

## COMMITTEE REPORT

**Committee:** West/Centre Area  
**Date:** 31 July 2007

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

**Reference:** 07/00871/FUL  
**Application at:** York Divan Centre 10 Clifford Street York YO1 9RD  
**For:** Change of use of first, second and third floors from retail to 5no. apartments including alterations to existing retail area and 3no. dormers to existing roof slope  
**By:** Mr M Grey  
**Application Type:** Full Application  
**Target Date:** 3 August 2007

### 1.0 PROPOSAL

1.1 The application relates to 10 Clifford Street, which is located on the corner of Cumberland Street and Clifford Street. The building is grade II listed and in the Central Historic Core Conservation Area. The site is presently used as a retail premises - York Divan Centre. The building has storage in the basement and display / retail space on the ground and upper floors.

1.2 The application seeks permission to convert the upper floors (first floor and above) into residential (five 1-bed flats). The flats would be accessed via the original side door which leads to a half turn staircase - an original feature of historic interest. There would be limited change to the external appearance of the building, the main changes being on the roof, the introduction of three dormer windows, rooflights and ventilation vents / ducts. Otherwise minor alterations and internal alterations are proposed which are considered to enhance the appearance of the building and its setting. These are described in more detail in the companion listed building consent application - 07/00873/LBC.

1.3 The application(s) are brought to committee at the request of Councillor Simpson-Laing.

### 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

Listed Buildings Multiple (Spatial)

2.2 Policies:

CYGP1  
Design

CYGP4B  
Air Quality

CYGP15  
Protection from flooding

CYHE3  
Conservation Areas

CYHE4  
Listed Buildings

CYH4A  
Housing Windfalls

CYH11  
Conversion of upper floors to housing

CYL1C  
Provision of New Open Space in Development

### **3.0 CONSULTATIONS**

INTERNAL

#### Design, Conservation and Sustainable Development

3.1 State that the change of use of the upper floors of the building from retail to residential use will enable the retention of original features present within the interior of the building. The only objection to the original scheme was the design of the dormer windows. Revised plans have now been submitted, the dormers have been given a vertical emphasis and they are lined up with the windows on the front elevations. Officers consider the revised plans of the dormers are acceptable.

3.2 Otherwise, details of the proposed secondary glazing were required and the design of the roof vents for the mechanical ventilation system. The revised plans contained large scale plans of the secondary glazing, which are considered to be acceptable and details of air vents and ducts on the roof. Officer's opinion on the vent details are awaited, but from an external view the air vents and ducts because of their size and location appear to be inconspicuous.

3.3 It could be a condition of approval that rooflights are conservation type (as requested by officers) and large scale details of the ventilation system be submitted. Also the paint colour for the shopfront and side entrance door could be agreed by condition if consent were granted.

#### Highway Network Management

3.4 No objection but question whether the bin store is of adequate size and advise that details of the glass hatch should be agreed with the highway infrastructure section. According to Council (CYC) guidance 5 flats would be expected to require bin storage for 900 litres. CYC provides bins with a capacity of 1100 litres, which measure 1.2m by 915mm. One of these stores would not quite fit in the allocated area for bins, which is around 1m by 1m. It could therefore be a condition that adequate acceptable bin storage is agreed. Details of the glass hatch could also be a condition if permission were granted.

#### Environmental Protection Unit

3.5 Have concerns about the application for the following reasons:

- There is considerable noise in this area day and night, from traffic.
- There is also considerable noise from pedestrians. There is a nightclub in very close proximity to the application site and customers queue outside from 10pm onwards for entry and of course later on there is considerable noise from customers leaving the club. There is a taxi office close by which attracts large numbers of people especially late at night. There are at least five other licensed premises in close proximity, which attract large numbers of night time customers.
- The Grand Opera House which shares a party wall with the application site will be another source of noise to the occupants. There will likely be considerable noise and vibration arising from shows being presented at the theatre and noise from loading of scenery and equipment into vehicles in the early hours of the mornings directly outside the proposed apartments. In addition, the theatre may have air conditioning units, which are likely to be a source of noise, and should be considered when undertaking a noise survey.
- At least one Noise Assessment Survey has been carried out for an application for another site in Clifford Street. That survey was carried out for a similar reason, i.e. converting business premises to residential apartments. The methodology from PPG24 (Planning and Noise) was used to find out what Noise Exposure Category (NEC) the proposed apartments would fall into and whether the use as residential was appropriate. That survey found noise levels that put the application site into NEC 'C', which means planning permission should not normally be granted, unless for example there are no alternative quieter sites available and conditions could be imposed to ensure a commensurate level of protection against noise.
- The applicants state that they intend to seal all windows to the front of the building and the plans show all windows on Clifford Street and Cumberland Street as being sealed. Instead it is proposed that they will install mechanical ventilation, the units to

be situated on the roof to the rear of the property. These ventilation units will make noise but as yet we do not know what level of noise or how it might affect occupants of the application site. These units must be included as a noise source in any noise survey carried out.

