

COMMITTEE REPORT

Date: 3 July 2014 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
 Commercial Team

Reference: 14/01133/FUL
Application at: Laura Ashley Ltd 11 Little Stonegate York YO1 8AX
For: Change of use to a restaurant and/or drinking establishment
(A3 and/or A4 use class) and associated external alterations
By: Rushbond Plc
Application Type: Full Application
Target Date: 9 July 2014
Recommendation: Approve

1.0 PROPOSAL

1.1 Proposals relates to 11 Little Stonegate, a 3-storey building with retail units at ground floor and offices above. Laura Ashley currently occupies part of the ground floor, this forms part of their shop that fronts on Davygate and gives them a frontage onto Little Stonegate. There is also a second smaller retail unit at ground floor level and an access to the upper floors. The site is within the Conservation Area.

1.2 The application is to use the three floors of the premises as either a cafe/restaurant or a drinking establishment. The application is clear that it wishes to have the flexibility only to use the premises as a drinking establishment. The specified opening times are between 07.00 and 02.00 the following day.

1.3 The application has been called in by Councillor Watson, to assess the loss of retail and increase in food/drink uses in the street.

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

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: Central Area 0002

2.2 Policies:

CYS5 Non-retail uses in shopping streets

CYS6 Control of food and drink (A3) uses

CYHE3 Conservation Areas

3.0 CONSULTATIONS

Environmental Protection Unit

3.1 No objection in principle. Officers have made the following comments on the proposals

- It is thought the noise levels specified in the report may be an unfair representation of the area, as they were taken over the weekend, rather than through the week, when noise levels may be lower due to less activity.
- Concern that the premises could be more like a nightclub than a restaurant and loud music could affect the adjoining office buildings.
- Provided entertainment noise does not exceed the background noise level the neighbouring properties are unlikely to experience a loss of amenity due the music from the application site. In order to ensure that noise from the venue doesn't cause a loss of amenity to the occupants of nearby properties officers recommend the volume of the music within the premises is controlled by a tamper-proof noise limiter.
- Conditions are recommended to ensure that noise from all the plant or equipment at the site would not exceed 5dB (A) below the background noise levels and to control times of opening and deliveries.

Guildhall Planning Panel

3.2 Object in principle to adding another drinking establishment in what is already a problematic area.

Publicity

3.3 An objection has been received on behalf of Laura Ashley. Grounds for objection are as follows -

- The loss of the retail premises could lead to the brand leaving York due to the lack of alternative premises. The loss of retail would harm the vitality and viability of the city centre, contrary to the National Planning Policy Framework.
- Crime and disorder issues.
- Harmful impact on nearby residents due to the introduction of another bar in the area, as there will be increased noise and disturbance in the area.

Safer York Partnership

3.4 No response received

4.0 APPRAISAL

4.1 Key Issues

- Principle of the proposed use
- Impact on amenity
- Character and appearance of the conservation area

Principle of the proposed use

4.2 The NPPF requires that planning ensures the vitality of city centres. In doing so, it requires Local Authorities define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations.

4.3 Local Plan policy S5, which relates to shopping streets that are not designated as primary shopping streets, acknowledges that a mix of class a uses (including financial and professional uses, cafes and drinking establishments) is appropriate in such streets. S5 requires that proposals do not harm the vitality of individual streets.

4.4 Currently the ground floor area is sub-divided. There is a vacant retail unit (formerly hair-dressers), the rear entrance and trading area of Laura Ashley and the entrance to the upper floors which are also vacant. There are a hairdressers and beauticians opposite, and another vacant retail unit.

4.5 Footfall on Little Stonegate is low during the daytime compared to other streets within the central shopping area and it is dominated by cafes/bars and restaurants. There are two vacant retail units. Little Stonegate is not a primary shopping street and is therefore one where restaurants/bars are deemed to be appropriate. The retail frontage of the Laura Ashley unit is only approx 5.5m wide, the remainder of the frontage (approx 9m) does not contribute to vitality - the other retail unit is vacant, as are the offices which have a ground floor entrance. The proposed use would utilise the entire building. The Davygate (front) section of the Laura Ashley unit would be retained. The objection from Laura Ashley states that the change of use could result in the brand leaving the city centre although no evidence is given to support this statement. Overall there are not grounds to resist the change of use on the grounds that the loss of the retail premises would have an undue effect on the vitality of the street.

