

COMMITTEE REPORT

Team: Central Area
Date: 22 June 2006

Ward: Micklegate
Parish: Micklegate Planning Panel

Reference: 06/00174/FUL
Application at: 25 George Hudson Street York YO1 6JL
For: Conversion of former food store to nightclub with internal and external alterations to frontage
By: McMillan York Ltd
Application Type: Full Application
Target Date: 23 March 2006

1.0 PROPOSAL

1.1 The application relates to the conversion of part of the former "Presto" foodstore in George Hudson Street/Tanner Row to form an enlargement of the existing "Nexus" night club. In April 2005, planning permission was granted for the refurbishment of the former food store to form 5 retail units with an additional 32 short stay car parking spaces together with the re-cladding of the existing structure, which includes the Tanner Row multi-storey car park. The proposal effectively relates to "Unit 5" of that proposed development, which has a frontage of approximately 20 metres to Tanner Row and also includes a first floor area. Thus although the site address of the application is referred to as "25 George Hudson Street", the premises to which the application relates is located wholly within Tanner Row.

1.2 The proposal would add approximately 390 sq metres of floor space to the existing club at ground floor level, with a further 650 sq metres at first floor, including toilet and storage facilities. Minor changes are proposed to the Tanner Row elevation of the building, including the creation of a new customer entrance and glazed "shop fronts", which would be carried out in conjunction with the re-cladding proposals already approved. The proposal also involves breaking through an existing dividing wall at both ground and first floor level to provide access between the existing nightclub and the new floor space. The first floor of the existing nightclub operates by virtue of a planning permission granted in November 2002, which permitted a change of use from the previous residential/office use.

1.3 The applicant states that the proposal should not be seen as a pure extension of the existing night club, but the creation of a new style of venue with quite distinct operational characteristics from that of the existing premises. The proposal seeks to increase the range of late night entertainment within the new venue, reducing the high turnover of customers associated with the existing premises, and with a corresponding reduction in queuing and pedestrian movement on the streets outside.

1.4 The site is within the Central historic Core conservation area. Although the building which would be converted, which forms part of the Tanner Row multi-storey car park, is of no historic interest, 25 Tanner Row (the former Burns Hotel), which forms part of the existing night club, is a Grade II listed building.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Floodzone 3 Flood Zone 3

Floodzone 2 Flood Zone 2 CONF

City Boundary York City Boundary 0001

Conservation Area Central Historic Core 0038

Areas of Archaeological Interest City Centre Area 0006

DC Area Teams Central Area 0002

2.2 Policies:

CYS1

Land allocated for shopping sites

CYS7

Evening entertainment including A3/D2

CYGP3

Planning against crime

CYHE3

Conservation Areas

CYHE4

Listed Buildings

3.0 CONSULTATIONS

3.1 INTERNAL

HIGHWAYS - No objections

ENVIRONMENTAL PROTECTION - No objections in principle. However, there are concerns in relation to possible noise nuisance to local residents from a number of sources, including loud amplified music, air conditioning equipment, cooking extraction equipment, patrons leaving the premises late at night and noise from vehicles leaving the adjacent car park. The Environmental Protection Unit have no enforcement powers regarding noise from people in the street and endorse proposals to instigate a late night bus/private hire service in connection with the proposal, as well as the provision of street marshals to ensure the quiet dispersal of customers from the premises. Conditions are recommended relating to the following matters:

- details of plant or machinery for the treatment and extraction of fumes to be submitted for approval.
- details of all machinery, plant and equipment to be submitted for approval.
- the submission of a noise management scheme to control the level of noise emanating from the site, in particular noise from customers queuing to enter the premises and customers exiting the premises.
- the submission of a scheme of sound insulation to ensure that music is not audible at the nearest residential properties.
- a restriction on the hours of opening of the premises of 2.30 am Thursdays to Sundays and 3.30 am on Fridays and Saturdays.

URBAN DESIGN AND CONSERVATION - Proposals would have an unacceptable effect on the Central Historic Core conservation area and also on the listed building at number 25 Tanner Row.

The building is opposite the Grade II "star" former railway headquarters building with its separately listed railings and fine gateways. This is a popular "cut-through" route for pedestrians using the station and it is around the corner from a major bus drop off point. English Heritage guidance notes on the character and management of conservation areas clearly states that the use of an area/buildings contributes to the creation of character. It would change the character of the area unacceptably to extend the proposed use further up Tanner Row.

