

## COMMITTEE REPORT

**Committee:** West/Centre Area  
**Date:** 28 August 2007

**Ward:** Micklegate  
**Parish:** Micklegate Planning Panel

**Reference:** 07/01625/FUL  
**Application at:** Edward VII 105 - 109 Nunnery Lane York YO23 1AH  
**For:** Erection of timber pergola to rear and external alterations to rear elevation of existing building including relocated air conditioning unit (resubmission)  
**By:** Wolverhampton And Dudley Breweries Plc  
**Application Type:** Full Application  
**Target Date:** 5 September 2007

### 1.0 PROPOSAL

1.1 The application relates to the Edward VII public house, located on the corner of Nunnery Lane and Victoria Street. There are terraced dwellings to the east side of the public house and an area of hardstanding, used as parking at the rear.

1.2 The application is for planning permission for a timber-framed pergola with a polycarbonate roof at the rear of the building, required to provide an outdoor smoking area for patrons of the public house. To enable direct access to the shelter it is proposed to replace a window within the rear elevation with an access door and small window. An existing air-conditioning unit is to be relocated in the rear yard area.

1.3 This application is a re-submission, after the original scheme was refused in 2006, reference 06/02823/FUL. The application was refused due to concern that the proposed development would lead to increased levels of noise and smoke disturbance from customers which would be harmful to the levels of amenity currently enjoyed by the occupants of No.111 Nunnery Lane.

1.4 The application is brought to planning committee at the request of Councillor D Merrett.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

## 2.2 Policies:

CYGP1  
Design

CYGP18  
External attachments to buildings

## 3.0 CONSULTATIONS

Internal

The Environmental Protection Unit (EPU)

3.1 Object to the application for the following reasons.

- The proposed shelter would be in very close proximity to neighbouring residential properties. Thus concerns that noise from patrons using the shelter throughout the day and at night will have a detrimental effect on the amenity of neighbouring residents which would give rise to nuisance complaints.
- Concern was also raised over noise breakout during access and egress to and from the bar from the proposed new door serving the bar area.
- EPU also stated that the structure is proposed to provide shelter for patrons. If approved it may encourage smokers to congregate in this area. The smoke generated by smokers may have a serious effect on the amenity of residents living in close proximity. It is also likely that smoke produced may give rise to nuisance complaints and have health implications for the adjacent residents.
- EPU also raised concern that the shelter may be substantially enclosed. If it were it would not be possible for this structure to be used as a smoking shelter under the Health Act 2006 which came into force on 1st July 2007.

Design, Conservation and Sustainable Development

3.2 No comment.

External

3.3 Planning Panel - No response.

3.4 Adjacent neighbours were notified by letter. The deadline for comments was 02.08.07. A list, of some 144 names, in support of the scheme has been submitted by the landlord of the pub along with a covering letter advising of a letter /leaflet (inviting objections to the scheme) which has been passed around to nearby residents. This leaflet advises that an application has been made to the licensing department for an outdoor drinking area, that the public right of way adjacent to the

building has been ignored, and that there is no provision for the containment of noise. A letter in support from 76 Nunnery Lane has also been received. This letter states that the space at the rear of the building is a natural place to accommodate smokers. Three objection letters have been received, from 111, 103 and 77 Nunnery Lane, the objections are as follows -

- Noise
- Anti-social behaviour
- Health implications
- Dangerous for children nearby - influenced by smokers, dangerous for them to be near people drinking
- Discrepancies with the information in the submitted application and statements - the area is not 'al fresco' as it is covered (it may not comply with new regulations), application states area would be for everyone to enjoy, however it is only for patrons of the premises, no account for what effect there would be on the surrounding area which is residential, fire safety concerns.

#### **4.0 APPRAISAL**

4.1 The key issues are the design / appearance of the proposed structure and the effect upon the amenity of surrounding residents and also crime and disorder.

4.2 The relevant policies of the Draft Local Plan are GP1 and GP18.

4.3 GP1 states that development proposals must, respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with the surrounding area; avoid the loss of open spaces which contribute to the quality of the local environment; provide and protect amenity space; provide space for waste storage; ensure no undue adverse impact from noise disturbance, overlooking, overshadowing or overdominance

4.4 GP18 pertaining external attachments to buildings states they will only be permitted where their design, locations, materials and colouring do not significantly detract from the visual amenity of the building, or the character and appearance of conservation areas.

4.5 The objectives of the general policies of the Local Plan are to enhance the health, safety and amenity of the public and improve the natural and built environment.

4.6 The proposed pergola would be 3515mm by 2270mm and 3m high. There would be a trellis around the pergola immediately below the roof level, and a fence above the dwarf wall on the car park facing elevation up to 1.8m from ground level. The structure would sit between a single storey flat roof rear extension at the existing building and a single storey lean- to rear extension at No. 111 Nunnery Lane.

#### Design / appearance

4.7 The row of terraced properties within which the property is located consists of a number of single storey rear extensions / outbuildings of various shapes and

materials. When viewed in this context the proposed building would not be harmful to the visual amenity of the area.

#### Residential amenity

4.8 The application proposes an access door and the creation of an outdoor smoking area. Although the area is within the curtilage of the public house, it would not have previously accommodated patrons principally because of its lack of direct access, size and appearance. The building would be adjacent to the boundary of No.111 Nunnery Lane, and would encourage people to congregate in the area. No.111 is a residential property with first floor windows within approximately 5m of the proposed building. The development is likely to harm the amenity of the occupants of No.111, through increased noise from patrons of the premises and nuisance from smoke. This would potentially occur both through the day and at night (the pub can open until 01:30 Thursday to Saturday), and would likely be worse in warmer periods when an increased number of patrons would desire to be outside, and for longer periods of time. Also, during warmer weather, No.111 may want to have their windows open, which would exacerbate the problems of noise and smoke. The level of disturbance may also be greater if the new door were left open, allowing noise to escape from inside the premises.

#### Crime and disorder

4.9 There is no evidence to demonstrate that patrons of the public house would cause harm or disturbance if they were outside. Officers consider that such a problem should either be dealt with through the premises' license, which could be revoked or amended if necessary, or by the police.

#### Other matters

4.10 The objections on the grounds of fire safety and whether the proposed shelter would be open enough to comply with the new regulations are covered in separate legislation and are thus not reasons to refuse this application, or seek amendments to the plans. Should the application be approved the applicants could be informed of this.

### **5.0 CONCLUSION**

5.1 This application is the same one which has previously been refused under delegated powers. It is considered that the proposed development would be harmful to the amenity of the occupants of No.111 Nunnery Lane as it would encourage noise disturbance and nuisance from smoke in close proximity to the windows of that residential property. The application is thus contrary to policy GP1 and the objectives of the general policies of the Local Plan which seek to enhance the health, safety and amenity of the public and improve the natural and built environment. Refusal is recommended.

### **COMMITTEE TO VISIT**

**6.0 RECOMMENDATION:** Refuse

1 In the opinion of the Local Planning Authority the proposed development would lead to increased levels of noise and smoke disturbance from patrons of the public house which would be harmful to the amenity presently enjoyed by the occupants of No.111 Nunnery Lane. As such this proposal is contrary to the objectives of the general policies of the City of York Local Plan which seek to enhance the health, safety and amenity of the public and improve the natural and built environment. Also to policy GP1 of the City of York Draft Local Plan which requires development proposals to provide and protect amenity space and ensure no undue adverse impact from noise disturbance, overlooking, overshadowing or overdominance to adjacent neighbours.

**7.0 INFORMATIVES:**

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