

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 20 September 2007 **Parish:** Guildhall Planning Panel

Reference: 07/01756/FUL
Application at: The Lowther 8 Cumberland Street York YO1 9SW
For: Outside seating area on Kings Staith for use by The Lowther Public House and Plonkers Wine Bar (resubmission)
By: Mr S Binns
Application Type: Full Application
Target Date: 18 September 2007

1.0 PROPOSAL

1.1 The application is a revised application following refusal of planning permission to open a 19-table pavement cafe on Kings Staith, on part of the pedestrianised cobbled public highway close to the river front for two public houses in Cumberland Street, the Lowther and Plonkers. The Council now own the freehold of the land having taken on the old River Companies, and the land is probably classed as a 'highway' evolving from long public access. The area is currently enclosed by highway bollards and a 2 metre pedestrian path would be retained along the river's edge. It is separated from the licensed premises by the one-way highway system on Kings Staith and it is intended that the waterfront pavement cafe would be operated by waiter service only, during operating hours of 10.00- 20:00 hours.

1.2 The area forms part of the Central Historic Core Conservation Area and the buildings at the rear of the site on Kings Staith are listed, with Cumberland House on the corner being a Grade I Listed Building. Kings Staith is also used as an embarkation point for riverboats. The nearby Kings Arms Public House has an outside seating area with approximately 7 tables. An application for the change of use from area to outside drinking area at the Kings Arms was withdrawn on 25.9.1998.

1.3 This application varies from the previously refused application by reducing the number of tables from 25 tables to 19 tables. Additional information has been provided to explain how the area would be managed and would include-

- Hours of occupation would be limited from 10.00-20.30 (this includes a 30 minute drinking up period)
- The area would be cleared of tables and chairs by 21.30
- Tables and chairs would be stored in the basement of the Lowther Public House
- The area would be cordoned off by fixing chains between existing bollards
- CCTV coverage of the area would be provided as required by a condition of the premises licence
- The area would be constantly supervised, staffed at all times, with waiters/ waitresses using an intra red wireless remote control to order and bar staff bringing the orders to the area
- There would be no buying of drinks within the bars and then moving outside to occupy seats within the pavement cafe.

- Only plastic containers would be used
- The licensee would be willing to accept a condition that would ensure that there would be no table umbrellas or banners used to delineate the area to minimise paraphernalia.

1.4 The applicant's agent has submitted two letters. The agent advises in the supporting letter that accompanied the originally submitted documentation that the grant of a premises licence is a material consideration. It is also indicated that there is a desire to encourage active uses along Kings Staith and the river frontage through the provision of an ancillary amenity facility whilst ensuring that the character and appearance of the conservation area is preserved and enhanced, contending that the scheme does not detract from the nearby listed buildings. The second letter responds to the concerns that were raised by the Boating organisations in their written representations.

1.5 This application is presented to the west/centre planning sub-committee at the request of Councillor Brian Watson due to the potential impact on neighbouring residential amenity. A committee site visit is to take place because objections have been received and the application is recommended for approval.

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

2.2 Policies:

CYHE3

Conservation Areas

CYHE4

Listed Buildings

CYS6

Control of food and drink (A3) uses

3.0 CONSULTATIONS

Neighbour Notification- Expires 16.8.2007

Site Notice- Expires 17.8.2007
Press Advert- Expires 22.8.2007

8 WEEK TARGET DATE -18.9.2007

3.2 INTERNAL CONSULTATIONS

Highway Network Management- No objections but advise that a highway licence would be required

Environmental Protection Unit - No objections subject to revisions and conditions
Design, Conservation and Sustainable Development- Subject to conditions and issues, it is considered that the character and appearance of the conservation area would remain unharmed

3.3 EXTERNAL CONSULTATIONS/ REPRESENTATIONS

Guildhall Planning Panel- Object as-

- insufficient free space between vehicular/ pedestrian through traffic and seating area
- lack of cordoning on inner face of the seated area may give restricted access perception to river thoroughfare kerb.
- remoteness of seating area from access to Plonkers wine bar

York Motor Yacht Club- Object as too close to moorings and could lead to boat damage/ fire risk

Ripon Boat Club- Object as increases risk to moored craft from drunken public disorder, and would further sully the City's reputation.