The existing fascia onto Rougier Street contains unauthorised advertising which is difficult to control due to its ad hoc nature. We would not wish to offer any further opportunity for extension of such advertising.

Proposals show that the listed building at number 25, the former Burns Hotel, would be opened up unacceptably to integrate it with the spaces on either side. The loss of its cellular compartmentation and elements such as chimney breasts, which are integral to its architectural and historic interest as a listed building would be unacceptable. At the moment it links through to the corner buildings but if the proposals went ahead it would merely become a cut-through and there would always be pressure to open the sides up.

The former supermarket site has been empty for a number of years. This area was the service and storage part of the supermarket and we are concerned that its loss might increase the difficulty of finding a viable use for the whole of the building.

We note that the elevations are superimposed on the proposed new cladding scheme which is not yet in existence.

ARCHAEOLOGIST - Any operations that penetrate below formation levels for the existing structure will have an impact on archaeological deposits. Therefore, there must be an archaeological watching brief (ARCH2) on all groundworks for this development.

CITY DEVELOPMENT - The proposed development site is identified as a preferred retail site (comparison/convenience goods) in the Draft local Plan (Policy S1 refers). However, it is recognised that the site has been marketed without success for several years, and that the future demand for retail development in the city may well be satisfied on other sites such as Castle Piccadilly, Hungate and York Central. In addition, the new Planning Policy Statement 6: "Planning for Town Centres" advocates a more flexible approach to development in town centres, stressing the importance of the evening economy, and indeed discusses retail and leisure development under the same broad heading. The proposal would not affect the George Hudson Street frontage of the shopping allocation, which would remain for future retail use should the demand arise. Thus it is considered that a leisure use within this part of the building is acceptable in principle. The requirements of Policy S7 (Evening Entertainment) would still need to be satisfied.

3.2 EXTERNAL

MICKLEGATE PLANNING PANEL - We support the application

POLICE LICENSING OFFICER - The proposal would increase the capacity of the club from 600 to 1,750, an increase of 1,150. The capacity of similar premises within the vicinity of the site is 3,410, and thus the proposal would increase this figure to 4,560, an increase of 33.7%.

The application suggests that the proposal is offering something new in this area with its mixed structure of a members bar, dancing and other entertainment but the simple fact is that there could be up to a further 1,100 people coming into the area and drinking alcohol until 4am in the morning.

The premises are located in the city centre in an area which already experiences high levels of violent crime and public order offences, and this is recognised in the Council's Licensing Policy which identifies the area as being under stress.

A crime analysis of the "Cumulative Impact Zone" (within which the site is located) indicates that in 2005 there were a total of 1,703 recorded crimes including 951 assaults and criminal damage. Of these, 837 (88%) occurred between 2100 hours and 0559 hours.

These crime statistics could well be increased by the additional numbers of people attracted to the area by the proposed development and therefore the police would suggest that this application represents a significant crime and disorder risk. The police suggest that this proposal would create a potential "honeypot" which would exacerbate opportunities for conflict, against the advice contained in the ODPM document "Safer Places: The Planning System and Crime Prevention".

The sheer number of people concentrated in George Hudson Street into the very early hours of the morning will create additional flashpoints for disorder, particularly at weekends. The adjacent car park could also be a potential flashpoint, with people returning to their vehicles under the influence of alcohol.

The dispersal of large groups of people is also an area of concern. The suggestions for a private hire taxi contact, taxi marshals and a late night bus service can only be viewed as theoretical solutions and this is further compounded by the correspondence from First York Ltd which only indicates a bus service on Friday and Saturday nights.

Care needs to be taken to ensure that this area does not develop into an even greater collection of high capacity drinking establishments which promotes rowdy behaviour by large groups of people. Although this building has been vacant for some time, the Council need to carefully consider how it wants this part of the city to develop for the benefit of the larger city centre community and local residents who will also be affected.

The application goes to great lengths to suggest that it is a new concept offering something different in the city centre. However, the fact remains that it will operate on a much larger scale than anywhere else and at a location where there are already several similar established venues. It is also sited in an area identified as having the most incidents of violent crime in the city centre.

The police believe that there are good crime and disorder grounds for objecting to this planning application as it represents a significant risk of increasing incidents of crime and anti-social behaviour in an area already suffering high levels of disorder.

