



## Report of the Chief Planning Officer

### CITY PLANS PANEL

Date: 1<sup>st</sup> AUGUST 2013

### CHANGE OF USE OF BUILDING TO FORM LAP DANCING CLUB, 68-72 NEW BRIGGATE, LEEDS 1 (REFERENCE 13/01428/FU)

#### APPLICANT

Illuminati Ventures Ltd

#### DATE VALID

15<sup>th</sup> April 2013

#### TARGET DATE

10<sup>th</sup> June 2013

#### Electoral Wards Affected:

City & Hunslet

Yes

Ward Members consulted

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

#### RECOMMENDATION:

**GRANT PERMISSION subject to the conditions set out below (and any others which might be considered appropriate).**

#### SUGGESTED CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
- 3 The use hereby approved shall not commence until a scheme to control noise emitted from the premises has been approved in writing by the Local Planning Authority and implemented as approved. The scheme shall provide that the LAeq of entertainment noise does not exceed the representative background noise level LA90 (without entertainment noise), and the LAeq of entertainment noise shall be at least 3dB below the background noise level LA90 (without entertainment noise) in octaves between 63 and 125Hz when measured at the nearest noise sensitive premises. The approved scheme shall thereafter be retained.
- 4 The hours of use of the premises shall be restricted to 2100 hours to 0600 hours.

- 5 The hours of delivery to and from the premises, together with loading and unloading within the premises shall be restricted to 0800 hours to 2100 hours Monday to Saturday with no such operations taking place on Sundays and Bank Holidays.
- 6 There shall be no storage of refuse outside the approved refuse storage area.
- 7 The existing flue on Merrion Place shall be removed prior to first use of the premises.
- 8 Details of any external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority prior to its installation. The works shall only be carried out in accordance with the details thereby agreed.

This permission does not give consent to any advertisement intended to be displayed on the site for which separate express consent may be necessary under the Town and Country Planning (Control of Advertisements) Regulations 2007.

## **1.0 INTRODUCTION**

- 1.1 This application seeks permission for the use of the premises as a lap dancing club. The application is presented to Plans Panel due to the sensitivity of the proposal. Associated applications for Licensing Act 2003 (regulated entertainment) and for a Sex Establishment Licence (Sexual Entertainment Venue) have been made to Entertainment Licensing.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 68-72 New Briggate is located immediately north of the junction of New Briggate with Merrion Place. The Victorian property comprises 4 levels of floorspace including the lower ground floor area. The building is triangular in shape with its principal frontage facing New Briggate. There is an entrance to upper floors of the building at the corner of New Briggate and Merrion Place and, although there is a fire exit and large flue onto Merrion Place, the Merrion Place elevation is very plain. The lower floors of the building were last used as a bar with a licence until 3am, with a separate lap dancing club operating on the upper floors since 2005.
- 2.2 The property is situated at the northern end of New Briggate, approximately 100 metres north of the Grand Theatre beyond Merrion Street and Merrion Place. Richer Sounds, an electrical goods shop, is situated in the former chest clinic immediately to the east. This property has an extant planning permission for conversion of the upper floors to seven flats. Nearby properties to the south are primarily in use as bars, restaurants and hot food takeaways. There is also a private hire car booking office. Residential property is located in Crispin House and Merchants House approximately 100 metres to the north of the site beyond the North Street / Inner Ring Road major highway intersection. There is also a manager's flat at The Wrens on the west side of New Briggate and a flat in Merrion Place.

## **3.0 PROPOSAL**

- 3.1 It is proposed to use the building as a lap-dancing club. Public access into the building would be from New Briggate. The lower ground floor would be used for storage and toilets. The ground floor would be primarily used as a public area and bar, with a small stage and three dance booths. The first floor would contain 12 dance booths. The second floor identifies three lounge areas, toilets and staff

facilities. Permission is sought for the premises to be open 2100-0600 hours seven days a week. External alterations comprise the formation of a new gated opening on Merrion Place to provide access to a new bin store, and the removal of a large redundant flue fronting Merrion Place.

- 3.2 The Design and Access Statement includes the following information regarding the use:

“The proposed use as a lap dancing venue is a public access venue opening to male and female over 18 years of age. It is not a private members club and not a traditional night club with public dance floors and loud music.