3.6 As yet no noise survey has been carried out. EPU suggest that due to the application site sharing a party wall with the theatre, in addition to traffic noise, it is possible that the NEC could be found to be 'D', in which case planning permission should normally be refused.

## EXTERNAL

### Planning Panel

3.7 Object, consider that the (originally proposed) dormer windows would be detrimental to the appearance of the building.

### Publicity

3.8 The application was publicised by site notice, press notice and letters of neighbour notification. The deadline for comments was 6.6.2007. One letter was received in support of the scheme although raising the issue that sound insulation at the party wall between the host and the theatre should be considered. Objections have been received on behalf of the Gallery Nightclub and the Theatre. These objections raise the following issues -

- Theatre opens until 02:00 and hosts a variety of shows such as musicals, night concerts and comedy shows. The party wall shared with the host is directly behind the stage and there is concern that noise and vibration would affect potential future occupants of the flats.
- Theatre shows tend to finish around 23:30 but after this people may use the licensed premises and stage sets and lights etc are loaded out of the building, this sometimes occurs long into the night and the loading area is adjacent the entrance to the proposed flats. Again this would harm the amenity of residents.
- Noise is also associated with the box office.
- The Gallery nightclub are also concerned there would be conflict between the proposed use and those which surround the application site. As such the quality of life for potential residents would be limited.

3.9 The owners of the Opera House and the Gallery nightclub are concerned that should the flats be developed their operations would harm amenity and lead to complaints by the residents. Whether a proposed use is compatible with its surrounds is a material planning consideration. It is felt by these businesses that without a noise assessment, which is made available for interested parties to comment on, the application should be refused. They also think it is unlikely that any means of mitigation will be adequate.

## 4.0 APPRAISAL

### 4.1 Key issues

Principle

Amenity

Impact on listed building and conservation area

Flood risk

### 4.2 Policy

- GP1 Refers to design, for all types of development. It states that development proposals must, respect or enhance the local environment; be compatible with the surrounding area; enhance, or create urban spaces; provide and protect amenity space; provide space for waste storage; ensure no undue adverse impact from noise disturbance, overlooking, overshadowing or overdominance.

- GP4b is relevant to sites within the Air Quality Management Area (AQMA). It states that proposals in the area must assess their impact on air quality. The policy intends to improve air quality in the city centre.

- The application site falls within an area where the risk of flooding is low to medium (flood zone 2). As such the developer is obliged to produce an assessment of additional flood risk as a consequence of the development and measures to mitigate such risk in accordance with GP15a.

- The proposal relates to a listed building within a conservation area, as such policies HE3 and HE4 of the City of York Draft Local Plan are relevant. HE4 states that consent will only be granted when there is no adverse effect on the character, appearance or setting of the building. HE3 states that within conservation areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area.

- H4a regards new housing development. It states that proposals for land not already allocated on the proposals map will be granted permission where: the site is within the urban area and is vacant, underused or it involves infilling, redevelopment or conversion of existing buildings; the site has good accessibility to jobs, shops and services; and it is of an appropriate scale and density to surrounding development and it would not have a detrimental impact on existing landscape features. H3c asks for a mix of house types on all sites, H5a seeks to achieve a density of 60 dwellings per hectare in the city centre and H11 requires that amenity and highway safety are satisfactory.

- L1c states developments for all housing sites will be required to make provision for the open space needs of future occupiers. For sites of less than 10 dwellings a commuted sum payment will be required for off site provision.

## Principle

### Change of use

4.3 The application proposes the change of use of the upper floors to residential. It is proposed that the ground floor and basement would be retained as commercial retail space. Although the proposal involves some loss of retail space, it is generally considered that this is acceptable because the ground floor retains a retail function, the site is on the edge of the defined central shopping area, not on a primary shopping street and the location / constraints of the listed building may deter commercial occupiers making the most of the first and second floor space. Furthermore the conversion of upper floors in city centres is encouraged in policy H11 and also in national guidance note PPS3: Housing.

### Mix house types and density

4.4 The residential units proposed are all one bed flats. This is contrary to policy H3c of the Local Plan although this is considered not to be reason for refusal in itself bearing in mind that such space, without any outdoor amenity area and up flights of stairs, is unlikely to be suitable for family accommodation. The density proposed is in excess of the preferred 60 dwellings per hectare.

