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Micklegate
Date: 16 September 2008 **Parish:** Micklegate Planning Panel

Reference: 08/01750/FUL
Application at: Salt And Peppers 19 Tanner Row York YO1 6JB
For: Removal of condition 1 of planning permission (06/00253/FUL)
to allow 24 hour opening
By: Mr C Altin
Application Type: Full Application
Target Date: 3 October 2008

1.0 PROPOSALThe site

1.1 The application relates to the Salt and Peppers hot food takeaway, which is located in Tanner Row, and fronts onto an area known as 'The Square', where George Hudson Street meets Rougier Street. There are a number of late night uses in this area; restaurants, drinking establishments and a taxi pick up point. The site is within the Central Historic Core Conservation Area.

The application

1.2 The application is for planning permission to remove any planning restrictions regarding the opening hours of the takeaway. This was initially permitted in 2006, for a trial period only. The takeaway was granted a premises license in July 2008 for 24-hour opening (see paragraph 1.7).

Site history

1.3 Planning permission for the hot food takeaway was originally granted on appeal in July 2000. At that time the Inspector imposed a condition restricting opening hours to 7 am to 24:00 (midnight) Mondays to Saturdays and 9 am to 23:00 on Sundays and Bank Holidays. Since that time the premises has been the subject of a number of applications to extend the opening hours.

1.4 In April 2003 planning permission was granted to extend the hours of opening to 02:30 on Thursdays, Fridays and Saturdays, 01:30 on Mondays to Wednesdays and 12.30 am on Sundays. Planning permission was granted for a temporary period, expiring on 3 April 2004, in order that impact of the extended hours on the surrounding area could be assessed.

1.5 In October 2004 planning permission was applied for, for the hours previously granted temporary permission. The application was refused. It was determined that the proposed hours would be detrimental to the amenity of adjacent occupiers by significantly increasing the potential for late night noise, nuisance, crime and anti-social behaviour.

1.6 The applicants successfully appealed against the decision. In allowing the appeal, the Inspector concluded that "the proposed extended opening hours would

not add significantly to existing levels of noise and disturbance or crime and disorder and there would, therefore, be little additional harm to the living conditions of the adjacent residents". Furthermore it was found the Council had acted unreasonably in refusing the application and costs were awarded to the applicant.

1.7 In April 2006 temporary permission was granted to allow 24 hour opening at the premises. This was required to cease by December 2006.

Reason for committee

1.8 The application is brought to planning committee at the request of Councillor Watson, on the grounds of amenity. Furthermore previous applications for the extension of hours of this premises have been determined at planning committee.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006
Conservation Area Central Historic Core 0038
City Boundary York City Boundary 0001
DC Area Teams Central Area 0002
Floodzone 2 Flood Zone 2 CONF
Floodzone 3 Flood Zone 3
Listed Buildings Grade 2; 17-22 George Hudson Street York YO1 1LP 0108

2.2 Policies:

CYS6
Control of food and drink (A3) uses

CYHE3
Conservation Areas

3.0 CONSULTATIONS

Internal

Design, Conservation and Sustainable Development

3.1 The application proposes no change to the fabric or appearance of the site. A late night economy is already well established in this part of the conservation area; consequently it is officers opinion that this application for the removal of a condition relating to opening hours will preserve the amenity, and hence the character of the conservation area.

Environmental Protection Unit

3.2 Advise they have not received complaints about the premises, thus do not object to the application.

Highway Network Management

3.3 No objection.

External

Planning Panel

3.4 No response to date.

Safer York Partnership

3.5 Report the crime figures within the premises and since 2005. These are included at the back of this report.

Publicity

The application was publicised by site notice and letters of neighbour notification. The deadline for comments is 9 September. Two letters in objection have been received, from the occupants of 7A Tanner Row and the Corner Pin Public House. The reasons for objection are as follows -

- Since the takeaway opens until 05:00, there are now large, noisy groups of very drunk people gathered outside the premises eating take away food until after 05:00 on a regular basis. Noise will result from the premises if it is permitted to open later.
- The area outside the premises is a "hotspot" for fighting and rowdy, drunken behaviour and the noise from this impacts on the local residents, who suffer from noise disturbance and loss of sleep.
- The police are never in the vicinity (reported that they leave after around 01:00) when the shouting and screaming is going on until daylight.
- The people leaving the premises inevitably walk down Tanner Row chanting, shouting and singing and drop their "takeaway litter" in the road and in the park on North Street. If the premises open 24hr when would the street cleaners be able to sweep up the litter? The area outside the takeaway is currently left in a disgusting, filthy state and this is left for the Council to clean up - there are no litter bins provided and the only place to put the leftovers and empty boxes is on the streets. This has led to a dramatic increase in the rat and pigeon population in this area.
- There are no toilet facilities on the premises and this is why customers of the takeaway have to find alternatives. This usually occurs in the alleyway next to the Corner Pin or next to Flares - the whole area is like one smelly, filthy, disgusting toilet with rubbish strewn everywhere.
- 24 hour opening would affect surrounding business for food trade during the day.
- It has been suggested that the alley (All Saints Lane) between Tanner Row and North Street be gated/closed at night to prevent noise and anti-social behaviour. Also that shutters are provided for nearby premises to prevent noise and stop them being smashed (which has happened in the past).

4.0 APPRAISAL

4.1 Key issues

- Residential amenity
- Crime and disorder
- Impact on the conservation area

Policy relating to amenity and crime and disorder

4.2 Planning Policy Statement 6: Planning for Town Centres (2005) paragraphs 2.23 to 2.26 provide advice on managing the evening and night-time economy. Local Authorities are encouraged to develop policies which 'encourage a range of complimentary evening and night-time economy uses which appeal to a wide range of age and social groups'. Key issues LPA's should consider in assessment of impact are the 'cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents'. LPA's are encouraged to adopt an integrated approach so that planning policies and proposals complement their Statement of Licensing Policy and the promotion of licensing objectives under the Licensing Act 2003.

4.3 The Council's Statement of Licensing policy sets out the procedure for determination of license applications. Particular consideration is given to location and impact of licensed activity, type of use and numbers likely to attend, proposed hours of operation, available public transport, car and cycle parking, scope for mitigating any impact and how often the activity occurs. A license is granted subject to conditions, which take steps to mitigate the effect of late night opening, however there are limited powers to deal with noise originating from customers entering or leaving premises. The license can be reviewed when representations are made and if necessary revoked if problems arise at the premises.

4.4 Policy S6 of the Draft Local Plan states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted in York City Centre provided there is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter, the opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers, car and cycle parking meets the standards defined in the Local Plan, acceptable external flues and means of extraction have been proposed and where security issues have been addressed.

Residential amenity

4.5 The application site is located in an area where there are a number of late night amenities. There are restaurants and bars/clubs, notably Flares on the corner of Tanner Row and Tanner Street, BPM, on the corner of Rougier Street and Tanner Row and Salvation, on the corner of Tanner Row and George Hudson Street. There is also the Corner Pin public house at 17 Tanner Row. Of these premises, Salvation can operate until 04:30, BPM 03:30 and Flares 02:30. However the opening times of

these premises are not restricted by planning permissions. When they are permitted to open is dependent upon their premises license. The road outside the takeaway is also used as a taxi pick up point.

4.6 The nearest residential premises to the site is 7a Tanner Row. There are also residential units at All Saint's Lane, northeast of the site and above the shops on George Hudson Street (27,29,31), the latter are used as staff accommodation for the 'Salvation' bar/club premises.

4.7 In analysing the impact on residential amenity, the consideration is whether allowing the takeaway to trade after 02:30 (earlier Sunday to Wednesday) will directly lead to additional noise and disturbance, which will cause significant harm.

4.8 Due to the nature of this area, it inevitably suffers from a certain amount of noise and disturbance late at night. This is detrimental to nearby residents amenity, and is highlighted in the objections to the application by the occupants of the Corner Pin Public House and occupant of 7a Tanner Row.

4.9 Evidence was submitted at the 2006 appeal (against refusal of permission to open until 02:30 at weekends) relating to the premises which demonstrated that noise levels and the amount of people in the area did not materially alter whether or not the application premises were open. It unlikely that if the premises are allowed to open later, to the times requested, this would change as there would still be the activity associated with the other facilities in the area and there are alternative takeaway facilities in other parts of the city centre, including mobile trailers, that operate through the night. As such it is unlikely that a significant amount of customers would come to the area specifically to visit the application premises, were it permitted to operate to the desired hours.