The Boating Association- Object as increased hazard for boat owners from disorderly behaviour, boarding of crafts, lack of supervision and accountability, consider the application should go to planning committee for a determination.

4 Representations have been received, one with an acoustic report. The following issues are raised -

- see little difference from previous application, only small reduction in the seating area
- conflict between vehicles/ pedestrians/ cyclists and patrons
- management issues of an area divorced from the public houses
- harm to nearby residential amenity from noise generated by large number of customers that can be accommodated, increase in daytime and early evening noise levels
- adverse impact from clutter and chairs on the unique historic character, open space of the Staith, the river frontage, listed buildings
- no restriction on number of standing customers
- licensing legislation is different from planning legislation and not relevant to the determination of the application

4.0 APPRAISAL

4.1 RELEVANT SITE HISTORY

07/00819/FUL Outside eating area on Kings Staith for use by the Lowther Public House and Plonkers Wine Bar. Refused 5.6.2007

98/01873/FUL Kings Arms PH- Change of use from area to outside drinking area- Withdrawn 25.9.1998.

4.2 ADDITIONAL PLANNING POLICY

Policy E4, North Yorkshire County Structure Plan

PPS 1 " Delivering Sustainable Development "

PPS 6 " Planning for Town Centres " 2005

PPG13 " Transport "

PPG15 " Planning and the Historic Environment "

Circular 11/95 "The Use of conditions in planning permissions"

4.3 KEY ISSUES

- Impact on the visual amenity and historic character of the conservation area/ adjacent listed buildings
- Impact on the residential amenity of the neighbours/ offices
- Impact on pedestrian and highway safety
- Public safety/ Crime

4.0 ASSESSMENT

4.1 The following sets the policy context for the proposed change of use. The application site is within the central historic core conservation area; as such policy HE3 of the City of York Development Control Local Plan and Policy E4 of the Structure Plan states that within conservation areas proposals will only be permitted where there is no adverse effect on the character or appearance of the area. Policy S6 of the City of York Development Control Local Plan relates to the control of food and drink uses. The policy permits the extension, of premises within York City Centre subject to there being no adverse impact on amenity of surrounding occupiers and the opening hours being restricted, where necessary, to protect the amenity of surrounding occupiers.

IMPACT ON CONSERVATION AREA/ LISTED BUILDINGS

4.2 It is imperative that any outdoor seating is of appropriate appearance and does not appear cluttered in order to maintain the character and appearance of the

conservation area. The site is within a designated conservation area (Central Historic Core) where the Council has a statutory duty to consider the desirability of preserving or enhancing the character or appearance of the area. King's Staith has been York's principal riverside quay since mediaeval times, and although altered and extended south, still provides a convenient and cobbled access to the south west riverside. The texture and quality of this foreground area adds greatly to the setting of the nearby listed buildings, especially the Grade 1 building of Cumberland House at the corner. The area that is proposed as a seating area is currently used for many purposes. It provides a link between the 3 roads- King Street, Cumberland Street, and Lower Friargate giving access onto the Staith. It allows clear and unobstructed access to the waterfront for pedestrians and maintains an open setting for the waterfront buildings behind. On summer days there are often tourists in this area. The proposed seating would fill part of an existing non-vehicular area with tables, chairs and barriers for a substantial part of the day and part of the evening altering the appearance of this highly visible area in front of the Grade 1 Listed building, Cumberland House.

4.3 The agent has indicated a random layout of tables and chairs in the submitted drawings with no mechanism to control the spread of tables within the area. It is likely that the cafe use would spread to fill the area if the pavement cafe area is not clearly defined, but an approved final layout, including table numbers, could be conditioned if planning permission is granted.

