

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 13 November 2008 **Parish:** Guildhall Planning Panel

Reference: 08/02093/FUL
Application at: The Lowther 8 Cumberland Street York YO1 9SW
For: Retention of external seating area on Kings Staith (renewal of temporary permission 07/01756/FUL) with freestanding sunshades; and formation of associated furniture storage area on land at the rear of 15 Kings Staith.
By: Mr S Binns
Application Type: Full Application
Target Date: 16 October 2008

1.0 PROPOSAL

1.1 The application seeks to renew a temporary planning permission for a pavement cafe on Kings Staith that is operated by the Lowther and Plonkers Public Houses (LPA Ref. 07/01756/ FUL). Consent was granted for a year and expired in September 2008. The temporary pavement cafe has operated and been managed according to the following detail, and it is not intended that this would alter-

- Hours of occupation are 10.00-20.30 (this includes a 30 minute drinking up period)
- The area to be cleared of tables and chairs by 21.30
- Tables and chairs to be stored off-site
- The area to be cordoned off by fixing chains between existing bollards
- CCTV coverage of the area is provided as required by a condition of the premises licence
- The area is constantly supervised, staffed at all times, with waiters/ waitresses using an infra red wireless remote control to order and bar staff bringing the orders to the area
- There is no buying of drinks within the bars and then moving outside to occupy seats within the pavement cafe.
- Only plastic containers to be used

1.2 In addition to the renewal of the planning permission for the pavement cafe area, planning permission is also sought for freestanding umbrellas, an external storage area, and an increase in the approved number of tables from nineteen to twenty tables so that there are ten tables for each operator. It was intended that eight umbrellas would be positioned around the highway edge of the seating area, and a further umbrella would give shade to the staff service point. It was also proposed that the umbrellas would be in two different colours to identify each operator- Plonkers would be and the Lowther would be Black or beige. Revised plans have been now been received that reduce the number of umbrellas to two unbrellas per operator

with a smaller shared umbrella for staff, and supporting information agrees to a single colour for the sunshades.

1.3 Planning permission is also sought for the retention of an external storage area. The external area is being used in preference to the storage area in the cellar of the Lowther that was approved in the temporary consent. The storage area has been formed by enclosing an area of land at the rear of 15 Kings Staith and 1 Lower Friargate with timber fencing and gates. The furniture is transported to the external pavement area through the side garden area of No. 15 Kings Staith and the storage area is accessible from the rear yard at the back of the public houses. The revised plans that include the storage area and umbrellas have been the subject of a full reconsultation and readvertisement exercise.

1.4 Both sites lie in the Central Historic Core Conservation Area.

1.5 This application is presented to the west/centre planning sub-committee as the application for temporary permission was determined by the sub-committee at the request of Councillor Brian Watson due to the potential impact of the pavement cafe on the neighbouring residential amenity. A committee site visit is to take place because the storage area is recommended for approval contrary to objections to the proposal from members of the public.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Conservation Area Central Historic Core 0038

2.2 Policies:

CYHE2

Development in historic locations

CYHE4

Listed Buildings

CYS6

Control of food and drink (A3) uses

CYGP1

Design

CYGP23

Temporary planning permission

3.0 CONSULTATIONS

3.1 INTERNAL CONSULTATIONS

Highway Network Management- No objections but advise that a highway licence would be required

Environmental Protection Unit - No objections as no complaints have been received in relation to the operation of the pavement cafe, subject to a condition that imposes the previous hours of operation.

Design, Conservation and Sustainable Development- No objections

3.2 EXTERNAL CONSULTATIONS/ REPRESENTATIONS

Guildhall Planning Panel- Object as there are safety and access concerns over the minimal degree of passageway width between the seating and the quayside edge- 3 metres at its narrowest point- too narrow for a busy pedestrian cycle through route.

The Boating Association- The association has received no complaints from the boating fraternity and are satisfied with the way the pavement cafe has operated over the past year. No objections to the renewal of temporary permission provided the same conditions are re-applied as they meet the concerns of the boating fraternity.

Conservation Area Advisory Panel- No objection to originally submitted proposal

Safer York Partnerships- Response awaited.

