

**Planning and Rights of Way Panel 11 July 2023**  
**Planning Application Report of the Head of Transport & Planning**

<b>Application address:</b> Unit 3, Azera, Capstan Road, Centenary Quay, Southampton			
<b>Proposed development:</b> Application for additional external seating not in accordance with details agreed under condition 31(External Seating & Umbrellas restriction) of planning permission ref: 08/00389/OUT to allow additional external tables (from 10 to 20) and seating (from 40 to 60), seasonal dependant.			
<b>Application number:</b>	23/00418/FUL	<b>Application type:</b>	FUL
<b>Case officer:</b>	Andrew Gregory	<b>Public speaking time:</b>	15 minutes
<b>Last date for determination:</b>	24.05.2023 ETA	<b>Ward:</b>	Woolston
<b>Reason for Panel Referral:</b>	Five or more letters of objection have been received	<b>Ward Councillors:</b>	Cllr Robert Stead Cllr Susan Blatchford Cllr Warwick Payne
<b>Applicant:</b> P&M Events Ltd		<b>Agent:</b> None	

<b>Recommendation Summary</b>	<b>Conditionally approve</b>
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<b>Community Infrastructure Levy Liable</b>	<b>No</b>
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**Reason for granting Permission**

The development is acceptable taking into account the requirements of condition 31(External Seating & Umbrellas restriction) of planning permission ref: 08/00389/OUT and the policies and proposals of the Development Plan as set out below. On the basis of the imposition of planning conditions to control the use and arrangement of the external area in conjunction with licensing controls, it is considered that a suitable balance has been achieved in retaining public access, supporting the viability of the business and vitality of the waterfront, whilst minimising noise and other disturbance to levels suitable for this area of mixed commercial and residential character. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39-42 and 46 of the National Planning Policy Framework (2021).

<b>Appendix attached</b>			
1	Development Plan Policies	2	Relevant Planning History

**Recommendation in Full**

Conditionally Approve

## **Background**

The Quayside wine bar is a mixed food/drink and bar use and occupies ground floor commercial unit 3 within Azera House at Centenary Quay. The premises has waterfront views and access onto a publicly accessible promontory which provides public waterfront access. The premises was consented under the original outline planning permission for Centenary Quay (08/00389/OUT) and subsequent reserved matter for phase 4 (15/01985/REM) which included block KL1 (Azera House).

Under condition 09 of the reserved matters approval there is a requirement that any bar use within Block K1L shall not operate outside of the following hours:

*Monday to Thursday* 11.00 to 23.30 (11.00am to 11.30pm)

*Friday and Saturday* 11.00 to 00.30 (11.00am to 00.30am)

*Sundays and public holidays* 12.00 to 23.00 (12.00pm to 11.00pm)

*unless otherwise agreed in writing by the Local Planning Authority.*

The demise for unit 3 is shown to be within the building under the reserved matters approval, and the promontory was identified as publicly accessible waterfront. However, the applicants advise that the extent of their leasehold area for unit 3 includes the external terrace around the building. Under condition 31 of the original outline planning permission the following condition was imposed in relation to external seating:

### *APPROVAL CONDITION – External Seating & Umbrellas Restriction*

*No external seating or umbrellas shall be erected in relation to a non-residential use without the prior written approval of the Local Planning Authority. Any external seating or umbrellas shall only be provided in accordance with the agreed specification and locations unless otherwise agreed in writing by the Local Planning Authority.*

### *REASON:*

*In the interests of visual amenity and to protect the residential amenities of prospective residents of the scheme.*

Condition 31 was discharged for this premises under discharge of condition reference 20/01080/DIS, which approved a maximum of 10 tables and 40 chairs (4 chairs per table).

There has been a breach of the details agreed under condition 31 with additional tables and chairs installed which is subject to a pending enforcement investigation. However, in line with the Council's Enforcement Policy, the applicants have been given the opportunity to seek permission for this arrangement and, therefore, the planning enforcement action is on hold pending the outcome of this application (and any appeal should that become necessary).

