

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 PROPOSAL

Application 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.

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