

COMMITTEE REPORT

Date: 11 April 2013 **Ward:** Fulford
Team: Major and **Parish:** Fulford Parish Council
 Commercial Team

Reference: 13/00245/FUL
Application at: York Designer Outlet St Nicholas Avenue York
For: Temporary use of car park for siting of funfair and marquee
By: Ms Maria Farrugia
Application Type: Full Application
Target Date: 3 April 2013
Recommendation: Approve

1.0 PROPOSAL

1.1 This application seeks planning permission for the temporary use of part of a car park for three Christmas seasons (November to January) at the Designer Outlet for a funfair and marquee which would be used as an exhibition or display space. The proposed funfair and marquee would operate alongside the ice rink which was granted a five year temporary planning permission in 2011 (11/00868/FUL). A funfair has been operated from the site for the last two years, the first year without planning permission and latterly with one year consent under planning permission 12/03168/FUL. Like the two previous years the funfair would operate on an area of car parking between the ice rink and the main pedestrian boulevard which accesses the south entrance. The addition of a marquee from the previous planning permission increases the site area resulting in the loss of 130 car parking spaces at the Designer Outlet. The previous application resulted in the loss of 100 spaces.

1.2 The proposed funfair would consist of the following rides: Speedway, Carousel, Planes, Dodgems, and a Helter Skelter. Also included is a toy/games stand, food stall, a marquee, a payment kiosk, six small log cabins and two electric generators. The site area measures approximately 56m by 47m.

1.3 The funfair would operate alongside the Ice Factor skating rink. The Ice Factor has planning permission to operate between 1st November and 31st January each year until January 2016. The ice rink and adjacent cafe is permitted to operate between 08:30 and 21:30 hours Mondays to Sundays during these dates. The proposed funfair would operate between 11:00 to 20:30 hours Monday to Sunday. The site would employ ten full time staff and seven part time.

1.4 The whole of the application site is within the Green Belt.

1.5 This application has been brought before East Area Planning Committee as the application for last season's funfair event was given a one year temporary permission at East Area Planning Committee in November 2012.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Contaminated Land GMS Constraints:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (1) 0003

2.2 Policies:

CYGP1
Design

CYGB1
Development within the Green Belt

CYGP23
Temporary planning permission

CYV1
Criteria for visitor related devt

3.0 CONSULTATIONS

INTERNAL

3.1 Highway Network Management - No objections in principle to the proposed use of the car park in this location from a highways point of view. The funfair was a part of the event last year and Highway Network Management have not been made aware of any issues and concerns relating to car parking on the adjacent highway as a direct result of the funfair's use. The applicant proposes a marquee in addition to the facilities provided last year to be used as a gallery or similar, which is unlikely to increase traffic generation due to the likelihood of linked trips. The applicant has increased the parking spaces used from 100 last year to 130 to hold the additional funfair. The total spaces to be lost represent less than 5% of the overall spaces at the outlet and therefore represent a minimal impact on the car park. The remaining car park is to be managed under the car park management plan set up by the associated ice rink.

3.2 Environmental Protection Unit -The application has been reviewed in consideration of noise and other nuisance issues. It is unclear from the application the timescale of the proposal however; the applicant has confirmed that they are seeking a three year temporary permission.

The main concerns would be to prevent nuisance from the proposed development, as such, should permission be granted for this proposal it is requested that the following conditions be placed on the permission:

1. The hours of operation of the funfair and marquee shall be confined to 1030 hours to 2030 hours Mondays to Sundays.

Reason: to safeguard the amenities of the local residents.

2. No lighting associated with the development, other than security lighting, shall operate outside the hours of 0900 hours and 2200 hours, unless required for emergency purposes.

Reason: to safeguard the amenities of the local residents.

3. No audio systems associated within the development shall operate outside the hours of 0900 hours to 2200 hours, unless required for emergency purposes.

Reason: to safeguard the amenities of the local residents.

4. That the permission be temporary to cover a three year period.

Finally it is requested that a condition be placed on the permission to require the funfair layout to be in accordance with the submitted plan which shows the generator in position. This is required to ensure the generator is sited in the location shown to provide maximum attenuation of noise due to distance from the nearest residential premises.

