

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Guildhall
Date: 18 October 2007 **Parish:** Guildhall Planning Panel

Reference: 07/02146/FUL
Application at: Pavement Cafe Bar 10 New Street York YO1 8RA
For: Variation of condition 3 of planning permission 06/01336/FUL for 10 New Street and variation of condition 4 of planning permission 06/00339/FUL for 10A New Street to alter opening hours of existing Cafe/bar to 0900-0430 Mon-Sun
By: James Doughty
Application Type: Full Application
Target Date: 31 October 2007

1.0 PROPOSAL

1.1 This application relates to the Blue Fly cafe bar premises at 10a New Street and its forthcoming extension at the ground and upper floors of 10 New Street.

1.2 The application seeks permission to allow the premises to operate between the hours of 09:00 and 04:30 the following day. The allowed hours would include the inside of both premises and their associated pavement cafe areas, which are to the front of 10 and 10a New Street. At present the internal and external areas have planning permission to operate until 03:30.

1.3 The application is to be determined at planning committee at the request of Councillor Watson, who is concerned about noise and disturbance that may occur.

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 Grade 2; 10A New Street York YO1 8RA 0582

2.2 Policies:

CYHE4 Listed Buildings

CYHE3 Conservation Areas

CYS6 Control of food and drink (A3) uses

3.0 CONSULTATIONS

Internal

3.1 Highway Network Management (HNM) - Ask that the application be deferred. Advise that presently pavement cafe licenses, which are allocated by HNM can only be given between the hours 10:00 and 20:00.

3.2 Design, Conservation and Sustainable Development - Response pending.

3.3 Environmental Protection Unit - No objections. Advise there are no residents nearby.

External

3.4 Planning Panel - Support the application.

3.5 Police Architectural liaison Officer (ALO) - No objection. Adds that crime reduction initiatives have been discussed with the applicant, these will be carried out through the premises license process.

3.6 The application was publicised by site notice, press notice and letters of neighbour notification. The deadline for comments being 3.10.07. No written representations have been made.

4.0 APPRAISAL

Relevant site history

4.1 Permission was granted for a retail/café unit at 10a New Street in February 98 (97/02453/ful). It was allowed to open until 11:30. An outdoor seating area was first allowed in December 98 (98/02385/ful). It was allowed to operate until 23:30, 23:00 on Sundays.

4.2 In August 06 permission was granted for an extension to the café bar, at the ground floor of 10 New Street (06/01336/ful). Another extension to the premises, to include the upper floors of 10 New Street and 14 Coney Street was approved in November 06 (06/02081/ful). Concurrently an application was approved to allow the whole premises to operate until 03:30 (06/02080/ful).

4.3 The latest permission for the outside seating area was allowed March 07 (07/00170/ful). Conditions of approval are that trading ceases at 03:30 and the permission expires (temp permission only) in March 2010.

Key issues

4.4 The key issues are:

Amenity of surrounding occupants

Character and function of the area
Security, crime and disorder
Highway safety and management

Policy

4.5 Planning Policy Statement 6: Planning for Town Centres (2005) contains current government guidance on a range of development in town centres. Local Authorities are encouraged to develop policies, which encourage a range of complimentary evening, and night-time economy uses which appeal to a wide range of age and social groups. Key issues are the cumulative impact on the character and function of the centre, anti-social behaviour, crime and the amenities of nearby residents. Local Planning Authorities should adopt an integrated approach so that planning policies and proposals complement their Statement of Licensing Policy and the promotion of licensing objectives under the Licensing Act 2003.

4.6 Policy S6 of the City of York Draft 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. S6 recommends that the opening hours are restricted, where necessary, to protect the amenity of surrounding occupiers. The Fourth Set of Changes to the Local Plan requires security issues to be addressed where the consumption of alcohol is involved.

4.7 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.

