

COMMITTEE REPORT

Committee: West/Centre Area
Date: 19 July 2007

Ward: Guildhall
Parish: Guildhall Planning Panel

Reference: 07/00910/FUL
Application at: Bay Horse 68 Marygate York YO30 7BH
For: Conversion of existing public house into 4no. offices at ground floor level and 4no. apartments to first floor
By: Wolverhampton And Dudley Breweries Plc
Application Type: Full Application
Target Date: 15 June 2007

1.0 PROPOSAL

1.1 The application relates to the conversion of the Bay Horse public house in Marygate to form four office suites at ground floor (approx 180 sq metres total floor area) with four apartments (2 x one bedroom, 2 x two bedroom) on the first floor. One of the two bedroom apartments would extend partially into the roof space of the property. Internal alterations would consist of the blocking up of existing openings and the insertion of new partition walls, in addition to the insertion of new staircase to provide access to the roof space. Externally, it is proposed to remove an existing fire escape at the side/rear of the building and alter the fire escape door to a window. It is also proposed to install three small "conservation" style rooflights. The existing side entrance to the building (from Hetherton Street) would serve the ground floor office accommodation, whilst the first floor apartments would be served by the main entrance from Marygate. The principle elevations of the building, fronting onto Marygate and Hetherton Street would not be altered by the proposal.

1.2 The building has been the subject of two previous applications for residential use. In November, 2004, an application was submitted for the conversion of the building to 10 apartments, which was withdrawn in January 2005. Subsequently, in April 2006, planning permission was sought for the conversion of the building to eight apartments. This application was withdrawn in April 2007 following comments from The Environment Agency, who objected to bedroom accommodation being located on the ground floor of the building having regard to its location within Flood Zone 3 (high risk of flooding) and its proximity to the River Ouse, with the consequent risk of rapid inundation by flood waters. This application seeks to overcome those concerns by proposing office (i.e. commercial) accommodation on the ground floor.

1.3 The building was erected as a purpose built public house by W. G.Penty in 1893/94. The business ceased to operate in late 2003 and the building has been vacant since that time. The property is a Grade II listed building and a separate application for listed building consent has also been submitted in respect of the proposal, also considered on this agenda. The site is also within the Central Historic Core conservation area.

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

DC Area Teams Central Area 0002

Floodzone 2 Flood Zone 2 CONF

Floodzone 3 Flood Zone 3

Listed Buildings Grade 2; Bay Horse 68 Marygate York YO3 7BH 0488

2.2 Policies:

CYH4
Housing devp in existing settlements

CYL1B
Loss of local leisure facilities

CYL1B
Loss of local leisure facilities

CYHE3
Conservation Areas

CYL1C
Provision of New Open Space in Development

3.0 CONSULTATIONS

3.1 INTERNAL

HIGHWAYS - No highway objections in principle. There is only one on-site parking space, however, there are no objections to this given the availability locally of both short stay, long stay and contract parking. The site is considered convenient for the city's facilities and transport links and therefore in keeping with the Council's policies and Central Government objectives on reducing dependency on private cars for personal travel.

The property falls within the R12 Marygate Respark Zone, which is heavily subscribed, and it is considered appropriate to remove the application site from

qualification for inclusion within that zone. This will mean that the occupants of the apartments will not be eligible to apply for residential permits for either personal or visitor use and the business premises will not qualify for business permits, and thus the parking scheme will not be placed under further pressure. If planning permission is granted (and implemented) the amendment to the zone will be processed under the Road Traffic Regulation Act 1984. The associated costs of undertaking such amendments will be sought from the applicant. An informative should be included on the Notice of Decision, to advise the applicant of the above.

Cycle storage is shown within the enclosed rear yard, but details are required. The cycle storage must be covered and secure and should ideally be individual and not communal. Standard condition HWAY18 is recommended (cycle parking details to be agreed).

DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT - The building is a purpose-built public house designed in 1893-94 by WG Penty. The interior and exterior were designed in an integrated way in the mode of the Arts and Crafts movement. There is a spectacular function room running across the front of the building at first floor level. C20th alterations have eroded the cellular room arrangement in the public rooms of the ground floor, resulting in an uncharacteristic open plan arrangement and the loss of some joinery details. Otherwise the character and quality of the building is still strong.

The applicant has put forward an argument that the building is no longer economically viable as a public house. Reasons given do not fully explore the attempts previous landlords have made to create a "special offer" to attract people to the building to compensate for the locational factors cited. We note that there has been a frequent change of landlords in recent years and that the public house is currently empty save for a security presence.