4.4 The openness of the riverbank at this point is a public attraction and a distinctive feature of the area, and the agent was asked to consider a wider footpath (3 metres) so that the public could continue to enjoy the amenity and access of the area without having to pass too close to either tables or the river bank. A 3 metre width of passage is normally considered comfortable, and this standard has been applied elsewhere in the central historic core where it is achievable (eg on opposite bank).The agent however considered that the proposed 2 metre passage would exceed the Highway Authority's standard of 1.8 metres and it would be adequate to allow pedestrians to walk along the riverside. It is also advised that any further restriction in the area of the cafe would impact significantly on the viability of the scheme. Whilst the widening of the path would be desirable in terms of amenity and accessibility, on balance a further restriction in the area may jeopardise the success of the venture and the harm to the conservation area would not be so significant to warrant refusal of planning permission.

4.5 As there is an existing outdoor seating outside the Kings Arms, the proposed use in the reduced area would add to this existing character and could be visibly accommodated in the area without appearing dominant. The details of the shiny, metallic furniture and chairs would require to be less urban in this traditional, historic environment and should be sympathetic to the seating area at Kings Staith. With controlled operating hours and with the removal and storage of furniture off -site, and the combined tighter management of the site, it is concluded on balance that the proposal could add to the vitality and viability of the area without harming the character and appearance of the conservation area and the listed building in accordance with adopted planning policy HE3 of the local plan and E4 of the Structure Plan.

RESIDENTIAL AND OFFICE AMENITY

4.6 Policy S6 states that planning permission for the extension, alteration or development 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 revised application contains information on the proposed management of the operation, much of which has been addressed and required as part of the recently approved premises licence. As the proposed area is divorced from the two public houses, the seating area would be staffed at all times and drinks can only be bought within the area. These will be delivered by staff within the public houses who will be in contact via wireless remote control. The area would be cleared of tables and chairs that would be stored within the cellar of the Lowther public house.

4.7 The main concern relates to the noise and disturbance that the proposal would have on the residential properties nearby on Kings Staith (Nos. 13 and 15). The occupiers have written to object to the proposal and this issue has also been raised by three boating groups who look after the interests of river craft using the moorings on Kings Staith. It is also noted that nearby Cumberland House is in office use, where it is important that excessive noise levels do not harm the working environment of the staff. The introduction of an outdoor seating for 19 tables would undoubtedly raise daytime noise levels for surrounding residential properties, boaters and office staff and this has been verified in a privately commissioned noise report that was submitted in relation with an objection letter. The readings indicated that noise from the area would be likely to affect nearby premises. The Council's Environmental Protection Unit has carefully considered the findings but at this stage could not categorically state that the proposed use would greatly affect the area without further monitoring and evidence. The predicted noise levels in cases of 100, 75, and 50 people using the 19 tables in the indicated area show that sound levels could affect local residential properties but expected noise levels cannot truly take into account other noise sources that affect the area such as traffic noise, boating noise, pedestrian noise etc.

4.8 Additionally, there is no guarantee that the area would be occupied by the numbers calculated, for any length of time, or that the noise from those in the area would be constant. The Environmental Protection Unit also informs that it has not received complaints regarding the noise associated with the close- by seating area outside the Kings Arms where there are residential properties directly adjacent to the use. The Unit therefore proposes that a temporary permission for a period of 12 months should be granted to allow time to assess the impact the use on local amenity and be able to investigate complaints made to this department, if any, regarding noise and that the use should cease completely by 21.00 and not be laid out until after 09.30.

PEDESTRIAN AND HIGHWAY SAFETY

4.9 The local Planning Panel has raised concerns that the proposed 2m wide footpath is insufficient in terms of safety. Highway Network Management has raised no objections in relation to the width of the footpath and the 2m width would appear

to be acceptable. However it is also noted that the issue is not one solely of safety but one of allowing access for all. Kings Staith forms a distinctive part of the river frontage, historically important and contributing to the amenity of the area. It is enjoyed by tourists, residents, businesses and their patrons, and there is reasonable justification to require a width of access to the river frontage that would maintain ensure that this continues.

