

## 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 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 area 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 a 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 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:**

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