

COMMITTEE REPORT

Committee: West/Centre Area
Date: 13 May 2010

Ward: Micklegate
Parish: Micklegate Planning Panel

Reference: 10/00376/FUL
Application at: Hotel Du Vin 89 The Mount York YO24 1BL
For: Permanent retention of smoking shelter to rear
By: Stephen Rodwell
Application Type: Full Application
Target Date: 13 May 2010
Recommendation: Approve

1.0 PROPOSAL

1.1 Planning permission is sought for the permanent retention of a smoking shelter which has been erected to the rear of the property (Hotel Du Vin). The smoking shelter is constructed using natural wood. The wooden frame is clad with tongue & grooved panels to the rear and is left open to the front elevation. The roof is clad in cedar shingles. The rainwater guttering has been manufactured from copper. The smoking shelter is built on top of a concrete slab. The floor and is finished with slate effect tiles. Planning permission was granted in 2008 (07/02616/FUL) for the temporary retention of the smoking shelter for 1 year.

1.2 The site is within a designated conservation area (Central Historic Core) the main building is Grade II listed.

COUNCILLOR REQUEST

1.3 The application is being presented to sub-committee at the request of Councillor Merrett, due to the number of objections received from adjacent neighbours.

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

Listed Buildings Grade 2; 89 The Mount, York

2.2 Policies:

CYGP1
Design

CYHE2
Development in historic locations

CYHE4
Listed Buildings

3.0 CONSULTATIONS

INTERNAL

Conservation Architect

3.1 The Council's Conservation Architect commented that the shelter has a neutral impact upon the Conservation Area and the Listed Building.

Environmental Protection

3.2 No comments received, an update will be given to members at committee.

EXTERNAL

Micklegate Planning Panel

3.3 No comments received, an update will be given to members at committee.

Neighbours

3.4 4 separate objections have been received from adjacent neighbours. These relate to: -

- The erection of the smoking shelter is a deliberate flouting of planning law;
- If neighbours had been consulted prior to the shelter being erected, it could have positioned further away from residents;
- Neighbours have complained to the Council's Environmental Protection Department about various late night disturbances emanating from the shelter;
- Neighbours have complained to the HDV about various late night disturbances emanating from the shelter, which means residents end up monitoring it instead of staff;
- The introduction of an external drinking area will be used for drinking as thus creating a nuisance;
- The shelter should have been removed when the temporary permission expired;
- The developers are being allowed to get away with it;
- Government is moving towards restricting smoking further;
- Outdoor heaters allow the shelter to be used throughout the year;
- Any level of disturbance is unacceptable;
- The smoking shelter should be relocated to the front;
- If the shelter is approved then a strict curfew should be imposed;
- There has been a lack of consultation between the planning department and

- the Licensing department; and
- Due to the building not being wholly enclosed, noise carries from occupants/patrons and causes noise intrusion and nuisance to neighbours.

4.0 APPRAISAL

4.1 KEY ISSUES

- Effect on character and appearance of the existing listed building and character and appearance of the conservation area; and
- Impact upon neighbours and temporary planning permission.

POLICIES

4.2 Planning Policy Statement 5 'Planning For The Historic Environment' (PPS5). Central Government advice in relation to listed building control contained within this document states Local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use.

4.3 Draft Local Plan policy HE2 states that within or adjoining conservation areas, and in locations which affect the setting of listed buildings, scheduled monuments or nationally important archaeological remains (whether scheduled or not), development proposals must respect adjacent buildings, open spaces, landmarks and settings and have regard to local scale, proportion, detail and materials. GP1 states that development proposals will be expected to ensure that residents living nearby are not unduly affected by noise and disturbance.

IMPACT ON CHARACTER AND APPEARANCE OF THE LISTED BUILDING

4.4 The hotel occupies a prominent site within The Mount. The alterations to the hotel were approved in 2006.

4.5 The smoking shelter is of a small diameter, has a low eaves height and the roof is covered in natural materials. The location and relatively small size of the building together with its general design and materials means that it has a neutral impact upon the Conservation Area and Listed Building. As a consequence it is considered that the shelter is acceptable and would not have a detrimental impact upon the Conservation Area or Listed Building. The shelter therefore satisfies policies HE2 of the Local Plan and the advice contained within PPS5.

IMPACT UPON NEIGHBOURS

4.6 Four separate objections have been received from adjacent neighbours regarding noise and smoke intrusion from the shelter. The residents object to the close proximity of the shelter, in relation to their dwellings and rear private gardens. A number of instances have been raised by the residents with regard to late night noise intrusion being created from patrons of the hotel using the shelter.

4.7 The residents also comment that this is during the winter months when less people are likely to use the shelter due to the inclement weather. The residents are concerned that further and increased noise intrusion will occur due to patrons of the hotel using the smoking shelter during the warmer summer months.

4.8 The applicant erected the shelter without planning permission. A temporary retrospective planning permission was granted for a period of 1 year as a trial run. It was noted at the time that there had been instances where neighbours had complained about excessive noise.

4.9 It appears that local residents believed that the Council had granted permanent planning permission for the smoking shelter. The objection letters which have been received so far, mention that neighbours have had to monitor the site themselves, and have complained on numerous occasions to the Hotel about noise intrusion from the shelter. Unfortunately, local residents have not always forwarded their complaints to the Council's Environmental Protection Unit. As a consequence, whilst a number of objections have been submitted concerning noise nuisance from the smoking shelter, the Council does not have documentary evidence to support these objections.

4.10 Circular 11/95 advises that a temporary permission may be appropriate where a trial run is necessary to see whether in practice a use which is potentially detrimental, turns out so to be.

4.11 Circular 11/95 also advises that a second temporary permission should not normally be granted and states that a trial period should be set sufficiently long for it to be clear by the end of the first permission, whether a permanent permission or refusal is the right answer. However, it is conceded that a second permission may be justified in some instances.

4.12 Because of the confusion over the original permission and neighbours comments relating to noise nuisance from the smoking shelter, and the fact that it is still not clear whether the shelter is having a detrimental effect upon neighbours amenity, it is considered prudent to grant a further temporary permission for 1 year.

5.0 CONCLUSION

5.1 Whilst temporary planning permissions are usually granted for temporary structures or development which can be easily removed with minimal cost, in this instance it is considered that temporary permission should be granted so as to gauge the impact of the shelter upon neighbouring residents properly throughout this period. A temporary consent of a year should allow the Council adequate time to assess the impact of the smoking shelter upon residents and give residents the opportunity to object should the use of the shelter create a nuisance and impact upon their amenity.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approved

1 The development or works hereby permitted shall be discontinued and the land reinstated to its former condition on or before 14/05/2011; unless an extension of the period shall first have been approved in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may assess the impact of this upon the surrounding area.

2 There shall be no external speakers mounted outside the premises.

Reason: In the interests of amenity.

**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 impact upon the listed part of the hotel which is Grade II Listed. As such the proposal complies with policies GP1 and HE2 of the Development Control Local Plan and National Planning Guidance PPS1 and PPS5.

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