4.10 It is noted that a separate Highway Licence would also be required if planning permission is granted and this would address many issues relating to safety and management of the area. It is intended that staff would bring drinks from the public houses at the other side of the road, and members of the public would not be crossing the road with drinks. The Highway Authority do not see this form of servicing as a hazard or the proximity of the seating to a highway as issues that would warrant refusing the proposal on road safety grounds. The traffic is considered to be light during the day and at night, and generally does not travel fast through the adjacent road network. Highway Network Management are therefore satisfied that there will no traffic management problems and the applicant would require a pavement cafe licence from this Section that would include conditions and require annual renewal.

PUBLIC SAFETY/ CRIME

4.11 The cafe is situated in a city centre location where there has been a burgeoning of similar uses over recent years that add to the vitality of the centre. The police liaison officer advises that it would be difficult to oppose this application on grounds of harm to public safety given both its proposed city centre location and the lack of any overwhelming crime statistics that indicate that an outdoor eating area that would operate within the times given would be likely to cause excessive public order or anti-social problems. Also the new licensing legislation would allow action to be taken should this become the case. Apart from the occasional 'very hot' day most offences and noise would tend to be in the evenings after the outdoor seating as proposed should have finished operating. It is recommended that additional barriers or bollards that are required should be of a secure fitting (even if temporary) of the type that insert into fitted locators in the surface to assist in maintaining the agreed area and to prevent any accidents from pedestrians falling against them.

4.12 In this instance, if Members are minded to approve the application it is advised that consideration should be given to a temporary consent for a year. Circular 11/95 states that where an application is made for a use that may be potentially detrimental to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development. A trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the correct outcome.

5.0 CONCLUSION

5.1 It is appreciated that this revised application has to a large extent addressed the material concerns raised in the previously refused application for a seating area on Kings Staith for the Lowther and Plonkers public bars. If minded to approve the application, Members may wish to consider whether the suggested condition that requires a 3m width of passage between the river and the pavement cafe is necessary to provide a comfortable access for the wider public, help reduce noise to mooring craft, and improve amenity is necessary. It has been demonstrated that the use would add significantly to daytime noise and measures and conditions would be required to allow the use to proceed whilst protecting neighbouring residential amenity and the character of the area. To this end, the site should be completely cleared by 21.00 hours when evening use can be most intrusive. Members are also advised that it is reasonable that a temporary consent for a year is considered as the potential for noise disturbance from the use could increase significantly and harm the amenity of residents and office workers in the area. On balance and subject to the conditions that include appropriate furniture details to be approved and a layout that contains and prevents the spread of the seating area, it is considered that the historic buildings in the area, the appearance, character and amenity of the conservation area, and a reasonable level of amenity for residents and businesses in the area would be maintained and would not be overly harmed.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 This use shall cease by 20 September 2008 unless prior to that date the consent of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: So that the Local Planning Authority may assess the impact of this use upon the surrounding area.

2 The development hereby permitted shall be carried out only in accordance with the following plans and other submitted details:-

Drawing Number 1.30 Rev B

or any plans or details subsequently agreed in writing by the Local Planning Authority as an amendment to the approved plans.

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

3 Notwithstanding the details of Condition 2 above, a revised seating layout shall be submitted for the written approval of the Local Planning Authority indicating

a 3 metre passage between the river and the tables and a final layout of tables, and the scheme shall thereafter be implemented in accordance with the approved details.

Reason: To ensure that amenity and a comfortable access is maintained along the riverbank similar to elsewhere within the Central Historic Core Conservation Area.

4 Prior to the commencement of the development hereby approved, the following information shall be submitted for the written approval of the Local Planning Authority, and shall thereafter be implemented in accordance with the approved details-

- (i) type of furniture to be used
- (ii) sample of chain and its method of fixing
- (iii) details of proposed CCTV equipment attached to existing posts

Reason: To ensure that the Local Planning Authority is satisfied with the details.

