

COMMITTEE REPORT

Committee: West and City Centre
Date: 21 September 2006

Ward: Guildhall
Parish: Guildhall Planning Panel

Reference: 06/01710/FUL
Application at: 35 Walmgate York YO1 9TX
For: Change of use from retail Class (A1) to hot food takeaway Class (A5) with rear extract duct (resubmission)
By: William Moore
Application Type: Full Application
Target Date: 26 September 2006

1.0 PROPOSAL

1.1 The application proposes a change of use to A5, Hot Food takeaway. An external extraction unit is proposed on the side of the building. At this stage the applicant is undecided whether a delivery service would be offered to customers. The requested opening hours are,

17:00 - 02:00 Monday to Thursday
17:00 - 03:00 Friday and Saturday
17:00 - 01:00 Sunday

1.2 The application relates to a grade II listed building previously in use as A1 at ground floor level. To each side, No.33 is used as offices No.37 is vacant. Along Walmgate and on the streets off it, there are a mix of shops, offices, restaurants, and an increasing number of residential units.

1.3 An application for listed building consent is also under consideration.

1.4 The application is brought to committee at the request of Councillor Brian Watson.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest City Centre Area 0006

Conservation Area Central Historic Core 0038

City Boundary York City Boundary 0001

DC Area Teams Central Area 0002

Floodzone 2 Flood Zone 2 CONF

Floodzone 3 Flood Zone 3

Listed Buildings Grade 2; 35 Walmgate York YO1 2TX 0882

Listed Buildings Grade 2; 37 Walmgate York 0883

2.2 Policies:

CYS6

Control of food and drink (A3) uses

CYS7

Evening entertainment including A3/D2

CYHE3

Conservation Areas

CYHE4

Listed Buildings

3.0 CONSULTATIONS

3.1 Internal

Urban Design and Conservation - No objection, request that details of the signage are subject to approval by the Local Planning Authority.

Highway Network Management - No objection

Environmental Protection Unit (EPU) - Awaiting comment.

3.2 External

Guildhall Planning Panel - Object, take-aways in York are characterised by their bright, spartan interior and signage, parked cars and gatherings of people. In the Panel's opinion, Walmgate has reached a tipping point beyond where further take-aways would spoil the appearance and character of this part of the conservation area and frustrate attempts at regeneration.

Application publicised by site notice, press notice and neighbour notification.

One letter in objection received from No.33 to date. The reasons are as follows,

Hot food takeaway would be detrimental to the character of the area

Use would create smells detrimental to amenity

Litter

Impact of cars parking on street to pick up food

4.0 APPRAISAL

4.1 Relevant site history

This application is a resubmission. Previous applications, for a change of use (05/02647/FUL) and listed building consent were refused as the proposed means of extraction by virtue of its design and location was considered to have an adverse impact upon the special historic interest of the grade II listed building. The reason for refusal has been addressed by the applicant and is appraised in 4.12.

4.2 Key issues

- Principle of development
- Amenity
- Effect on listed building
- Character and appearance of the conservation area

4.3 The site is located on the edge of the central shopping centre. There is a mix of uses on Walmgate. These include a high concentration of non A1 uses, restaurants, cafes and sandwich bars, offices and also an emerging level of residential, both at ground floor levels and above and in the courts and streets leaving Walmgate (see 4.8).

4.4 This application proposes what would be the only hot food takeaway on Walmgate. The three existing takeaway food outlets (at 40, 65 and 71) on Walmgate offer ancillary levels of takeaway hot food, and trade predominantly throughout the day. The change of use in this location would thus contribute to the vitality of the street where such uses are to be expected, given that the defined central shopping area is some 110 metres away. As such it is considered that in principle the development is acceptable, provided it meets the criteria of policies S6 and S7 of the City of York Draft Local Plan.

4.5 Policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted in York City Centre provided,

- there is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter,
- the opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers,
- car and cycle parking meets the standards defined in the Local Plan, and
- acceptable external flues and means of extraction have been proposed.

Policy S7 adds that public order and safety should be addressed. It is considered that this can be managed through the Licensing Act 2003. A premises license would be required, as late night refreshment beyond 23:00 hours would be offered.

4.6 The Highway Network Management section has raised no objection to the proposed development. It is not likely that traffic arising as a result of the proposed use would have a significant effect on the surrounding area. Cooking smells should be dealt with adequately by the proposed means of extraction. It can be required by condition that this be maintained at all times.

4.7 The potential for litter to be generated by a hot food takeaway is a material consideration. Consultations are continuing with the Council's Street Environment Officers.

