

COMMITTEE REPORT

Committee: West/Centre Area
Date: 31 July 2007

Ward: Micklegate
Parish: Micklegate Planning Panel

Reference: 07/01442/FUL
Application at: Total Power Solutions 92 Micklegate York YO1 6JX
For: Creation of smoking terrace including erection of 2.1 timber panels with galvanised steel frame, floor mounted umbrella and associated works to the rear of 92 Micklegate
By: Luminar Terrace Ltd
Application Type: Full Application
Target Date: 9 August 2007

1.0 PROPOSAL

1.1 This application relates to land at the side of Toffs nightclub, which is presently used as a car park in association with the office premises at 92 Micklegate and also an outbuilding at the back of 92 Micklegate. 92 Micklegate is a grade II star listed building situated in the conservation area.

1.2 The application proposes an outdoor smoking facility, to be used in association with Toffs Nightclub. The area would measure around 8m by 4m and be located to the side of the nightclub entrance, adjacent Toft Green. Also included in the proposal is a new entrance door at the back of 92 Micklegate and a replacement gate at the side of the building. Because No.92 is listed, a companion Listed Building Application is also under consideration - reference 07/001441/LBC.

1.3 The application is brought to planning committee at the request of Councillor D Merrett, who is concerned about the effect on the amenity of occupants on Micklegate where there are generally some flats above ground floor level and a hostel at 88-90.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

2.2 Policies:

CYGP1
Design

CYHE3
Conservation Areas

CYHE4

Listed Buildings

CYS6

Control of food and drink (A3) uses

3.0 CONSULTATIONS

Internal

3.1 Highway Network Management - No response to date (16.7).

3.2 Design, Conservation and Sustainable Development - No objections to the proposed smoking shelter adjacent to the boundary with Tanner Row. It will have limited visual impact on the setting of the rear of the listed buildings in Micklegate. The materials and finishes are generally acceptable. The door opening to the rear of the modern extension to the listed building will improve access to car parking and will not impact on the historic fabric of the listed building or the setting in the conservation area.

3.3 Environmental Protection Unit - No objection - Advise that the applicant has recently applied for the smoking area to be licensed. The hearing imposed strict conditions to ensure that the amenity of any local residents was preserved. As such EPU feel that the concerns they may have had were resolved through the Licensing process, there is no need to recommend the same conditions for the planning application. EPU do however recommend a condition to ensure that no amplified music equipment is installed for use externally in the area and advise the applicant to adhere to the recommended advice in the instructed noise assessment survey.

External

3.4 Planning Panel - No objection.

3.5 The application was publicised by site notice, press notice and letters of neighbour notification. The deadline for comments is 25.7.07. To date one objection from 73/75 Micklegate

I should like to object to this application on the grounds of the noise nuisance that will almost result from this area being used in the early hours. It will particularly affect local residents and the backpackers hostel. There is likely to be shouting, banging of doors, and possibly loud music from the club.

4.0 APPRAISAL

Key issues

4.1 The key issues are considered to be the design of the proposed development - whether it is acceptable, assessing the impact on the special historic interest of the

listed building, and the effect on the character and appearance of the conservation area, and also the impact on the amenity of the surrounding occupants.

Policy

4.2 The relevant policies are as follows -

- E4 of the North Yorkshire County Structure Plan states that buildings and areas of special historic interest shall be afforded the strictest protection.

- HE4 states that listed building 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.

- GP1 Refers to design, for all types of development. It states that development proposals must, respect or enhance the local environment and ensure no undue adverse impact from noise disturbance, overlooking, overshadowing or overdominance.

- Policy S6 states that planning permission for the extension or alteration of premises for food and drink uses 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, the opening hours are restricted where this is necessary to protect the amenity of surrounding occupiers and where security issues have been addressed.

Design

4.3 The proposed shelter would be enclosed by 2.1 metre high timber panels and partially covered by a single 3 metre by 4 metre umbrella. Inside the shelter it is proposed to provide 3 wall mounted outdoor lights and heaters, there would be no tables and chairs as such but there would be 6 poseur tables.

4.4 At present facing Toft Green (at the side of the nightclub) there is a brick wall with an arched entrance gate into the car park. The proposal would mean that from Toft Green an additional double fire escape door would be seen and the brickwork above the gate would be removed. These alterations would have a limited visual impact when seen from the street, and the timber enclosure would be mostly screened from view. As such it is considered that the visual impact of the smoking shelter from the public realm would be neutral. The timber screen would be seen from the upper floors of the units on Micklegate. However there would be no harm to any views of importance or significant merit and again the visual impact of the proposed shelter from surrounding buildings would be limited. Overall it is considered the proposed shelter would cause no harm to the setting of nearby listed buildings, the character and appearance of the conservation area or the outlook enjoyed by surrounding occupants.