4.10 Overall noise in the area and the behaviour of persons after consuming alcohol cannot be attributed to the presence of the application site and would be an issue in this part of the city regardless of whether the takeaway is trading. Furthermore it could be argued that the provision of the facility, which offers food and non-alcoholic drinks, helps manage/deter noise and disorder.

4.11 It is a requirement of the premises license that a litter pick is carried out in the nearby area at or around 05:00 each day. This is considered to be reasonable in terms of controlling litter in the vicinity and there is no need to duplicate this legislation.

4.12 The takeaway is existing and has adequate means of extraction for food odours.

Crime and disorder

4.13 The 2006 appeal decision is a material consideration in determining the present application. With reference to crime and anti-social behaviour in the surrounding area, it was concluded that in general there is no evidence that persons eating food has a material detrimental impact on behaviour, thus causing additional noise/disturbance. Studies carried out by the Home Office were referred to (at the

appeal) which advise that food is likely to reduce the risk of persons being aggressive, whereas alcohol consumption on the other hand is a trigger for violent crime and aggression. The inspector reported that 'it cannot be concluded that the recent increase in recorded crime close to the premises is a direct result of later opening hours of the takeaway'.

4.14 At the public inquiry (2006 appeal), the Council produced police crime statistics associated with the premises for the period September 2004 to September 2005. There were 7 crimes reported that occurred inside the host premises. The Inspector concluded that the 7 crimes recorded were an extremely small proportion of the 555 assault and criminal damage crimes recorded in the Micklegate area in 2004. Monitoring of the site has been continued by the police, the results are as follows -

Year	Total crimes inside premises
2005	19
2006	9
2007	11
2008 (to end of June)	6

(stats are at the back of this report)

4.15 This issue was flagged up by the police as a concern when the premises applied for a license to extend hours of operation. A premises license, allowing the takeaway to trade 24 hours was granted in July 2008. In addition to the requirement for CCTV, the premises are also required to provide door supervision each day of the week. It is expected that these measures will significantly deter crime within the premises. Crime and anti-social behaviour is an issue which the Licensing Act has powers to tackle and should incidents continue to occur at the premises, it would be expected that the license would be reviewed accordingly.

Impact on the conservation area

4.16 Policy HE3 states that within Conservation Areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area.

4.17 Policy HE3 relates to visual appearance and there are no physical changes to the premises proposed that would affect the appearance of the conservation area. The impact would thus be neutral.

5.0 CONCLUSION

5.1 The application site is located in a part of the city centre renowned for its late night activity, which affects the amenity of its occupants. This is an extant issue. There is no evidence that the takeaway has a material impact on either the character and function of this area, noise levels, anti-social behaviour or crime. Noise levels cannot be attributed to the application site and conditions of the premises license seek to control anti-social behaviour, crime and litter. As such it is considered there is no justification to restrict the opening hours of the premises

6.0 RECOMMENDATION:

Approve planning permission for 24 hour opening.

7.0 INFORMATIVES:

Notes to Applicant

1. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the character and appearance of the conservation area, residential amenity, crime and disorder, anti-social behaviour and highway safety. As such the proposal complies with Policies HE3 and S6 of the City of York Local Plan Deposit Draft.

Contact details:

Author: Jonathan Kenyon Development Control Officer
Tel No: 01904 551323

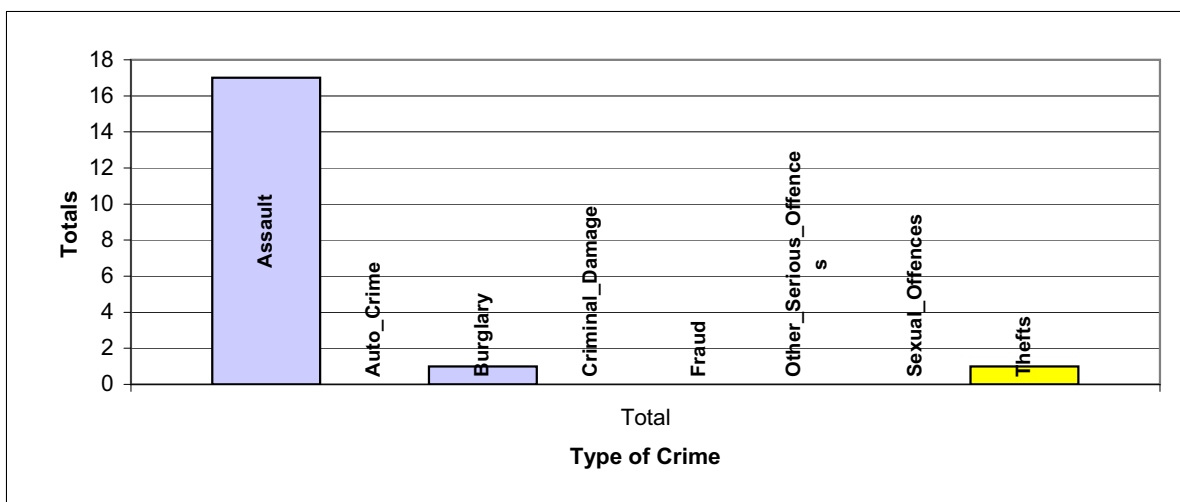
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Architectural Liaison Officer Report

Crime Analysis Study Area:	=	Salt and Peppers
Planning Application Reference:	=	
Size of Study Area from Application	=	Just Premises
Study Period Start:	=	01/01/2005
Study Period End:	=	31/12/2005
Date Study Completed	=	04/09/2008
Number of Months in Study Period	=	12
Geocoding Accuracy Rate	=	95%

Crime Group	Total
Assault	17
Auto_Crime	0
Burglary	1
Criminal_Damage	0
Fraud	0
Other_Serious_Offences	0
Sexual_Offences	0
Thefts	1
Grand Total	19

A Table of Crime in the Study Area (Above) and corresponding Graph (Below)



A Table of Crime by Crime Group and then Crime Type

EVENT_GROUP	HO_DESCRIPTION	Total
ASSAULT	ASSAULT ON CONSTABLE	2
	COMMON ASSAULT ETC.	1
	OTHER WOUNDING ETC.	7
	PUBLIC ORDER OFFENCES	7
BURGLARY	BURGLARY IN A BUILDING OTHER THAN A DWELLING	1
THEFTS	THEFT OF PEDAL CYCLE	1
Grand Total		19

19/01/2005	ASSAULT ON CONSTABLE
19/01/2005	ASSAULT ON CONSTABLE
19/01/2005	PUBLIC ORDER OFFENCES
29/01/2005	PUBLIC ORDER OFFENCES
06/02/2005	PUBLIC ORDER OFFENCES
06/02/2005	PUBLIC ORDER OFFENCES
19/02/2005	PUBLIC ORDER OFFENCES
20/02/2005	PUBLIC ORDER OFFENCES
03/03/2005	OTHER WOUNDING ETC.
03/03/2005	OTHER WOUNDING ETC.
05/06/2005	THEFT OF PEDAL CYCLE
14/07/2005	OTHER WOUNDING ETC.
18/08/2005	OTHER WOUNDING ETC.
17/08/2005	OTHER WOUNDING ETC.
13/08/2005	OTHER WOUNDING ETC.
05/11/2005	BURGLARY IN A BUILDING OTHER THAN A DWELLING
05/02/2005	PUBLIC ORDER OFFENCES
03/02/2005	OTHER WOUNDING ETC.
03/02/2005	COMMON ASSAULT ETC.