The venue is used as a variety of uses, including, as a traditional bar serving alcohol and non-alcohol and snacks, a striptease show, with the dancing girls doing a strip dance on the stage/dance pole and private dancing with a dancing girl doing a striptease show for individual customers in the private booths, please note that the private dances are strip shows only and there is no form of body contact allowed, this is strictly adhered to and controlled by the SEV Licensing Act”.

#### **4.0 RELEVANT PLANNING HISTORY**

- 4.1 Planning permission was granted in 1983 for the change of use of a shop to A3 restaurant (20/378/83/1). In 1998 permission was granted for a new frontage to the restaurant bar (20/689/97/FU). Permission was granted in 1998 to use part of the second floor as staff bedrooms (20/294/98/FU).
- 4.2 A planning application to use the lower two floors of the building as a lap-dancing club was withdrawn earlier this year when it became evident that the upper floors did not have the benefit of planning permission for use as a lap-dancing club (13/00017/FU).
- 4.3 Licensing records show that the upper floors commenced providing entertainment and alcohol in 2005. Upon introduction of the licensing of Sexual Entertainment Venues the same floors acquired a Sex Establishment Licence in 2012.

#### **5.0 PUBLIC/LOCAL RESPONSE**

- 5.1 Site notices advertising the application were erected in the area on 3<sup>rd</sup> May 2013.
- 5.2 One letter of objection has been received from SARSVL (Support After Rape & Sexual Assault Leeds). SARSVL believes that having any sexual establishments in Leeds is incompatible with the Council’s Child Friendly Leeds policy, the Equality Act and the Violence Against Women Strategy. SARSVL suggests that wherever lap-dance and strip clubs appear, women’s quality of life deteriorates as a result, with increased reports of rape. SARSVL refers to new licensing policy and states that the premises are next door to the Grand Theatre, a family-friendly space.

## 6.0 CONSULTATION RESPONSES

### 6.1 Non-statutory:

- 6.1.1 Licensing – the licence applications have attracted objections from Members, an MP and activist groups. The LA03 (drinking) licence application has been adjourned pending determination of the planning application. The premises are within the Cumulative Impact Policy area as set out in the Council's Statement of Licensing Policy, albeit the Police do not have any objection on this basis.
- 6.1.2 The Council adopted a Sex Establishment Statement of Licensing Policy in June 2011 which came into effect in September 2011. This was at the same time the Council adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which allowed it to control sex establishments including sexual entertainment venues, sex shops and sex cinemas (SEV's).
- 6.1.3 Under this policy the Council stated that all applications for sex establishments would be considered on a case by case basis and under this policy seven lap-dancing clubs were issued sex establishments licences which came into effect on the 1<sup>st</sup> October 2012, including Black Diamond at 68-72 New Briggate which was issued a licence to operate between 10pm and 4am Sunday to Thursday and 10pm and 5am Friday and Saturday. The licence had standard conditions attached.
- 6.1.4 In July 2012 the Licensing Committee decided to review the policy to ensure it still met the needs of the people of Leeds. An important part of this review included a survey of the Citizen's Panel to garner the public's view on the location and numbers of lapdancing clubs.
- 6.1.5 As a consequence of this consultation the working group consulted upon a draft policy for sex establishments. The policy was approved by Executive Board on 17<sup>th</sup> July 2013 and will take effect from 1<sup>st</sup> September 2013. The policy states that there shall be no SEVs outside of the city centre (defined by Entertainment Licensing as the city centre core). It states that there shall be no more than 4 SEVs in the city centre and not in sensitive locations or near sensitive uses.

#### Sensitive uses include:

- Schools and other areas of education
- Play areas/parks
- Youth facilities
- Residential areas
- Women's refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Places of worship
- Places used for celebration or commemoration
- Cultural leisure facilities such as libraries, museums
- Retail shopping areas
- Historic buildings

Sensitive locations are:

- Millennium Square, Calverley Street
- City Square
- The area around the combined Courts
- The Headrow, Eastgate
- East Parade, Park Row
- New Briggate, Briggate
- Albion Street, Woodhouse Lane
- Merrion Centre, Merrion Street
- Boar Lane
- New Station Street, Wellington Street

