

COMMITTEE REPORT

Date: 7 April 2016 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
 Commercial Team

Reference: 16/00012/FUL
Application at: Bicis Y Mas 59 - 63 Walmgate York YO1 9TY
For: Use of rear yard for cafe seating associated with existing retail use
By: Mr Ellis Thackray
Application Type: Full Application
Target Date: 17 March 2016
Recommendation: Approve

1.0 PROPOSAL

1.1 The application relates to the bike shop, cafe and cycle repair facility located on the corner of Walmgate and George Street. Despite the address the facility includes 2 George Street, where cycle repairs are undertaken. This was understood when the use was granted permission in February 2015, under application 14/01960/FUL. The associated outside yard is used for storage and provides an outside seating area for cafe customers. In the original permission the use of the outside area was controlled by planning conditions as follows -

- The use was to be for a trial period only, ending 31 Jan 2016
- There would be no more than 8 customers using the yard area
- The yard area would only be used between 0830 to 1800 Monday to Saturdays and 0930 to 1630 on Sundays and Bank Holidays.

1.2 The restrictions on the use were agreed to by the applicant in order to address objections from neighbours. There were 7 objections from residents of St Denys Court. This application has attracted four objections.

1.3 This application is to allow permanent use of the outside yard as a seating area. It proposes an increased number of covers, from 8 up to 12 and to allow the area to be used to 1900 Monday - Saturday and until 1700 Sundays.

1.4 The application site is within the Central Historic Core Conservation Area. Walmgate predominantly has commercial premises at ground floor level and there are residential properties which bound the site at the rear; St Denys Court, Hotham's Court and the houses on George Street.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006
Conservation Area GMS Constraints: Central Historic Core CONF
City Boundary GMS Constraints: York City Boundary 0001
DC Area Teams GMS Constraints: Central Area 0002

2.2 Policies:

S6 Control of food and drink uses

3.0 CONSULTATIONS

Forward Planning

3.1 Officers explain the relevant planning policy and conclude that the assessment should consider the effect of the proposal in terms of any negative impacts on the amenities of surrounding occupiers. If these can be overcome there would not be a policy objection to the proposals.

Public Protection

3.2 No objection. Ask that planning conditions ensure the use is as per the application only, regarding the times of operation and number of covers.

3.3 During the temporary permission public protection received two noise complaints. The first was regarding the early emptying of bottles, which was resolved informally. The other related to two weekends in October when groups of patrons moved tables together, rather than the tables being used by smaller groups or individuals. The complainant acknowledged that whilst the noise was audible, it was not sufficient for a complaint about nuisance to be lodged with us, as such the company was not contacted.

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3.4 No objection.

Publicity

3.5 The application was publicised by site notice, and neighbour notification letters. The deadline for comment was 8 March.

3.6 Four objections have been received from occupants of the flats at upper floor level in St Denys Court. The concerns raised are as follows -

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- The rear yard is primarily at the rear of and belonging to 2 George Street. The yard is directly surrounded and enclosed by at least 11 residential properties that either abut or overlook it. As such, the rear yard must be considered as being predominately within a residential area and having no connection with the predominately commercial Walmgate.
- The council's Environmental Protection Unit (now Public Protection) saw it fit in the previous approval for the rear yard to restrict number of customers who were allowed to use the area and the hours of operation. Conditions were imposed and only a trial period granted permission. This confirms the council had concerns over the possible impact on amenity.
- There is a loss of privacy suffered as customers using the outside seating area can see into surrounding properties and onto external balconies.
- The view of the cafe from a neighbouring balcony is unattractive and disturbing.
- The use of the rear yard by customers has lead to an increase in noise caused by customers talking, the use of mobile phones, dogs barking, babies crying etc, and noises associated with the laying up and serving at tables etc. On occasions tables have been pushed together to accommodate large and noisy groups. On occasions noise could be heard in the adjacent flats, even with windows closed. Complaints have been made to the CYC Public Protection Unit on two occasions concerning the level of noise. There were a number of occasions when further complaints could have been made but on such occasions there was unlikely to be a statutory noise nuisance. On occasions noise from the cafe could be heard in the flat at St Denys when windows were closed. The outside area is likely to be popular during better weather, when residents would also want to have windows open/sit outside, thus leading to disturbance. Whilst it is acknowledged that the impact does not justify enforcement under the Environmental Protection Act, there has been an adverse effect on residential amenity.
- The summer of 2015 was not particularly good and that the number of days when people might want to sit outside in a cafe were limited by this.
- In the neighbours opinion the restrictions on numbers of customers using the rear yard and restrictions on the times that the rear yard can be used do not prevent the loss of amenity.
- Concern that the cafe is popular and is becoming the dominant part of the use of the premises. There would be 34 covers if the increase in seating proposed were allowed, which is more substantial than other cafes along Walmgate, the

use which has occurred conflicts with the original proposal for primarily a shop and cycle repair workshop.

- It is suggested the applicant is in breach of the premises licence due to the amount of floor space used as a cafe. There is also concern that the applicant will in future apply to vary the licence and allow alcohol to be served in the outside area. It is highly likely a loss to residential amenity would result.

4.0 APPRAISAL

Key Issues

4.1 The issue in this application is the impact on the amenity of surrounding occupants.

Assessment

Noise

4.2 The National Planning Policy Framework (NPPF) states that developments should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impact on health and quality of life as a result of new development and use planning conditions to secure mitigation.