A Table of Crime by Month of the Year and Hour of the Day in the Study Area

Month	Total
Jan	4
Feb	4
Mar	2
Apr	0
May	0
Jun	1

Month	Total
Jul	1
Aug	3
Sep	0
Oct	0
Nov	1
Dec	3

Crime Day	Total
Mon	1
Tue	0
Wed	4
Thu	4
Fri	0
Sat	6
Sun	4
Grand Total	19

Grand Total

19

Expected Average Crime per Month =

1.58

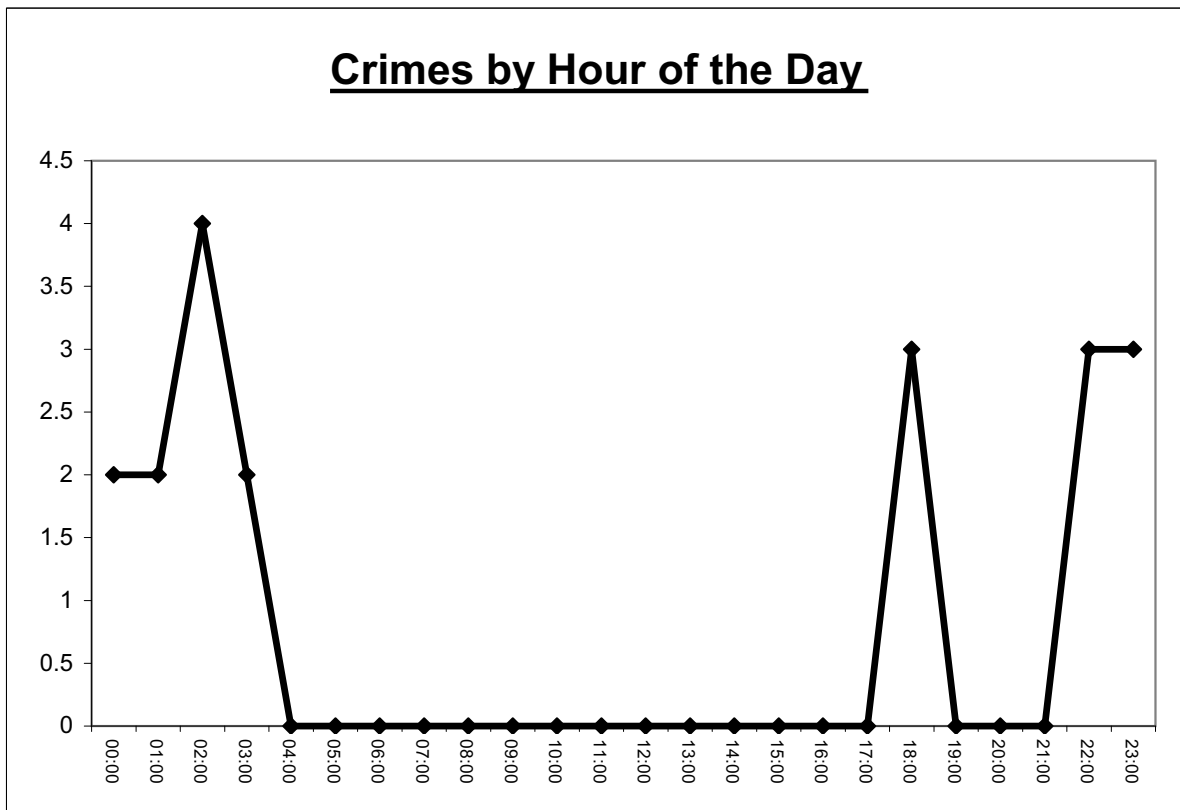
Expected Average Crime per Day =

2.71

A Table of Crime by Hour of the Day in the Study Area

	00:00	01:00	02:00	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total
Total	2	2	4	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	3	3	19

Crimes by Hour of the Day



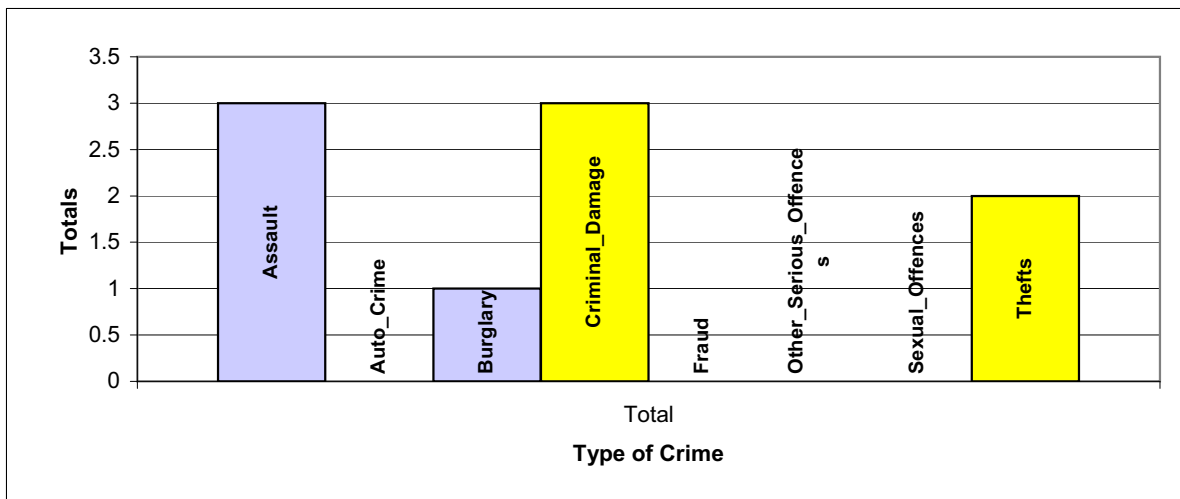
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Architectural Liaison Officer Report

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Size of Study Area from Application	=	Just Premises
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Date Study Completed	=	04/09/2008
Number of Months in Study Period	=	12
Geocoding Accuracy Rate	=	95%

Crime Group	Total
Assault	3
Auto_Crime	0
Burglary	1
Criminal_Damage	3
Fraud	0
Other_Serious_Offences	0
Sexual_Offences	0
Thefts	2
Grand Total	9

A Table of Crime in the Study Area (Above) and corresponding Graph (Below)



A Table of Crime by Crime Group and then Crime Type

EVENT_GROUP	HO_DESCRIPTION	Total
ASSAULT	COMMON ASSAULT ETC.	1
	OTHER WOUNDING ETC.	1
	PUBLIC ORDER OFFENCES	1
BURGLARY	BURGLARY IN A BUILDING OTHER THAN A DWELLING	1
CRIMINAL_DAMAGE	CRIMINAL DAMAGE TO OTHER BUILDINGS	2
	CRIMINAL DAMAGE TO VEHICLES	1
THEFTS	THEFT FROM THE PERSON OF ANOTHER	2
Grand Total		9

06/01/2006	BURGLARY IN A BUILDING OTHER THAN A DWELLING
07/01/2006	OTHER WOUNDING ETC.
17/01/2006	PUBLIC ORDER OFFENCES
21/01/2006	THEFT FROM THE PERSON OF ANOTHER
13/02/2006	CRIMINAL DAMAGE TO VEHICLES
12/02/2006	THEFT FROM THE PERSON OF ANOTHER
09/02/2006	CRIMINAL DAMAGE TO OTHER BUILDINGS
30/07/2006	COMMON ASSAULT ETC.
04/11/2006	CRIMINAL DAMAGE TO OTHER BUILDINGS