LOCAL RESIDENTS/THIRD PARTY REPRESENTATIONS

Seven letters have been received, including one from the owner of Ziggy's night club in Micklegate, which make the following points:

- there are more than enough licensed premises at this time.
- the area is already a hot spot for trouble and with more than 1000 extra customers will create an additional burden for the police and ambulance services.

- the premises already has police vans stationed outside with a mobile police unit across the road at McMillans.
- the "superclub" idea was tried at Clifton Moor and subsequently failed.
- pubs and bars in the city are already offering discounted drinks - what will happen if the new club does the same.
- documents and proposals for the dispersal of customers might work for a short period but the control of drunken revellers at 4am is not an easy job.
- perhaps McMillans should be turned into a police office and renamed McMagistrates.
- a trebling of capacity will increase the occurrence of noise, public nuisance, litter and anti-social behaviour and will place an intolerable burden on local residents and businesses.
- this is not an extension of the existing business but a new large scale venture.
- the site is located within the designated saturation zone of Micklegate where it is recognised that further enlargement would be detrimental to the area.
- the extension could result in as many as 4000 people being attracted to the area.
- Nexus already offer a large number of free entry tickets suggesting that the existing occupancy figure is not often reached.- this being the case, where will the new customers come from? Will they be bussed in from outside York? How will the type of clientele be controlled?
- If people are turned away, what frame of mind will they then be in?
- More competition between bars and nightclubs would encourage cheap drinks with venues undercutting each other, resulting in more drunkenness.
- there is a possibility of 1700 customers all vacating the premises at the same time, a recipe for disaster.
- there is evidence of overcapacity in the industry, and this proposal may result in the closure of small bars and clubs resulting in a loss of character within the city.
- York has a reputation of being a "jewel" of a city with character and charm, not a stag and hen night destination.
- it is ironic that attempts are being made to make the centre of York more attractive to residents, whilst on the other hand nightclubs are increasing in number and expanding their facilities.
- on clubbing nights walking home alone is a frightening experience.
- noise from screams, rows and fights can still be heard in the early hours even with doors and windows closed.
- cans, bottles and other detritus are frequently left on window sills.
- the area is already subject to anti-social behaviour - the additional facilities should be provided for the present clientele without attracting even more clubbers to the area.
- there has been a reduction in violent crime in the area since the new licensing regulations came into force due to late licences being spread across the city and the concentration of people in the area being diluted. This application will bring that concentration of people back into the area, where police resources are already overstretched.
- the superclub will attract people who are already drunk coming from venues which close at more reasonable times.
- the management of Nexus and McMillans claim to care about the effect of their businesses on the surrounding area when their only aim is to make as much profit as possible.
- little has been done to alleviate the concerns of residents and the impact on their lives.
- neither premises adheres to the conditions imposed on their late licences particularly with regard to noise breakout.
- it is doubtful that the "niceties" proposed by the applicant to gain permission will come to fruition or will be sustained in the long term.
- clubs such as this should be located in non-residential areas not in the city centre where there are large numbers of residential properties.

A letter has also been received on behalf of the owners of the former railway headquarters and adjacent old station premises. The letter does not object to the application but wishes

the following safeguards to be put in place to address issues of residential amenity, crime and anti-social behaviour:

- CCTV camera coverage to be provided externally and adequately monitored.
- the waiting/dispersal area should be used solely for this purpose and not for dancing or drinking.
- adequate noise control measures should be carried out.
- a pilot scheme for a late night bus service should be undertaken - this should be every 20 minutes not 30 minutes as suggested by the applicant.
- a contract with a private hire company should be established.
- regular litter patrols should be enforced.
- the Council's Licensing Committee should be made fully aware of the above matters when any subsequent licensing application is considered.

4.0 APPRAISAL

4.1 Key Issues

- principle of the proposal
- policy issues, loss of potential retail floor space
- impact on the character and appearance of the conservation area
- impact on the special architectural and historic importance of the listed building
- crime and disorder
- amenity of local residents

4.2 The application relates to the conversion of part of the former Presto supermarket to form an extension of an existing nightclub, together with internal and external alterations. The supermarket closed circa 1995 and the premises has been vacant since that time. The site is shown as part of a larger shopping allocation, which includes the whole of the former supermarket, on the Proposals Map (City Centre Inset) forming part of the City of York Draft Local Plan. Policy S1 of the Local Plan (as amended by the Fourth Set of Changes - April 2005) refers to George Hudson Street as an edge-of-centre site appropriate for retail development most suited to the convenience sector or to small scale comparison retail operators. The application relates to a leisure/evening entertainment use and there would, therefore, appear to be a fundamental conflict with Policy S1, a matter which is discussed in more detail in the main body of the report.