5 No tables, chairs, external lights or heaters shall be used for the seating area hereby approved .

Reason: To avoid the visual clutter of paraphernalia that would detract form the visual amenity, character and historic interests of the nearby listed buildings and the conservation area

6 There shall be no amplified sound within the external seating area hereby approved.

Reasons: In the interests of protecting neighbouring residential amenity and the character of the area.

7 The hours of operation of the use hereby permitted shall only be between 10.00 and 20.00 hours each day of the week. Customers shall be clear of the area approved by 20.30 with tables and chairs cleared from the site by 21.00. Setting up shall not commence before 09:30 daily.

Reason: In the interests of amenity of the occupiers of neighbouring properties, free flow of the highway outside the approved hours, highway safety and in the interests of the amenity of the conservation area.

7.0 INFORMATIVES:

Notes to Applicant

1. HIGHWAY LICENCE INFORMATIVE:

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980

(unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Cafe Licence - Section 115 - Mr A Briggs- 01904 551368

The issue of a highway licence may be subject to some or all of the following conditions, or variations thereof, as considered appropriate.

1 For streets with footways and carriageways, the maximum width of any licensed area shall not exceed one third of the usable width of the footpath. A minimum unobstructed footpath width of 1.8 metres must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards, parking meters etc). Where there is a heavy pedestrian flow additional footpath space may be required.

2 For fully pedestrianised streets a minimum width of 1.8 meters or two thirds of the total width of the public highway, whichever is the greater, must remain free and unobstructed to facilitate pedestrian movement. This figure may be increased where there is a heavy pedestrian flow. The unobstructed route shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.

3 Only the licensed and designated area shall be used for trading.

4 Only tables, chairs and umbrellas associated with tables and small potted plants shall be placed within the designated area. No other furniture other than receptacles shall be placed within this area.

5 The license holder will ensure that the designated area is maintained in a clean and tidy condition. The license holder shall also take appropriate precautions to prevent the highway from becoming, littered as a result of trading activities.

6 The license holder will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or tenants of adjoining premises.

7 All tables and chairs shall be removed at the end of each trading day.

8 Suitable storage for tables and chairs; shall be identified by the applicant at the time of application for a license.

9 Tables and chairs shall be durable and suitable for outside use. No damaged furniture should be used.

10 Tables, chairs and umbrellas shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.

11 No speakers or music shall be permitted.

12 No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.

13 A clear pathway of at least 1.2 metres wide shall be maintained to allow entrance and exit from shop premises.

14 Only refreshments shall be provided.

15 The area shall be vacated immediately if requested by the Council, Police, other emergency service, Statutory Undertaker etc. without any liability for compensation, refund of application fee, or damage arising.

16 Planning permission must be obtained for the use of the highway for a pavement café and for any structural alterations to the building or its appearance. This includes the fitting of electrical signs and canopies.

17 No canopy or umbrella shall be lower than two metres in height and shall be adequately secured.

18 The issue of a license does not give, or imply any permission to supply intoxicating liquor in the street.

19 The use of the licensed area shall cease before 20.00 hours each day and shall not commence prior to 10.00 hours.

20 Notice of application for a new licence shall be displayed in the window of the premises to which it relates for a period of 21 days.

21 The licence shall be displayed in the window of the premises to which it relates.

22 The licence shall be rendered invalid, should the license holder cease to own the premises or cease employment.

23 No licence will be granted if the effect of this licence and any previously granted for premises in the same street, would be:

That in that street the length of licensed pavement café would result in a continuous section in excess of 50 metres

Or

Where the public highway concerned is a paved island or square, the licensed area and any previously licensed area would occupy more than 33% of the publicly available space.

2. 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 conservation area, vitality and viability of the city centre, amenity and safety. As such the proposal

complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995); Policies HE3 and S6 of the City of York Local Plan Development Control Local Plan- Incorporating the Proposed 4th Set of Changes (2005); and national planning guidance contained in Planning Policy Statement 6 " Planning for Town Centres, "Planning Policy Guidance Note No. 15 " Planning and the Historic Environment. "

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