

## COMMITTEE REPORT

**Committee:** West/Centre Area  
**Date:** 15 July 2010

**Ward:** Guildhall  
**Parish:** Guildhall Planning Panel

**Reference:** 10/00788/FUL  
**Application at:** Luxury Ice Cream Company 20 Back Swinegate York YO1 8AD  
**For:** Change of use of highway to form seating area to front of property in connection with existing business  
**By:** Mrs Dawn Argyle  
**Application Type:** Full Application  
**Target Date:** 14 June 2010  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 This application seeks permission for a change of use of part of the highway to form an outside seating area associated with the Luxury Ice Cream Company, 20 Back Swinegate. The seating area will measure 2.2m x 6.6m and will comprise 3no. tables and 10no. chairs. 20 Back Swinegate is situated in the Central Historic Core conservation area.

1.2 This application has been called in to sub-committee by Councillor Brian Watson in view of some conflicting issues down the street.

### 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  
DC Area Teams GMS Constraints: Central Area 0002

2.2 Policies:

CYGP1 Design  
CYHE3 Conservation Areas  
CYS6 Control of food and drink (A3) uses

### 3.0 CONSULTATIONS

INTERNAL

3.1 DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT - Proposed barriers will be slender post connected by rope which are considered acceptable. Also the design of the tables and chairs is considered acceptable also. No metal barriers or advertising will be supported. Conditions should be applied, if approval is given, to prevent the use of umbrellas.

3.2 CONSERVATION AREA ACTION PANEL - The panel felt there was insufficient information to make an informed comment as no details of furniture, means of enclosure etc were not included. If the application were to be approved enclosures should be by means of post and rope (not railings) no more than 1m high. The panel felt the proposed area was too wide and should be less than 50% of the carriageway.

3.3 HIGHWAY NETWORK MANAGEMENT - The proposed seating area will reduce the highway to 2.7m in width which is less than the 3m recommended width to allow for emergency vehicles, disabled and security carriers. At its current width a Pavement Cafe Licence would not be issued, it is therefore suggested that the seating area be reduced by 0.3m to achieve the required highway clearance. If this were revised there would be no highway objections. Operation hours need to comply with traffic order for Back Swinegate - close at 16:00pm on a Saturday and cannot commence until 13:00pm on a Sunday.

3.4 CITY CENTRE MANAGEMENT - In principle, no objections to seating area during footstreet hours, however this area can get busy during loading times - up to 11am.

#### EXTERNAL

3.5 NORTH YORKSHIRE POLICE - No comments to make regarding 'designing out crime'. Have referred the application to the Police Traffic Management Officers for comment.

3.6 POLICE TRAFFIC MANAGEMENT OFFICER - Objects to the scheme on safety grounds:

- City centre has medieval design and layout with many streets reflecting this in width and style. The city centre area is particularly vulnerable to fire with many buildings in the Quarter used as restaurants and bars which increases this risk.
- Stonegate has previously been highlighted as being extremely vulnerable with serious evacuation problems envisaged should a fire or other emergency occur - outside seating areas increase congestion and are a cause for real concern as the numbers of outside seating areas have increased and may compromise large scale evacuation and access for emergency vehicles
- Whilst the footpath is left clear of tables, movement across the pathway will likely be obstructed by staff servicing tables, customers etc causing further obstruction.
- The proposed tables are directly opposite the exit to Nether Hornpot Lane which is a busy pedestrian route. The siting of tables narrows the road significantly at this point and will push pedestrian and vehicular traffic nearer the exit with potential conflict.

3.7 GUILDHALL PLANNING PANEL - The panel have concerns that the wheel chair access will be compromised.

3.8 PUBLICITY - The application was advertised by site notice and neighbour notification letter. One objection has been received from the owners of the 20 Back Swinegate. Whilst they support the increase in activity within streets, they consider that this can only be achieved where it does not have potentially harmful implications. Their main concerns are:

- practicality of controlling the seating area so it doesn't conflict with passing pedestrians
- the revised 1.9m area for seating will be informally extended due to the restricted area required by Highway access for emergency vehicles.
- pedestrians will be forced to walk around the seating area, the barriers themselves would be hazardous to pedestrians
- the proposal will create a different situation from that on more traditional streets where pedestrians can still walk freely in front of shops

#### **4.0 APPRAISAL**

##### KEY ISSUES

- Principle of proposed seating area
- Effect on the character and appearance of the conservation area
- Amenity
- Highway safety

##### RELEVANT PLANNING POLICY

4.1 Draft Local Plan Policy HE3 states that within conservation areas, proposals will only be permitted where there is no adverse effect on the character and appearance of the area.

4.2 Draft Local Plan Policy S6 states that planning permission for the extension, alteration or development of premises for A3 uses (food and drink) 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.

4.3 Draft Local Plan Policy GP1 states that development proposals will be expected to (i) respect or enhance the local environment, (ii) be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces and the character of the area using appropriate building materials; (iii) avoid the loss of open spaces, important gaps within development, vegetation, water features and other features that contribute to the quality of the local environment; (iv) retain, enhance and/or create urban spaces, public views, skyline, landmarks and other townscape features which make a significant contribution to the character of the area, and take opportunities to reveal such features to public view; and (v) ensure that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

##### PRINCIPLE OF PROPOSED SEATING AREA

4.4 There are no other outside seating areas within Back Swinegate however the principle for external seating is already established on the neighbouring street Little

Stonegate at Kennedys and Bobo Lobos which have seating predominantly on the pavement. The proposal for outside seating in this area of the city centre (The Quarter) is generally encouraged by both the city centre management team as well as other similar business within the locality.