Three representations have been received from the occupiers of the neighbouring property at No. 1 Lower Friargate and Nos.13 and 15 Kings Staith who object to the external storage area for the following reasons-

- The peaceful character of the garden area has harmed by the formation of a commercial storage area and the transporting of furniture through the garden.
- The appearance of the garden has been detrimentally affected by fencing
- The use of the garden contravenes the temporary planning consent as the applicants are required to store the pavement cafe furniture inside the cellar of the Lowther
- The security of the side garden is compromised as gates are often left open
- The applicant often sets up the pavement cafe earlier than the approved setting-up times causing disturbance to/ waking up residents at 15 Kings Staith and breaching the temporary planning consent for the pavement cafe

- The stockade enclosure greatly hinders access to our property (No. 13 Kings Staith)
- If approved, all previous planning conditions should be re-applied

3.3 The application has been advertised in the local press, by site notice, and abutting neighbours have been notified. The consultation period for representations expired on 5 November 2008.

4.0 APPRAISAL

4.1 KEY ISSUES

- Impact on the visual amenity and historic character of the conservation area/ adjacent listed buildings
- Impact on the residential amenity of the neighbours/ offices
- Impact on pedestrian and highway safety
- Public safety/ Crime

4.2 POLICY CONTEXT

Current central government planning guidance is contained in the following documents. 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. Planning Policy Guidance Note 15 " Planning and the Historic Environment " seeks to ensure that the special characteristics of listed buildings and conservation areas are not adversely affected by inappropriate developments. Planning Policy Guidance Note No. 13 " Transport " advises that leisure facilities are ideally located in town centres or should be concentrated in locations well served by public transport and that the impact of development on pedestrian movement should always be considered. The key objectives of Planning Policy Statement 6 " Planning for Town Centres " seeks to facilitate and promote sustainable development and inclusive patterns of development, including the creation of vital and viable town centres.

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. POLICY HE4 of the Local Plan relates specifically to listed buildings and states that consent for development in the immediate vicinity of listed buildings, demolition, internal and external alteration, and changes of use will only be granted where there is no adverse effect on the character, appearance or setting of the building. POLICY S6 of the City of York Development Control Local Plan relates to the control of food and drink uses. The policy permits the extension, of premises within York City Centre subject to there being no adverse impact on amenity of surrounding occupiers and the opening hours being restricted, where necessary, to protect the amenity of surrounding occupiers.

POLICY GP23 of the Local Plan specifically relates to temporary planning permission, it states that planning permission will only be granted for a limited period provided; there is no loss of amenity; there is no viable permanent solution; there are plans for a permanent solution; the period for which consent is sought is the minimum required to allow the permanent development to be implemented; or a trial period is necessary.

POLICY GP1 of the City of York Local Plan Deposit Draft includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

4.3 RELEVANT SITE HISTORY

07/00819/FUL Outside eating area on Kings Staith for use by the Lowther Public House and Plonkers Wine Bar. Refused 5.6.2007

07/ 01756/FUL Outside seating area on Kings Staith for use by the Lowther Public House and Plonkers Wine Bar (Resubmission). 1 Year temporary consent granted 21.9.2008

APPRAISAL

4.4 Members may recall that a temporary consent for a year was granted in September 2007 to allow the impact of the proposal to be assessed. The ability for local planning authorities to grant temporary permission is contained in Circular 11/95. It states that where an application is made for a use that may be potentially detrimental to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development. It states that a trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the correct outcome. As the pavement cafe has been operating for over a year and is sited on important public highway, Members may consider it prudent to consider granting a limited consent for a 5 year period if minded to support the continued use of the pavement cafe in this location.

IMPACT ON CONSERVATION AREA/ LISTED BUILDINGS

4.5 It is imperative that any outdoor seating is of appropriate appearance and does not appear cluttered in order to maintain the character and appearance of the

conservation area. The site is within a designated conservation area (Central Historic Core) where the Council has a statutory duty to consider the desirability of preserving or enhancing the character or appearance of the area. King's Staith has been York's principal riverside quay since mediaeval times, and although altered and extended south, still provides a convenient and cobbled access to the south west riverside. The texture and quality of this foreground area adds greatly to the setting of the nearby listed buildings, especially the Grade 1 building of Cumberland House at the corner. The seating area provides a link between 3 roads- King Street, Cumberland Street, and Lower Friargate giving access onto the Staith. It allows clear and unobstructed access to the waterfront for pedestrians and maintains an open setting for the waterfront buildings behind. On summer days there are often tourists in this area enjoying the river frontage. The pavement cafe fills part of the existing non-vehicular area with tables, chairs and barriers for a substantial part of the day and part of the evening, and alters the appearance of this highly visible area in front of the Grade 1 Listed building, Cumberland House.