4.3 The amendment to the Town and Country Planning (Use Classes) Order 1987 (UCO), which came into force on 21 April 2005, confirms that nightclubs do not fall specifically into any use class and are thus considered to be "sui generis". Policy S6 of the Draft Local Plan relates specifically to the control of food and drink uses, i.e. public houses, restaurants and takeaway food shops (formerly Class A3 of the UCO), and is not considered to be relevant in this case. However, the proposal is considered to fall within the category of a leisure use, where Policy S7 of the Draft Local Plan may apply.

4.4 Policy S7 states that new leisure uses that complement York City Centre will be permitted provided that there is no adverse cumulative effect on the vitality and viability of the city centre, there is no unacceptable effect on residential amenity, the public order and safety aspects have been addressed, and there is no net increase in the number of pubs, clubs and hot food takeaways on Micklegate, Bridge Street, George Hudson Street and Low Ousegate. Although the site address of the application is referred to as "25 George Hudson Street", the premises to which the application relates is located wholly within Tanner Row, and thus it is not considered that the proposed change of use is specifically excluded by virtue of Policy S7. In addition, the proposal relates to an extension to an existing leisure use, as distinct from the establishment of a completely new premises, and thus there is

some doubt as to whether Policy S7 applies at all in this case. However, the issues referred to in Policy S7 relate to established planning principles and are still considered to be relevant to the determination of the application.

4.5 Policy GP3 expects new development, where required, to incorporate crime prevention measures to achieve natural surveillance of public spaces and paths from existing or proposed development, secure locations for any associated car and cycle parking, satisfactory lighting, and the provision of CCTV, where the proposal would include the consumption of alcohol or the congregation of large crowds or would contribute to a significant increase in traffic, pedestrian activity, or the parking of significant numbers of vehicles.

4.6 The site is within a designated conservation area (Central Historic Core) wherein the City Council, when determining planning applications, is under a specific duty to consider the desirability of preserving or enhancing the character and appearance of the area. This duty is reflected in Policy HE3 of the Draft Local Plan which states that within conservation areas, changes of use (which are likely to generate environmental or traffic problems) will only be permitted where there is no adverse effect on the character and appearance of the area, and in Policy E4 of the Approved North Yorkshire Structure Plan, which states that buildings and areas of special townscape, architectural or historic interest will be afforded the strictest protection.

4.7 The proposal would involve internal alterations to break through an existing dividing wall at both ground and first floor level, providing access to the new floor space from the existing night club at 25 Tanner Row (the former Burns Hotel), a Grade II listed building. Policy HE4 of the Draft Local Plan states that with regard to listed buildings, consent will only be given for developments involving internal or external alterations, and changes of use, where there is no adverse effect on the character, appearance or setting of the building.

4.8 Central Government guidance in Planning Policy Statement 6: Planning for Town Centres (2005) (PPS6) contains advice on a range of development in town centres. Paragraph 2.2 states that a diversity of uses in centres makes an important contribution to their vitality and viability. It states that different but complementary uses, during the day and in the evening, can reinforce each other, making town centres more attractive to local residents, shoppers and visitors. Local Planning Authorities should encourage diversification of uses in the town centre as a whole, and ensure that tourism, leisure and cultural activities, which appeal to a wide range of social groups, are dispersed throughout the centre. Paragraphs 2.23 - 2.25 relate to the management of the evening and night-time economy, and state that policies should encourage a range of complimentary evening and night-time economy uses which appeal to a wide range of social groups, ensuring that provision is made where appropriate for a range of leisure, cultural and tourist facilities such as cinemas, theatres, restaurants, public houses, bars, night clubs and cafes.