EXTERNAL

3.3 Highways Agency - No objections.

3.4 Fulford Parish Council - Object to the application on the following grounds:

- The site is within the Green Belt and the proposed development is inappropriate development in the Green Belt which is by definition harmful to the Green Belt;
- There are no very special circumstances to overcome the presumption against inappropriate development in the Green Belt, there have been applications for developments at the Designer Outlet refused on Green Belt grounds in the last two years;

- The funfair would take place at a time when demand for car parking spaces is at its highest, photographs are submitted showing vehicles parked on access roads, green areas and across pedestrian crossings when the funfair and ice rink were operating in December 2012, this can cause safety issues as well as damaging important green landscaping in the site;
- Last year's application was approved for one year only with Members stating that future applications should include a mains power supply, this was considered important to protect residential amenity. The lack of a provision of a mains power supply in this application is an additional reason to refuse planning permission;
- The application provides little information regarding the use of the proposed marquee; further details must be needed in order to assess the potential impact. The scale and massing of the structure would cause harm to the openness of the Green Belt;
- In previous years a large unsightly advertising structure has been erected which was highly visible from Naburn Lane, the applicants should be advised that this would require a separate application.

3.5 Local Residents - Two letters of objection have been received at the time of writing the report. The letters of objection were received from the residents of 34 and 36 Naburn Lane. The following comments are made:

- The application form states that there has been local consultation; local residents have no evidence that this has taken place;
- The application form also states that the land affected is not near any designated land, it is in fact within 500 metres there is land which is designated as SSSI which is regularly used by migratory wildfowl, there is also known bat roost nearby, bat activity was observed during the period of last years event;
- Within the application there is no mention of the use of generators however the letter which accompanies this application states generators will be used; at last years Planning Committee meeting Members of the Planning Committee clearly stated they would not support the granting of permission for future events without mains electric to protect the amenity of local residents. It is totally unacceptable that local residents have to suffer the noise from this generator to spare the organisers expenditure on mains electric.
- The application also states that the event cannot be seen from any public roads or footpaths, this is not true as the event can be seen from Naburn Lane, it can also be seen clearly from our property which is less than 150m directly opposite the proposed site.
- The application has requested a further extension to last years event by the addition of a marquee, this addition would now mean the event would be more than 125% greater than the original planning approval (ice rink) this is clearly unfair when local residents are restricted to extensions of no more than 25% of the original footprint as the land is situated in Green Belt;

- It is not stated what the marquee would be used for, this leaves the door open for further noise production from an event which has been as source of noise complaint over the last 3 years;
- The noise control for this event currently ceases early evening which leaves the event unregulated as the EPU do not operate at this time either;
- The application states that the number of car parking spaces the event uses leaves adequate parking to cover the busiest periods at the Designer Outlet, this has already been proven not to be the case, last years event was no different to previous years where parking has spilled onto the approach roads at busy times (including pedestrian crossings) and also onto Naburn Lane despite the parking control which was put in place.

4.0 APPRAISAL

4.1 The key issues are:

- The impact on the Green Belt
- The impact on residential amenity
- Highways and car parking

GREEN BELT

4.2 The whole of the application site is within the Green Belt. The National Planning Policy Framework (NPPF) states that the Green Belt serves five purposes, these are 1) to check the unrestricted sprawl of large built-up areas; 2) to prevent neighbouring towns merging into one another; 3) to assist in safeguarding the countryside from encroachment; 4) to preserve the setting and special character of historic towns; and 5) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. The NPPF and Development Control Local Plan set out the type of developments which are considered appropriate within the Green Belt. It is considered that the proposed funfair, marquee and food stall use do not fit within one of the listed potentially appropriate uses. Therefore the proposed use of land set out in this application represents inappropriate development. Inappropriate development is considered harmful to the Green Belt by definition. The NPPF states that 'local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' (to justify development) will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.'

4.3 The proposed use of land would only take place for a limited period of the year. It is considered that if Members are minded to approve the application that permission should only be granted for the proposed funfair use for a period of time which corresponds to the permission of the ice rink.

Any permission could be conditioned such that the funfair is only on site in November, December and January and shall only be permitted until January 2016.