PPG15 para 3.8 says that in judging a new use its economic viability must be balanced against the effect of any changes that it entails in the special architectural and historic interest of the building. New proposals show a scheme with 4 offices and 4 apartments. The intensity of use is much less than with previous proposals. The building would appear to have the capacity to accept the new uses without compromising the qualities which form its special interest as a historic building.

Improvements would be seen in the restoration of the cellular plan form and the removal of the fire stair in the rear yard. There are few new windows and their detailing would copy existing windows. The secondary door close to the NW corner would be removed and blocked in. This corner has experienced structural movement and the removal of the doorway would help to stabilize this area. The interior arrangement has been respected, including retention of the function room as one whole space. The service staircase would be removed and it is regrettable that a new partition would have to be introduced into the ground floor staircase corridor. The latter is necessary to achieve separation of the circulation spines. The approach to detailing of new work requires sensitivity to the existing fabric.

We regret the loss of the original use. The new proposals would provide a future for the building and we consider that they do not adversely affect the special architectural and historic interest of the building. Please condition the following:

- 1) Full details of repairs to front terrace and access route
- 2) A schedule of amendments to doors and door openings should be provided. It should be cross-referenced to plans and accompanied by large scale details. Where doors have been removed they should be reused elsewhere. New architraves should copy existing ones. Original doors should be retained in place
- 3) Full details of fire measures should be submitted
- 4) Full details of acoustic measures should be submitted
- 5) New partitions should be scribed around existing. The commercial lobby partition should not be fixed to the existing staircase.
- 6) Original ironmongery inside and outside should be retained.
- 7) Where elements are being removed making good must be carried out to match surroundings.
- 8) Rainwater goods should be repaired rather than replaced. Details of any proposed replacements should be given
- 9) The render panel specification should be submitted
- 10) Details of cycle storage and waste compound
- 11) Details of increased ventilation provision

CONSERVATION AREA ADVISORY PANEL - No objections

COUNTRYSIDE OFFICER - A bat survey was carried out approximately 18 months ago. The building has been inspected to ascertain whether it needs to be re-assessed. However, the survey would still appear to be valid and there is no evidence of bats using the loft space. However, it is suggested that a condition be attached requiring "bat friendly" features to be incorporated into the building.

ENVIRONMENTAL PROTECTION - No objections. It is unclear whether any plant or equipment is to be installed in association with the office units, and a condition is recommended to safeguard this issue. Standard informatives are recommended in relation to contaminated land and demolition and construction.

LIFELONG LEARNING AND CULTURE - As there is no on-site open space commuted sums should be sought for:

- amenity open space, which would be used to improve a local site such as Museum Gardens;
- play space, which would be used to improve a local site such as Clarence Gardens or Crombie Avenue
- sports pitches, which would be used to improve a facility within the North or East Zones of the Sport and Active Leisure Strategy.

Based on the Council's "Commutated Sum Payments for Open Space in New Developments" document, approved on 26 April 2007, a sum of £3,204 would be required.

EDUCATIONAL PLANNING OFFICER - No financial contribution is required as there are only 2 - two bedroom apartments

CITY DEVELOPMENT - The proposed application site is a former public house. There are two key issues to be considered. Firstly, the loss of the existing public house and secondly, if the loss of the public house is acceptable in policy terms, whether the proposed office/residential use is acceptable in this development.

Policy L1b aims to protect leisure facilities, including pubs, and only allows re-use for other uses where it can be demonstrated that a need for the facility no longer exists or appropriate alternative facilities exist within the catchment area.

In terms of the proposed office development, the proposal must be considered against Policy E4 "Employment Development on Unallocated Land". This relates to the scale and design of the proposal and whether the site is vacant, derelict or underused or involves the conversion of existing buildings.

The residential element of the scheme must be considered against Policy H4a, which allows residential development where the proposals are within the urban area, where land is vacant/underused or involves the conversion of existing buildings and is of acceptable density and scale..

3.2 EXTERNAL

GUILDHALL PLANNING PANEL - We object on the grounds that access and privacy aspects do not reflect the quality of the building in that accommodating office space compromises quality features.

ENVIRONMENT AGENCY - No objections in principle subject to conditions relating to the following:

- flood warning notices to be erected in numbers, positions and with wording to be agreed
- internal access from the ground floor office accommodation to the residential stairwell to be maintained at all times (to ensure access can be gained to the first floor during a flood event).

