

COMMITTEE REPORT

Date: 15 November 2012 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
 Commercial Team

Reference: 12/03022/FUL
Application at: Lucia Bar And Grill 9 - 13 Swinegate Court East Grape Lane
York YO1 8AJ
For: Variation of condition 5 of planning permission 12/01910/FUL
for restaurant/bar to extend opening hours to allow premises
to open till 02:00 every day
By: Mr Osman Doganozu
Application Type: Full Application
Target Date: 16 November 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 This application relates to 9-13 Swinegate Court East which is occupied by Lucia Bar and Grill and Bar Esperanza.

1.2 Planning permission was granted for the use of the ground floor as a restaurant in the 1990s. In July 2011, the upper floor of the property became vacant and permission was granted for the restaurant to expand onto the first floor. Neither permission restricted the opening hours of the restaurant.

1.3 At the August meeting of the West and Centre Planning Committee, the first floor of the premises was granted planning permission retrospectively for a change of use to a drinking establishment. Members resolved to restrict the permitted opening hours of the restaurant and the first floor bar and as such, condition 5 of the permission requires the premises to close at midnight each day of the week.

1.4 This application seeks permission to vary Condition 5 to enable the premises to operate from 10.00am until 02:00 the following day, on each day of the week. These opening hours are sought for both the A3 restaurant use and the A4 drinking establishment use.

1.5 The applicant states that the use of the first floor bar is mainly used by customers of the restaurant (75%) for pre and after dinner drinks or waiting for an available table on the ground floor. Last orders for food in the restaurant are 11pm and it is considered important that customers have the facility to consume their meal without feeling rushed in order for the premises to close at midnight.

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 Multiple (Spatial)

2.2 Policies:

CYS6 Control of food and drink (A3) uses
CYHE3 Conservation Areas
CYS7 Evening entertainment including A3/D2

3.0 CONSULTATIONS

Environmental Protection Unit

3.1 Since the comments made at the time of the previous application, the Environmental Protection Unit have received no further justifiable noise complaints regarding this premises and it is considered that the 2 conditions applied previously relating to the submission of a scheme for all the machinery, plant and equipment installed and for an electronic noise limiter to be installed within Bar Esperanza, will satisfactorily address any issues as far as the Environmental Protection Unit is concerned.

City Centre Management

3.2 No objections

Police Architectural Liaison Officer

3.3 In respect of "designing out crime", no issues to raise. These premises have a licence in place to operate until 0300 hours every day (one hour longer than the variation being applied for). This licence was endorsed by both the Police and Council Licensing departments.

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3.4. Object. The hours extension means it would be at the earliest 03:00 before the noise would start to die down. We note that the majority of the covers are outside and believe this would be unacceptable to local residents. The companies so scant regard for their neighbours by operating without permission so if they are given permission, will care little for the disturbance to their neighbours.

Local Publicity

8 letters of objection have been received from residents and businesses (including a letter from the Lund's Court Residents Association representing 5 flats) which raise the following planning issues.

(i) Oppose the introduction of late night drinking establishments in the area. Noise and disturbance now has an adverse impact on residential amenity and the ability of residents to sleep. Consider the midnight closing time should be maintained. It is also noted that the midnight closing time imposed at committee in August has not been upheld.

(ii) Increased anti-social behaviour, noise, litter, crime and vandalism in the area since the introduction of late night drinking establishments, which has a detrimental impact on the character and appearance of the area, and incurs costs on existing businesses having to repair damaged premises.

(iii) The area used to be attractive, and where commercial and residential premises co-existed harmoniously. There is concern that increased amounts of late night drinking establishments will lead to residents moving out of the city centre and prevent new residential development. The area could become the next 'Micklegate' where noise disturbance and vacant retail premises are an issue for that area.

(iv) Other courtyards in the area like 1331, the Slug and Lettuce and Stonegate Yard have to be cleared by 11pm. This should be the same for both of these businesses especially as Swinegate Court East is such a confined area so noise travels upwards.

(v) Although the applicants are able to put all sorts of noise limitation measures in place at their premises, the one thing they can't do is control the noise made by customers as they leave and walk down Grape Lane. Closing at a reasonable hour is the only way that the problem can be contained to an extent.

(vi) Kuja Bar adjacent to Barley Hall has a late licence and ceased trading at the beginning of 2012 since when it has remained vacant. This hardly suggests there is a shortage of bars in the area. If the applicants are keen to find another form of operation, why have they not taken over this bar?

