

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 7 November 2017	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>46 Langham Street, London, W1W 7AX</b>		
<b>Proposal</b>	Use of public highway for the placing of 5 wooden picnic benches on the public highway in Middleton Place measuring 10m x 1.5m and 1 picnic bench in Langham Street measuring 1.5m x 1.8m enclosed by a total of 9 canvas barriers.		
<b>Agent</b>	Andrews and Boyd		
<b>On behalf of</b>	Samuel Smith ( Southern )		
<b>Registered Number</b>	17/06948/TCH	<b>Date amended/ completed</b>	3 August 2017
<b>Date Application Received</b>	3 August 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	East Marylebone		

## 1. RECOMMENDATION

Grant conditional permission for a temporary period of one year.

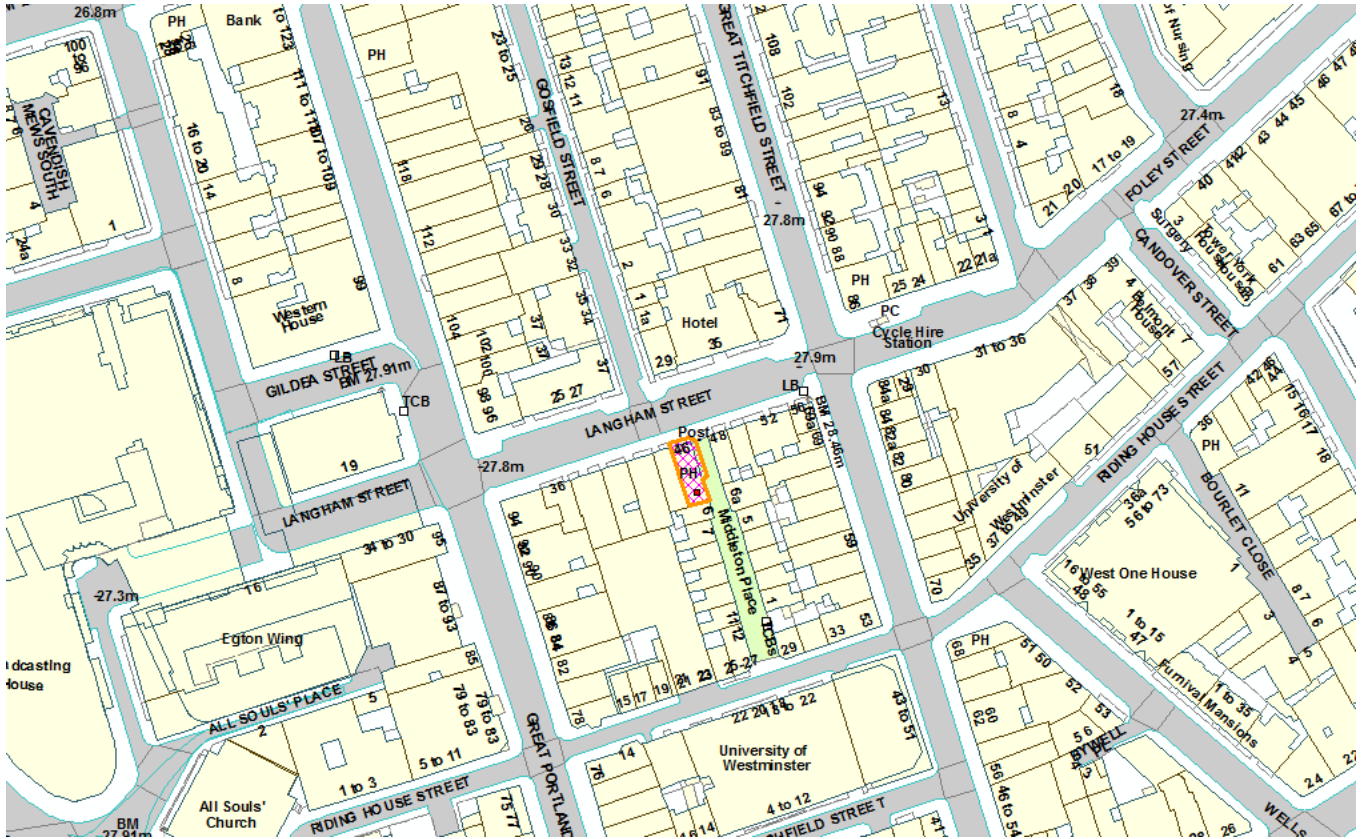
## 2. SUMMARY

The application site is a public house located on the southern side of Langham Street at its junction with Middleton Place. The immediate area is characterised by a mixture of residential and office uses although Middleton Place is primarily in residential use.

There is a long history of permissions for the placing of place tables and chairs outside the property, the last granted in September 2016 for a temporary period of one year. This permission expired on 30 September 2017. Objections have been received on the grounds of late night disturbance, highways obstruction and increased litter generation and on the basis that the Management Plan previously submitted by the applicants has not been adhered to and that the proposed seating area is larger than that previously permitted.

Subject to conditions, the scheme is considered acceptable on highways and amenity grounds. However, it is recommended that permission is granted for a temporary period of one year to enable the situation to be monitored.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



1 Sep 2016 15:03:24



## 5. CONSULTATIONS

### FITZROVIA NEIGHBOURHOOD ASSOCIATION

Any response to be reported verbally.

### HIGHWAYS PLANNING MANAGER

No objection

### CLEANSING:

No objection

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 61

Total No. of replies: 3

No. of objections: 3

No. in support: 0

Objections on the following grounds:

- \* Noise disturbance and nuisance;
- \* Highway obstruction;
- \* Applicants do not comply with undertakings in the management plan.
- \* Litter generation

