

## DELEGATED REPORT

**Committee:** West/Centre Area                      **Ward:** Guildhall  
**Date:** 13 May 2010                                      **Parish:** Guildhall Planning Panel

**Reference:** 10/00322/FUL  
**Application at:** The Lowther 8 Cumberland Street York YO1 9SW  
**For:** Retention of external seating area on Kings Staith - Variation of condition 5 of temporary planning permission 08/02093/FUL to extend the times of operation of the outside seating area until 22.00 hrs  
**By:** Mr Malcolm Goodwin  
**Application Type:** Full Application  
**Target Date:** 3 May 2010

### 1.0 PROPOSAL

1.1 This application seeks planning permission for an extension of operating hours of an existing pavement cafe on Kings Staith that is operated by the Lowther and Plonkers Public Houses. The use was first approved in September 2008 when a temporary consent was granted for a year (Ref. 07/01756/ FUL). The use was extended to a 5 year operational period that expires on 14.11.2013 (Ref. 08/02093/FUL). The applicants seek permission for an additional hour in the evening to allow service within the area until 21:00, with customers vacating the area by 21:30 and tables cleared away by 22:00 hours.

1.2 The temporary pavement cafe has operated and been managed according to the following detail, and it is not intended that this would alter-

- 20 No. tables; 10 for each operator with 2 No. free-standing umbrellas for each operator and a smaller shared umbrella for staff
- The area to be cleared of tables and chairs by half an hour after the approved closing time
- Tables and chairs to be stored off-site in an area approved in LPA Ref. 08/0293/FUL
- 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 intra 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

1.3 The application site lies in the Central Historic Core Conservation Area in close proximity to Listed Buildings, including Cumberland House, a Grade I Listed Building.

### 2.0 POLICY CONTEXT

## 2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006

Conservation Area GMS Constraints: Central Historic Core CONF

## 2.2 Policies:

CYHE2 Development in historic locations

CYS6 Control of food and drink (A3) uses

CYHE4 Listed Buildings

CYGP1 Design

## 3.0 CONSULTATIONS

### INTERNAL CONSULTATIONS

3.1 Highway Network Management- No objections but advise that a variation in the highway licence would be required.

3.2 Environmental Protection Unit - Concerns about potential loss of amenity through noise.

3.3 Design, Conservation and Sustainable Development- No objections on conservation grounds.

### EXTERNAL CONSULTATIONS/ REPRESENTATIONS

3.4 Guildhall Planning Panel- No comments at the time of writing

3.5 The application has been advertised by site notice and abutting neighbours have been notified. The consultation period for representations expired on 13 April 2010. One objection has been received following the consultation exercise raising the following issues-

- Longer hours would have a detrimental impact on amenity of local residents
- Attract a noisier type of client
- Current pavement cafe breaches planning conditions relating to operating hours, exceeding approved table numbers, incorrect storage of furniture, breaching drinking conditions on licence.
- More clarification needed.

## 4.0 APPRAISAL

## 4.1 KEY ISSUES

- Amenity of surrounding occupants
- Character and function of the area
- Security, crime and disorder
- Highway safety and management

## POLICY CONTEXT

4.2 Planning Policy Statement 4: Planning for Sustainable Economic Growth (2009) contains current government guidance on a range of development in town centres. In Policy EC4, 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 are the cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents. Local Planning Authorities should 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 Planning Policy Statement 5 " 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.

4.4 Circular 11/95 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.

4.5 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. Policy S6 recommends that the opening hours are restricted, where necessary, to protect the amenity of surrounding occupiers. The Fourth Set of Changes to the Local Plan requires security issues to be addressed where the consumption of alcohol is involved.

4.6 POLICY HE2 states that within conservation areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area.

## ASSESSMENT

### **Amenity of surrounding occupants**

4.7 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 two years and it is considered that the management of the

operation has generally 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 breaches notified by the neighbour that relate to drinking issues have been passed to the Licensing Section.