## **1. The site and its context**

- 1.1 Azera (Block KL1) is a waterside development located within Centenary Quay, and comprises an 11-storey block, located to the west of the main plaza. The building comprises 3 no. ground floor commercial units (consented for flexible food & drink, bar and office uses) and 110 flats on the upper floors. This development was delivered as part of phase 4 of Centenary Quay and was constructed in 2017-2018
- 1.2 This application relates to unit 3, occupied as a waterside bar and restaurant, known as the 'Quayside'. The venue currently supports between 15-20 jobs. The

unit occupies the western end of the ground floor and is dual aspect with westerly views over the River Itchen. The other ground floor commercial units in the building are occupied as shared office space. The building is framed by an external terrace which provides publicly accessible waterfront which terminates on the northern side of the building, adjacent to land allocated as part of the Marine Employment Quarter. Unit 3 access onto the external terrace and occupies the space as an external terrace containing tables and chairs associated with the bar and restaurant.

## **2. Proposal**

- 2.1 The premises has permission for 10 tables and 40 chairs on the outside terrace, as approved under details reserved by condition 31 of the original outline planning permission which regarding the location and specification of external seating (ref 20/01080/DIS).
- 2.2 The applicant seeks to vary the details previously agreed for condition 31 in order to increase the number of external tables and chairs from 10 tables/40 chairs to 20 tables/60 chairs. Please note the additional tables are smaller 2 person tables and are moveable and sought by the applicants to improve the viability of the business during the Summer season.
- 2.3 The application has been amended following the original submission and public consultation to reduce the number of tables by 5 (total reduced from 25 to 20) and the arrangement revised in order to provide a 2m width public access route adjacent to the waterfront (whereas on submission the entire external demise was included).

## **3. Relevant Planning Policy**

- 3.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at ***Appendix 1***.
- 3.2 The site forms part of the major allocation for Woolston Riverside under policy MSA18 of the Local Plan Review. The area is allocated for major mixed use development with land to the north of Azera identified for marine employment uses. Azera is located within Centenary Quay and this part of MSA18 is identified for a mix of residential, local leisure and community uses and a high quality publicly accessible waterfront.
- 3.3 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

- 3.4 The NPPF indicates that the planning system has three overarching objectives (environmental, economic and social), which are interdependent and need to be pursued in mutually supportive ways in order to achieve sustainable development. Section 06 of the NPPF advises that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt and significant weight should be placed on the need to support economic growth and productivity.
- 3.5 Also of relevance to this application is Paragraph 185 of the NPPF which indicates that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) on living conditions that could arise from the development. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

#### **4. Relevant Planning History**

- 4.1 A schedule of the relevant planning history for the site is set out in **Appendix 2** of this report.

#### **5. Consultation Responses and Notification Representations**

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice 14.04.23. At the time of writing the report **52 representations** have been received with 19 in objection and 33 in support. It should be noted that 18 of the objections are from residents within the Azera block. Please also note that of the 33 the letters of support, 18 were from local residents of Woolston. The following is a summary of the points of OBJECTION raised:

- 5.2 **Impact of noise – late night disturbance associated with the premises and existing outdoor area, particularly to those living within the associated flats above.**

Response – See comments from the licensing team and also comments within the considerations section below.

- 5.3 Those in SUPPORT comment on the need to support the viability of the existing use and the attractiveness of the offer.

#### **Consultation Responses**

- 5.4 **SCC Licensing** – No objection

Having people seated does assist in managing their noise but does not completely resolve it. They describe people sat out there enjoying a drink and conversation looking at the sunset and view of the city, unfortunately the licensing team have received video evidence showing some patrons being quite loud. The premises really have to manage the people out there and keep them quiet, if they fail then we will look to restrict the licence. We are going to be monitoring them over the Summer. The licensing Act has a review process where conditions can be applied to licences and hours of use can be restricted. We can impose conditions limiting

the number of their customers and any other condition as long as it is reasonable, supports one of the licensing objectives and is enforceable.