4.9 PPS6 states that in drawing up policies and proposals, Local Planning Authorities should consider the scale of leisure developments they wish to encourage and their likely impact, including the cumulative impact on the character and function of the centre, anti-social behaviour, crime and disorder and the amenities of nearby residents. Local Planning Authorities should also ensure that there is an integrated approach to the evening and night-time economy, so that their planning policies and proposals take account of and complement their Statement of Licensing Policy and the promotion of licensing objectives under the Licensing Act 2003.

4.10 Although the site is identified as a preferred retail site (comparison/convenience goods) in the Draft Local Plan (Policy S1 refers), it has to be acknowledged that the site has been marketed without success for several years and has been vacant throughout that time,

contributing little to the city centre economy. It is also likely that the future demand for retail development in the city will be satisfied in other locations such as Castle Piccadilly, Hungate, and in the longer term, York Central. In addition, the new Planning Policy Statement 6, published in 2005, emphasises a more flexible approach to development in town centres, stressing the importance of the evening economy and indeed discusses retail and leisure development under the same broad heading (para 2.33). The opening of the "Budgens" store on the corner of George Hudson Street and Micklegate has satisfied some of the demand for convenience shopping in the area. It should also be noted that the proposal is restricted to the Tanner Row frontage of the allocated shopping area and would still leave the more prominent George Hudson Street frontage available for retail development should the demand arise. It could not be argued that the proposal would adversely affect the vitality or viability of the city centre as a whole, and it is not considered, therefore, that an objection to the proposal on policy grounds could be sustained in this case.

4.11 In terms of the impact of the proposal on the character and appearance of the conservation area, the site is within an area where there are a significant number of evening entertainment uses, and where the footfall is already considerable, particularly in the evenings and early hours of the morning. It is not considered, therefore, that the proposal would detract from the character of the area to such an extent that the refusal of planning permission could be justified, particularly bearing in mind that the nature of the proposed operation which would be likely to result in a reduced turnover of customers and activity in the street. The proposal would include the installation of glazed "shop fronts" in the Tanner Row frontage. However, this would be carried out in conjunction with the re-cladding of the entire multi-storey car park approved in April 2005, and would take place on an otherwise "dead" frontage and thus could improve the appearance of the streetscene.

4.12 The proposal would involve internal alterations to break through an existing dividing wall at both ground and first floor level, providing access to the new floor space from the existing night club at 25 Tanner Row (the former Burns Hotel), a Grade II listed building. A separate report on this issue has been submitted on behalf of the applicant by Roger Wools and Associates, Heritage Consultants. The report points out that previously approved proposals to open up the interior of the building have already resulted in the loss of its original cellular nature, and the proposed work would take place in areas of the building where there are no surviving historic features. The report concludes that a considerable degree of change has already taken place by virtue of previous consents, and that on the ground and first floor levels there is nothing of any interest in the areas being proposed for the new access doorways. At second floor, where the cellular arrangement survives better, there are few features of interest and the proposed changes are considered acceptable given the context as found today. If it were not for the frontage on the three upper levels of the building, there would in the view of the author of the report be grounds for an application to de-list the building. Even though a separate application for listed building consent would be required for the proposed internal alterations, it is not considered that a case could be made for withholding such consent, given the content of the submitted report.

4.13 Any application of this nature will inevitably raise concerns in relation to noise, anti-social behaviour, crime and disorder, and harm to the amenity of local residents. A key issue in this case is that although the proposal would result in a considerable increase in the capacity of the existing venue, the applicant is also proposing a change in the mode of operation of the new premises. Thus the new facility would offer a range of entertainments in a single location with a premium admission charge, creating a "destination venue" in its own right and a lower turnover of customers, in contrast to the "short stay" nature of the existing operation, resulting in a high turnover of customers often associated with increased consumption of alcohol over a shorter period and greater activity levels on the streets outside the premises.

4.14 The applicants agent has submitted a lengthy statement in support of the application but has also produced a summary of the proposal, as follows:

" The requirement to enlarge the floor space of the existing night-club is driven by the intention to create a new style of venue providing food, drink, entertainment and dancing with a variety of rooms providing a range of 'atmospheres', so as to deliver a high quality facility appealing to a broad age range. That is to say the proposal is to create a new style of venue not an expansion of the current provision.