### Amenity

#### Noise

4.5 There is a concern that due to surrounding land uses future occupants of the proposed flats would be adversely be affected by noise. The sources of noise in the surrounding area being the fire station, traffic and noise associated with late night activities in the area such as the Gallery nightclub across Cumberland Street, the Theatre behind the application site and the proliferation of other uses which operate late at night nearby.

4.6 There have been other planning applications for residential above ground floor level in Clifford Street. At 1-3 (above café Uno) an application was withdrawn because no noise assessment was submitted. At 23 Clifford Street flats were approved subject to conditions that required non-opening windows on the front elevation and sound attenuation measures to ensure that noise inside the building (from outdoor sources) was no more than (on average (A)) 49dB. PPG24: Planning and Noise sets categories for sites ranging from category A where noise would not be an issue to D, where planning permission would normally be refused. To be in category D noise levels would need to be on average more than 72dB between 07:00 and 23:00 and above 66 dB at night (after 23:00). The noise assessment associated with the application at 23 placed that premises at the top end of noise category C, daytime noise was on average 71/72 dB, at night 64 dB.

4.7 The Environmental Protection Unit are concerned that because this site (compared to No.23) is much closer to the Gallery nightclub and as the building shares a party wall with the theatre, noise levels, particularly at night and when

shows occur at the theatre would be harmful to amenity. It is likely that the site falls into noise category D. At this time there has been no noise assessment submitted by the applicant which demonstrates otherwise. Therefore despite the proposed mitigation measures (secondary glazing and alternative means of ventilation) the concern that potential residents would be affected by noise has not adequately been addressed.

4.8 There is concern that because this site is in such close proximity to the theatre, nightclub and the other uses, which operate late at night, potential residents would be unduly affected by noise disturbance at night. Because it has not been demonstrated that noise levels would be acceptable within the proposed flats, it is considered that permission should not be granted. Although the use of underused upper floors for residential is generally welcomed, there is no significant demand for 1 bed units and therefore no compelling reason to approve the application unless it is demonstrated that adequate amenity would be offered to potential residents.

#### Air quality

4.9 GP4b seeks to improve air quality. The proposed use is sustainable in that it is located close to jobs and services, thus likely to provide residential accommodation, which is not reliant upon the private car - this is a car free development. As such the development would not harm air quality. It could be asked that windows are non-opening in the development but this should be a choice of the occupants. It is considered that the proposal does not conflict with policy GP4b.

#### Residents amenity

4.10 Outlook for potential future residents would be acceptable and overlooking is not a concern. As the proposal relates to a conversion, there are no issues regarding overbearing / overdominance. It is proposed that non-opening windows are installed however this need not be enforced through the planning process. The only concern is noise, which is discussed in 4.5 – 4.8.

#### Open space

4.11 In accordance with L1c the applicant would be required to make a contribution toward open space. Based on City of York's guidelines the contribution would be £1,800 (£360 x 5). The agent has been informed of this requirement, which would be a condition if permission were granted.

#### Bins and cycle stores

4.12 Bins and cycle stores are proposed by the residential entrance. Subject to agreement of the detailed design of the bin store, the stores would be acceptable.

#### Impact on listed building and conservation area

4.13 The design of the scheme is considered to be acceptable; it is considered there would be no harm to the listed building or conservation area. This is appraised in full in the companion application for listed building consent.

## Flood risk

4.14 Because residential is proposed on the upper floors only there is not a concern that the flats would be at risk from flooding. It is considered that although the amount of sewage created is likely to increase given the intensification of use, an additional 5 flats would not create an undue strain on the existing drainage infrastructure.

## **5.0 CONCLUSION**

5.1 There is significant concern that the development would be incompatible with its neighbours. As such it is considered that without it being demonstrated that noise levels would be acceptable for potential residents, the application should be refused.

## **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION:** Refuse

- 1 The Local Planning Authority considers that the proposal has failed to demonstrate that potential residents living conditions would be adequate, in that residents would not be adversely affected by noise from traffic, pedestrians and the surrounding land uses.

As such the proposal is contrary to policy GP1 of the City of York Draft Local Plan (4th set of changes) which states that all development proposals will be expected to ensure that residents are not unduly affected by noise and disturbance and policy H11 which states that the use of upper floors for residential purposes will be granted provided the development meets residential amenity requirements. The proposal is also contrary to national guidance contained within PPG24 Planning and Noise which states that Local Planning Authorities should consider ... whether proposals for new noise-sensitive development would be incompatible with existing activities. Such development should not normally be permitted in areas which are - or are expected to become - subject to unacceptably high levels of noise.

## **7.0 INFORMATIVES:**

### **Contact details:**

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