- 6.1.6 This new policy will come into effect on 1<sup>st</sup> September 2013 and will be the policy under which the renewal applications of all seven lap dancing clubs will be determined. Although Black Diamond/Tantric Blue is located near to family leisure facilities (the Grand Theatre and the Arena), and close to New Briggate, this does not automatically mean that the licence will not be granted. There may be other matters that the applicant will bring to the hearing to be taken into consideration and the licensing sub-committee is able to depart from the policy if it has clear and cogent reasons to do so.
- 6.1.7 A sexual entertainment venue is subject to a number of conditions including the hours during which the premises may operate; the Licensing Authority also control the external appearance and all signage/advertising material associated with the premises through an approval process via the Licensing Sub Committee.
- 6.1.8 It is generally a requirement of the Licensing Sub-Committee that a separate smoking area is provided for the dancers/staff, preferably a secluded and safe area that is not accessible by members of the public.
- 6.2.1 West Yorkshire Police – no detrimental comments.
- 6.3.1 Environmental Protection Team (EPT) – state that when the premises previously operated as a bar EPT received a number of complaints concerning loud music emanating from the premises. The complaints seemed to relate to the operation of loud speakers within the doorway.
- 6.3.2 EPT comment that there are a number of lap dancing clubs in the city centre and that these rarely result in complaints of public nuisance. It is understood that music levels associated with such establishments are significantly lower than that of a typical city centre bar. A noise report submitted with the application stipulates that amplified music will be played at background music levels. If this forms part of a satisfactory sound insulation scheme then music from the premises is unlikely to result in disturbance to nearby occupants. It is recommended that conditions relating to a sound mitigation scheme, operating hours and delivery hours are added if permission is granted.
- 6.4.1 Transport Development Services – the scheme does not affect road safety. No objection.

## **7.0 PLANNING POLICIES**

7.1 Applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Unitary Development Plan Review 2006 (UDPR) and the Natural Resources and Waste Local Plan 2013 (NRWLP). The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

### 7.2 Development Plan

#### 7.3 Unitary Development Plan Review (2006)

68-72 New Briggate is located in the Entertainment Quarter (CC27). Policy CC26 supports the new provision of entertainment facilities in the city centre, in particular, in the Entertainment Quarter. The main objective of the Quarter is to provide a geographical focus for evening entertainment and associated uses.

68-72 New Briggate is defined as a secondary shopping frontage. Policy SF3 states that change of use of retail at ground floor to non-retail (A2, A3, amusement centres, and taxi offices) may be acceptable where the proportion of retail frontage remains sufficient to sustain the retail function of the parade.

Policy GP5 requires proposals to avoid loss of amenity. Any alterations should respect the form of the existing building (BD6).

#### 7.4 Draft Core Strategy

The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed. It is expected that the examination will commence in September 2013.

As the Council has submitted the Publication Draft Core Strategy for independent examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding representations which have been made which will be considered at the future examination. It has recently passed the Duty to Cooperate Test.

Spatial Policy 3 states the city centre's role as the regional capital will be promoted by new retail, leisure, culture and office development. A network of streets and spaces should be created and enhanced to make the city centre more attractive and family friendly. Policy CC1 states that a concentration of shops with ground floor frontages should be maintained in the Prime Shopping Quarter for reasons of vitality. Policy P10 states alterations to existing buildings should provide good design appropriate to its scale and function.

## 7.5 National Planning Policy Framework

Planning should proactively drive and support sustainable economic development; and seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings (para. 17). Competitive town centres that promote customer choice and a diverse retail offer should be promoted (para 23). Paragraph 123 says decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise.

## 8.0 **MAIN ISSUES**

- Principle of the proposed uses
- Moral considerations
- Amenity and streetscene issues
- Diversity and equality
- Other issues
- Conclusion

## 9.0 **APPRAISAL**

### 9.1 Principle of the proposed uses

9.1.1 The building was used as a restaurant and for ancillary uses from the 1980's. Subsequently, the lower floors were used as a bar and the upper floors were used as a separate lap-dancing club. No planning permission was sought for these uses and no lawful development certificate has been sought. The proposed use does not fall within any use class (sui generis) and it is considered to be materially different to the previous uses such that planning permission is required.

9.1.2 The premises are located within the Entertainment Quarter where UDPR policies seek to focus evening entertainment and associated uses. The nature of the use is an entertainment use opening during the night-time and consequently, in principle, the use reflects the type of use identified in the Development Plan.

9.1.3 Although on the fringe of the city centre the New Briggate frontage is identified as a secondary shopping frontage where a proportion of retail use should be maintained in order to sustain the retail function of the parade. In this case the parade comprises solely the application premises. In considering the 1993 application to change the use of the premises to a restaurant the officer report to Planning Sub Committee stated that the benefits of maintaining a retail presence were then hard to

identify. Other than for Richer Sounds the retail composition of the area has diminished further since the 1990's whilst the entertainment component has increased. As the retail function of the frontage has already been lost it is not considered that the use would be harmful to the retail viability of the area whilst the use would help to support the night-time economy.