Amenity of surrounding occupants

4.8 The premises are currently allowed to trade until 03:30 each day of the week, as there are no residential properties nearby. Permission has been granted for residential at 3 New Street although this has never been implemented (In 2004 and a revised proposal approved in 2005 to covert the upper floors only into residential). Environmental Protection Unit Officers report that the premises presently plays music which can be heard along New Street well into the evening. This would be contrary to a condition placed on all the recent approvals for the site, which reads "Any amplified music or entertainment shall be confined to the indoor cafe and in any case shall not be audible at any nearby noise sensitive premises". However despite this apparent breach of condition, no complaints have been made to the Council, and the site appears to be operating without causing any harm. On this basis, it is unlikely that an extra hour, 4:30 instead of 3:30 is likely to cause further harm.

4.9 It is considered to be reasonable to allow the extended hours for the outdoor area on a temporary basis only, as circumstances in the area may change, i.e. nearby upper floors may become residential. In principle the conversion of underused upper floors of buildings in the city centre is supported by planning policy (H11 of the Local Plan). If residents were to occupy premises nearby, it would be likely that the external seating area would become a noise nuisance, which could not be controlled as successfully as the indoor premises.

Character and function of the area

4.10 There would be a neutral effect on the character and appearance of the conservation area, as no physical alterations are proposed. As previous the appearance of the outside seating area would be controlled by attaching a condition that requires all furniture to be agreed by the Planning Authority prior to use. Allowing trade for an extra hour only would not harm vitality and viability of the city centre or affect its function.

Security, crime and disorder

4.11 The Police Architectural liaison Officer has reported that there is no objection to the extension of hours. It is considered that the issues of crime and disorder can be dealt with through the Licensing Act, which can be revoked if necessary. There is no evidence to suggest that the premises affects crime and disorder in the area.

Highway safety and management

4.12 The area of the outdoor seating area would be as per previous approvals and Highway Network Management have no objection to this on the grounds of highway safety. The additional hour opening required would have a neutral effect on highway safety. Under the Highways Act a pavement café license would also be required before the use can commence. Presently conditions of a pavement café license include that they can only operate until 20:00 and the operators of the pavement café are responsible for keeping their designated area in a clean and tidy manner.

5.0 CONCLUSION

5.1 It is considered that at present the site is operating without causing harm to amenity. The request to open an additional hour is unlikely to affect this. To safeguard against possible changes in circumstances in future, it is recommended that consent for the outdoor area is temporary.

6.0 RECOMMENDATION: Approve

1 PLANS2 Apprvd plans and other submitted details

2 The pavement cafe (outdoor seating area) use shall cease by 01 May 2010; 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.

3 The opening hours of the premises shall be confined to the following hours:

09.00 - 04.30 hrs (the following day)

Reason: In the interests of amenity.

4 The outdoor seating area shall not extend beyond its existing boundaries, as shown on the plans referred to in condition 1, date stamped 05.9.2007.

Reason: To avoid the extension of the use, that would unduly restrict the flow of pedestrians and other users of the highway.

5 Any amplified music or entertainment shall be confined to the indoor cafe and in any case shall not be audible from the second floor of 10 New Street and at any other nearby noise sensitive premises.

Reason: In the interests of the amenities of nearby occupants and other users of the public highway.

6 Outside the permitted hours of operation, all equipment associated with the outdoor seating area shall be removed from the public highway and stored in the cafe premises.

Reason: In the interests of users of the public highway.

7 Any change in the furniture used in association with the outdoor seating area shall not be carried out unless first agreed to in writing by the Local Planning Authority.

Reason: In the interests of the appearance of this part of the City Centre Conservation Area.

8 Details of all machinery, plant and equipment to be installed in the premises including any means of extraction, and the proposed noise mitigation measures, shall be submitted to the local planning authority prior to installation. These details shall include maximum ($L_{Amax}(f)$) and average (L_{Aeq}) sound levels (A weighted), and octave band noise levels they produce. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the local planning authority. The machinery, plant or equipment and any approved noise mitigation measures shall be appropriately maintained thereafter.

Reason: To protect the amenity of nearby occupiers.

7.0 INFORMATIVES:

Notes to Applicant

1. 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 function of the area, the character and appearance of the Conservation Area, the setting and historic interest of the listed building, the amenities of nearby occupants and highway safety. As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan and

Policies HE3, HE4 and S6 of the City of York Development Control Local Plan Deposit Draft, incorporating the 4th set of changes.

You are reminded that premises license and pavement cafe licenses are also required for the premises.

Contact details:

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