YORKSHIRE WATER - No comments required

LOCAL RESIDENTS - Two letters have been received making the following points:

- accepted in principle, the refurbishment of this redundant dilapidated building is long overdue.
- concern over parking, the existing residents parking scheme would not cope with the likely increase in vehicles.
- parking for residents must be protected before the application is approved.

4.0 APPRAISAL

4.1 Key Issues

- loss of public house/function room
- acceptability of proposed uses
- impact on listed building and character and appearance of conservation area
- flood risk
- highway and parking issues
- residential amenity

4.2 The application relates to the conversion of the public house, which has been vacant for almost four years, to form office accommodation on the ground floor with four apartments on the first floor, partially extending into the roof space. The first floor of the building contains a sizeable function room with its own bar facility (16 m x 6m approx), which is clearly capable of accommodating a wide range of functions and events. Policy L1b of the City of York Draft Local Plan states that planning permission will only be granted for a change of use that would result in the loss of a leisure facility (including pubs) where it can be demonstrated that a need for the leisure facility no longer exists, or appropriate alternative facilities exist within the catchment area. The written justification states that in considering applications for the change of use of such facilities, an assessment of provision in the area will be required to identify whether there are any alternative facilities which can be accessed using sustainable transport methods. Evidence of vacancy or attempts to lease, let or sell will also be taken into account.

4.3 So far as the proposed alternative uses for the building are concerned, Policy H4a of the Draft Local Plan states that proposals for residential development on land not already allocated on the Proposals Map will be granted planning permission, where the site is within the urban area and is vacant, derelict or underused or it involves infilling, redevelopment or conversion of existing buildings, and the site has good accessibility to jobs, shops and services by non-car modes. In addition, Policy H4a also expects proposals to be of an appropriate scale and density to surrounding development, and not have a detrimental impact on existing landscape features. With regard to employment development, Policy E4 states that within defined settlement limits, planning permission will be granted for employment use of a scale and design appropriate to the locality where the site is vacant, derelict or underused, or it involves infilling, extension, redevelopment or conversion of existing buildings.

4.4 The site is within the Central Historic Core conservation area. When determining planning applications within conservation areas, the Council is under a statutory duty to consider the desirability of preserving or enhancing the character and appearance of the area. This is reflected in Policy E4 of the Approved North Yorkshire Structure Plan, which states that buildings and areas of special townscape, architectural or historic interest (e.g. listed buildings, conservation areas) will be afforded the strictest protection. Policy HE3 of the Draft Local Plan states that within conservation areas, proposals for changes of use (which are likely to generate environmental or traffic problems) will only be permitted where there is no adverse effect on the character or appearance of the area. The application relates to a Grade II listed building, and a separate application for listed building consent has been submitted, also considered

on this agenda. Policy T4 requires all new developments to provide cycle parking in accordance with standards set out in the Local Plan (i.e. one space per unit). In relation to car parking, Central Government advice in Planning Policy Guidance Note 13 states that in order to reduce dependence on the private car, developers should not be required to provide more parking spaces than they themselves wish.

4.5 The application is accompanied by a statement assessing the commercial viability of the premises as a public house. It points out that the present owners of the property, Wolverhampton and Dudley Breweries plc, purchased the property as part of a package from Burtonwood, who had in turn purchased these from County Estates Management, the previous owner being Unique Pub Company. The report contends that the regularity with which the property has changed hands in recent years possibly gives an indication of its poor trading history. Both the River Ouse to the south and the York - Scarborough railway line a short distance to the west act as "trade barriers" from adjacent residential areas, which in any event are located closer to other local public houses. To the southwest of the site are the Museum Gardens, providing pedestrian access to the city centre and a large number of other licensed premises.. However, the Gardens have restricted opening times, particularly in winter, and it is unlikely that the public house would ever form part of the regular city centre drinking circuits. To the north there are a number of other public houses within walking distance, including the Minster Inn in Marygate and several licensed premises in Bootham.

4.6 The building is not readily visible from the river or riverside footpath and is unlikely to benefit from passing trade, being perhaps too close to the Marygate car park in this respect. The public house is considered, therefore, to suffer from a number of locational disadvantages, being in a relatively quiet residential location with low volumes of pedestrian footfall and vehicular traffic flow. It is neither in a city centre location nor within a densely populated suburb. There are numerous other public houses within easy walking distance of the site. In conclusion, the public house is not considered to be in "the heart of the community" such that its retention is justified for its own sake. In addition, whilst externally the property appears to be in good condition, internally it requires major investment, which must be carried out to a high standard having regard to its listed status.