4.3 Local Plan policy S6 states that planning permission for the development of premises for food and drink uses will only be granted provided there is no unacceptable impact on the amenities of surrounding occupiers as a result of noise, smell or litter.

4.4 There is further guidance within National Planning Policy Guidance (NPPG) on noise. The guidance explains where noise would cause an adverse effect and if this cannot be adequately mitigated, developments should be refused. Noise is described as being noticeable and intrusive when, for example neighbours would have to close windows for some of the time because of the noise, if there were potential for some reported sleep disturbance or noise would affect the acoustic character of the area such that there is a perceived change in the quality of life.

4.5 The NPPG guidance advises that in considering whether there would be an adverse effect, consideration should be given to -

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night, when people are trying to sleep and when background noise levels can be lower) than if they occurred during the day

- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise
- the spectral content of the noise (i.e. whether or not the noise contains particular high or low frequency content) and the general character of the noise (i.e. whether or not the noise contains particular tonal characteristics or other particular features)

4.6 Of the 35 neighbour notification letters sent there have been four objections made. The objections refer to occasions when noise could be heard as a consequence of the outside seating area. The noise was described as talking, the use of mobile phones, dogs barking, babies crying etc, and noises associated with the laying up and serving at tables. There is concern because in times of good weather and when larger groups occupy the yard area noise levels have an adverse effect on amenity. There is concern also that if alcohol were served in the outside area (which is not allowed under the current premises licence) there would be further disturbance.

4.7 The rear yard is enclosed by surrounding buildings. It is overlooked by flats. Noise levels are lower in this area in comparison to front of the buildings where there is activity during the day and evening and traffic noise. Consultation responses note that within the flats in St Denys, external noise is audible in rooms overlooking the street and rear rooms are more tranquil. The national planning guidance advocates provision of such quieter areas by design to mitigate against noise pollution.

4.8 The noise assessment undertaken by Dragonfly Consulting for the 2014 application recorded noise levels as being 44-52 dB between 13.00 and 21.00. It was estimated that as a consequence of the outside seating area originally proposed, noise levels would increase to 54.6 to 56.3 dB between 13.00 and 21.00. Noise levels were lower after 17.00. However this was on the basis of a typical licensed restaurant whilst the application site has a cafe with limited alcohol sales and predominantly trades during the daytime and not the evening.

4.9 The application asks to allow the outside area to operate for a further hour Monday to Saturday (until 19.00) / half an hour Sundays (until 17.00). There would be 4 more covers.

4.10 It is evident that there would be a noticeable change to the noise environment on occasions as a consequence of the rear yard being in use as proposed in this application. The activity associated with the use could at times be heard by neighbours if they were using their balconies or if they had windows open. However the use would still remain during the daytime; 7pm at the latest, and the type of noise would not be unduly intrusive. Given the type of noise that would result, when it occurs and the number of events, it would not cause any change in behaviour or attitude to the extent that there would be a perceived change in the quality of life.

4.11 The site is within a mixed use and dense developed area. There are a number of flats above the host premises and should the rear yard be made available for their use, it could equally be used to a similar effect. Even in less urban areas, activity from traffic and neighbouring activity would typically be evident, including noise from people making use of outside amenity spaces during better weather.

4.12 Officers agree with residents that if alcohol were permitted to be served in the yard, or if it were to open into the evening, when background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning condition. Alcohol is currently not permitted in the outside area; prevented by the premises licence. This matter would need to continue to be managed through the licensing legislation.

Appearance of the yard

4.13 The objections include comments that the view of the outside area is unattractive. The yard is surfaced in a mix of stone paving and timber decking. There is a timber bin store and a cycle shelter with a green roof. The premises were last in retail use and in such a case it would be unlikely the yard would be landscaped to such a high standard as it is currently. If the yard were particularly unattractive, it would also be unlikely to appeal to customers. Photographic evidence has been provided showing the appearance of the yard; it appears well kept and does not detract from the setting.

Whether the applicant is according to the original permission for mixed use

4.14 The application relates to the outside seating area only. However the internal layout has not materially changed since planning permission was granted in February 2015. Although the application only refers to a Wamgate address, it has always been the case that the planning unit includes also the George Street property, where the workshop is located, as was explained in the 2014 permission (14/01960/FUL).

5.0 CONCLUSION

5.1 According to the NPPF the test in terms of impact on residential amenity is that developments should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impact on health and quality of life and use planning conditions to secure mitigation.

5.2 Whilst noise as a consequence of the introduction of the outside seating area would be apparent at times, the potential impact, based on national planning policy guidance, is regarded as noticeable and not intrusive. There would not be an undue impact on residential amenity. Adequate mitigation by the application of planning conditions can ensure suitable management. Conditions can control times of use and the number of covers and can prevent amplified noise, from music and televisions for example. Whether customers are allowed to consume alcohol is a matter for licensing and would not be controlled through the planning process in this case.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

Site plan dated 21 Jan

Seating area dated 5 Jan

The number of covers shall not exceed the amount (12) shown on 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 The use of the rear yard as an outside seating area for customers shall only occur during the following times -

Monday to Saturdays 08.30 to 19.00 hours

Sundays and Bank Holidays 09.30 to 17.30 hours

Reason: In the interests of residential amenity.

4 There shall be no amplified or recorded music or installation of other electrical equipment (such as televisions) in the courtyard area.

Reason: In the interests of residential amenity.

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

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In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome: the use of planning conditions.

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