Additional points raised by the residents of Flat 1 at 2 Grape Lane;

(vii) Base noise and vibration from the upstairs bar area is still being experienced despite a noise limiter being installed. The noise comes up from the ceiling which it is assumed is not insulated. The premises licence includes a condition that the noise and vibration shall be inaudible at nearby residential properties. This has not

happened. Noise from the courtyard is also experienced which is an open ended situation so sound is carried and rebounds off nearby buildings. It is appreciated that we live in a bar saturated area (14 in total) but it is only in the past 6 months with the opening of the nightclub next door that our lives have drastically changed. We can accept midnight as a closing time because we can enjoy 6 to 7 hours sleep but 2am is unacceptable. This time becomes later with customers and then staff leaving the premises into Grape Lane often waiting for taxis outside our property. There are many other bars in the area which have a licence until 2am but these bars are not next door in close proximity to residential properties as is Lucia's.

4.0 APPRAISAL

Key Issues

4.1 The main issues are the impact on residential amenity as a consequence of the proposed operating hours and the vitality of the city centre.

Planning Policy

4.2 The National Planning Policy Framework advises that planning should positively promote competitive city centres and enhance their vitality and viability. The NPPF advises that residential development can play an important role in ensuring the viability of town centres. It forwards the principle that planning should seek to ensure a good standard of amenity for all existing and future occupants of land and buildings. Planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder and the fear of crime, do not undermine quality of life or community cohesion. Planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

4.3 Local Plan Policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted provided:

- There is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.
- Opening hours are restricted where this is necessary to protect the amenity of surrounding occupiers.
- Where security issues have been addressed.

4.4 Policy S7 seeks to promote the introduction of new evening entertainment uses provided there is no adverse impact on the vitality and viability of the city centre and no adverse impact on residential amenity.

4.5 Dwellings form an integral part of city centres and their character, vibrancy and vitality. The National Planning Policy Framework recognises that town centres are

'the heart of communities', that 'residential development can play an important role in ensuring the vitality of centres' and planning policies should 'encourage residential development on appropriate sites'. Local Plan policies GP12, H11 and H12 also encourage residential development in the city centre and advise such development can make a vital contribution to housing need in the city.

Assessment

4.6 At the August Committee, Officers had recommended approval for the use to open until 03:00 with a condition giving a temporary permission for the outside area to open beyond midnight, to assess the impact on the area. Many objections were raised relating to the general character of the area and music/noise from Lucia's and Bar Esperanza and the Environmental Protection Unit had received noise complaints with respects to noise from the external chiller units and the late night base beat emanating from the Esperanza Bar. With conditions requiring noise mitigation measures for the plant and machinery at the premises and for an electronic noise limiter to be installed within Bar Esperanza, the Environmental Protection Unit were satisfied that the business could be operated in a manner which would not affect nearby dwellings.

4.7 Members decided to grant retrospective planning permission for the change of use of the first floor of the premises to a drinking establishment imposing a midnight closing time. The opening hours of the premises were restricted as Swinegate Court is a compact part of the historic core where there are residential properties close-by, residents form an important part of the vitality and viability of the city centre and their continued presence should be encouraged. Midnight was deemed a reasonable closing time because as the licence permits a maximum occupancy of 30 people outside, noise disturbance from both music and customers is likely to occur.

4.8 There are a number of premises situated in the Swinegate Quarter that operate as bars. Consequently there is late night activity in the area and attributed to it a degree of noise, disturbance and anti-social behaviour. The bars and their opening times are listed below:

Premises	Closing time - licensing	Closing time – planning
1331 Grape Lane	02.00	None
Wildes Grape Lane	00.30	None
Oscars	02.30	02.00 Outside area 02.30 fri & sat 20.00 sun – thurs
Biltmore	02.30	02.00

		Outside area 02.30 fri & sat 20.00 sun – thurs
Vudu Lounge	04.30	03.00 fri & sat 02.00 sun – thurs (for 1 year then revert to 01.00)
Slug & Lettuce	02.30 fri & sat pm 00:30 sun – thurs	None
Stonegate Yard	02.20	None
Kennedy's	02.30	None
La Tasca	No restrictions	Midnight Outside area 22.00

4.9 There are houses nearby including a flat at No.2 Grape Lane, which is adjacent to and shares a party wall with the application site. Its bedroom fronts Grape Lane which is around the corner from the courtyard seating area. There are also houses in Lund's Court, Norman Court and Petergate.

4.10 In determining the application, the key test is whether the surrounding occupants would suffer an undue loss of amenity as a direct consequence of Lucia's / Bar Esperanza trading between midnight and 2:00.

4.11 The previous consent required the implementation of noise mitigation measures for the plant and machinery at the premises and for the installation of an electronic noise limiter. An application to discharge these conditions has yet to be received, however the applicant states that these works have all been completed and has advised that an up to date independent noise survey is shortly to be submitted. Members will be updated at the meeting.

