

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 16 April 2009 **Parish:** Guildhall Planning Panel

Reference: 09/00299/FUL
Application at: Temporary Moorings Museum Street York
For: `Retention of mooring of floating coffee bar with waiter service seated area on the river bank
By: Mr Andrew Gill
Application Type: Full Application
Target Date: 16 April 2009

1.0 PROPOSAL

1.1 This application seeks planning permission for the retention of a mooring of a floating coffee bar and the associated use of the adjacent river bank as a waiter serviced seating area. The West and Centre Planning Sub-Committee approved the use for a temporary trial period of two years on 19 April 2007 (07/00266/FUL) restricted to the months of April- September (inclusive). The applicant then sought planning permission to operate throughout the year, and the West and Centre Sub-Committee granted planning permission (08/00392/FUL) on 16 May 2008 that allowed the use over the extended period for the duration of the temporary consent. These permissions expire on 19 April 2009 and the applicant seeks full planning permission for the mooring of the floating cafe and associated riverbank use throughout the year.

1.2 The proposed details are as previously approved. The floating cafe moors at the Council moorings on the River Ouse and operates from 0800-2000 hours provided the river conditions are acceptable. The area on the embankment (50 squ. m) is cordoned off with a demountable post and rail fence and accommodates 10 tables and chairs that are removed from the site at night. Similarly, the vessel is moored outside the city centre on a private mooring when the cafe is not operating. There is no loss of mooring as boats can moor alongside the cafe boat and 1.5m platforms to either end of the boat allow safe access to the riverbank. In the event of the moorings nearing capacity, private boaters have priority and the cafe temporarily ceases to trade. The applicant indicates that 2 full time staff and 4 part- time staff are employed, recycling litterbins are provided and removed daily, there is no delivery of supplies, and there are no permanent structures, fixtures or fittings to the riverbank.

1.3 The site lies in the Central Historic Core Conservation Area adjacent to the Museum Gardens which is a Grade II Garden of Special Historic Interest.

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

York North West Boundary : York North West Boundary CONF

2.2 Policies:

CYL4

Development adjacent to rivers

CYHE2

Development in historic locations

CYHE12

Historic parks and gardens

CYGP4A

Sustainability

CYGP15

Protection from flooding

CYV1

Criteria for visitor related devt

CYGP1

Design

CYGP23

Temporary planning permission

CYHE4

Listed Buildings

CYS6

Control of food and drink (A3) uses

3.0 CONSULTATIONS

3.1 INTERNAL CONSULTATIONS

HIGHWAY NETWORK MANAGEMENT- No objections

DESIGN CONSERVATION AND SUSTAINABLE DEVELOPMENT- No objections subject to previous conditions reapplied to any permission.

PUBLIC RIGHTS OF WAY- No comments at the time of writing.

LEISURE SERVICES - Support the application

ENVIRONMENTAL PROTECTION UNIT- No objections to the application

3.3 EXTERNAL CONSULTATIONS

GUILDHALL PLANNING PANEL- No objections.

BRITISH WATERWAYS- No objections provided applicant adheres to conditions of the previous planning consents.

ENVIRONMENT AGENCY- No objections the development proceeds in accordance with the submitted flood risk assessment.

BOATING ASSOCIATION- Object as the cafe would take up part of the limited public mooring space in the centre of York, and that it has evidently not been possible for craft to moor alongside the floating cafe as required by the condition of the temporary planning consent.

INLAND WATERWAYS ASSOCIATION- No comments at the time of writing.

The application was advertised by site and press notices. The expiry period for comments was 8 April 2009

1 letter of support has been received from as a result of the above consultations, commenting that the City should promote the use of the river as a tourist facility

4.0 APPRAISAL

4.1 KEY ISSUES

1. Land use impact of permanent use of riverbank and mooring for cafe use
2. Visual impact of permanent use of riverbank and mooring for cafe use

4.2 RELEVANT SITE HISTORY

06/00282/FUL Proposed mooring of floating temporary coffee bar and waiter serviced seated area on riverbank REFUSED 31.3.2006

07/ 00266/FUL Proposed mooring of floating coffee bar with waiter serviced seated area on the riverbank (April- September, inclusive) PER 20.4.2008

08/00392/FUL Mooring of floating coffee bar with waiter service seated area on the river bank (Resubmission of 07/00266/FUL) to allow use throughout the year PER 16 May 2008

4.3 RELEVANT PLANNING POLICY

Planning Policy Statement 1 " Delivering Sustainable Development " (PPS1) 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 No. 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 Statement 25 " Development and Flood Risk " contains the aim of ensuring that Local Planning Authorities consider the issue of flooding on the wider scale and the need to work with the natural processes in planning future development.