A key issue in respect of the assessment of the impact of the proposals is that with a wide range of offerings and a premium admission charge the venue will provide a one stop location for the customer's evening entertainment. This is to be contrasted with the present operation with limited dancing facilities and late night drinks provision which makes the venue a stop on a customer's circuit of locations during an evening. In terms of numbers this will mean that whereas on an average Saturday the current club has some 2300 customers against a 600 maximum occupancy, it is projected the new style club will receive a maximum of 2000 customers against a maximum floor capacity of 1750.

Not only do the proposals result in an overall reduction in customers, the churn and therefore the scale of street movement is dramatically reduced. The customers in the churn currently represent customers who are also short stay customers at other venues. The new venue providing a comprehensive range of offerings will provide a single location for a significant element of the existing customers, provision for a customer base which will expand with York's economic expansion and a provision for the market not yet provided in the City for the higher spending over-night visitor.

Other key features which will reduce street movement and improve safety are :

A departure lounge, designed to provide a calming transition for those leaving and off- street waiting area for those who order taxis.

Additional pay desks to eliminate on-street queuing.

The in-venue provision of food which should reduce the take-away visits by departing customers.

The site will include 32 CCTV cameras to serve the in-house security team.

The site will be 100% accessible for wheelchairs - the first such night-club venue in the City.

The proposal represents significant economic benefits including :

£1m+ fitting out and refurbishment work.

The creation of 11 full time and 29 part time jobs.

Providing a new dimension to the evening/night-time economy serving the higher spending overnight visitor.

Bringing life to a frontage that has remained unused and unattractive for a number of years.

It is anticipated that the application will result in a contribution to the proposed improved public CCTV coverage of the area and the applicants have made great efforts to provide a

platform to achieve a night-time public transport service through the offer to underwrite a trial bus service. At the very least this would establish whether such a service is commercially viable or the extent to which it may require to be subsidised. The applicants have suggested that if a subsidy for a service is necessary this trial will quantify it and then such a subsidy could be raised through a levy under Licensing Policy."

4.15 Although an objection to the proposal has been raised by the North Yorkshire Police, this is based on crime statistics for the whole of the city centre "Cumulative Impact Area", where it is recognised that there are high levels of violent crime and public order related offences. However, as the Planning Inspector concluded in the successful appeal against the refusal of permission for an extension of opening hours at the nearby "Salt and Peppers" takeaway, it is not sufficient to rely solely on crime statistics for an entire area when refusing an application on crime and disorder grounds. It is also necessary to demonstrate that the individual premises would significantly increase crime and disorder over and above existing levels in the area. Although individual crime statistics associated with Salt and Peppers were produced at the public inquiry, the Inspector concluded that they represented only a very small percentage of the total crime attributable to the area, and given the high levels of noise and activity which already occurs in the area, objections to the proposal on the grounds of crime and disorder and loss of amenity to local residents were not considered to be sustainable. A further argument which was advanced at the public inquiry is that the availability of food, as would be the case with the new premises, has been associated with a reduced risk of aggression in research conducted by the Home Office.

4.16 In this particular case, it cannot be automatically inferred that the increase in the capacity of the premises would result in an increase in crime, disorder and public nuisance in the area, particularly bearing in mind the proposed change in the nature of the operation. Indeed, the proposal could result in a reduction in queuing and general activity levels on the streets outside the premises. Recent statistics suggest that there has been an overall reduction in the level of crime and disorder in the city centre since the introduction of the new licensing regime. Within the Cumulative Impact Area, the Council's Licensing Policy states that there is a presumption to refuse applications for a premises licence resulting in an extension or increased capacity where relevant representations are received, and where the increase in capacity would undermine the licensing objectives, unless the applicant can rebut the presumption that the granting of such a variation would undermine the licensing objectives. Clearly, the applicant is likely to submit the change in the mode of operation of the premises in mitigation when applying for a premises licence. A condition could be attached requiring the departure lounge/"chill out" area to be maintained as such at all times and not used for dancing or the sale of alcohol. The applicant would not wish the consumption of alcohol to be restricted in this area as it is also intended to be a "quiet" area where customers may on occasions wish to sit.