4.7 In planning terms, the principal use of the property is as a public house with the function room performing an ancillary purpose. So far as the internal layout of the building is concerned, the function room is an integral part of the public house and in practical terms could not operate separately from it. Thus the closure of the public house would inevitably result in the loss of the function room. There is no evidence to suggest that the non-availability of the function room has resulted in any particular difficulties or hardship. It is not considered that the loss of the function room would justify the refusal of planning permission in this case, particularly bearing in mind the location of the site within a large urban area where many similar or equivalent venues are available.

4.8 Central Government advice in relation to the use of listed buildings is contained in Planning Policy Guidance Note 15 : "Planning and the Historic Environment" (PPG15). Paragraph 3.8 states that generally the best way of securing the upkeep of historical buildings and areas is to keep them in active use. For the great majority

this must mean economically viable uses if they are to survive, and new, and even continuing uses will often necessitate some degree of adaptation. The range and acceptability of possible uses must therefore usually be a major consideration when the future of listed buildings or buildings within conservation areas is in question. In paragraph 3.10, PPG 15 goes on to say that the best use will very often be the use for which the building was originally designed, and the continuation or reinstatement of that use should certainly be the first option when the future of a building is considered. But not all original uses will now be viable or even necessarily appropriate. Policies for development and listed building controls should recognise the need for flexibility where new uses have to be considered to secure a building's survival.

4.9 Paragraph 3.13 of PPG15 states that many listed buildings can sustain some degree of sensitive alteration or extension to accommodate new or continuing uses. Given that the Bay Horse has been vacant for almost four years, and its continued viability as a public house has been called into question, there is clearly a need to examine possible alternative uses. It is considered that the proposed "mixed use" development of office accommodation with residential use on the upper floor is acceptable in this location and would not conflict with Policies H4a or E7 of the Draft Local Plan. Whilst regretting the loss of the original use, the Council's Conservation Architect considers that the proposals would not adversely affect the special architectural and historic interest of the building, and indeed the restoration of the cellular plan form of the building and the removal of the external fire escape would result in improvements to its fabric and visual appearance. The majority of the conditions recommended by the Conservation Architect would more appropriately be attached to the parallel listed building application, should consent be forthcoming. It is not considered that the proposal would have any significant impact on the character or appearance of the conservation area, given the absence of any significant external alterations and the activity levels that could be associated with the use of the property as a public house.

4.10 The previous application for the conversion of the entire building to apartments, with bedroom accommodation at ground floor level, was withdrawn following objections from the Environment Agency. The location of the site within Flood Zone 3 (high flood risk) and its proximity to the River Ouse could result in rapid inundation of the site by flood waters in the event of the overtopping or failure of the flood defences. The proposed use of the ground floor of the building as office accommodation is considered to be no more "flood sensitive" than the existing use as a public house, and thus the Environment Agency have raised no objections to the proposal. The Agency have recommended a condition requiring flood warning notices to be prominently displayed, and also that internal access is available to the upper floor of the building via the residential stairwell. This has been provided for on the submitted drawings. Clearly, the developer may wish to consider other precautionary measures, such as locating electrical/IT circuits at a reasonable height within the building.

4.11 Highways (Network Management) have raised no objections to the proposal, pointing out the presence of short stay, long stay and contract parking within the immediate vicinity of the site, which is also within easy walking distance of the city centre and a wide range of amenities and services.. However, the site is within

Marygate R12 Residential Parking Zone, which is heavily subscribed, and it would be appropriate, therefore, to remove the site from qualification for inclusion within that zone. This would mean that the occupants of the apartments would not be eligible to apply for residential permits for either personal or visitor use and the business premises would not qualify for business permits, and thus the parking scheme will not be placed under further pressure. If planning permission is granted (and implemented) the amendment to the zone will be processed under the Road Traffic Regulation Act 1984. The associated costs of undertaking such amendments would be sought from the applicant. The applicant has requested whether the existing parking entitlement that applies to the premises (as a public house) could be maintained in respect of the present proposal, and this matter is being discussed with the Highways (Network Management) Team. Cycle (and refuse) storage could be accommodated within an enclosed yard at the rear of the premises with access from Hetherton Street, details of which could be required by condition.