4.12 Since the consideration of the application in August, the Environmental Protection Unit advise that they have received no further justifiable noise complaints regarding this premises and consider that the conditions applied previously would satisfactorily address any issues they might have. It is noted from comments raised by the occupants of the flat adjacent to the application site that base noise and vibration from the upstairs bar area is still being experienced despite a noise limiter being installed. On receipt of the noise survey and the information to discharge the conditions, the Environmental Protection Unit will be reconsulted to ensure that the measures employed are sufficient to ensure that no music and/or bass beat is audible within nearby residential properties.

4.13 Aside from assessing the impact on residential amenity from the "inside" of the premises, Officers acknowledge that external seating area has the potential for noise disturbance from music and raised voices. The applicant has confirmed that this seating area is used in association with the bar as well as the restaurant and therefore should this application be approved, this area could be used between midnight and 2am by up to 30 persons.

4.14 The licence permits the premises to play music outside in the courtyard but the Environmental Protection Unit comments that the levels are maintained at background level and the external music is not currently a source of noise complaints.

4.15 The closest residential property is the flat at No.2 Grape Lane, which is adjacent to and shares a party wall with the application site. Its bedroom fronts Grape Lane which is around the corner from the courtyard seating area. Noise from amplified music can be controlled through an appropriately worded condition (provided the condition is adhered to). As such and because of the intervening buildings and streets between the application site and surrounding residential premises, it is deemed that persons using the outside area would be unlikely to create undue noise disturbance (i.e. no more than that which is already experienced in this area). As with the previous application, Officers recommend allowing the later opening hours for the outside seating area for a temporary period, so they can be reconsidered and revert to midnight if the 02:00 closing time leads to disturbance.

5.0 CONCLUSION

5.1 Subject to the reapplication of conditions to ensure appropriate noise mitigation measures are implemented with respects to the plant and machinery and to ensure music is inaudible within nearby residential properties, Officers consider potential noise disturbance to arise from allowing Lucia's / Bar Esperanza to trade between midnight and 02:00 would be satisfactorily mitigated.

5.2 A temporary permission for the use of the outside area to allow for trading until 02:00 is recommended to allow for a trial period. Conditions can control noise from amplified music to ensure music is inaudible within nearby residential properties and to restrict times when glass/bottles are taken out to control noise from the premises.

5.3 As granting permission would lead to a fresh permission for the premises, a comprehensive list of conditions will be necessary, in the interests of the amenity of surrounding occupants.

6.0 RECOMMENDATION: Approve

1 The premises shall only be open to customers between the following hours:
10.00 to 02.00 the following day.

From 15/11/2013 the outside area shall not be open to customers between 24:00 midnight and 10.00 each day of the week unless a further planning permission has been granted to extend or remove this restriction.

Reason: To monitor noise associated with the outside area and to protect the amenity of nearby residents from noise associated with the premises.

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Floor plans received 7 September 2012

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 Within 1 month of permission being granted, a scheme shall be submitted to and approved in writing by the Local Planning Authority for all the machinery, plant and equipment installed. The machinery, plant and equipment and specifically any approved noise mitigation measures shall be fully implemented and operational within 1 month and shall be appropriately maintained thereafter.

Reason: In order to protect the amenity of residents and in the interests of the character of the Conservation Area.

4 Within 28 days of this permission being granted, full details of an electronic noise limiter to be installed within the premises shall be submitted to and approved in writing by the local planning authority. The approved noise limiter shall be installed within 28 days of written approval and thereafter amplified music shall be played through the device at all times and it shall be set at a level such that no music and/or bass beat is audible within nearby residential properties.

Reason: In order to protect the amenity of residents and in the interests of the character of the Conservation Area.

5 No amplified, recorded or live music in association with the restaurant and external seating area shall be played which is audible within nearby residential properties.

Reason: In order to protect the amenity of residents and in the interests of the character of the Conservation Area.

6 The premises shall only be open to customers between the following hours:

10.00 to 02.00 the following day.

From 15/11/2013 the outside area shall not be open to customers between 24:00 midnight and 10.00 each day of the week unless a further planning permission has been granted to extend or remove this restriction.

Reason: To monitor noise associated with the outside area and to protect the amenity of nearby residents from noise associated with the premises.

7 Bottles and glass shall not be placed into bottle bins between the hours of 24.00 hours (midnight) and 08.00 hours on any day.

Reason: To protect the living conditions of adjacent residential occupiers in accordance with policy S7 of the Development Control Local Plan.

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 character and appearance of the Central Historic Core Conservation Area and the amenity of surrounding residents. As such the proposal complies with Policies S6, S7 and HE3 of the City of York Development Control Local Plan.

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