4.6 The layout of tables and chairs is visually contained behind existing highway bollards and is appropriate in scale and appearance in relation to its surroundings. Prior to the pavement cafe opening, the style of the proposed tables and chairs was agreed with the local planning authority to ensure that the furniture would blend with the traditional surroundings and cobbled surface of the Staith. It is considered that the existing pavement cafe is not a visually dominant or obtrusive feature in this part of the conservation area and that the proposal to increase the number of tables by one table could be absorbed without affecting the appearance or character of the use or the area.

4.7 The most significant change within the pavement cafe would arise from the introduction of umbrellas. The applicant has explained in supporting information that the parasols are required to provide shade for staff and customers in this south facing location, especially during the summer months. It is appreciated that the site of the pavement cafe is very exposed and the surrounding buildings provide little shade, the health of staff and customers must be considered, and the serving of food within the area, are valid reasons for considering that a degree of shade may be justified. It is noted that the nearby outside drinking area adjacent to the Kings Arms uses green parasols. It does not appear that the umbrellas have been formally approved. The introduction of umbrellas would be visually prominent and the agent has reduced the number of umbrellas to two per operator and a smaller sunshade for the staff service point to minimise their visual impact and clutter. It is considered that the reduced number of parasols would be acceptable if they were in a single colour (in preferably a terracotta red or green colour) and in a layout that would allow visual gaps through the area and not forming a visual barrier around the perimeter of the pavement cafe. This could be appropriately conditioned if Members are minded to approved the application.

4.8 The proposed storage area for the cafe furniture has been formed by enclosing an area of the rear service yard that is set behind the garden area that separates No.15 Kings Staith and Nos 1-3 Lower Friargate with timber fencing. Representations have been received from the neighbours at No 15 Kings Staith and 1 Lower Friargate that express the view that the storage area is unsightly and not in keeping with the character and appearance of the conservation area. The storage

area is not prominent but it forms the backdrop for an attractive domestic garden that fronts Kings Staith and the introduction of more visually fencing lessens its attractiveness. Despite this impact,, it is considered that the storage area in a recessed location does not detrimentally harm the character of appearance of this part of the conservation area. If Members are minded to approve the application, it is suggested that the visual impact of the fencing that fronts Kings Staith could be reduced and improved by staining it a darker colour.

RESIDENTIAL AND WORKPLACE AMENITY

4.9 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 there is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter. The proposal has the benefit of being in operation for a year and it is considered that the management of the operation has been successful despite being remote from the parent public houses. Existing management measures would be continued as part of the premises and highway licences. The Environmental Protection Unit advises that it has received no complaints about the operation of the pavement cafe and would support the principle of the use subject to any planning approval restricted to the previous hours of operation.

4.10 The applicants, as part of the previous planning permission, agreed that the furniture required for the pavement cafe would be stored in the cellar of the Lowther Public House. They now seek consent to store the furniture externally in an area between residential properties on Kings Staith and Lower Friargate. The occupants of No. 15 Friargate have expressed concern that furniture is being moved outside the approved setting-up times and disturbing their peace. It is considered that a reasonable level of amenity for the neighbouring properties could be achieved if the applicants complied with the setting- up times that were conditioned in the previous planning permission.

PEDESTRIAN AND HIGHWAY SAFETY

4.11 The Local Planning Panel has concerns that the proposed 2m wide footpath that separates the pavement cafe from the quayside edge is insufficient in terms of safety as Kings Staith forms a distinctive part of the river frontage, historically important and contributing to the amenity of the area. It is enjoyed by tourists, residents, businesses and their patrons, and it would be reasonable to require an acceptable width of access to the river frontage that would allow the area to be enjoyed safely by all users. The Highway Authority considered that a 2 metre wide footpath would be acceptable in the previous application for temporary permission. The width of the footway has now been tested for a year, and the Highway Authority maintains the view that a 2m wide footway would be acceptable. No other highway issues have arisen as a result of the operation of the pavement cafe over the previous year. It is noted that a separate Pavement Cafe Licence would also be required from the Highway Authority if planning permission is granted and this

licence would have to be renewed annually. It would allow a review of issues relating to safety and management of the area as they affect highway use.