#### 5.5 **SCC Environmental Health – No objection**

The Environmental Health Team have not received a noise nuisance complaint since July 2022 (however please note that the licensing and planning enforcement team have received complaints). The complaint at that time was not substantiated and as no further reports/complaints were received the case was closed. The provision of seating rather than a standing area associated with a bar/restaurant (and restricting the number of people outside to those that can be seated) does tend to improve behaviour and hence levels of noise are reduced/controlled. Furthermore, a management plan is required through licensing as to minimise disturbance and potential nuisance to residents nearby. EH therefore have no objection, but would also support a temporary permission if that were possible and revert to current table provision (10) if expected/required standards of management are not met.

##### Officer Response

*So whilst the Environmental Health team haven't received significant recent complaints about this premises, it is clear that other departments across the Council have. In terms of the suggestion of a temporary permission this is not what has been applied for and officers are supportive of a permanent solution in any event, with the comfort that SCC Licensing have additional controls and conditions are recommended under Planning. The Panel may decide a different approach, but would need to consider the application for a permanent change first.*

#### 5.6 **Cllr Warwick Payne – No objection**

I would like to support the application 23/00418/FUL to provide approval for additional outside seating at Azera Unit 3 at Centenary Quay. The seating has been used on a 'trial' basis during warmer weather and has proved popular with customers and I regard it as a good community asset. There are also precedents of external seating at other hospitality venues in Woolston including Mettrick's cafe bar, Olaf's Tun, and Piggy's Restaurant, so granting approval would strike me as entirely consistent in policy terms

### **6.0 Planning Consideration Key Issues**

6.1 The key issues for consideration in the determination of this planning application are:

- The Principle of Development; and
- Noise Impacts & Residential Amenity

#### 6.2 Principle of Development

6.2.1 Quayside bar and restaurant currently has planning permission for 10 tables/40chairs on part of the external waterside terrace. This revised application is seeking permission for a further 10 tables/20chairs and an extended boundary that retains public access to the water's edge

6.2.2 The policy allocation for Woolston Riverside under policy MSA18 of the Local Plan Review identifies this part of Centenary Quay for a mix of residential, local leisure and community uses and a high quality publicly accessible waterfront. The design vision for Centenary Quay as set out within the Deign Code supporting the original outline planning application envisaged the public realm around Azera (Block K11)

as Centenary Square Centenary Square as having a more open and active character than the main plaza and its proximity to the water's edge provides the setting for commercial uses including restaurants and bars. Furthermore, the Azera block was identified within location suitable for active frontages and the Design Code indicates that the maximum interaction within the public areas around the building will occur where bars and cafes spill out onto the streets and squares and occupy pavement space animating the public realm.

- 6.2.3 The planning permission for Centenary Quay phase 4 only defines the external terrace on the promontory as publicly accessible waterfront, but did not define the areas for external tables and chairs and general public access. However, there is a canopy strategy for the bars and restaurant within the Reserved Matters approval for phase 4, which identifies much of the external area around unit 3 as covered with a canopy to serve this unit (comparable to the area shown within this current application).
- 6.2.4 The applicant is seeking the additional tables and chairs to improve the viability of the business by capturing trade and demand for this waterfront location during the warmer months; and as such is seeking an additional 10 small tables/20 chairs during this seasonal period which would increase the capacity of the external area by 50% an increase from 40 to 60 seat capacity.
- 6.2.5 P&M EVENTS LTD (the applicants) have occupied the premises since mid 2022 and it understood they are the first occupiers of unit 3 since the construction of the Azera block in 2107-18. It should be noted that in 2019 planning permission was granted to increase the range of flexible uses within the vacant ground floor units within Azera to allow office use as well as the previously consented food and drink uses (ref 19/00347/FUL). As part of the 2019 application evidence was provided from Vail Williams dated 3 July 2019 (pre pandemic), which advised of little market interest for the commercial units with Azera following the commencement of marketing prior in 2018 citing difficulties in trading conditions within the area due to the lack of footfall and at that point no interest had been received from restaurant or bar occupiers. It is therefore understandable that the applicants are now seeking to maximise the use of the external terrace and create a destination within this waterfront location, and it benefits the development and the wider district centre that this unit is now occupied.
- 6.2.6 However, in seeking to maximise opportunities on the terrace to create a vibrant waterfront area, it is important that private interests do not compromise the wider public enjoyment of the waterfront and/or the amenity of residents. The provision of accessible and attractive waterfront is a key priority in the development plan as set out within policy CS12 of the Core Strategy, and the provision of high quality publicly accessible waterfront at Centenary Quay is also a priority within this major site allocation.
- 6.2.7 As such, a balance needs to be struck in taking opportunities to activate the waterfront and supporting the viability of this business by introducing additional tables and chairs, but ensuring that this is done in a manner which does not compromise general public access of the waterfront. Therefore, the scheme has been amended to revise the arrangement of external tables and chairs bringing them closer to the building in order to provide a retained 2m width public access route around the promontory. Planning conditions are recommended to secure and prevent infringement of this public route.