POLICY HE2 of the City of York Deposit Development Control Local Plan (Fourth Set of Changes), approved 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 HE12 of the Local Plan advises that any proposals that would affect the character, setting, appearance , amenity or enjoyment of historic parks and gardens would not be supported.

POLICY GP1 of the Local Plan is a general design policy in the Local Plan that, inter alia, seeks to ensure that new development respects its surroundings.

POLICY GP4a of the Local Plan requires all new developments to have regard to the principles of sustainable development.

POLICY GP15a of the Local Plan seeks to ensure that flood protection is considered in new developments.

POLICY L4 of the Local Plan states that planning permission will be supported for development adjacent to rivers where:

- a) there would be no loss to established and thriving recreational interests and uses;
- b) the development would complement existing recreational uses and the character of the area;
- c) the navigational capacity of the river would not be decreased, and
- d) existing walkways and cycleways along the river banks are retained.

POLICY V1 of the Local Plan advises that any new visitor related developments can bring economic and employment benefits to the City but that these benefits have to be weighed against any adverse environmental and amenity impact that may arise.

POLICY GP23 (e) of the Local Plan supports the granting of temporary planning permission for a limited period provided that a trial period is necessary for the development, to allow an assessment of its character or effects.

POLICY S6 of the City of York Development Control Local Plan relates to the control of food and drink uses. The policy permits the development and 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

4.4 ASSESSMENT

LAND USE

4.5 The ability for local planning authorities to grant temporary permission is contained in Circular 11/95 and contained in the City of York Development Control Local Plan as Policy GP23. 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. The proposals will then be assessed on the basis of current national and local planning policies and proposals. It is considered that two years is sufficient time to experience the cafe operation, and that any further application for planning permission for the continued use should be considered on a permanent basis and assessed against current planning policies and circumstances.

4.6 Riverbank use- The Guildhall Planning Panel and the Conservation Area Advisory Panel raised concerns that the riverbank use as a cafe would result in creeping colonisation of the water's edge in their responses to the two previous

applications for planning permission. The experience of the operation on a trial basis has allayed these concerns and lifted this previous objection. The Planning Panel now appears satisfied that this has not been a problem since the operation of the cafe use on the riverbank. The use is sporadic and has not resulted in any associated/ additional uses on the riverbank. It was also suggested that the cafe use be time-restricted as the area forms part of the esplanade area where there is an intention of the Local Development Framework City Centre Action Plan to tidy up the esplanade area. The Local Plan Development Framework is not at a stage that would include any proposals that would preclude the use of the riverbank as a cafe area and there are no other adopted Council plans that would restrict this proposed use. It is therefore considered that it would be unreasonable to resist the proposed use on the grounds of prematurity. The Leisure Services Department who operate the Council moorings would retain control over the mooring as the cafe proprietor would still require a licence to trade from the upper riverbank where they place their tables and chairs. They would raise no objections to a permanent permission for the floating cafe. They have received a few complaints and a few compliments about the cafe - at best no more than 2 or 3 of each but maintain the view that the operation should be supported as it has brought life and vitality to the area as per member wishes expressed through the Scrutiny Report "Making more use of York's Rivers and riverbanks" June 2003.

4.7 The proposal would also be supported by Policies L4 and V1 of the Local Plan that seek to promote development adjacent to rivers and visitor related development provided there is no conflict to other users or material considerations.

4.8 It is noted that the Boating Association has expressed concerns that the cafe use takes up part of the limited public mooring space and advises that it has not been possible for craft to moor alongside the floating cafe as required by the conditions imposed by the previous planning consents. This body represents the interests of a particular type of craft user and does not represent all water craft users. The Council's Lifelong Leisure and Learning Department advises that the Inland Waterways Board also represents users of the river, and contributes to the wider forum that promotes the use of the river. Members will be advised of any comments that are received from the Inland Waterways Board.