4.12 It is not considered that the amenity of adjacent residents would be unduly affected by the proposal. Indeed, the late night activity associated with the public house use would cease, reducing the incidence of noise and disturbance. However, it is considered that a restriction on the office use to Class B1 only would be appropriate, as a Class A2 use (financial and professional services or other services, including use as a betting office, which would be appropriate to provide in a shopping area), could result in amenity problems such as high levels of activity and casual parking.

4.13 As no on-site open space would be provided with the development, Policy L1c of the Draft Local Plan requires a commuted sum to be paid towards the upgrading of existing facilities. Based on the Council's "Committed Sum Payments for Open Space in New Developments" document, approved on 26 April 2007, a sum of £3,204 would be required. This could be secured through an Agreement under Section 106 of the Town and Country planning Act 1990. The site has easy access to the riverside footpath and is immediately opposite Museum Gardens, and thus has good access to recreational opportunities.

5.0 CONCLUSION

5.1 The loss of the public house, for which the building was originally designed, is clearly regrettable. However, the listed building has been vacant for almost four years and it is important that alternative uses are considered in order to secure the future use and upkeep of the building. It is considered that the proposed uses are acceptable in this location and that the necessary alterations can be carried out without adversely affecting the special architectural and historic interest of the building. As such, the proposal is considered to be acceptable.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2

2 VISQ8

- 3 The office use hereby approved shall relate to uses solely within Use Class B1(a) as defined by the Town and Country Planning (Use Classes) Order 1987 only, and for no other purpose.

Reason: For the avoidance of doubt and so that the Local Planning Authority may re-assess alternative uses which, without this condition, may have been carried on without planning permission by virtue of Article 3 of the Town and Country Planning (Use Classes) Order 1987.

4 HWAY18

- 5 Details of all machinery, plant and equipment to be installed in the proposed premises which is audible outside of the site boundary when in use shall be submitted to the local planning authority for approval. These details shall include maximum (LA_{max}(f)) and average (LA_{eq}) sound levels (A weighted), octave band noise levels they produce and any proposed noise mitigation measures. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenity of nearby residents.

- 6 Prior to the occupation of any part of the development, flood warning notices shall be erected in numbers, positions and with wording all to be agreed in writing with the Local Planning Authority. Once erected, the notices shall be maintained, kept legible and clear of obstruction at all times.

Reason: To ensure that owners and occupiers of the premises are aware that the land/building is at risk of flooding.

- 7 Internal access from the ground floor office accommodation to the residential stairwell shall be maintained at all times.

Reason: To ensure that office employees can gain access to first floor level without having to exit the building during a flood event.

- 8 No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority of the measures to be taken within the design of the building to accommodate bats.

Reason: In the interests of habitat creation, as advocated by Planning Policy Guidance Note 9: "Biodiversity and Geological Conservation"

- 9 No development shall commence unless and until details of provision for public open space facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The open space shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy L1c of the Development Control Local Plan which requires that all new housing sites make provision for the open space needs of future occupiers.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £3,204

No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

- 10 All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Not at all on Sundays and Bank Holidays.	

Reason: In order to protect the amenity of adjacent occupiers

**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:

- loss of public house/function room
- acceptability of proposed uses
- impact on listed building and character and appearance of conservation area
- flood risk
- highway and parking issues
- residential amenity

As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies L1b, H4a, E4, and HE3 of the City of York Local Plan Deposit Draft.

2. The applicant is asked to note that the development/property (as proposed), is not considered eligible for inclusion within the Marygate R12 Residents Parking Zone, which is heavily oversubscribed, and it will be removed from such under the Traffic Regulations 1984. Upon commencement of development on the site the applicant is requested to contact the Council's Network Management Section (tel 01904 551450), in order that the amendments to the Residents Parking Scheme can be implemented prior to the occupation of the development.

3. If, as part of the proposed development, the applicant encounters any suspect contaminated materials in the ground, the Contaminated Land Officer at the council's Environmental Protection Unit should be contacted immediately. In such cases, the applicant will be required to design and implement a remediation scheme to the satisfaction of the Local Planning Authority. Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the Council may consider taking action under Part IIA of the Environmental Protection Act 1990.

4. The developer's attention should also be drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be noted and acted upon. Failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(i) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(ii) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

(iii) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(iv) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(v) There shall be no bonfires on the site.

Contact details:

Author: Simon Glazier Assistant Area Team Leader

Tel No: 01904 551351