ADVERTISED/ SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is a public house located on the southern side of Langham Street on the corner with Middleton Place, which is a pedestrianised residential mews. The application property comprises basement storage, customer bars/seating areas on ground and first floor, a second floor kitchen and an ancillary staff flat at third floor level.

The premises licence permits the public house to open to customers until 23.00 hours on Monday to Saturday and until 22.30 hours on Sundays, with special arrangement for public holidays and Bank Holidays.

The surrounding area is characterised by a mixture of residential and office uses. The neighbouring property at No. 44 Langham Street has residential accommodation on the upper floors. Middleton Place is predominantly residential in use.

### 6.2 Relevant history

There is a history of permission for the placing of tables and chairs outside the premises dating back to 1986.

Most recently temporary permission was granted at Committee on 27 September 2016 for a temporary period of one year and included a number of additional conditions to address neighbour objections, including adherence to the approved Management Strategy.

## **7. THE PROPOSAL**

Permission is sought for the use of public highway for the placing of 5 wooden picnic benches on Middleton Place, in an area measuring 10m x 1.5m, and 1 picnic bench in Langham Street, in an area measuring 1.5m x 1.8m, enclosed by a total of 9 canvas barriers

The most recent permission allowed for their use to cease at 22:30 and the barriers would be removed from the highway and stored inside the premises.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

The use of the highway for tables and chairs in connection with eating and drinking establishments is considered under Unitary Development Plan (UDP) Policy TACE 11 and Policy S41 of the City Plan. These policies permit tables and chairs where there would be no adverse obstruction on the highway and no unreasonable harm to the local residential amenity. Each of these matters is discussed in the sections of this report below.

### **8.2 Design/townscape**

The proposed picnic benches are considered acceptable in townscape terms and, being impermanent, would not harm the character and appearance of the East Marylebone Conservation Area. The use of the barriers is considered acceptable on the basis that, in this instance, they do not display advertising. An informative to this effect would be attached if permission is granted.

### **8.3 Amenity**

The nearest residential accommodation is located above the public house and adjacent, at 44 Langham Street. There are also several residential dwellings in Middleton Place in close proximity to the site.