A Table of Crime by Month of the Year and Hour of the Day in the Study Area

Month	Total
Jan	4
Feb	3
Mar	0
Apr	0
May	0
Jun	0

Month	Total
Jul	1
Aug	0
Sep	0
Oct	0
Nov	1
Dec	0

Crime Day	Total
Mon	1
Tue	1
Wed	0
Thu	1
Fri	1
Sat	3
Sun	2
Grand Total	9

Grand Total

9

Expected Average Crime per Month =

0.75

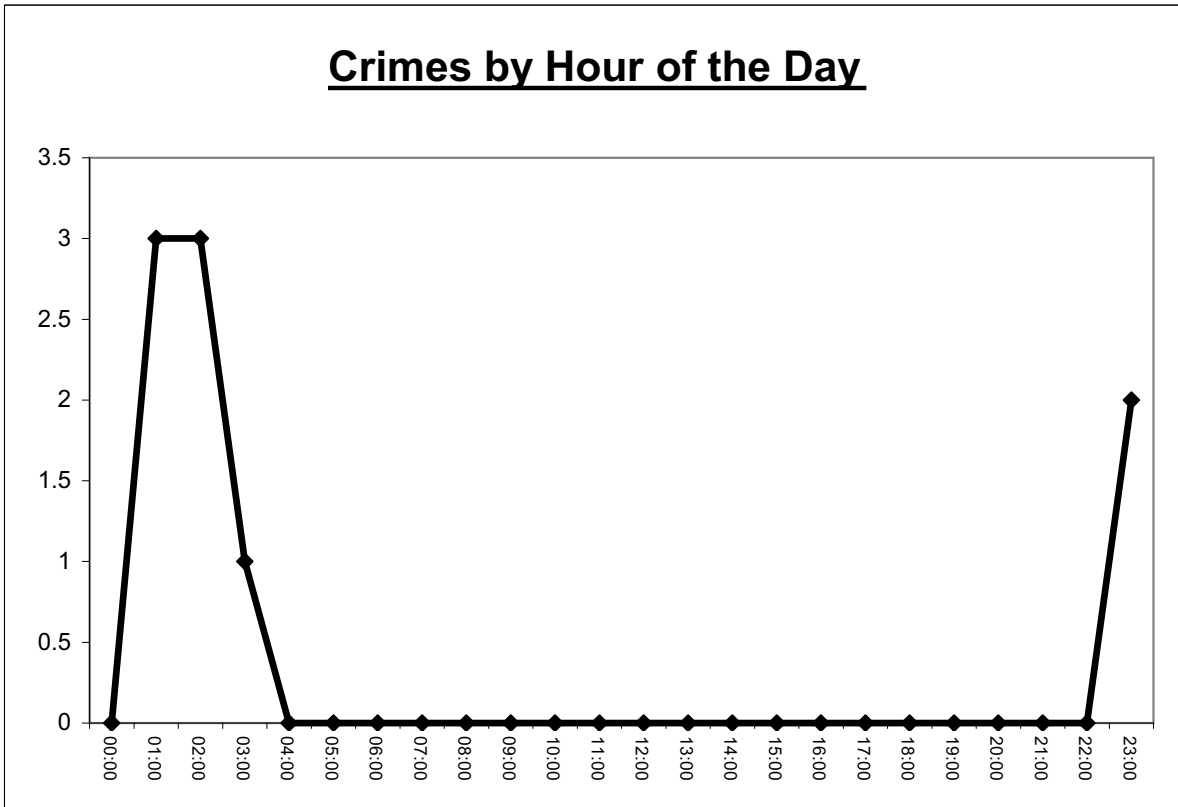
Expected Average Crime per Day =

1.29

A Table of Crime by Hour of the Day in the Study Area

	00:00	01:00	02:00	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total
Total	0	3	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	9

Crimes by Hour of the Day



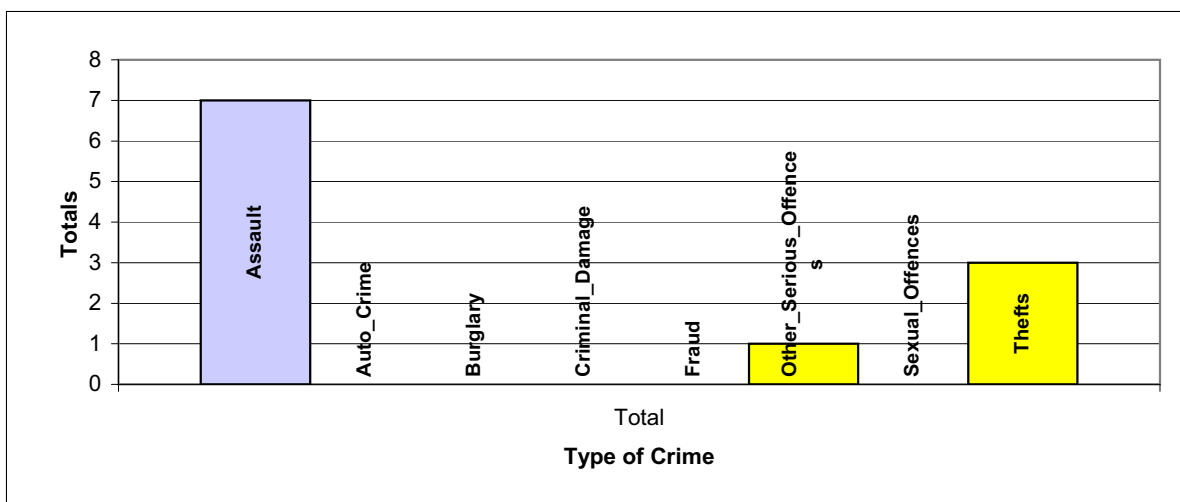
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Architectural Liaison Officer Report

Crime Analysis Study Area:	=	Salt and Peppers
Planning Application Reference:	=	
Size of Study Area from Application	=	Just Premises
Study Period Start:	=	01/01/2007
Study Period End:	=	31/12/2007
Date Study Completed	=	04/09/2008
Number of Months in Study Period	=	12
Geocoding Accuracy Rate	=	95%

Crime Group	Total
Assault	7
Auto_Crime	0
Burglary	0
Criminal_Damage	0
Fraud	0
Other_Serious_Offences	1
Sexual_Offences	0
Thefts	3
Grand Total	11

A Table of Crime in the Study Area (Above) and corresponding Graph (Below)



A Table of Crime by Crime Group and then Crime Type

EVENT_GROUP	HO_DESCRIPTION	Total
ASSAULT	COMMON ASSAULT ETC.	1
	OTHER WOUNDING ETC.	1
	PUBLIC ORDER OFFENCES	5
OTHER_SERIOUS_OFFENCES	TRAFFICKING IN CONTROLLED DRUGS	1
THEFTS	OTHER THEFT OR UNAUTHORISED TAKING	2
	THEFT FROM THE PERSON OF ANOTHER	1
Grand Total		11

01/01/2007	OTHER THEFT OR UNAUTHORISED TAKING
01/01/2007	OTHER THEFT OR UNAUTHORISED TAKING
03/02/2007	PUBLIC ORDER OFFENCES
13/02/2007	THEFT FROM THE PERSON OF ANOTHER
01/06/2007	TRAFFICKING IN CONTROLLED DRUGS
08/07/2007	PUBLIC ORDER OFFENCES
08/07/2007	PUBLIC ORDER OFFENCES
02/12/2007	OTHER WOUNDING ETC.
15/12/2007	COMMON ASSAULT ETC.
30/12/2007	PUBLIC ORDER OFFENCES
30/12/2007	PUBLIC ORDER OFFENCES

A Table of Crime by Month of the Year and Hour of the Day in the Study Area

Month	Total
Jan	2
Feb	2
Mar	0
Apr	0
May	0
Jun	1

Month	Total
Jul	2
Aug	0
Sep	0
Oct	0
Nov	0
Dec	4

Crime Day	Total
Mon	2
Tue	1
Wed	0
Thu	0
Fri	1
Sat	2
Sun	5
Grand Total	11

Grand Total

11

Expected Average Crime per Month =

0.92

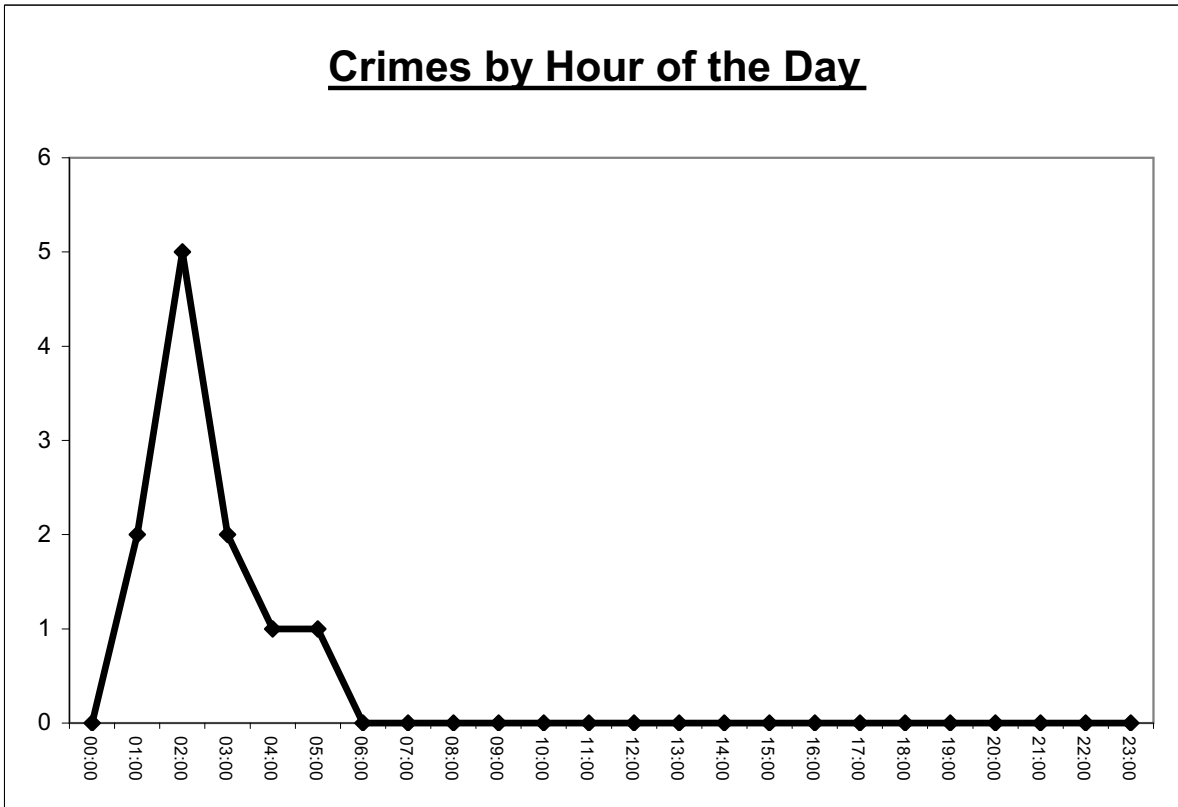
Expected Average Crime per Day =

1.57

A Table of Crime by Hour of the Day in the Study Area

	00:00	01:00	02:00	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total
Total	0	2	5	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11