4.8 The potential additional noise could arise from two sources - the later use of the pavement cafe and the later storage of furniture in the area that was approved under Ref. 08/02093/FUL. The Environmental Protection Unit advises that it has concerns about the impact of the extended hours on the amenity of nearby properties from late night noise when background noise levels would be lower and any noise generated would be more noticeable. It is noted that the Environmental Protection Unit has received no complaints about the operation of the pavement cafe. It is therefore considered that it would be reasonable to recommend a temporary 1 year permission for the additional hour in order to assess the impact of additional evening hours from the cafe and the later storage of furniture in the storage area close to residential properties on King's Staith. The pavement cafe area is a reasonable distance from residential property and the additional hour would not take the use into the late evening when ambient noise levels are significantly reduced. The main concern related to the noise and disturbance arising from the later use of the furniture storage area that has been formed on land at the rear of 15 King's Staith. On balance, it is considered that it would be unreasonable to refuse temporary permission for the later use of the storage area by an hour in the evening.

4.9 On balance, it is therefore concluded that the proposed additional operational hour in the evening would not conflict with policy S6 of the Local Plan and national guidance contained in PPG24 Noise.

#### **Character and function of the area**

4.10 The proposed extension of an hour would have a neutral effect on the character and appearance of the conservation area. No additional physical alterations are proposed and the appearance of the outside seating area would be controlled by attaching a condition that requires all furniture to be agreed by the Planning Authority prior to its use. It is also considered that an extra hour's trading would not harm the vitality and viability of the city centre or affect its function.

#### **Security, crime and disorder**

4.11 The Police Architectural liaison Officer has no objection to the extension of hours. It is considered that the issues of crime and disorder can be dealt with through the Licensing Act, which can be revoked if necessary. There is no evidence to suggest that the premises affects crime and disorder in the area.

#### **Highway safety and management**

4.12 The area of the outdoor seating area would be as per the previous approvals and Highway Network Management have no objection to this on the grounds of highway safety. The additional hour opening required would have a neutral effect on highway safety. A variation to the pavement café licence would also be required before the use can commence.

## **Temporary Permission**

4.13 A temporary permission for a year was granted in September 2007 to allow the impact of the proposal to be assessed. Advice for local planning authorities on granting temporary permission is contained in Circular 11/95. 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. This advice is reflected in Policy GP23 of the Local Plan. At the end of the original trial period for the pavement cafe, a time-limited permission for a 5 year period was granted for the continued use of the pavement cafe in this location. It is recommended that the existing planning permission is varied to allow the extended operating hours for a period of 1 year after which time the hours would revert to those previously approved unless a further planning permission has been granted.

## **5.0 CONCLUSION**

5.1 The pavement cafe has operated for a two year period 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 is considered reasonable for the Local Planning Authority to restrict the applicants to a limited temporary planning permission for the extended operating hours if minded to approve the extended use.

5.2 It is therefore concluded that the proposal would not conflict with Policies HE2, GP1 and S6 of the City of York Local Plan Development Control Local Plan ( 2005 ); and national planning guidance contained in Planning Policy Statement 4: Planning for Sustainable Economic Growth (2009), Planning Policy Statement 5: Planning and the Historic Environment and it is recommended that planning permission is granted for the extended pavement cafe hours for a year, and thereafter the operational hours shall revert to the approved hours under planning permission 08/02093/FUL that expires on 14 November 2013.

## **6.0 RECOMMENDATION: Approve**

1 The use as an external seating area shall cease by 14 November 2013 unless prior to that date the permission of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: The seating area forms part of the public highway where it is considered to be inappropriate to grant a permanent planning permission in the interests of the freeflow of traffic and pedestrians and highway safety.

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

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 ( e.g. external lights or heaters ) other than that approved 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 Until 14 May 2011 the hours of operation of the use hereby permitted shall only be between 10.00 and 21.30 hours. Customers shall be clear of the area approved by 21.30 with tables and chairs cleared from the site by 22.00.

Thereafter the hours of operation shall revert to between 10.00 and 20.30 hours only. 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 3 metre passage between the river edge and the area for tables and chairs as indicated on drawing no. 1.32 revision B shall be kept clear at all times and shall not be obstructed by the pavement cafe use or any furniture associated with the use.

Reason: To ensure that amenity and a comfortable access is maintained along the riverbank and to enable safe and unhindered access to the waterfront in accordance with policy L4 of the Development Control Local Plan

## **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 character and appearance of the conservation area, vitality and viability of the city centre, public access to the riverside, residential amenity and highway and pedestrian safety. As such the proposal complies with Policies HE2, GP1 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.

## 2. HIGHWAY LICENCE INFORMATIVE:

You are advised that a revised 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 then be renewed annually. For further information please contact the officer named:

Cafe Licence - Section 115 - Miss Anne Marie Howarth- 01904 551337

### **Contact details:**

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