4.4 Whilst the applicants have not provided a supporting statement which seeks to argue very special circumstances to overcome the presumption against inappropriate development in the Green Belt, it is clear that there are a number of considerations which need to be balanced against the harm through inappropriateness. The proposed funfair would be sited next to an ice rink which also includes a covered skate hire and cafe facility. To the east of the proposed funfair is the substantial building of the Designer Outlet. Added to this is the fact that the site sits within a substantial car park with associated footpaths and lighting. The Designer Outlet is well screened by substantial planting around the boundary. In addition the fun fair has operated from the site for the previous two Christmas seasons and is described as a 'huge success' by the applicant. It is considered that the public benefit and enjoyment of the fun fair forms part of the consideration.

4.5 Policy V1 of the Development Control Local Plan encourages visitor related development and improving the prosperity of the tourism industry to the City's economy. Balancing inappropriate development in the Green Belt with other issues requires a degree of subjective judgement. However, it is considered by officers that given the characteristics of the site, the fact that any use would only take place for a limited period of time, and that it would be located alongside an approved temporary ice rink use, that the proposed development is on balance acceptable. The temporary use ensures that the long term openness of the Green Belt is retained and the proposal does not conflict with the five purposes of including land within the Green Belt.

RESIDENTIAL AMENITY

4.5 Policy GP1 of the Development Control Local Plan seeks, in part, to protect the amenity of local residents. The nearest residential dwellings are along Naburn Lane. The nearest house to the site of the proposed funfair is 32 Naburn Lane which is approximately 125m away. The ice rink would be located between the funfair and these houses. Between the ice rink and Naburn Lane is a substantial area of mature landscaping.

4.6 A funfair has operated from this site alongside the ice rink event for the last two Christmas Seasons. Previous events have been monitored by both Planning Enforcement and the Environmental Protection Unit. Other than an issue with an ice rink generator during the first year, there has been no noise or light pollution issue which has been considered to be significantly harmful to residential amenity. Last years event took place with no complaints to Planning Enforcement and no substantiated complaints to the Environmental Protection Unit.

4.7 Previously there has been significant debate about the use of electricity generators on site. During the first year a generator failed which resulted in a more noisy back up generator being used for a short period of time. This created noise which led to complaints from local residents. Since this time the ice rink has been powered by mains electricity with alternative quieter generators being used for the funfair. In the case of this application the generators have been located at the opposite end of the site to the houses on Naburn Lane. This is in a similar location to last year's event. At last year's Planning Committee some Members requested that the applicant consider the use of mains electricity to power the funfair rather than generators. The applicant states that this has been investigated with the Designer Outlet and the conclusion was that 'there is no more power to give and this is not a valid option'. Whilst Members may consider this a disappointing outcome, in order to refuse the application on these grounds there would need to be an identified harm. The Environmental Protection Unit have no objections to the application and the Planning Department received no complaints regarding last year's event. Given this and the site circumstances which already includes a degree of background noise during the day and evening, it is not considered that any objections can be substantiated regarding the use of generators on site.

4.8 The application proposes that the funfair and marquee be open to the public between 11am and 8.30 pm Monday to Sunday. Therefore there would be no activity associated with this proposal during the most noise sensitive hours of the night. The funfair would operate for fewer hours than the ice rink with a finishing time an hour before the ice rink. The residential dwellings on Naburn Lane experience background noise through traffic use on local roads and the A64 and the general operational activities at the Designer Outlet. The marquee is an addition to this year's application proposal. The applicants have stated that the marquee would be used 'to hold an exhibition or display' event for the general public. The marquee would have a footprint of approximately 12.2m by 18.3m and therefore could not hold a large capacity event. Conditions could be added to any approval to control the use of lighting and loudspeaker systems to ensure that there is no significant impact on local residents. A condition could also control its use such that it can only be used as an exhibition or display space. Overall, it is considered that appropriate planning conditions can be put in place which ensure that the proposed development does not have a significantly adverse impact on neighbouring amenity.

HIGHWAYS AND CAR PARKING

4.9 The proposed development would reduce the amount of car parking on site from 2800 to 2670 spaces. Whilst the loss of 130 car parking spaces is numerically significant, it represents a relatively small percentage of the overall provision. The car park at the Designer Outlet is busy at Christmas time. Evidence provided by local residents and the Parish Council in respect of similar events over the last two years indicates that a number of people have chosen to park on grass verges, outside of the site, and other locations.