Crimes by Hour of the Day



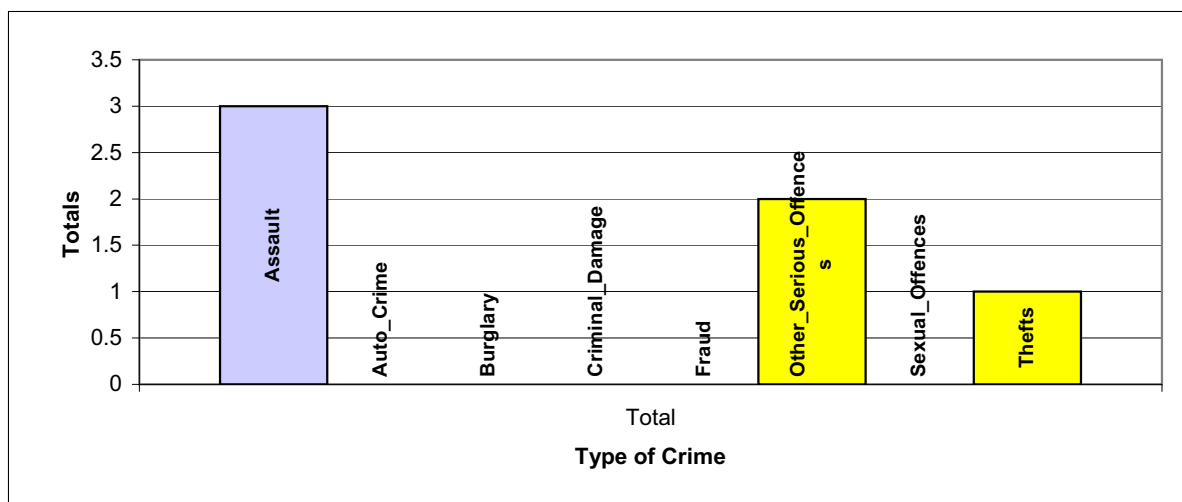
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Architectural Liaison Officer Report

Crime Analysis Study Area:	=	Salt and Peppers
Planning Application Reference:	=	
Size of Study Area from Application	=	Just Premises
Study Period Start:	=	01/01/2008
Study Period End:	=	31/07/2008
Date Study Completed	=	04/09/2008
Number of Months in Study Period	=	7
Geocoding Accuracy Rate	=	95%

Crime Group	Total
Assault	3
Auto_Crime	0
Burglary	0
Criminal_Damage	0
Fraud	0
Other_Serious_Offences	2
Sexual_Offences	0
Thefts	1
Grand Total	6

A Table of Crime in the Study Area (Above) and corresponding Graph (Below)



A Table of Crime by Crime Group and then Crime Type

EVENT_GROUP	HO_DESCRIPTION	Total
ASSAULT	ACTUAL BODILY HARM WITHOUT INTENT	1
	OTHER WOUNDING ETC.	1
	PUBLIC ORDER OFFENCES	1
OTHER_SERIOUS_OFFENCES	OTHER OFFENCE AGAINST STATE OR PUBLIC ORDER	1
	TRAFFICKING IN CONTROLLED DRUGS	1
THEFTS	OTHER THEFT OR UNAUTHORISED TAKING	1
Grand Total		6

05/01/2008	OTHER WOUNDING ETC.
31/01/2008	OTHER OFFENCE AGAINST STATE OR PUBLIC ORDER
16/02/2008	PUBLIC ORDER OFFENCES
01/03/2008	OTHER THEFT OR UNAUTHORISED TAKING
08/03/2008	TRAFFICKING IN CONTROLLED DRUGS
18/07/2008	ACTUAL BODILY HARM WITHOUT INTENT

A Table of Crime by Month of the Year and Hour of the Day in the Study Area

Month	Total
Jan	2
Feb	1
Mar	2
Apr	0
May	0
Jun	0

Month	Total
Jul	1
Aug	0
Sep	0
Oct	0
Nov	0
Dec	0

Crime Day	Total
Mon	0
Tue	0
Wed	0
Thu	1
Fri	1
Sat	4
Sun	0
Grand Total	6

Grand Total

6

Expected Average Crime per Month =

0.86

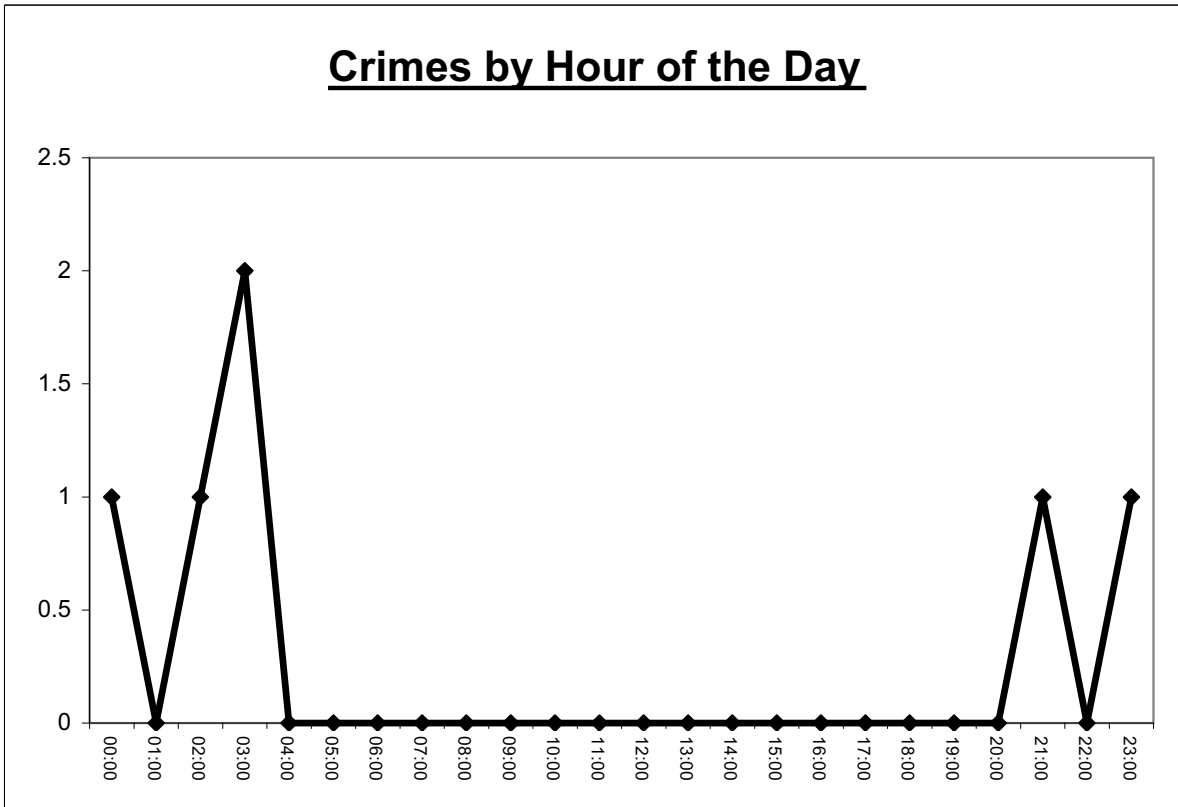
Expected Average Crime per Day =

0.86

A Table of Crime by Hour of the Day in the Study Area

	00:00	01:00	02:00	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total
Total	1	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	6