6.2.8 It should be noted that the applicants have indicated that the demise of their lease includes the whole external terrace, however private lease arrangements do not override existing planning controls which have secured public access within Centenary Quay through existing planning conditions and the original S106 planning obligations.

### 6.3 Noise Impacts & Residential Amenity

6.3.1 It is clear from the representations received from residents within the Azera Block, and from licensing and enforcement records that there have been instances of noise and anti-social behaviour associated with the Quayside Bar and Restaurant. The licensing team are monitoring the premises and are currently satisfied that management arrangements can be put in place to address issues. However, if there are ongoing issues licensing have powers to introduce controls or to revoke the premises license. It is recognised that the introduction of additional tables and chairs results in a higher concentration of people outside which could lead to greater impacts beyond the approved capacity of 10 tables/40 chairs.

6.3.2 However, whilst increased impacts are recognised it is considered that harmful noise levels can be controlled through better management arrangements as required through the licensing regime, and no objection has been raised to the proposal by the Council's Environmental Health and/or Licensing teams. Additional layers of control are recommended through the recommended list of conditions set out below

6.3.3 It is recognised that residents within the Azera building have legitimate concerns around noise and disturbance issues associated with this premises, and that management arrangements and mitigation needs to be in place to ensure residents are not subject to significant adverse disturbance on health and quality of life.

6.3.4 However, the noise environment within this area does need to be assessed in relation to the mixed character of the area and the Azera block was consented with ground floor bar and food and drink uses, with an external offer, and the original design vision for this area of Centenary Quay is to include outdoor tables and chairs supporting bars and restaurants. It should also be added that because of the time taken between the completion of the block in 2017/2018 and occupation of Unit 3 as a bar and restaurant in mid 2022, there was a period of approximately 3.5 years where early occupiers of Azera would have enjoyed a noise environment with no commercial uses at ground floor. It is recognised that this period also included a global pandemic.

6.3.5 The applicant has been working with SCC Licensing to address noise disturbance issues, and has agreed to clear the external terrace by 11pm. They are also in the process of installing barriers and signage to control the external area and are to install noise monitoring equipment too. It is recommended that, in addition to licensing monitoring and controls, planning conditions are introduced to define the area of tables and chairs and to limit their maximum number to that shown on the amended plans. Hours of use controls are also recommended to prevent the outdoor area being used for food and drink consumption beyond 11pm, because the current consented hours allows the external area to be used until 11.30pm Mon-Thurs and until 00.30am Friday and Saturday.

- 6.3.6 It is recognised that the enjoyment and use of this outdoor waterside area is weather dependant, and demand for use of this area is less likely out of season. It is also recommended that a condition be added to prevent the installation of additional external heaters within this area to encourage customers to go inside the building rather than stay outside later into the evenings.
- 6.3.7 With these measures in place, and the controls on offer through SCC Licensing, officers consider that a good balance has been found between supporting local business, providing wider public access to the waterfront, and offering suitable protection to the residents living above the application site. It should also be noted that external seating is already approved and so the applicants have this as a fall-back in the event that the Panel cannot support the additional changes.

## **7. Summary**

- 7.1 On the basis of the imposition of planning conditions to control the use and arrangement of the external area in conjunction with licensing controls, it is considered that a suitable balance has been achieved in retaining public access, supporting the viability of the business and vitality of the waterfront, whilst minimising noise and other disturbance to levels which are not significantly adverse and suitable for this area of mixed commercial and residential character.

## **8. Conclusion**

- 8.1 It is recommended that planning permission be granted subject to the conditions set out below.