## 9.2 Moral issues

- 9.2.1 In principle, any consideration which relates to the use and development of land is capable of being a planning consideration, but whether it is in any given case will depend upon the particular circumstances. The courts are the arbiters of what constitutes a material consideration and have held that public opposition per se is not. In cases where fears or concerns are genuinely held by members of the public, these may constitute a material consideration but case law suggests that such fears would have to be shown to relate to material considerations, or be objectively justified or have land use consequences in their own right. Moral objections to developments, such as those involving gambling, drinking or sex, are given little weight in decision making unless there is some tangible land use or amenity impact deriving from such activities which can be shown.
- 9.2.2 There have been few planning appeals specifically referring to lap-dancing clubs. In a 2010 appeal in Bristol the Planning Inspector identified that the main issue in that case was the impact upon the vitality and viability of the retail frontage and moral issues were not considered. In a 2011 appeal in Portsmouth the Inspector noted that representations were made with regard to gender equality, child safeguarding and moral issues but opined that they were not matters that he was able to consider and that the proposal was considered on the planning merits.

## 9.3 Amenity and streetscene issues

- 9.3.1 The property is located on the fringe of the city centre in an area which experiences significant night-time activity generating noise and activity from bars, restaurants, hot-food take-aways, clubs, private hire and taxi ranks. Immediately to the north there is also the major highway infrastructure which whilst busy at peak times is relatively quiet in the early hours of the morning, albeit there are peaks of noise. Residential accommodation in the immediate vicinity is limited other than apartments in buildings approximately 100 metres to the north and flats have also been approved in the adjacent building.
- 9.3.2 Environmental Protection records show that there were a number of complaints regarding amplified noise emitted from the former bar premises. It is apparent that music levels associated with the proposed use are significantly lower than that of a typical city centre bar. Consequently, despite the proposed hours of use, it is likely that noise will significantly reduce relative to noise generated by the most recent use of the property. Further, the change of use provides the opportunity to apply noise controls to ensure that any music at the premises will be inaudible at the nearest noise sensitive premises. In this regard, flats approved in the upper levels of the adjacent building (74 New Briggate) will need to be taken into account.
- 9.3.3 The premises have historically stored large waste bins on the Merrion Place footway detracting from the appearance of the area. The current proposal involves the provision of an enclosed off-street storage area for the bins. Together with the removal of the external flue the bin store would improve the appearance of the area.
- 9.3.4 The nature of the activity proposed within the premises is such that views into the building need to be restricted. It is not proposed to make any alterations to the current arrangement where film has been applied to the ground floor windows and



the upper floor glazing has been painted black. A consequence of the use is therefore that the building effectively presents a blank, inactive, frontage adversely affecting the vitality of the immediate area. However, despite being situated at an entrance point into the city centre the extent and arrangement of highways is such that the premises do not attract significant attention from either pedestrians or vehicle occupants. Further, the alignment of the road is such that the site is not seen in the same vista as the Grand Theatre to the south.

#### 9.4 Diversity and equality

9.4.1 The City Council has a key ambition for Leeds to be a child friendly city, in creating places where children and young people feel safe and welcome. The objector states that the use would be incompatible with this objective. The position of the building relative to the city centre attractions for young people is such that pedestrian footfall in this part of New Briggate is low. Further, as the building's windows are blanked out; no external reference to the nature of the use within the building are allowed; and given the proposed hours of use it is not considered that it would be readily evident to children and young people what the premises was used for.

#### 9.5 Other issues

9.5.1 Reference has been made by the objector to the proposed Licensing policy relating to sex establishment venues which seeks to avoid sensitive locations. However, a recent Court decision has confirmed that planning and licensing are two distinct regimes and decisions in each regime must be made in accordance with the material considerations relevant for that regime. Consequently, the Licensing Committee will be free to reach its own conclusions, taking account of the Licensing Policy and will not be bound by the planning decision.