The current application results in 30 less spaces being available than was the case during last season's event. It is not considered that the modest reduction of 30 spaces out of 2800 would have a significant impact. A further consideration is that there was known indiscriminate parking around the Designer Outlet at Christmas periods before the ice rink and funfair was in operation. Linking the indiscriminate parking directly to the ice rink and funfair users is therefore not justified.

4.10 Furthermore, it is considered that indiscriminate parking within the grounds of the shopping centre is the responsibility of the Designer Outlet itself. If there is not a car parking space available for a potential customer to the shopping centre or the ice rink and funfair, this is not considered a reason to refuse the planning application. The Development Control Local Plan seeks to reduce dependence on the private car and generally applicants for new developments are not asked to provide more car parking than they themselves request. Parking within the site which blocks circulation routes or impedes crossing points is regrettable; however this is not the responsibility of the Local Planning Authority or the Local Highway Authority. Parking management within private sites is the responsibility of the site owner.

4.11 It is considered that the users of the funfair are likely to be making linked trips in association with the ice rink and shopping centre. Therefore it is not considered that the funfair and marquee would be a significant generator of additional vehicle movements or parking demand. Additional uses at the site has the potential to increase the length of the stay at the Designer Outlet, however this in itself is not considered to have a significant impact on the local or wider highway network. Neither the Highways Agency nor the Council's Highway Network Management department have any objections to the proposed development. Should indiscriminate car parking take place outside of the site, it is the responsibility of the Police or relevant highways department to exercise control. The decision as to whether to approve this application or not should not be based on the fact that some individuals may break highway rules in their choice of car parking location. The site is accessible by Park and Ride bus as well as a regular bus service between York and Selby.

5.0 CONCLUSION

5.1 It is considered that the proposed development would not harm the long term openness or the purposes of including land within the Green Belt. It is considered that residential amenity would not be significantly harmed and conditions are recommended in this respect. Whilst the loss of car parking spaces within the Designer Outlet may result in some congestion within the site, it is not considered that this would create any significant harm to the local highway network outside the site and would not warrant a reason for refusal.

5.2 The application is recommended for approval for three further Christmas seasons in line with the planning permission for the ice rink.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 The use hereby approved shall only operate between 1st November and 31st January for a period of three years and shall cease by 31st January 2016 unless prior to that date the consent of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: The temporary nature of the structures is such that the use is considered inappropriate on a permanent basis.

2 The development hereby permitted shall be carried out in accordance with the following plans:-

Site layout ground plan and height plan received by CYC on 05/02/13

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority

3 All buildings and equipment used in association with the funfair and marquee use shall be removed from the site and the land reinstated to its former condition and use as a car park at or before 31st January of each year for the period of this consent unless an extension of the period shall first have been approved in writing by the Local Planning Authority.

Reason: To ensure the car park is re-instated and available for use by users of the shopping centre.

4 The hours of operation of the funfair, marquee and associated uses shall be confined to 11:00 and 20:30 hours Mondays to Sundays.

Reason: To safeguard the amenities of local residents.

5 No lighting associated with the use hereby approved, other than security lighting, shall operate outside the hours of 09:00 to 21:30 on any day, unless required for emergency purposes.

Reason: To safeguard the amenity of local residents

6 No audio systems associated with the use hereby approved shall operate outside the hours of 10:30 to 21:00 on any day unless required for emergency purposes.

Reason: To safeguard the amenity of local residents

7 The marquee hereby approved shall only be used for the purposes of a public display or exhibition.

Reason: In the interests of neighbouring residential amenity and to restrict the use to that which is considered complementary to the public enjoyment of the funfair and ice rink use.

8 Prior to the first use of the generators hereby approved, an acoustic enclosure shall be erected around the generators. The acoustic enclosure shall be at least 2.0m in height and imperforate in construction with no air gaps to allow the passage of noise, for example a close boarded fence.

Reason: To safeguard the amenity of local residents

7.0 INFORMATIVES: Notes to Applicant

1. REASON FOR APPROVAL

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 impact on the openness of the Green Belt, the amenity of local residents, the effect on the local highway network and car parking. As such the proposal complies with Policies GB1, GP1, V1 and GP23 of the City of York Development Control Local Plan and Government advice contained within the National Planning Policy Framework.

2. 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) and having taken account of all relevant national guidance and local policies, considers the proposal to be satisfactory. For this reason, no amendments were sought during the processing of the application, and it was not necessary to work with the applicant/agent in order to achieve a positive outcome.

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