### **Local Government (Access to Information) Act 1985**

#### **Documents used in the preparation of this report Background Papers**

1. (a) (b) (c) (d) 2. (b) (c) (d) (e) (f) (g) 4.(f) (g) (vv) 6. (a) (b) 7. (a)

### **Case Officer AG for 11/07/23 PROW Panel**

#### **PLANNING CONDITIONS to include:**

##### **01. Approved Plans (Performance)**

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below. A maximum of 20 tables and 60 chairs shall be provide on the external terrace at any one time and a 2 metre wide public waterfront access as shown on the plans hereby approved shall be provided and kept clear at all times.

Reason: For the avoidance of doubt and in the interests of proper planning

##### **02. External Noise Restrictions**

No live or amplified equipment/music shall be used outside of the building.

Reason: In the interests of the amenities of neighbouring occupiers.

##### **03. Public Access to the Waterfront**

Within 2 months of the date of this permission details of a clear marker between the tables and the walkway, and also details of additional signage confirming public access to the water's edge shall have been agreed in writing with the Local Planning Authority and installed. These features shall be retained as agreed for the lifetime of the development.



Reason: To ensure public waterfront access is retained

04. **Hours of use (Outside)**

Notwithstanding the permitted hours of use for the premises under condition 09 of 15/01985/REM, no food and drink shall be consumed outside of the building beyond the following hours in accordance with the applicant's supporting Statement:

Monday to Saturday 11.00 to 23.00 (11.00am to 11.00pm)

Sundays and public holidays 12.00 to 23.00 (12.00pm to 11.00pm)

Reason: In the interests of the amenities of neighbouring residents.

05. **External Heaters**

No additional external heaters shall be installed.

Reason: To reduce the likelihood of the outdoor area being occupied late into the evening or outside the summer season in the interests of neighbouring residential amenities.

**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS1	City Centre Approach
CS2	Major Development Quarter
CS6	Economic Growth
CS12	Accessible and Attractive Waterfront

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP16	Noise
REI7	Food and Drink Uses
MSA18	Woolston Riverside, Victoria Road

Other Relevant Guidance

The National Planning Policy Framework (2021)

**Relevant Planning History**

**08/00389/OUT – Conditionally Approved 31.12.2009**

Redevelopment of the site to provide a mixed use development comprising: 1,620 dwellings (including 405 affordable homes); retail (Class A1 - 5,525 square metres, including a food store); restaurants and cafes (Class A3 - 1,543 square metres); offices (Class B1 - 4,527 square metres); yacht manufacture (Class B2 - 21,237 square metres); Business, industrial, storage and distribution uses (Class B1/B2/B8 - 2,617 square metres); 100 bedroom hotel (Class C1- 4,633 square metres); 28 live/work units (2,408 square metres); community uses (Class D1- 2,230 square metres); two energy centres (1,080 square metres); with associated parking (including the laying out of temporary car parking); new public spaces; river edge and quays; new means of access and associated highway/ environmental improvements. (Environmental Impact Assessment Development- 'Hybrid' planning application: outline in part, full details of phase 1 and river edge submitted).

Description amended following submission following the removal of 33 residential units from the scheme and the introduction of a temporary car park.

**15/01985/REM – Conditionally Approved 30.03.2016**

Reserved Matters approval sought for External Appearance and Landscaping with variations to Scale and Layout as agreed under outline planning permission reference 08/00389/OUT for Phase 4 of the Centenary Quay Development, comprising 185 residential dwellings, 508 sqm of A3/A4 retail space and a multi storey car park within buildings ranging in height from 6-storeys to 11-storeys with associated works including a temporary car park (Environmental Impact Assessment Development) - Amendments to Condition 10 (Building Heights) and Condition 56 (Parking) incorporated - description amended following validation

**19/00347/FUL – Conditionally Approved 16.07.2019**

Change of use of ground floor units to flexible restaurant/cafe/drinking establishment/office (use classes A3/A4/B1(a))

**20/01080/DIS – No objection 05.11.2020**

Application for approval of details reserved by condition 31 (External seating and umbrellas restriction) of planning permission ref 08/00389/OUT