4.9 It would appear that there would be no further impingement on the adjacent footpath provided the relevant planning conditions on the previous application that control the riverbank use are re-applied to any new planning permission.

VISUAL IMPACT

4.10 The mooring and the use of the riverbank as a seating area are adjacent to the Museum Gardens, a registered park and garden that is situated within the Central Historic Core Conservation Area. Temporary planning permission was granted with conditions that aimed to ensure that the extent of seating was limited and that all associated paraphernalia associated with the use was removed outside operating hours to preserve the setting of the gardens and the overall appearance of the conservation area. The boat is of "traditional" appearance and the seating is

designed to suit the semi-rural character of this location. This application would retain these acceptable features.

4.11 The Local Planning Authority is unaware of any changes in the area or problems from the use during the trial period that affect the amenity of the conservation area and the Museum Gardens e.g. litter, vandalism. The character of the area varies from tranquil to busy depending on surrounding activities and as the use tends to operate at busy times to catch passing trade, there is no harmful change to the character and amenity of the area. As a result of the seasonal nature of the riverbank cafe use, it tends to be seen against a backdrop of other activities on the riverbank and the river. The use of the riverbank/temporary mooring is infrequent during winter months when there is less tree screening. The experience of the previous year's business demonstrates that the character of the conservation area in this area would be preserved and any increased prominence is not materially harmful to the locality or the character or amenity of the conservation area. There would be no further conflict with local planning policy HE2, HE4, HE12 and related national planning policy.

5.0 CONCLUSION

5.1 The mooring and the use of the riverbank for the floating cafe has operated for nearly two years 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 a further 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 no new issues have arisen since the granting of the previous permissions and that no additional significant harm would arise that would warrant refusal of the application. It is therefore recommended that planning permission be granted subject to the the planning conditions of the previous consents applied to the permission.

5.2 It is therefore concluded that the proposal would not conflict with Policies HE2, HE4, HE12, L4, V1, GP4a, S6, GP15a, GP1, and GP23 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 Statement 1: "Planning for Sustainable Development. "

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. AG01, dated 18.2.2009 and details submitted on 18 February 2009 and validated on 19 February 2009,

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 The use hereby permitted shall be confined to the following hours:

Monday- Sunday (Including Bank Holidays) 0800-2000 hours

Reason: To minimise the impact that noise could potentially have on the nearby residents.

4 The external seating area shall not encroach upon the public highway and all furniture associated with the aforementioned area shall be fully removed when the premises are closed.

Reason: In the interests of the users of the public highway and the visual amenity of the area

5 No equipment other than the approved tables, chairs and barriers shall be installed within the seating area without the prior consent of the Local Planning Authority.

Reason: To ensure that the appearance of the development is suitable and that it contributes to the character and appearance of this part of the Central Historic Core Conservation Area in accordance with policy HE3 of the local plan and policy E4 of the structure plan.

6 There shall be no public address system or amplified music associated with the cafe boat and the seating area hereby approved.

Reason: In the interests of amenity

7 There shall be no primary cooking of unprepared food within the designated seating area hereby approved.

Reason: It is considered that this use would be inappropriate and would detract from the character and appearance of this part of the Central Historic Core Conservation Area and conflict with policy HE3 of the local plan and policy E4 of the structure plan.

8 The development shall proceed and operate at all times in accordance with the submitted flood risk statement.

Reason; To minimise the risk of flooding

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:-

- the impact of the use on the visual amenity and character of the conservation area and the adjacent listed garden
- the continued use of the riverbank as a cafe

As such, the proposal complies with Policies HE2, HE3, HE4, HE12, L4, V1, GP15a, GP23, and GP1 of the City of York Development Control Local Plan- Incorporating the Proposed 4th Set of Changes; and national planning guidance contained in Planning Policy Statement 1 " Delivering Sustainable Development, " Planning Policy Statement. 15 " Planning and the Historic Environment., " and " Planning Policy Guidance Note No. 25 " Development and Flood Risk. "

2. PAVEMENT CAFE LICENCE

You are advised to contact the City of York's Highway Network Management as a pavement cafe licence may be required under the Highways Act.

3. EXTRACTION DETAILS

The floating coffee bar shall have adequate facilities for the treatment and extraction of fumes so that 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 can be submitted to the Council's Environmental Protection Unit for approval.

Contact details:

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