Objections have been received from three local residents, which re-iterate objections to previous applications. These relate to the principle of late night drinking outside the premises (and associated noise disturbance) and that external drinking is not confined to the area immediately outside the public house which causes noise disturbance and litter generation from pub customers and obstructions to neighbouring doorways. Other comments request that outside drinking is not permitted after 22.30 hours.

Many of the concerns detailed above relate to the principle of vertical drinking on the public highway outside of the seating area which is a matter for licencing. These issues were brought to the attention of the new operator, Samuel Smith, during the consideration of a 2011 application (as the brewery had taken control of the premises in 2010). At that time, the applicant was keen to address residents' concerns over problems associated



with external drinking and submitted a Management Strategy, which was designed to show how drinking outside the premises within the designated seating area, would be controlled and this area managed and maintained. The management strategy makes clear that any customers stepping outside of the area would not be served.

This Management Strategy forms part of the current application and is included in the background papers. It proposed the demarcation of an area to which customers, standing or seated, would be confined to keep them away from neighbouring residential properties. This area is to be regularly monitored by staff and those customers not keeping within it would not be served. The Management Plan also provides a direct telephone number for neighbours to report instances of customers not keeping within the marked area/or causing nuisance. As part of a wider commitment to reducing noise disturbance there is a commitment that the premise would not provide music, entertainment or television and would not serve 'alcopops'.

It is noted that complaints have been made to the City Council's Licencing Team relating to noise disturbance and highways obstruction (vertical drinking) with one active complaint being investigated. The Street Trading Licence was renewed in July 2017 (until 9 January 2018) for the placing of tables and chairs on the highways. This permits the use of the external seating until 22:30 hours on Monday to Sunday.

The City Council's Planning Enforcement Team has an ongoing investigation which was reported in October 2016. The complaint relates to a breach of Conditions 3 and 4 on the 2016 permission (16/07002/TCH) which relate to the hours of operation and use of the benches by patrons only. The Planning Enforcement team continue to monitor the site. It should be noted that, since the warning letter dated 13 December 2016 the Enforcement Officer, has not received any further complaints. Furthermore a letter from the Manager of the Public House received by City Council on 19 December 2016 confirms that the benches are chained up by 22:30 at the latest each night.

As stated above, objections remain related to the principle of late night drinking outside the premises, in particular to permitted drinking hours and "vertical drinking" in parts of Middleton Place, outside of the designated seating area, rather than to the placing of limited seating on the highway and the management of that area. In these circumstances, the removal of the seating would have no impact on objectors' concerns about late night disturbance and the use of other parts of the highway. In the absence of any permitted external seating it appears likely that the area vacated by the picnic benches could be taken over by a (potentially) greater number of "vertical" drinkers. This is not an activity that requires planning permission, being a licencing matter beyond the scope of planning control. It is important therefore to differentiate between the impact of activity taking place within the seating area, which is the subject of this planning application, and the drinking activity currently occurring elsewhere on the public highway.

In response to the additional objections from neighbours to this application, the brewery has submitted a 'Management Plan – Control of External Areas' which sets out to prevent public nuisance and protect the local residential amenity.

The additional Management Plan sets out a number of objectives including restrictions that patrons will not be permitted to drink in the area sought after 10:30pm Monday to Saturday and 10pm on Sunday and patrons are not permitted to block the pavement.

The majority of the 'Management Plan – Control of External Areas' relates to licencing matters. The planning related matters referred to within the plan relate to external housekeeping which has already been set out in within the existing Management Strategy. As the majority of the Management Plan relates to licencing matters, it is considered unreasonable to condition the plan as part of the planning application.

#### **8.4 Highways**

The Westminster Way, which requires a minimum 2.0m width of public highway beyond the proposed seating area to be maintained, free of physical obstructions to allow for pedestrian traffic. The plan shows an unobstructed highway width of 2.6m on Middleton Place and 2.8m on Langham Street.