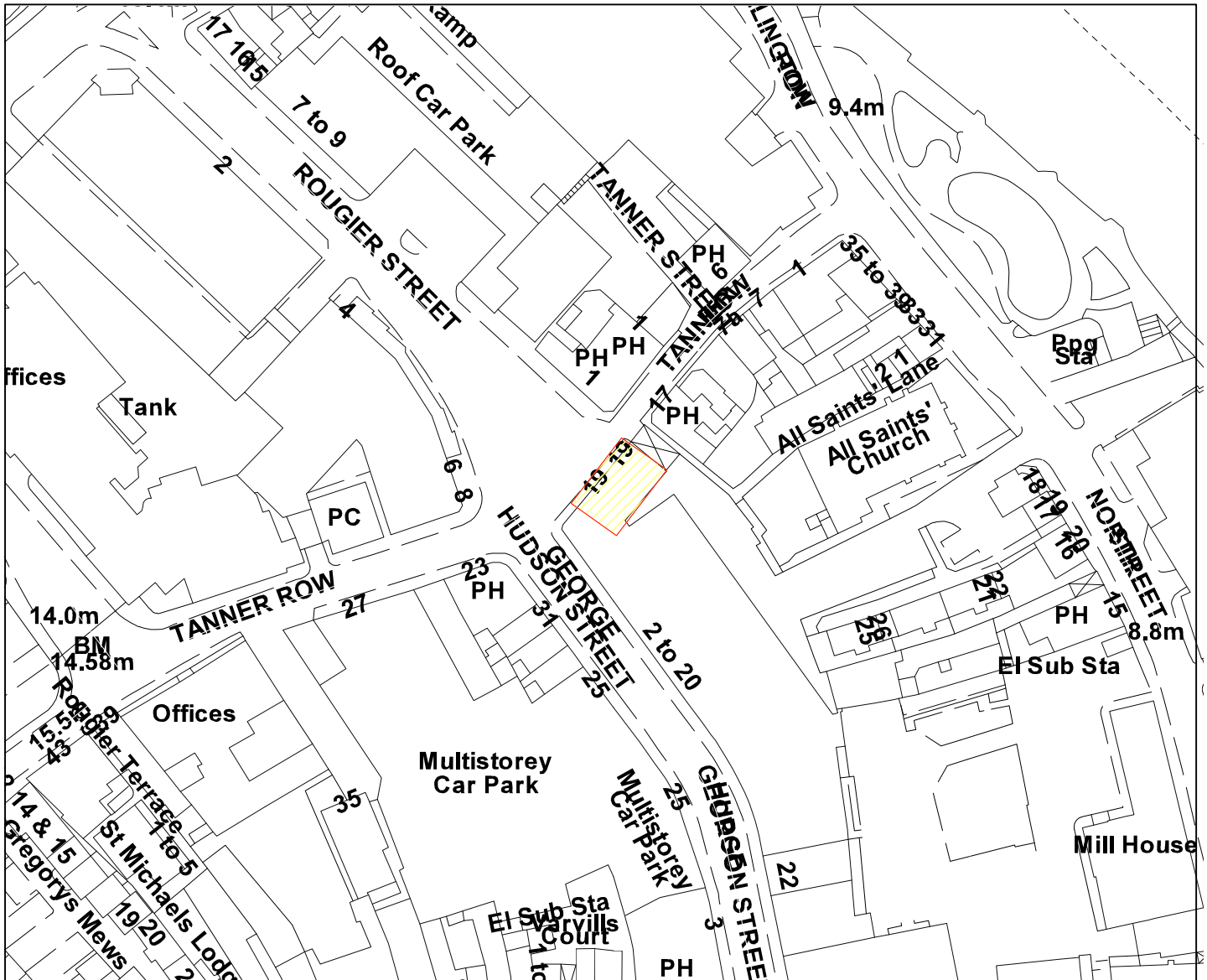
Crimes by Hour of the Day



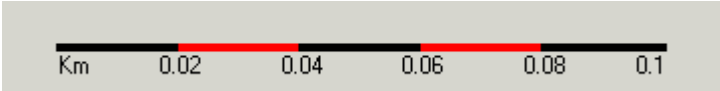
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Salt and Peppers, 19 Tanner Row

08/01750/FUL



Legend



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Organisation	City of York Council
Department	City Strategy
Comments	Application Site
Date	03 September 2008
SLA Number	Not set

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COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 September 2008 **Parish:** Guildhall Planning Panel

Reference: 08/01139/FUL
Application at: Thorntons Plc 15 Parliament Street York YO1 8SG
For: Change of use from retail shop (use class A1) to financial and professional services (use class A2)
By: Town Centre Securities PLC
Application Type: Full Application
Target Date: 17 July 2008

1.0 PROPOSAL

1.1 The application is for the change of use from retail shop (use class A1) to financial and professional services (use class A2)

1.2 The site is within the Central Historic Core Conservation Area and is classified as a Primary Shopping Street, as identified on the proposals maps. The building is Grade II listed.

1.3 The application has been called into committee by Cllr Brian Watson as a previous application at 14 Parliament Street was recommended for refusal (application was later withdrawn). 14 Parliament Street had two frontages, one on Parliament Street the other on Market Street.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Listed Buildings Grade 2; The Disney Store 14 Parliament Street York YO1 8S 0559

Listed Buildings Grade 2; 15 Parliament Street York 0560

Listed Buildings Grade 2; 16 Parliament Street York YO1 2SG 0561

2.2 Policies:

CYHE3
Conservation Areas

CYHE4
Listed Buildings

CYS3
Mix of use in certain shopping streets

CYGP1
Design

3.0 CONSULTATIONS

3.1 PUBLICITY DATES/PERIODS

Neighbour Notification - Expires 17/06/2008
Site Notice - Expires 02/07/2008
Press Advert - Expires 25/06/2008
Internal/External Consultations - Expires 18/06/2008

8 WEEK TARGET DATE 17/07/2008

3.2 INTERNAL CONSULTATIONS

CITY DEVELOPMENT

- A total of 34.5% of the combined frontage of these two streets is classified as non-A1 use, and, all other factors remaining unchanged, if the property 15 Parliament Street were to be converted from A1 to A2 use rights, then this would rise to 36.6%, thereby exceeding the permitted maximum.

- The applicant is prepared to enter into a S106 agreement, to remove the A2 use rights of property 3 St Sampson's Square, which is currently vacant and also under the ownership of Town Centre Securities. The use rights on this property would effectively revert to A1. This would effectively mean that the A2 use rights would be transferred from 3 St Sampson's Square to 15 Parliament Street, and the percentage of non-A1 frontage in the two streets combined would fall to 33.8%, due to the smaller frontage of 15 Parliament Street.

- Criterion e) of Policy S3a of the Draft Local Plan also states that regard should be had to the number of vacant ground floor premises in the immediate area. At present, the only vacant premises in the two streets is 3 St Sampson's Square. In this respect, the applicant is prepared to enter into an agreement that the change in use of 15 Parliament Street shall not be effected until an A1 retailer is found to occupy 3 St Sampson's Square, which would thereby lead to an increase in the vitality of the area.

DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT

- It would appear that no changes are proposed at present and in principle, the change of use of the building is acceptable. The applicant should however be advised that any internal, external or signage changes may require the submission of a formal application for listed building consent

3.3 EXTERNAL CONSULTATIONS/REPRESENTATIONS

GUILDHALL PLANNING PANEL - Object

- The continued encroachment of financial services outlets, we suspect for prestige reasons, is anonymising high streets across the country. A stand should be made.

4.0 APPRAISAL

RELEVANT SITE HISTORY

7/00/895/PA - Change of use from bank to shop - Approved

History for 3 St Sampson's Square

07/02509/LBC - Internal alterations and external alterations including erection of external fire escape to rear - Approved

07/02508/FUL - Erection of external fire escape to rear, first floor extension - Approved

07/02216/FUL - Alterations to shopfront and doorway - Approved

07/02217/LBC - Internal alterations and external alterations including erection of external fire escape to rear - Approved

7/05/4093F/PA - Change of use of second floor from retail shop to offices - Approved

7/05/4093A/PA - Change of use of first floor estate agents to doctors consulting rooms - Approved

7/00/4093/PA - Change of use of second floor from offices to retail shop - Approved

ADDITIONAL PLANNING POLICY

Planning Policy Guidance Note 15 'Planning and the Historic Environment'

KEY ISSUES

1. Impact on the vitality and viability of the street

ASSESSMENT

PLANNING POLICY

4.1 Planning Policy Guidance Note 15 'Planning and the Historic Environment' (PPG15) sets out the approach to dealing with proposals that affect Listed Buildings and Conservation Areas. In making decisions on proposals in Conservation Areas, Planning Authorities have a statutory duty to consider the desirability of preserving or enhancing the character or appearance of the Conservation Area.

4.2 Policies HE2 'Development within Historic Locations' and HE3 'Conservation Areas' of the City of York Development Control Local Plan are also relevant to this proposal. These policies expect proposals to maintain or enhance existing urban spaces, views, landmarks and other townscape elements and not to have an adverse effect on the character or appearance of the Conservation Area. Policy HE4 'Listed Buildings' is also relevant in that it states that consent will only be granted for development where there is no adverse effect on the character, appearance or setting of the building.

