

## COMMITTEE REPORT

**Date:** 20 October 2011      **Ward:** Guildhall  
**Team:** Major                      and **Parish:** Guildhall Planning Panel  
Commercial Team

**Reference:** 11/00480/FUL  
**Application at:** Go Mobile 11 Church Street York YO1 8BG  
**For:** Change of use from retail (use class A1) to hot food  
takeaway (use class A5) with extract grille to first floor  
window (retrospective)  
**By:** Mrs S Caglar  
**Application Type:** Full Application  
**Target Date:** 22 September 2011  
**Recommendation:** Refuse

### 1.0 PROPOSAL

1.1 Retrospective planning permission is sought for a change of use of an A1 retail unit to a hot food take away (Class A5) at 11 Church Street. The property is Grade II listed and is located on a Primary Shopping Street within the Central Historic Core Conservation Area. Formerly a mobile phone shop, the use is currently operating as an A5 unit with some seating. The first floor is used for kitchen preparation.

1.2 Retrospective permission is also sought an extract grill to the first floor window on the front elevation. A listed building application for this extract has not been submitted.

1.3 The application has been brought to Committee at the request of Cllr Watson due to concerns relating to the effect of non retail businesses on Church 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

Listed Buildings GMS Constraints: Grade 2; 10 Church Street York YO1 2BG 0771

Listed Buildings GMS Constraints: Grade 2; 11 Church Street York YO1 2BG 0769

2.2 Policies:

CYS3 Mix of use in certain shopping streets

CYS6 Control of food and drink (A3) uses

### **3.0 CONSULTATIONS**

#### HIGHWAY NETWORK MANAGEMENT

3.1 No objections

#### DESIGN CONSERVATION AND SUSTAINABLE DEVELOPMENT

3.2 The alterations to the front elevation harm the character of the building as one of special architectural or historic interest and its contribution to the character and appearance of the conservation area.

#### CITY STRATEGY

3.3 Should permission be forthcoming, the proposals would see an increase in non retail frontage to 35.52%. However it should also be taken into consideration that there is an extant permission at Talbot House (Sony Centre) for the change of use from A1 to A3 and to be split into 2 units. Taking this into consideration, the non retail frontage increases to 41.1 % which would further increase to 44.01% should permission be granted for the current proposal. Accordingly, this does not comply with Policy S3a. As such there is a policy objection.

#### ENVIRONMENTAL PROTECTION UNIT

3.4 Comments awaited.

#### GUILDHALL PLANNING PANEL

3.5 Do not object but note that yet again a retrospective application and the quality of the plans are very poor.

#### PUBLICITY

3.6 A letter of objection has been received from the owner of 10 Church Street stating that another A5 unit will tip the balance and alter the appearance and ambience of Church Street. There are many A5 properties in the area already and it is noted that four more take away units have begun trading adjacent to Church Street in the last year. The extract grill is inadequate and will become a grease trap. It is a fire risk.

### **4.0 APPRAISAL**

#### 4.1 The key issues are:

- The principle of the change of use, considering the retail function of what is a primary shopping street.
- The amenity of surrounding occupants.
- Any impact on heritage assets - the listed building and the Central Historic Core conservation area.

#### **The vitality and viability of the street and the city centre as a whole**

4.2 PPS4 advises that Planning Authorities set a strategy for management and growth of centres over a plan period. At local level this includes defining the centre and primary shopping areas, and establishing policies which state what type of development will be appropriate in that area. Policy S3a of the Local Plan identifies Church Street as a primary shopping street, where non retail uses will only be permitted when they will not dilute the retail function of the street, or the centre as a whole. Factors to consider in assessing the impact will be: location and prominence of the premises, the amount of non-retail uses (as a guide a maximum of 35% non-retail premises are given), the level of activity associated with the proposed use, and the proportion of vacant premises in the area.

4.3 The non-A1 frontage of Church Street consists of the St. Sampson's Centre, a pub, two cafes and a hot food takeaway (A5 use). There are 3 vacant units. Including the street frontage relating to the church, which City Strategy confirm should be included in the calculations, the non A1 uses (including the proposed change of use) currently comprise 32.91% of the frontage. The change of use of 11 Church Street would bring the level of non retailing uses to 35.51%.

4.4 The comments from City Strategy as detailed in paragraph 3.3 with respects to the extant permission at the Sony Centre are noted. This permission expires at the beginning of 2012 and Officers consider it unlikely that it will be implemented given its continued retail occupation and therefore conclude that it should be given little weight in determining this application.