4.5 At 92 Micklegate the application proposes a new rear door and opening at the back of a single storey extension to the building, and a replacement timber gate

between the building and Toffs nightclub. The building is a more recent addition to the listed building thus the alterations would not affect any parts of the listed building of historic or architectural importance and are considered to have a neutral effect on it's setting.

Amenity

4.6 The nearest premises that would be affected is the backpackers hostel at 88-90 Micklegate, the rear elevation of this premises is around 36 metres from the proposed outdoor smoking shelter. Some of the upper floors of the units on Micklegate also provide living space, but these are no nearer the shelter than the hostel. The surrounding area has a number of bars/amenities open late at night. The nightclub is open until at latest 04:00 and there is noise created from persons coming and going from the premises. Other sources of noise nearby are people visiting the bars on Micklegate, traffic and persons using the outdoor drinking areas at nearby premises, specifically Rumours (No.94), which also has external speakers that play recorded music and The Nags Head (100).

4.7 The applicant has submitted a noise report that measures impact on the nearest noise sensitive premises, the hostel. It covers potential noise breakout from the club and the predicted noise levels as a consequence of patrons using the smoking shelter.

Noise breakout from the premises

4.8 The noise assessment found that although the music being played inside the nightclub could be heard from outside, it was not 'subjectively disturbing'. This noise would be lesser inside the hostel and other nearby premises.

4.9 The assessment found there would be no evident change in noise emanating from inside the nightclub as a consequence of people leaving the building and going outside to use the shelter. The shelter would be accessed via the escape corridor; there would be two separate sets of fire doors into the external area, from the internal area. This is intended to ensure at least one set of doors are closed at all times. When the doors are opened it is expected noise breakout from the nightclub would occur, the noise level from the nightclub would be up to 19dB. This noise would be inaudible from the hostel, as it is well below the existing average noise levels outside the premises (55dB during trading hours, 48dB afterwards).

Noise from persons using the outdoor area

4.10 The assessment predicts that persons using the outdoor smoking area would create an average noise level of 45dB. Because this is less than the existing background noise levels the impact would be neutral thus not harmful to the amenity of surrounding occupants. Although there may be times when there are raised voices, above the average noise levels, it is considered that in this area such noise will occur already and thus the potential effect on amenity would be limited.

4.11 To prevent noise outbreak from the outdoor area it can be conditioned that no music is played, no alcohol be consumed, and no other furniture, opposed to that on

the plans be placed outside. These measures would deter people from spending time in the outdoor area. Furthermore it is a requirement of the premises license that staff police the area at all times, this would deter anti-social behaviour and ensure doors into the area are kept closed.

Highway safety

4.12 The only alteration that is considered to affect highway safety is the proposed fire doors that would open out onto the highway. The doors open out onto some cobbles, as per the arrangements with the other exits from the nightclub. Because the doors do not open onto the footpath or road, it is considered there would be no additional harm to highway safety.

5.0 CONCLUSION

5.1 It is considered that the proposed outdoor smoking facility would be of acceptable appearance. The evidence submitted by the applicant demonstrates that the proposed development can be managed to an extent that it would not unduly add to noise disturbance in the locality and therefore the impact on nearby occupants would be acceptable.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

- 1 PLANS1
- 2 TIME2
- 3 Within one month of its installation the colour finish to the timber enclosure shall be agreed to in writing by the Local Planning Authority and the fence coloured accordingly. After which, the enclosure shall be reasonably maintained at all times.

Reason: In the interests of appearance.
- 4 The external access doors shall be developed in accordance with the recommended specifications in the SRL Noise Assessment dated 23 May 2007.

Reason: To protect the amenity of nearby occupants.
- 5 The furniture used in the outdoor smoking area shall be as per the approved plans and no other furniture such as tables and chairs shall be placed in the area without prior agreement in writing by the Local Planning Authority.

Reason: So as not to encourage the use of the shelter as an outside drinking area/beer garden, in the interests of amenity and health.

- 6 No sound reproduction or amplification equipment (mechanical or electrical) shall be installed or used in, or adjacent to any part of the building at any time for the purposes of external use.

Reason: To protect the amenity of nearby occupants.

- 7 There shall be no alcohol permitted in the outdoor smoking area.

Reason: So as not to encourage the use of the shelter as an outside drinking area/beer garden, in the interests of amenity.

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 special historic interest of the listed building, the character and appearance of the conservation area and amenity. As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies GP1, HE3, HE4 and S6 of the City of York Local Plan Deposit Draft.

Demolition and Construction

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.

The developer's attention is also drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974.

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