The Highways Planning Manager has expressed concern that there are no openings between the canvas barriers and that the service corridor between the picnic benches and the canvas barriers, at 0.2m wide, does not accord with the 0.9m width recommended in the Highways Planning Guide. However, as these arrangements are identical to those approved in 2012, 2014 and 2016, no objection has been made to the current application.

As detailed above, objections on the grounds that pub customers congregate in Middleton Place and on Langham Street, obstructing the highway and access to neighbouring premises are not directly relevant to the current application and cannot justifiably form the basis of a recommendation for refusal.

As previously, outside the permitted hours of use, the picnic benches would be chained upright to the side of the public house premises and the barriers will be stored within the premises.

The proposal is therefore considered acceptable on highways grounds.

#### **8.5 Conclusion**

Whilst the City Council does not dispute there are problems associated with patrons of the public house, particularly in summer months, much of this is a result of drinkers standing on the highway in the pedestrianised Middleton Place and is not due to activity contained within the cordoned-off seating area. These problems would not cease if the application for picnic benches were to be refused since standing outside a public house to drink is not an activity that falls within planning control. Furthermore it is considered that benches within the contained area outside the premises, properly managed, allows the public house to contain the patrons in an area, preventing any obstruction in Middleton Place and Langham Street.

### **9. BACKGROUND PAPERS**

1. Application form and Management Strategy Plan received 3 August 2017
2. Management Plan – Control of External Areas received on 12 September 2017
3. Memorandum from the Highways Planning Manger dated 26 September 2017
4. Memorandum from the Cleansing Officer dated 18 August 2017