4.5 Officers acknowledge that the proposal brings the non retailing uses in Church Street over the threshold set down in Policy S3A and also note that there is a cluster of A3, A4 and A5 uses at this end of Church Street with an A5 unit adjacent to the application site, adjacent to which is a pub and opposite which is a cafe. Whilst outside the scope of planning control, and not related to the retail provision of the street but more relevant in an assessment of the character of the area, there are also 4 No. mobile take away units in the vicinity of Church Street including two in St. Sampson's Square together with a mixed use retail / hot food takeaway in St. Sampson's Square.

4.6 Notwithstanding the above, it is considered that it would be difficult to refuse the proposed use on the grounds of undue detrimental impact on the retail function of the street. This conclusion is based on the consideration that the non retailing proportion is only marginally above the 35% threshold, that there are three vacant units in Church Street, which Policy S3A states should be taken into account, and the consideration that 11 Church Street is a relatively small unit with 22 square metres of internal floorspace and a frontage of only 5.9 metres.

### **The amenity of surrounding occupants**

4.7 Local Plan Policy S6 relates specifically to the control of food and drink uses and states that planning permission for the extension, alteration or development of premises for A3 uses (food and drink) will be granted in York City Centre provided that a) there is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise smell or litter; b) the opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers; c) car and cycle parking meets standards referred to in the Local Plan, and d) acceptable external flues and means of extraction have been proposed. Policy S7 states that proposals for new leisure uses (including use classes A3 and D2) that complement York City Centre will be permitted provided that a) there is no adverse cumulative effect on the vitality and viability of the Centre, and b) there is no unacceptable effect on residential amenity.

4.8 The applicant's state their opening times as 08:30 to 18:00 however it is acknowledged that in granting a change of use without an hours of use restriction, the character and activity associated with the use could change in the future. The only residential accommodation on Church Street is associated with the Golden Lion pub at 9 Church Street, although it is believed that the licence holder of the pub does not live on site. This pub is licensed to open until 2am Thursday to Sunday and 1am on other nights of the week. The hot food takeaways operating in close proximity to the application site comprise 14 St. Sampson's Square and 10 Church Street, the planning approvals for which imposed no opening hours restrictions.

4.9 A premises licence would be required for the business to operate after 11pm at night and such a licence would cover issues relating to CCTV, notices requesting the public to respect the needs of local residents, a general litter pick up and tidy of the general area on closing, and security. With respects to an application at 10 Church Street in 2010 to allow opening until 5am, the Police Architectural Liaison Officer stated that there is no evidence to suggest that the business at St. Sampson's Square has generated crime or anti social behaviour.

4.10 Given the City Centre location, the lack of residential properties in close proximity to the site and the fact that should the current or future owners of the business wish to open after 23:00, the requirement for a premises licence would

control aspects relating to noise, litter and security, Officers consider that the proposal would be in accordance with Local Plan polices S6 and S7.

### **Impact on heritage assets**

4.11 The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development that affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving a listed building, its setting and any features of special architectural or historic interest which it possesses. The local planning authority shall also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. These statutory requirements are also requirements of policies HE3 and HE4 of the Local Plan.

4.12 11 Church Street, a Grade II listed building, was constructed between 1836 - 1839 and incorporates an early 20th Century shopfront. In order to provide kitchen extraction, one of the lower panes to the first floor sash windows to the front elevation has been blanked in and a vent has been inserted. Officers consider this alteration to be harmful to the character of the building as one of special architectural or historic interest and its contribution to the character and appearance of the conservation area and no justification for the works have been put forward. Officers therefore consider this element of the application to be contrary to PPS5: Planning for the Historic Environment, and policies HE3 and HE4 of the Draft Local Plan.

4.13 Limited information has been submitted with the application and comments from the Environmental Protection Unit are awaited as to an appropriate method of extraction for this business. An alternative means of extraction would need to form the subject of a listed building and revised planning application and an assessment would be made as to whether the extraction can be accommodated without harm to the character or appearance of the listed building and Conservation Area. Members will be updated at the meeting.

## **5.0 CONCLUSION**

5.1 Officers consider that it would be difficult to refuse the proposed change of use on the grounds of undue detrimental impact on the retail function of the street. This conclusion is based on the consideration that the non retailing proportion is only marginally above the 35% threshold, that there are three vacant units in Church Street and the consideration that 11 Church Street is a relatively small unit.

5.2 Despite the above, the installation of an extract grill to the first floor window is considered to conflict with Policies HE3 and HE4 of the Local Plan and related national guidance and therefore on this basis, it is recommended that planning permission be refused.

## **6.0 RECOMMENDATION: Refuse**

1 The blanking in one of the lower panes to the first floor window and the insertion of a vent detracts from the architectural interest of the building. The works are therefore harmful to the character of the building and its contribution to the character and appearance of the Central Historic Core Conservation Area and there is inadequate justification and no public benefits that outweigh the harm caused. As such the proposals are contrary to PPS5: Planning for the Historic Environment, and policies HE3 and HE4 of the Draft Local Plan.

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