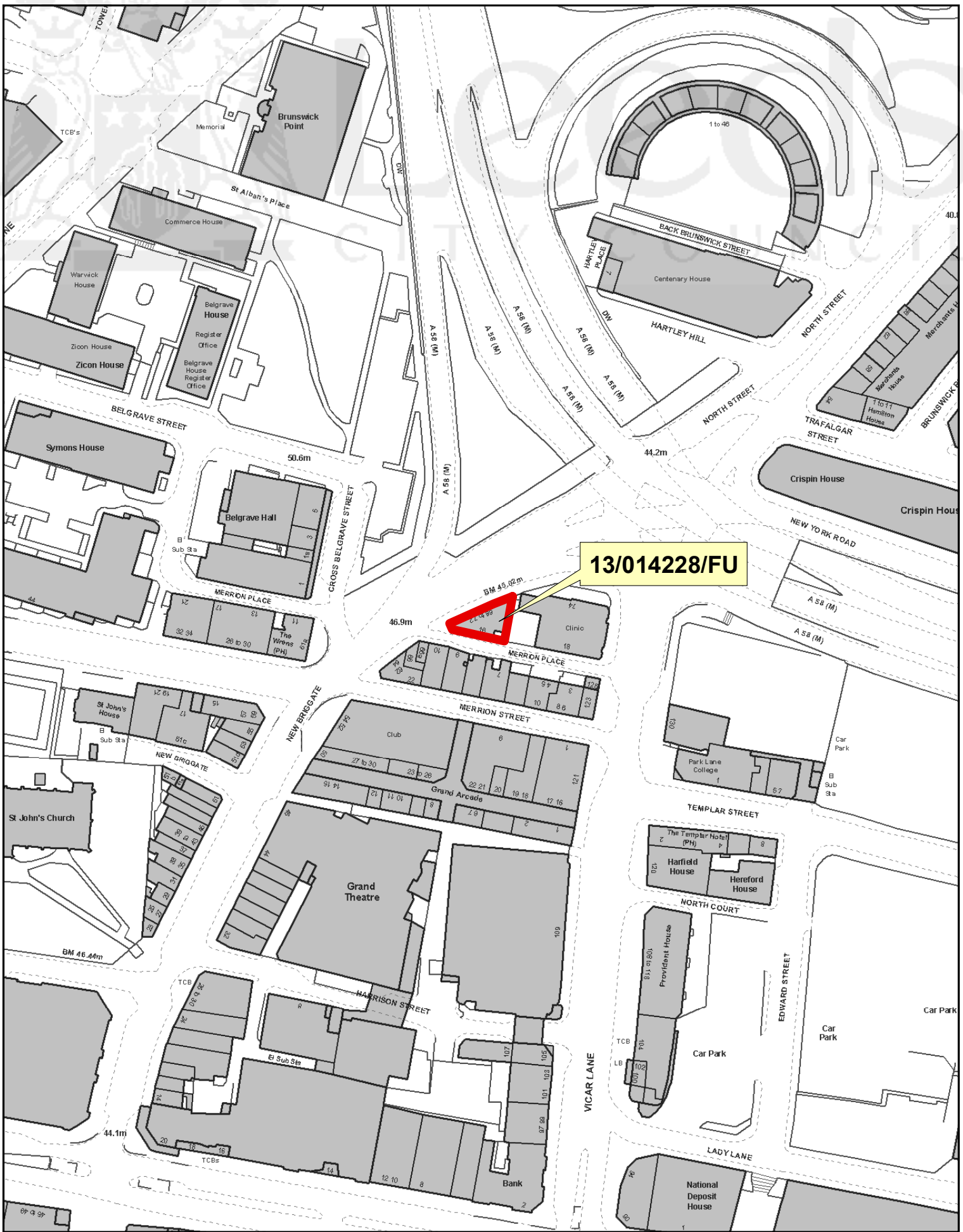
9.5.2 The premises are situated in a location where existing on-street parking controls regulate parking activity. There is no provision for customer parking around the site and customers would be expected to arrive on foot or by taxi. Deliveries would take place to the rear of the building on Merrion Place which is primarily used by vehicles for servicing. As such, the development would not affect highway safety.

#### 9.6 Conclusion

The proposed use is compatible with the Entertainment Quarter designation. Evidence suggests that the use would be likely to have less of a direct impact on the amenities of the locality than the use of the building primarily as a drinking establishment. Some beneficial alterations are proposed to the rear of the premises whereas the use necessitates a blank frontage which does not contribute to either the vitality or the appearance of the area. However, the peripheral, largely isolated, position is such that the impact on the area is negligible. No objections have been raised by consultees including the Police and Environmental Protection and accordingly, on balance, the application is recommended for approval.

### **Background Papers:**

Application file 13/01428/FU



# CITY PLANS PANEL