4.8 Noise as a result of the comings and goings of customers is a concern as there are a number of residential units nearby. The upper floor of the host unit was not on the December 2005 register of electors but it could be used as residential. The closest confirmed residential units to the host, based upon planning applications and the register of electors, are at (South side of Walmgate) 1-20 St Deny's Court, where residential faces Walmgate at ground floor level, and above ground floor level at No.29. To the North at Nos. 40, 50-52 (above ground floor), 54, and 60-62 (ground floor and above). In addition to these Walmgate also accommodates a number of courts, away from the frontage, which contain residential. On Walmgate there are only two public houses, the Red Lion on Merchantgate is also nearby. Given that there are a number of hot food takeaway sites within the city centre, and the peripheral location of the host, it is unlikely that people using the city centre's

drinking establishments would deviate to this location to acquire hot food late at night. As such only people who already use Walmgate as a route home may cause disturbance. It is unlikely other customers, i.e. those visiting by car or from nearby uses, would generate significant levels of noise. It is therefore recommended that the premises be allowed to open until 02:00 the following day on Fridays and Saturdays and 24:00 otherwise. It is considered this would not have undue harm on residential amenity.

4.9 Highway Network Management have not requested that the proposed use provides car or cycle parking spaces. On street parking is available nearby.

4.10 The means of extraction is yet to be confirmed as acceptable by EPU. The applicant has demonstrated that extraction is to be used and it can be conditioned that this is adequate and maintained. EPU made representation in the application previously refused, stating that the building was not structurally adequate to accommodate the proposed use without odour being transferred through the walls. To adequately protect the amenity of the adjoining units it is considered that a schedule of works to repair the wall could be conditioned. This would have to be satisfactory in both environmental and design terms to preserve the special historic interest of the listed building.

4.11 The proposal relates to a listed building within a conservation area, as such policies HE3 and HE4 of the City of York Draft Local Plan are relevant. HE4 states that listed building consent will only be granted when there is no adverse effect on the character, appearance or setting of the building. HE3 states that within conservation areas, proposals will only be permitted where there is no adverse effect on the character or appearance of the area. PPG15: Planning and the Historic Environment is also of relevance.

4.12 The proposal is considered to be acceptable in Conservation terms. The extraction flue is proposed at the side of the building, setback from the rear elevation. It would be conditioned that the flue is coloured, so it would blend in with the building. As such the flue would not appear prominent, it would be of acceptable appearance. It is proposed the flue exits through the brickwork, this is considered not to have an undue impact on the special historic interest of the listed building. The signage of the building would be subject to an application for advertisement consent, if required, otherwise the sign and colouring of the frontage shall be controlled by condition in the listed building application.

4.13 The proposal is compliant with the thrust of PPG15 in that it would bring the unit into active use without harm to its special historic interest.

4.14 Overall the impact on the listed building is considered to be acceptable. For the reasons given in 4.12 the character and appearance of the conservation area are considered to be maintained also.

5.0 CONCLUSION

5.1 The application, on balance, accords with the policies of the development plan and PPG15. Approval is therefore recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 PLANS1

2 TIME2

3 The hours of operation of this approved use shall be confined to

10:00 to 24:00; Sundays to Thursdays,
10:00 to 02:00 the following day; Fridays and Saturdays

Reason: To safeguard the amenities of adjoining occupants.

4 Any extraction system fitted in association with the use hereby approved must be adequate for the treatment and extraction of fumes so that there is no adverse impact on the amenities of nearby occupants by reason of fumes, odour or noise. The extraction system shall be appropriately maintained as such and fully removed once its use has ceased.

Reason: In the interests of residential amenity in accordance with policy S6 of the City of York Draft Local Plan.

5 Within a week of its installation, the extraction duct shall be finished in a colour to be agreed by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the finished appearance of the duct to protect the appearance of the listed building and conservation area.

6 Prior to the occupation of the use hereby permitted a scheme for works to repair the walls to prevent the transferral of odour shall be agreed to by the Local Planning Authority and carried out in accordance with the approved details.

Reason: To protect the amenity of neighbouring units.

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 special historic interest of the listed building and amenity. As such the proposal complies with Policy E4 of the North Yorkshire County Structure Plan (Alteration No.3 Adopted 1995) and Policies S6 and S7 of the City of York Local Plan Deposit Draft.

2. You are advised that listed building consent is also required for the proposed development. Advertisement consent may also be required. You are advised to contact the Local Authority for clarification prior to the installation of any advertisement at the premises.

Contact details:

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