Impact on 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 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.
- Acceptable external flues and means of extraction have been proposed.
- Where security issues have been addressed.

4.7 The applicants have provided a noise report which confirms that noise breakout from the premises can be below the current background noise levels. This can be required through a planning condition. A condition can also require that the plant (kitchen, air-conditioning etc) do not exceed existing background levels. Typically planning conditions do not control the times of deliveries within the city centre, which predominantly are outside of footstreet hours. There are no residents living on Little Stonegate or Back Swinegate and to restrict delivery times on this premises alone would have no material impact upon the amenity of residents living in the city centre.

4.8 The proposed use would also require a premises license, and the license considers prevention of crime and disorder. There are a number of restaurants and bars situated along Little Stonegate and Back Swinegate. Consequently there is late night activity in the area and attributed to it a degree of noise, disturbance and potentially anti-social behaviour. Recent appeal decisions have given a clear steer that it is not appropriate to refuse proposals for drinking establishments in the city centre on the grounds that new premises would result in more people in an area and consequently leading to an increase in disturbance in surrounding streets. The Inspector's view has been that consideration should be focused upon actual noise from the premises itself.

4.9 There is no external space associated with the premises where waste could be stored. A condition is proposed to agree the strategy for waste storage/collection, to ensure there is no harm to the appearance of the conservation area and general amenity.

Character and appearance of the conservation area

4.10 The site is within a designated conservation area (Central Historic Core). Within such areas, the Council has a statutory duty to consider the desirability of preserving or enhancing the character and appearance of the area.

4.11 According to the plans the roof top plant would be situated far enough back on the roof so it would not be seen in public views. It would sit alongside existing rooftop plant. There would not be a material impact on the conservation area. The proposals do not include any other external changes.

5.0 CONCLUSION

5.1 The proposed use would not cause undue harm to the vitality of the street; it would bring the entire unit into use and therefore could potentially enhance vitality. Planning conditions can control noise, in the interests of amenity and ensure there is no harm to the character and appearance of the conservation area. As such proposals reasonably comply with the relevant Local Plan policies - S5, S6 and HE3 and do not conflict with national policy established within the NPPF. Approval is recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years -

2 PLANS1 Approved plans - drawings 800 - 004E, 005B, 006B, 007C, 012B

3 Details of all machinery, plant and equipment to be installed in or located on the use hereby permitted, which is audible outside of the site boundary when in use, shall be submitted to the local planning authority for approval. These details shall include maximum (L_{Amax} (f)) and average sound levels (L_{Aeq}), octave band noise levels and any proposed noise mitigation measures. 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 fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenity of occupants of the nearby properties from noise.

INFORMATIVE: The rating level of any building service noise associated with plant or equipment should not exceed 5dB(A) below the background noise level at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 1997.

4 Amplified or recorded music shall not exceed background noise levels at a distance of 1m from the application site.

Reason: In the interests of general amenity and the character of the conservation area.

5 The rooftop plant shall be confined to the areas indicated on the approved roof plan and elevations.

Reason: For the avoidance of doubt and in the interests of the appearance of the conservation area.

6 The premises shall only be open to customers between the hours of 07.00 and 02.00 (the following day) each day of the week.

Reason: In the interests of amenity.

7 Prior to the commencement of works to convert the premises into either of the approved uses details of waste and recycling storage areas within the premises shall be submitted for the written approval of the local planning authority. The approved details shall be provided prior to the commencement of the use and shall thereafter be retained solely for the purposes of storing waste and recyclable materials.

Reason: In the interests of the environmental quality of the area and the area and the character and appearance of the conservation area.

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome: pre-application advice and the use of planning conditions.

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