4.3 Policy S3a 'Mix of uses in Shopping Streets' states in York's City Centre Primary Shopping Streets development will be permitted where it provides the improvement and expansion of existing retail premises and the establishment of new shopping uses. Proposals involving the change of use of ground floor premises within the primary shopping streets will only be permitted provided that they do not detract from the primary shopping function and contributes to the vitality and viability of these areas. The assessment of proposals for the change of use from a shop (A1) to uses within classes A2 or A3 will be guided by the following factors:

- the location and prominence of the premises within the shopping frontage;
- the floorspace and frontage of the premises;
- the number (a maximum of 35%), distribution and proximity of other ground floor premises in use as, or with planning permission for class A2 or A3; and
- the particular nature and character of the proposed use, including the level of activity associated with it, and; the proportion of vacant ground floor property in the immediate area.

4.4 Policy SP3 'Safeguarding the Historic Character and Setting of York' in the City of York Council Development Control Local Plan (2005) states that high priority will be given to the protection of the historic character and setting of York.

4.5 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.

IMPACT ON THE VITALITY AND VIABILITY OF THE STREET

4.6 The application is for the change of use of 15 Parliament Street from an A1 use to an unspecified A2 use. The site is within the primary shopping streets set out in the Proposals Maps.

4.7 To overcome the 35% threshold stipulated in Policy S3a the applicant is willing to enter into a S106 agreement to change the use of another property close by from A2 to A1 (3 St Sampson's Square). 3 St Sampson's Square was previously the Woolwich Building Society, and under permitted development rights can change to a use class A1 without the need for planning permission. The agent has confirmed that a lease has been signed on the 3 St Sampson's Square property for a retail use. There is no permitted change to another use class once a property is in an A1 use. The purpose of the S106 agreement is to ensure if 15 Parliament Street is granted planning permission for an A2 use, 3 St Sampson's Square would change to A1 use.

4.8 Officers from City Development have confirmed (with regards to Policy S3a) that the combined frontage of Parliament Street and St Sampson's Square is 34.5%, just under the threshold 35%. If 15 Parliament Street were converted to A2 use the frontage would be 36.6%. However if 3 St Sampson's Square was converted to A1 use only then the percentage of non-A1 frontage in the two streets combined would fall to 33.8% (as the frontage of 15 Parliament Street is smaller). There would be no overall loss of A1 use within the two streets and therefore it is considered that there would be no loss of vitality to the protected streetscape and conservation area.

4.9 The Guildhall Planning Panel have objected on the grounds that the gradual encroachment of financial services are creating anonymous frontages in the streetscape. Parliament Street (not including the proposed site) is made up of 5 Banks/Building Societies and 17 A1 uses (4 opticians, Disney Store, 4 clothes shops, 2 mobile phone shops, 2 sandwich shops, 2 photography shops, 1 accessories shop, 1 Whittards) and 1 A3 use.

4.10 The agent has not specified the specific use of the site however by virtue of the small area of the unit it is not considered that any potential use could cause such an increase in activity such as footfall and traffic as to cause a disturbance.

4.11 The applicants recently applied (07/02674/FUL) to change the use of 14 Parliament Street (the Disney Store) to an A2 use but this was withdrawn as the proposed loss of a retail unit on Parliament Street and Market Street would by virtue of its prominent siting of the existing retail unit and its contribution to the retail character of this side of Parliament Street breach and undermine its retailing status as a primary shopping street, detract from the strength and cohesiveness of the wider shopping area, and adversely harm the character and appearance of the conservation area.

4.12 The building is Grade II listed, the agent has stated that there would be no internal changes and no changes to the frontage. Listed Building Consent is therefore not required. Any changes to adverts would require advertisement consent and listed building consent. Conservation does not have any concerns regarding the change of use of the ground floor storey.

5.0 CONCLUSION

5.1 The proposed change of use (dependent on the Section 106 agreement with regarding 3 St Sampson's Square being A1 use only) is not considered to reduce the vitality and viability of the two streets. The property has a small frontage and is not considered to be unduly prominent. The change of use is not considered to cause harm to the protected street or the conservation area. Approval is recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 No development shall commence until the applicant or any successor in title has agreed in writing to a Section 106 agreement (of the Town and Country Planning Act 1990) which agrees to change of use of 3 St Sampson's Square to an A1 use.

Reason: In order to comply with Policy S3a of the City of York Development Control Local Plan.

2 TIME2 Development start within three years

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 protected street, and the visual amenity of the streetscene and conservation area. As such, the proposal complies with Policies GP1, S3a and SP3 of the City of York Development Control Local Plan (2005).

Contact details:

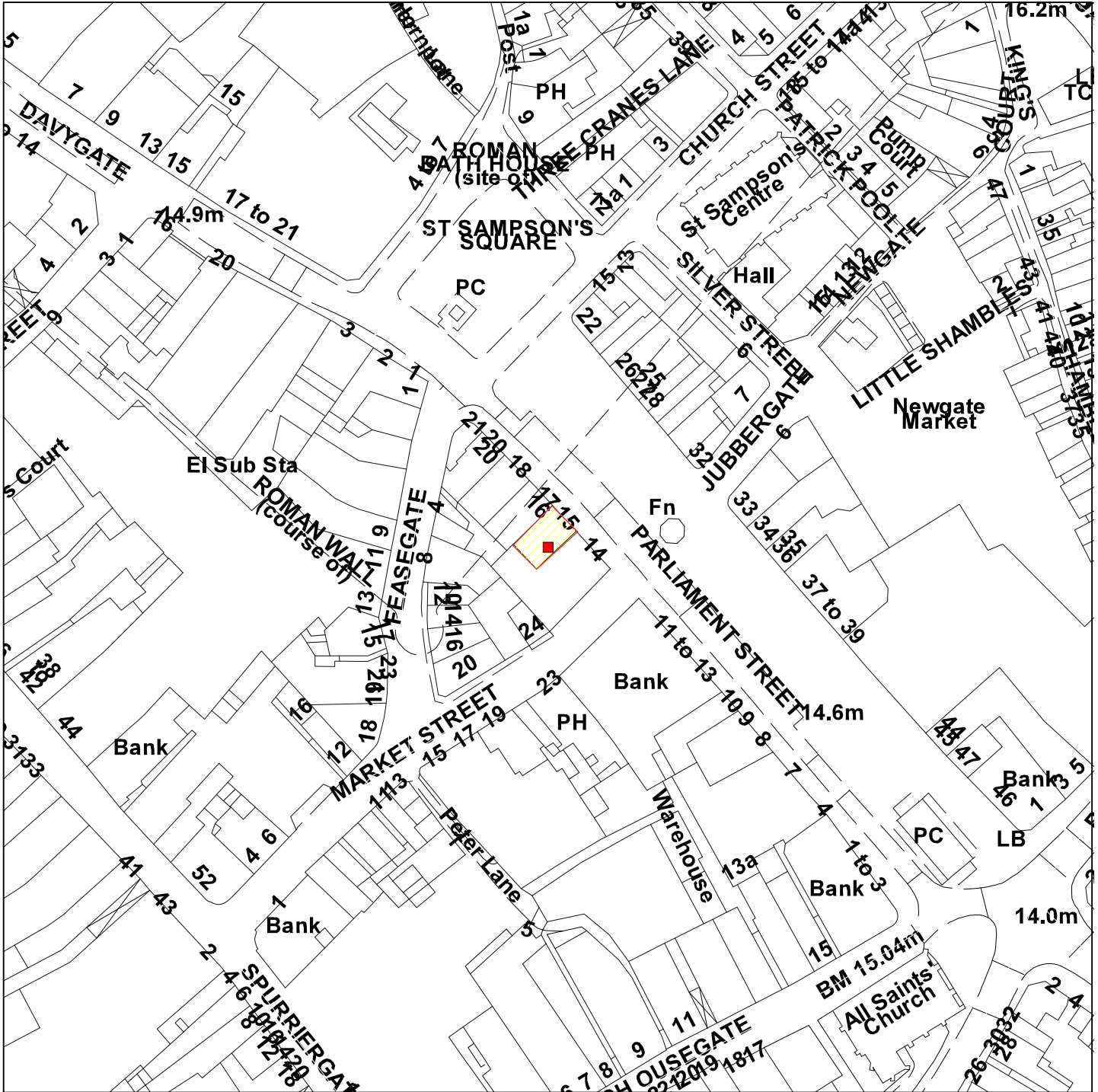
Author: Richard Beal Development Control Officer
Tel No: 01904 551610

Thorntons Plc, 15 Parliament Street

08/01139/FUL



GIS by ESRI (UK)



Scale : 1:1250

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Organisation	City of York Council
Department	City Strategy
Comments	Application Site
Date	03 September 2008
SLA Number	Not set

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CYGP1
Design

CYGB2
Development in settlements "Washed Over" by the Green Belt

CYNE2
Rivers and Stream Corridors, Ponds and Wetland Habitats

3.0 CONSULTATIONS

3.1 Internal:-

Highway Regulation raise no objection to the proposal.