4.17 Whilst the planning system can address the fundamental planning considerations, recent experience has demonstrated that detailed operational matters relating to licensed premises are more appropriately addressed through the licensing system. Indeed, the new licensing regime provides a more robust framework for dealing with crime, disorder and anti-social behaviour than the planning system. The Council's Licensing policy specifically states that 'The Licensing Authority may review premises licenses when representations are received from a responsible authority (such as the police or fire authority), or interested party (such as local residents), to indicate that problems associated with crime and disorder, public safety, public nuisance or protection of children from harm are occurring'. Therefore, should any future problems arise in this area, either from a crime or amenity perspective, it can be dealt with under the licensing review process. The application specifies opening times of 1600 hours to 0400 hours on Mondays to Saturdays, and 1600 hours to 0300 hours on Sundays. However, whilst it would be possible to attach a condition on the planning

permission relating to hours of operation, it is considered that this would be more appropriately addressed as part of the licensing process.

4.18 On the basis of the foregoing, it is concluded that there are no fundamental land use objections to the proposal, nor any compelling evidence to resist the proposal on the grounds of crime and disorder or loss of amenity to local residents. The Environmental Protection Unit have raised no objections to the principle of the proposal and have recommended a number of conditions to mitigate against noise and smell nuisance, whilst pointing out that they have no enforcement powers in relation to noise and disturbance on the streets outside the premises. It is likely, however, that any noise associated with the premises would be subsumed within the ambient noise levels already occurring in the area, and in these circumstances it is difficult to isolate the noise emanating from, or associated with, an individual premises. This was again a matter referred to in the Salt and Peppers takeaway appeal decision.

4.19 Policy GP3 expects new development, where required, to incorporate crime prevention measures including the provision of CCTV, where the proposal would include the consumption of alcohol or the congregation of large crowds or would contribute to a significant increase in traffic, pedestrian activity, or the parking of significant numbers of vehicles. The applicant fully anticipates that the proposal will result in a requirement for a financial contribution to be made towards improved CCTV coverage of the area, and this could be secured by means of an Agreement under Section 106 of the Town and Country Planning Act 1990. Officers are negotiating with the applicant in relation to this matter and it is anticipated that further information will be available at today's meeting. In addition, the applicant intends to install a network of 32 internal CCTV cameras together with monitoring points in order to monitor the interior of the premises. A condition could be attached requiring the details of any such scheme to be submitted and agreed with the local planning authority.

4.20 The applicant has also indicated a willingness for this development to be used as a catalyst to achieve a night-time bus service through an offer to underwrite such a service on a trial basis. If successful, this would assist with the dispersal of customers not only from the proposed venue but also from other establishments in the area. At the very least the trial would establish whether the service is commercially viable or the extent to which it may require to be subsidised. The applicant suggests that if a subsidy is necessary, it could be raised through a levy under the Council's Licensing Policy. The principle of a night-time bus service is supported by First York Limited, who are working on a detailed plan based on a network of five routes operating to Acomb, Clifton Moor, Haxby, Osbaldwick and the University. It is anticipated that the services would operate at 30 minute intervals between midnight and 0330 hours on Fridays and Saturdays, would start and terminate in Rougier Street, observe all recognised bus stops along the routes and be monitored by night club staff at the departure points on Rougier Street. Officers are negotiating with the applicant with a view to securing a financial commitment for the establishment of a night-time bus service on a trial basis through a Section 106 Agreement, and a further update on this matter will be given at the meeting.

4.21 The applicant has also indicated an intention to enter into a contract with a private hire company to secure guaranteed access to an appropriate number of vehicles for customers. The bookings would be made from within the premises and customers would wait inside prior to collection. Streamline Taxis have indicated a willingness to offer such a service to the applicant. A condition could be attached requiring the applicant to enter into such a contract prior to the development being brought into use. The applicant has also agreed to undertake regular litter patrols within a suitably defined area, and this could also be controlled through an appropriate condition.

5.0 CONCLUSION

5.1 It is considered that there are no fundamental land use objections to the proposal. Although the proposal would result in a significant increase in the capacity of the premises, it is considered that the impact on amenity and the character of the area would be at least partially offset by the proposed change in the mode of operation of the premises. Detailed operational matters, such as the hours of operation, could be addressed through the licensing process. A financial contribution towards the provision and improvement of CCTV camera coverage in the area could be secured through a Section 106 Agreement. The applicant has expressed a willingness for the proposal to be used as a catalyst to secure a night-time bus service in the city centre through agreeing to underwrite such a service on a trial basis, and is also proposing to operate a private hire booking service for customers. It is considered that the proposal could be supported subject to the imposition of appropriate conditions.