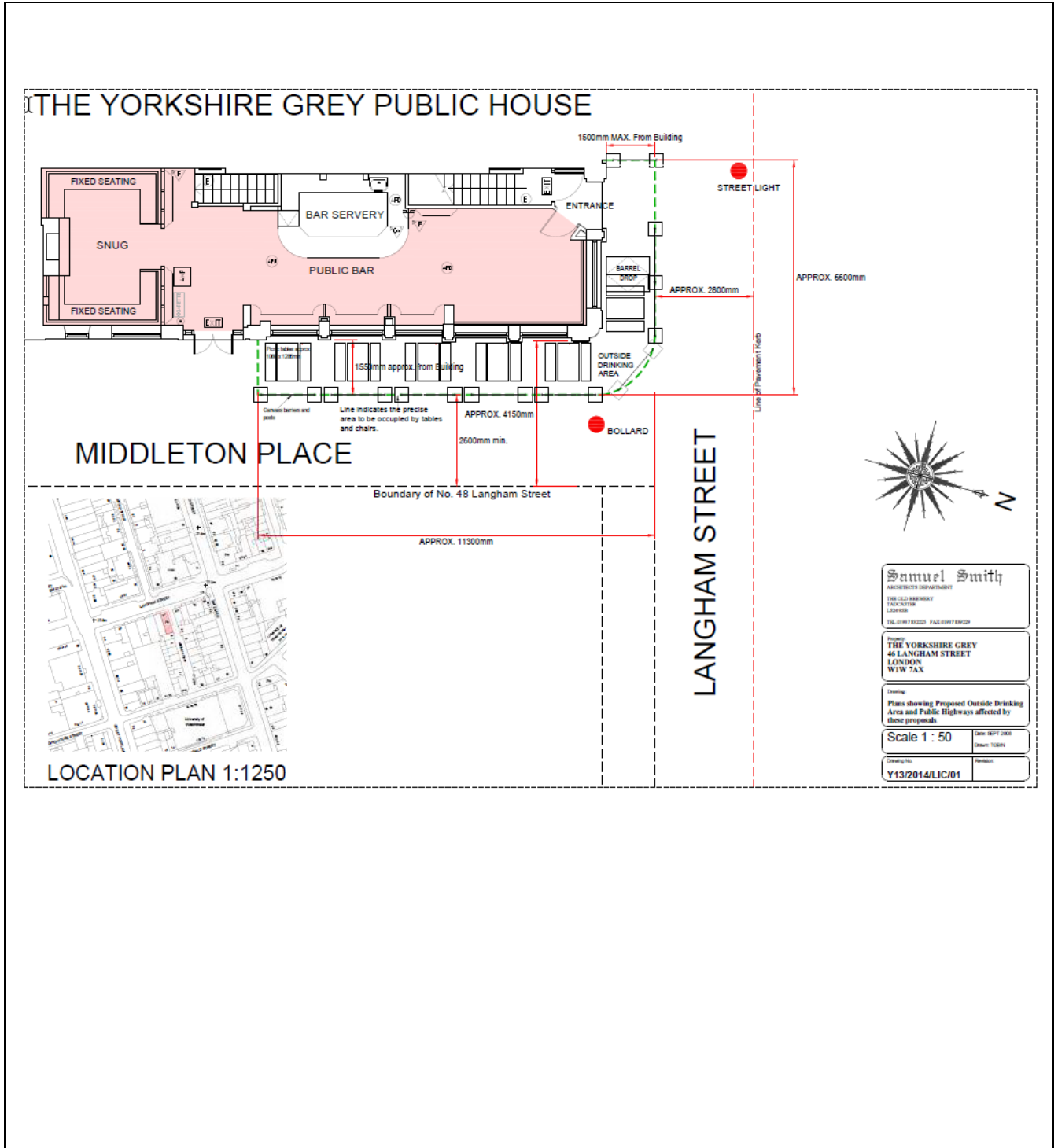


5. Letter from occupier of 10 Middleton Place, dated 24 August 2017
6. Letter from occupier of 44 Langham Street, dated 14 August 2017
7. Letter from occupier 1 Middleton Place, dated 28 August 2017

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT [mhollington2@westminster.gov.uk](mailto:mhollington2@westminster.gov.uk)

10. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 46 Langham Street, London, W1W 7AX,

**Proposal:** Use of public highway for the placing of nine canvas barriers and five picnic benches in Middleton Place and one on Langham Street frontage , in two areas measuring 10m x 1.5m x 1.5m x 1.8m

**Reference:** 17/06948/TCH

**Plan Nos:** Y13/2014/LIC/01, Management Strategy Plan received 03.08.2017

**Case Officer:** Shaun Retzback

**Direct Tel. No.** 020 7641 6027

**Recommended Condition(s) and Reason(s):**

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 You must not put the picnic benches in any other position than that shown on drawing Y13/2014/LIC/01. (C25AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (July 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 3 You can only put the picnic benches and barriers on the pavement for use by public house customers between 11.00 and 22.30 Monday to Saturday and 12.00 and 22.30 Sundays. Outside these times the picnic benches shall be removed from the pavement or securely chained upright to the side of the public house premises and the barriers will be stored within the premises.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (July 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 4 The picnic benches must only be used by customers of the existing public house. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (July 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 5 This use of the pavement may continue until 30 November 2018. You must then remove the picnic benches and barriers. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (July 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 6 You must carry out the measures included in your management strategy received on 3 August 2017.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S24, S29 and S32 of Westminster's City Plan (July 2016) and TACE 11; and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 7 The area of footway is to be maintained in a clean and tidy condition at all times, litter receptacles are to be provided and the footway is to be thoroughly washed down each day after trading has ceased.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (July 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

### **Informative(s):**

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.

- 2 You cannot put tables and chairs in the area unless you have a street trading licence. If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter. Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)
- 3 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)
- 4 You are advised that customers not seated on the benches should be confined to the 'outside drinking area' shown on the floor plan.
- 5 You are advised that if the use of the highway continues to cause problems for local residents, planning permission is unlikely to be granted in the future.
- 6 The text on the free standing barriers has not been approved as part of this application. This should be subject to an application for advertisement consent. However this is unlikely to be approved and therefore barriers without text should be used.
- 7 Management strategy received on 3 August 2017 must be adhered to. If the City Council continue to receive complaints planning permission is unlikely to be renewed.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.