Design, Conservation and Sustainable Development were consulted with regard to the proposal on 1st August 2008. Any representations will be reported orally at the meeting.

Public Rights of Way were consulted with regard to the proposal on 1st August 2008. Any representations will be reported orally at the meeting.

3.2 External:-

Natural England raise no objection to the proposal.

Acaster Malbis Parish Council raise no objection to the replacement of the moorings but object to the associated fencing erected to either side of the river bank footpath.

The Rambler's Association raise no objection to the replacement of the moorings but object to the associated fencing erected to either side of the river bank footpath.

The Environment Agency object to the design of fencing erected directly adjacent to the river bank. They feel that the close boarded design adopted would impede the free flow of flood water causing an increased risk of flooding elsewhere in the vicinity. A post and rail fence would however be deemed to be acceptable.

British Waterways were consulted in respect of the proposal on 1st August 2008. Any representations will be reported orally at the meeting.

Acaster Internal Drainage Board were consulted in respect of the proposal on 1st August 2008. Any representations will be reported orally at the meeting.

Some 22 letters of objection have been received in respect of the proposal. These raise no objection in respect of the re-instatement of the moorings, but object to the associated fencing on the grounds that it destroys the open character of the riverbank, would set a precedent for other similar developments elsewhere, would increase the risk of flooding elsewhere, creates an undesirable urbanising element within the local townscape and create a fear of crime for those using the riverbank right of way.

4.0 APPRAISAL

4.1 Key Issues:-

Impact upon containment of flood risk arising from the fencing as erected ,
Impact of the fencing upon the visual amenity of the riverbank area.

Fear of crime arising from the design and layout of the fencing erected,

Impact of the proposal on the nature conservation value of the river bank.
Impact of the proposal on the open character and purposes of designation of the Green Belt.

The implications of the "fall back position" in terms of potential refusal and subsequent enforcement.

4.2 Flood Risk:

Policy GP15a) of the York Development Control Local Plan following on from Central Government advice contained PPS 25 "Planning and Flood Risk" sets down a clear policy presumption that new development must successfully manage flood risk with minimal environmental effect ensuring that the site can be developed, serviced and occupied safely. In the current context the simple renewal of the existing moorings would be unexceptionable, however the fencing erected has given rise to substantial concerns on a number of fronts. The Environment Agency object strongly to the fencing erected which in their opinion greatly exacerbates the level of flood risk within the immediate area of the development. The Environment Agency indicate that they are unhappy with fencing but would settle for a more rural open post and rail type fence that would not in any way impede the free flow of floodwater, if fencing were deemed essential. Any permission should therefore be conditioned to require relocation and re-design of the fencing in a more appropriate manner.

4.3 Visual Amenity of the River Bank Area:

The Ouse riverbank as it passes through Acaster Malbis generally comprises a pleasant relatively wide tree lined walkway with a mix of mature trees and lengths of hedgerow along the village side and a more open shrub lined character along the riverside. Several cottages including ones Listed as of Special Architectural or Historical Importance line the walkway. Policies GP1 and NE2 of the York Development Control Local Plan are of particular relevance in this context. Policy GP1 gives a firm policy presumption in favour of new developments which respect or enhance the local environment, are of a layout, scale and design compatible with neighbouring spaces and the character of the area and retain and enhance public views and the rural character and setting of villages. Policy NE2 sets a policy presumption to resist development which would have an adverse impact upon the landscape character of the riverbank and ensuring that the design of structures and engineering works along the riverbank are appropriate in their form and setting. The fencing as erected creates a visually inappropriate, discordant, alien and urbanizing element within an otherwise pleasant sylvan riverbank setting. The terms of Policies GP1 and NE2 are thus not complied with in respect of the proposal. In order to secure compliance any approval will need to be conditioned to require re-design and re-location of the fence combined with the planting of a hedge more visually characteristic of the riverbank area.

4.4 Impact upon the Open Character and Purposes of Designation of the Green Belt:

Policy GB 2 of the York Development Control Local Plan set a clear policy presumption in favour of developments which would not detract from the open character of the Green Belt and on a specific scale would be appropriate to the form and character of the settlement in terms of its location, scale and design. The intrinsic character of the Green Belt in the vicinity of Acaster Malbis lies in its largely rural sylvan character with a low density of built development. The fencing as

erected introduces a dense and oppressive urbanising element to the Green Belt in the area of Acaster Malbis village contrary to its open character. In order to comply with Green Belt Policy in respect of Acaster Malbis the fence will require relocation together with landscaping in a more visually appropriate manner.

4.5 Fear of Crime:

The fencing as erected does create a clear and distinct sense of enclosure alien to that section of the riverbank. Notwithstanding other issues it does not however generate a specific and well founded fear of crime.

4.6 Impact of the Proposal on the Nature Conservation Value of the Riverbank:

Policy NE 3 of the York Development Control Local Plan sets a firm policy presumption in favour of the protection of open water bodies for their wildlife and recreational value. Natural England in their consultation response to the proposal confirm that the impact of the proposal on the nature conservation value of the riverbank would be minimal.

4.7 Impact of the "Fall Back Position" In Terms of Potential Enforcement:

The design of the fencing directly associated with the renovated moorings has resulted in a quality of development somewhat below that which would ordinarily be acceptable in this context. However, in the event of a refusal of the proposal and a subsequent enforcement case should the fence be retained a planning inspector will be required to have due regard to the "fallback position" whereby the applicant may erect a very similar fence utilizing his permitted development rights. The courts have held that in coming to a decision a planning authority must have substantial regard to the impact of this "fallback position" particularly where on the balance of probabilities there is a strong likelihood that the " fallback position" will be implemented .It is felt that in the event of a refusal of the current proposal that there is a strong likelihood that the concerns arising from the fence will remain as a consequence of the " fallback position" being implemented. The imposition of robust conditions within the context of a permission for the basic development which is unexceptionable is felt to be the most appropriate course of action.

5.0 CONCLUSION

5.1

The three disused moorings adjacent to The Orchard Tyn Garth form part and parcel of the usual riverside activity associated with the riverbank in the vicinity of Acaster Malbis. Their restoration is unexceptionable. The key issue of concern is the domestic and urbanizing fencing that has been erected in association. In order for the impact of the development to be rendered at all acceptable it is imperative that any approval is conditioned to relocate the fencing to enable the pre-existing hedge to be re-instated, together with the fence being stained to enable it to blend in with the surrounding landscape.

6.0 RECOMMENDATION: Approve

1 Notwithstanding the application details hereby approved, full details of the fencing or other means of enclosure dividing the renovated moorings from the adjoining land shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the date of this permission. Such details shall include full information on the design, height, location and alignment of the fencing, or other means of enclosure and shall allow for the fencing panels and posts to be dark stained to the satisfaction of the Local Planning Authority. The development shall be undertaken in strict accordance with the details thereby approved.

Reason: To ensure a satisfactory form of development

2 Notwithstanding the application details hereby approved a hedge dividing the area of the renovated moorings from the adjoining land to the north-west, in a precise location and utilizing species previously approved in writing by the Local Planning Authority shall be planted within the first planting season following the date of this permission. Any part of the hedge so planted which dies within five years from the date of the permission, or is removed or becomes seriously damaged or diseased shall be replaced in the next planting season to the satisfaction of the Local Planning Authority.

Reason: To ensure a satisfactory form of development

3 Notwithstanding the provisions of the 1995 Town and Country Planning General (Permitted Development) Order or any other similar order currently in force, no domestic paraphernalia shall be stored or otherwise erected within the enclosed area surrounding the moorings hereby approved.

Reason: To secure a satisfactory form of development.

**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 management of flood risk, fear of crime, impact of fencing upon visual amenity, impact upon nature conservation, impact upon Green Belt and the "Fallback Position" and as such complies with Policies GP 15,GP1,L4,GB2,and NE2 of the City of York Local Plan Deposit Draft.

Contact details:

Author: Erik Matthews, Development Control Officer

Tel No: 01904 551416

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The Orchard, Tyn Garth, Acaster Malbis

08/01177/FUL



GIS by ESRI (UK)



Scale : 1:2500

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Organisation	City of York Council
Department	City Strategy
Comments	Application Site
Date	04 September 2008
SLA Number	Not set

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