



## 2.2 Policies:

CYHE3

Conservation Areas

## 3.0 CONSULTATIONS

### **Internal**

#### Design, Conversation and Sustainable Development

3.1 Removing the requirement for a barrier around the pavement cafe would reduce clutter in the street scene; consequently the proposal would be supported in terms of its effect on the character and appearance of the conservation area. Irrespective of the absence of detailed design and scale of the proposed umbrellas, they would be overly intrusive in the street scene, to the detriment of the historic character and appearance of the street scene.

#### Conservation Area Advisory Panel

3.2 No response to date.

#### Highway Network Management

3.3 Highways officers do not have any objection to the operation of the cafe during footstreet hours, however they do not support the removal of the barriers as the seating area is positioned in the highway and some vehicular activity is still permitted during footstreet hours. As such it is necessary for the pavement cafe to be enclosed for safety reasons. Failure to erect the barrier is likely to result in non-renewal of the pavement cafe licence.

#### City Centre Management

3.4 No response to date.

### **External**

#### North Yorkshire Police

3.5 No issues with regards to designing out crime.

#### NYP – Traffic Management Officer

3.6 Objects to the scheme as the removal of the barriers will allow the tables and chairs to be moved, with no restriction further into the road causing further obstruction to the highway. The addition of umbrellas defeats the purpose of removing the barriers which is required to reduce time for placing equipment into the highway. No details have been submitted regarding the proposed umbrellas.

## Guildhall Planning Panel

3.7 The Panel objects to the removal of the barriers as this could allow the seating to spread across the highway causing a hazard to pedestrians.

## Publicity

3.8 The application was advertised by site notice and neighbour notification letter. No responses have been received.

## **4.0 APPRAISAL**

### 4.1 Key Issues

- Effect on the character and appearance of the conservation area
- Highway safety

## RELEVANT PLANNING POLICY

4.2 Planning Policy Statement 5: Planning and the Historic Environment states that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification.

4.3 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.

## CHARACTER AND APPEARANCE OF THE CONSERVATION AREA

4.4 The seating area is situated in the Central Historic Core conservation area where there are a number of other similar schemes operating throughout the city centre. In order to preserve the character and appearance of the conservation area the Council has taken the approach with regard to street furniture that no umbrellas and no advertising should be permitted, and the approved area should be delineated by posts joined by a rope or chain. There is however evidence within certain areas of the city centre of seating areas which do not abide by this approach, and in the majority of cases the street furniture being used (canvas barriers and umbrellas with advertising) has not been given permission and is subject to enforcement action.

4.5 It was noted by the conservation officer in the original application for this site that umbrellas would not be acceptable as they would give a cluttered appearance to the conservation area. Umbrellas would be overly intrusive in the street scene to the detriment of the historic character and appearance of the conservation area. Such an impact would be exacerbated by the use of umbrellas with advertising. There is only one site in the city centre where umbrellas have been approved; this is

in a much wider street, where the streetscape is better able to absorb such development. Any further permissions for umbrellas in conjunction with pavement cafes would incrementally undermine the historic character and appearance of the conservation area, contrary to the purpose of its designation. As such the proposal to include 2no. umbrellas in this location would be contrary to policy HE3 and is therefore not supported.

## HIGHWAY SAFETY

4.6 There were strong objections from the Police to the principle of the outside seating area in its current location 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. However as there are no other seating areas in Back Swinegate to cause further obstruction and it was considered that the barriers would provide adequate restriction to the street furniture being moved further into the highway, the application was considered to be acceptable. The applicant now wishes to remove the barriers as their setting out and storing away takes up too much time given the restricted hours of operation. As the seating area operates wholly within the highway, it is a requirement of the Highway Licence to provide suitable barriers for public safety and to prevent further encroachment of the street furniture into the highway. Highways officers, (the Police and the Planning Panel) have objected to the removal of such barriers on highway safety grounds, and state that a pavement cafe licence is unlikely to be renewed without them.

4.7 Condition 5 in relation to street furniture states that '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'. This condition does not require that the barriers are used, just that their appearance should not be changed or that any other addition to the street furniture be allowed without prior written approval from the LPA. As such it is not considered necessary to vary the wording of condition 5 in respect of the barriers.

4.8 With regard to the variation of operating hours, the approved operating hours for the outside seating area were:

Monday to Friday	11.15 - 15.45
Saturday	10.45 - 16.00
Sundays and Bank Holidays	13.00 - 15.45

The applicant has however asked to vary condition 3 to allow the cafe to operate in compliance with the advertised foot street hours:

Monday to Friday	11:00 - 16:00
Saturday	10:30 - 16:30
Sundays and Bank Holidays	12:00 - 16:00

4.9 It was originally required that the cafe operate 15 minutes inside of the footstreet hours so as to not cause obstruction to vehicles entering/leaving Back Swinegate. The cafe has been in operation for approx. 9 months and in this time

there appears to have been no issues with access to vehicular traffic during footstreet hours. As such the change in operating hours to reflect the footstreet hours is deemed acceptable.

4.10 When determining the original application, the Sunday operating hours needed to coincide with the Traffic Order for Back Swinegate which stipulates that access for vehicles must be available up to 13:00 on Sunday for church goers. However it appears that the Traffic Order access times on a Sunday were related to the Elim Church. The Elim Church is no longer run as a place of worship and has been converted into a public house. Therefore there are no objections to the extended operating hours on Sundays. The variation of condition 3 is therefore felt to be acceptable.

## **5.0 CONCLUSION**

5.1 The variation of Condition 3 (operating hours) is considered acceptable as it will not cause further obstruction to the highway, however the variation of Condition 5 (street furniture) is unacceptable as the provision of 2 no. umbrellas would be detrimental to the character and appearance of the conservation area.

## **6.0 RECOMMENDATION: Refuse**

1 The proposed use of 2no. umbrellas within the pavement cafe area would be incongruous and intrusive in the street scene and would have a detrimental impact on the character and appearance of the Central Historic Core Conservation Area. The proposal is therefore contrary to national advice in PPS5, and to policy HE3 of the City of York Draft Local Plan, which states that alterations will only be permitted where there is no adverse effect on the character and appearance of the Conservation Area.

## **7.0 INFORMATIVES:**

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