4.5 The introduction of a seating area in Back Swinegate is not considered to be detrimental to the amenity of customers or owners of other businesses in the street, and would not adversely affect the vitality of the street.

#### EFFECT ON THE CHARACTER AND APPEARANCE OF THE CONSERVATION AREA

4.6 The seating area will be situated in the Central Historic Core conservation area where there are other similar schemes operating throughout the city centre. The proposed seating area is not felt to harm the character and appearance of the conservation area. The submitted details showing the proposed design of the tables, chairs and rope barriers are in keeping with the simple style associated with the conservation area and as such the proposal is felt to preserve the character and appearance of the conservation area.

#### AMENITY

4.7 It is the aim of local businesses to make this food and drink area of the city more inviting and as such they hope that more outside seating will be allowed in this part of the city centre. While this area is predominantly in cafe and retail use, there are some upper floor offices on Back Swinegate. Whilst it is acknowledged that this area is generally a quieter part of the city centre, it is still a public area which is frequently used by members of the public and therefore due to the limited seating provided it is unlikely that noise levels will increase so significantly that the proposal would impact negatively on neighbouring properties.

#### HIGHWAY SAFETY

4.8 The applicant has applied for the trading hours for the outside seating area to reflect foot street hours to operate between 11.15 - 15.45 Monday - Friday, 10.45 - 16.15 on Saturday and 12.15 - 15.45 on Sundays and Bank Holidays as the area will be located within the public highway. However due to the current Traffic Order for Back Swinegate, the operating hours should be amended on Saturdays so that the seating area is removed by 16.00 and cannot commence on Sundays and Bank Holidays until 13.00.

4.9 There are strong objections to the proposal from the Police on the grounds of highway obstruction with regard to access for emergency vehicles and the possible need to evacuate premises in the case of fire or other emergency. Whilst this issue is considered to be extremely important, at present there are no other seating areas in Back Swinegate to cause further obstruction. The proposal includes 3no. tables and 10no. chairs which is not considered to overly crowd the highway or cause a problem for pedestrians or wheel chair users. The seating area has also been reduced so that the required 3m width is available for emergency vehicles, which has been considered acceptable in other areas of the city centre.

4.10 There is also some concern about the obstruction of the footpath outside the premises as people walk to and from tables including staff servicing tables. It was the intention due to the narrow pavements that the seating would be situated wholly within the highway to reduce disruption to the pavement. However as this area is predominantly pedestrianised it is not felt that the movement of people to and from the premises is considered to be a serious obstruction to the pavement, in most cases people would simply walk around the tables as they do in other areas of the city centre.

4.11 The point is also raised about the location of the seating area directly opposite the exit to Nether Hornpot Lane which is a busy pedestrian walkway. It is suggested that the position of the tables would narrow the road significantly at this point pushing traffic and pedestrians nearer the exit with potential conflict. However the tables and chairs are only proposed during footstreet hours when there will be little if any vehicular traffic. Due to the narrow roads it is likely that any vehicle travelling down Back Swinegate would be going at a very reduced speed thereby further reducing the chance of an accident.

4.12 Therefore by virtue of the limited space occupied by the proposed seating, the available highway width and the lack of any other obstructions to the highway the proposal is not considered to cause significant highway safety issues. However it should be noted that any increase in outside seating in this street would likely cause additional issues for highway safety with the cumulative effect being significant for highway safety in the event of an emergency. However given the circumstances it is recommended to the sub-committee that the planning permission should be temporary for a period of two years to allow for the situation to be monitored.

## **5.0 CONCLUSION**

5.1 The proposal would not have an adverse affect on the character and appearance of the conservation area and would not cause harm to highway safety. Approval is recommended.

## **COMMITTEE TO VISIT**

**6.0 RECOMMENDATION:** Approve

1 This use shall cease by 31 July 2012 unless prior to that date the permission of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: To assess the ongoing impact on the conservation area and highway safety, as circumstances of the land may change in future.

2 PLANS1 Approved plans - Revised drawing received 14.06.10

3 The tables and chairs shall not be placed on the highway except between the hours of 11.15 - 15.45 Mondays to Fridays, 10.45 to 16.00 on Saturdays and 13.00

to 15.45 on Sundays. Outside of these hours, all equipment associated with the use shall be removed from the public highway.

Reason: In the interests of users of the public highway and to avoid clutter, in the interests of the character and appearance of the conservation area.

4 The tables and chairs associated with the use hereby approved shall be stored within No. 20 Back Swinegate when not in use.

Reason: In the interests of the safety and rights of way of users of the public footway, and in the interests of visual amenity of the conservation area.

5 There shall be no change or addition to the furniture used in association with the outdoor seating area from that shown in the details submitted on 7 May 2010 (tables, chairs, barrier posts and ropes) without the prior written approval of the Local Planning Authority.

Reason: In the interests of the appearance of this part of the Central Historic Core Conservation Area.

## **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 and highway safety. As such the proposal complies with Policies GP1, HE3 and S6 of the City of York Development Control Local Plan.

### **2. CAFE LICENCE INFORMATIVE:**

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Cafe Licence - Section 115 - Heather Hunter or Anne-Marie Howarth (01904) 551418

#### **Contact details:**

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