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:-

Drawing number N/01D - proposed floor plans received 26 January 2006
Drawing number N/04 Rev A - proposed elevations received 26 January 2006

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 VISQ8 Samples of exterior materials to be app
- 4 Prior to the commencement of the development, details of the positions and numbers of CCTV cameras to be installed within the premises, together with details of monitoring points, shall be submitted to and agreed in writing by the local planning authority. Once installed, the CCTV cameras and monitoring points shall be maintained in perpetuity and shall be operational at all times that the premises are open to the general public, unless any variations are first agreed in writing with the local planning authority.

Reason: In the interests of reducing and controlling incidents of crime and disorder that may occur within the premises.
- 5 No development shall commence unless and until details for the provision of external CCTV coverage or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The external CCTV coverage shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to the development being brought into use.

Reason: In the interests of reducing and controlling incidents of crime and disorder that may occur outside the premises, and in order to comply with the provisions of Policy GP3 of the City of York Draft Local Plan.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards the provision of external CCTV coverage. The obligation should provide for a financial contribution calculated at £XXXXX.

No development can take place on this site until the external CCTV coverage has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

- 6 The proposed departure/"chill out" area indicated on the submitted drawings shall be maintained for this purpose at all times the premises is open to the general public and shall not be used for dancing, live entertainment or for the sale of alcohol.

Reason: In order to encourage the quiet and orderly departure and dispersal of customers from the premises, in the interests of the amenity of local residents.

- 7 The use hereby permitted shall not commence unless and until a contract has been made with a private hire operator to secure guaranteed access to vehicles for customers wishing to depart the premises. Provision shall be made for bookings to be made within the premises and adequate waiting areas shall be provided within the premises for the use of customers awaiting collection. These arrangements shall be maintained in perpetuity unless any variation is first agreed in writing with the local planning authority.

Reason: In order to encourage the quiet and orderly departure and dispersal of customers from the premises, in the interests of the amenity of local residents.

- 8 No development shall commence unless and until details for the provision of a trial bus service or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The trial bus service shall thereafter be provided in accordance with the approved scheme or the alternative arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to encourage the quiet, orderly and rapid departure and dispersal of customers from the premises, in the interests of the amenity of local residents.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of a late night bus service. The obligation should provide for a financial contribution calculated at £XXXXX.

No development can take place on this site until the trial bus service has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

- 9 Prior to the development hereby approved being brought into use, a scheme for the regular collection of litter outside the premises shall be agreed in writing with the local planning authority. The scheme shall agree the frequency of the collections and the area within which they are to take place. Once approved, the scheme shall be undertaken in its entirety, unless any variation is first agreed in writing with the local planning authority.

Reason: In the interests of visual amenity.

- 10 Before the development commences a noise management scheme shall be agreed with the local planning authority which shall specify the provisions to be made for the control of noise emanating from the site. The scheme should, in particular, address noise from the customers queuing to enter the premises and customers exiting from the premises. The scheme shall be approved by the local planning authority prior to the opening of the use hereby permitted.

Reason: To protect the health, safety and welfare of nearby residents.

- 11 Before the use hereby permitted commences the proposed development site shall be insulated in accordance with a scheme to be approved in writing by the local planning authority, to ensure that music is not audible at the nearest residential properties.

Reason: To protect the health, safety and welfare of nearby residents.

- 12 ARCH2 Watching brief required

- 13 There shall be adequate facilities for the treatment and extraction of fumes so there is no adverse impact on the amenity of local residents by reason of fumes, odour or noise. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for approval; once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the health, safety and welfare of nearby residents.

- 14 Details of all machinery, plant and equipment to be installed in the proposed premises, which is audible outside the premises, shall be submitted to the local planning authority for approval. These details shall include maximum ($L_{Amax}(f)$) and average (L_{Aeq}) sound levels (A weighted), octave band noise levels they produce and any proposed noise mitigation measures. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the health, safety and welfare of nearby residents.

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:

- principle of the proposal
- policy issues, loss of potential retail floor space
- impact on the character and appearance of the conservation area
- impact on the special architectural and historic importance of the listed building
- crime and disorder
- amenity of local residents

As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies S1, S7, GP3, HE3 and HE4 of the City of York Local Plan Deposit Draft.

Contact details:

Author: Simon Glazier Development Control Officer
Tel No: 01904 551351