PUBLIC SAFETY/ CRIME

4.12 Information submitted by the police liaison officer advises there are no overwhelming crime statistics that indicate that the outdoor eating area operation causes excessive public order or anti-social problems in the area. It would therefore be difficult to oppose an application to continue the use on grounds of harm to public safety given both its proposed city centre location and its successful trial period. Also the new licensing legislation would allow action to be taken should this become there be any harm to public safety.

4.13 The external storage area is accessed from Kings Staith through the side garden of No 15 Kings Staith. This arrangement is causing some concern for the occupiers of the property as the gates are not locked thus compromising their security and allowing increased anti-social behaviour in the garden. The access arrangement is largely a civil matter and there are no reasonable planning conditions that can be imposed on any planning permission that would improve the security for the residents of this property.

5.0 CONCLUSION

5.1 The pavement cafe has operated for a year without causing significant harm to surrounding land uses, neighbouring amenity, highway safety, and the visual amenity and character of the area. Under the terms of Circular 11/95, it would be unreasonable of the Local Planning Authority to restrict the applicants to such a limited temporary planning permission if minded to approve the continued use unless there are new issues that would require a similar test. It is considered that the proposed additional table in the pavement cafe area and the introduction of the reduced level of single colour umbrellas would not require a similar assessment, and that any planning permission could effectively control setting-up times to ensure that the neighbours adjacent to the external storage area would not be disturbed in the early morning.

5.2 It is therefore concluded that the proposal would not conflict with Policies HE2, GP1, GP23 and S6 of the City of York Local Plan Development Control Local Plan-Incorporating the Proposed 4th Set of Changes (2005); and national planning guidance contained in Planning Policy Statement 6 " Planning for Town Centres, "Planning Policy Guidance Note No. 15 " Planning and the Historic Environment " and Planning Policy Guidance Note No. 13 " Transport" and Planning Policy Statement 1: "Planning for Sustainable Development " and it is recommended that planning permission is granted for a five year period.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

Drawing No. 1.32 Rev. B, Received 29.10.2008

Drawing No. 1.33 Received 3 October 2008

or any plans or details subsequently agreed in writing by the Local Planning Authority as an 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 No additional furniture other than that approved (e.g. external lights or heaters) shall be used for the seating area hereby approved .

Reason: To avoid the visual clutter of paraphernalia that would detract form the visual amenity, character and historic interests of the nearby listed buildings and the conservation area

4 There shall be no amplified music within the external seating area hereby approved.

Reason: In the interests of protecting neighbouring residential amenity and the character of the area.

5 The hours of operation of the use hereby permitted shall only be between 10.00 and 20.00 hours each day of the week. Customers shall be clear of the area approved by 20.30 with tables and chairs cleared from the site by 21.00. Setting up shall not commence before 09:30 daily.

Reason: In the interests of amenity of the occupiers of neighbouring properties, free flow of the highway outside the approved hours, highway safety and in the interests of the amenity of the conservation area.

6 The umbrellas approved in Drawing No. 1.32 Rev. B, received 29.10.2008, shall not be erected on the pavement cafe until the colour of the shade has been agreed with the Local Planning Authority. Thereafter the colour of the umbrellas shall be retained unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the Local Planning Authority is satisfied with the details in the interest of the character and amenity of the conservation area.

7 Within one month of the approval of the application, the fence to the pavement cafe storage area that fronts Kings Staith shall be painted or stained black or dark brown, and shall thereafter be retained and maintained as such.

Reason: In the interests of the visual amenity and character of this part of the conservation area.

7.0 INFORMATIVES:

Notes to Applicant

1. HIGHWAY LICENCE INFORMATIVE:

You are advised that a Pavement Cafe Licence is required for the proposed operation under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). This must be renewed annually. For further information please contact the officer named:

Cafe Licence - Section 115 - Mr A Briggs- 01904 551368

2. REASON FOR APPROVAL

In the opinion of the Local Planning Authority the proposal, subject to the conditions listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the character and appearance of the conservation area, vitality and viability of the city centre, amenity and safety. As such the proposal complies with Policies HE2, GP1, GP23 and S6 of the City of York Local Plan Development Control Local Plan- Incorporating the Proposed 4th Set of Changes (2005); and national planning guidance contained in Planning Policy Statement 6 " Planning for Town Centres, "Planning Policy Guidance Note No. 15 " Planning and the Historic Environment " and Planning Policy Guidance Note No. 13 " Transport" and Planning Policy Statement 1: "Planning for Sustainable Development. "

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