

COMMITTEE REPORT

Date: 15 November 2012 **Ward:** Acomb
Team: Major and **Parish:** Acomb Planning Panel
Commercial Team

Reference: 12/02658/FUL
Application at: 134 Boroughbridge Road York YO26 6AL
For: Variation of condition 5 of planning permission 11/02339/FUL
to extend opening hours to allow the hot food takeaway to
open from 12.00 to 20.30 on Sundays
By: Miss Lynette Barton
Application Type: Full Application
Target Date: 15 October 2012
Recommendation: Approve

1.0 PROPOSAL

1.1 134 Boroughbridge Road comprises a two storey brick built property circa 1930 recently converted into a fish and chip shop with a flat above, under planning permission 11/02339/FUL. That planning permission was given subject to a condition no 5 restricting opening hours on Sundays to lunchtimes only with a closure at 14.00 hours. Planning permission is currently sought under Section 73 of the 1990 Town and Country Planning Act to vary the condition to allow for opening until 20.30 hours on a Sunday. Permission was also sought for the placing of tables on the forecourt at the Boroughbridge Road frontage of the property but this element of the proposal has subsequently been withdrawn.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: West Area 0004

York North West Boundary GMS Constraints: York North West Boundary CONF

2.2 Policies:

CYGP1Design

CYS6 Control of food and drink (A3) uses

3.0 CONSULTATIONS

INTERNAL:-

3.1 Environmental Protection Unit raise no objection to variation of the condition relating to opening hours to allow for opening up until 20:00 on Sundays but express concern in respect of any external seating associated with the development.

3.2 Highway Network Management were consulted in respect of the proposal on 30th August 2012. Any response will be reported verbally at the meeting.

EXTERNAL:-

3.3 Acomb Planning Panel – no response received.

3.4 Three letters of objection have been received in respect of the proposal. The following is a summary of their contents:-

- Concern that other conditions on the original planning permission ref:- 11/02339/FUL have not been complied with;
- Concern that the odour control system at the property has not proved effective and that neighbouring residential properties are subjected to a significant degree of odour nuisance as a result;
- Concern at a loss of residential amenity through noise both from staff working at the premises and from the flue and extraction system;
- Concern in respect of on-street parking in relation to the premises and its impact upon the safety and convenience of highway users.

4.0 APPRAISAL

4.1 Policy GP1 of the York Development Control Local Plan sets a firm policy presumption in favour of new development which respects or enhances the local environment and ensures that residents living nearby are not unduly affected by noise or disturbance. The current proposal seeks an extension of operating hours on a Sunday from 14.00 hours to 20.30 hours. The condition in respect of operating hours was originally imposed in order to secure the residential amenity of properties to the rear and aligned with the operating hours set out in the application form. The wider area contains a mix of uses including a veterinary surgery, a second hand furniture seller and several takeaways along Boroughbridge Road with residential property to the rear. Nearby takeaways open much later in to the evening on Sundays. The Chinese food takeaway at no.122, has planning permission to open until 22.30hours on Sundays. The application premises face on to Boroughbridge Road with sole access gained from Boroughbridge Road. Any impact arising from comings and goings and from traffic would therefore be concentrated at the front of the site well away from residential property. Concern has been expressed in respect

of odour dispersal. The flue system whilst at present not authorised has been located so as to disperse odours on to the street frontage away from residential property to the rear. With the removal of the proposal to locate tables along the street frontage of the property to provide an external eating area it is felt that the proposed variation of opening hours would have a modest impact upon residential amenity and can not therefore be reasonably refused.

4.3 Concern has been expressed in respect of the lack of compliance by the developer in respect of other conditions on planning permission 11/02339/FUL. This is the subject of on-going enforcement action and is not directly relevant to the determination of the current application. Similarly in respect of on-street parking, a significant issue arises in respect of other land uses presently in the area, it would therefore be unreasonable to specifically single out the current application site.

5.0 CONCLUSION

5.1 No.134 Boroughbridge Road comprises a recently opened fish and chip shop with a flat above. Permission is sought to vary the condition covering operating hours to allow opening into the evening on Sundays to 20.30 hours. The premises are accessed from the Boroughbridge Road frontage and the existing flue system is designed to direct nuisance from odour away from nearby residential properties. Other takeaways also exist within the near vicinity without such a severe restriction upon Sunday evening opening. It is felt therefore that to continue to restrict opening hours to 14.00 hours would be un-reasonable in view of the modest impact upon residential amenity that would result. Approval is therefore recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

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

Drawing Refs:- 7D, DP4E,BP2, DP1 and P1 Date Stamped 30th August 2011.

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

2 Notwithstanding the application details hereby approved full details of the proposed refrigeration, air circulation, extraction and odour mitigation system including its location, acoustic detail and the finishes of any components external to the building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the cafe/takeaway use. The development shall thenceforth be undertaken in strict accordance with the details thereby approved prior to the development being first brought into use.

Reason:- To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 of the York Development Control Local Plan.

3 The cafe/hot food take away use hereby authorised shall operate solely between the following hours:-

Monday to Saturday 12.00 hours to 22.00 hours.

Sundays or Bank Holidays 12.00 hours to 20.30 hours.

Reason:- To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 and S6 of the York Development Control Local Plan.

4 The rear seating and storage area hereby authorised shall be used solely in conjunction with the cafe/takeaway use.

Reason:- To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 of the York Development Control Local Plan.

5 Notwithstanding the submitted details, the doorway giving access from the Cafe/Takeaway seating area to the rear amenity area shall be single leaf only in dimension and shall be solely used for the purposes of an emergency exit and shall be clearly identified as such. The amenity area shall not be used as an outside seating or storage area for the cafe/takeaway use.

Reason:- To safeguard the residential amenity of neighbouring properties and to secure adequate amenity space for the residential use at the premises in compliance with Policy GP1 of the York Development Control Local Plan.

6 DRAIN1 Drainage details to be agreed -

7 Notwithstanding the application details hereby approved full details of the layout of parking space and circulation arrangements within the front forecourt of the application site including measures to prevent pedestrian/vehicular conflict shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the date of this permission. The development shall thenceforth be undertaken in strict accordance with the details thereby approved prior to the development being first brought into use and shall be maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason:- To secure the safety and convenience of highway users.

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 impact upon the residential amenity of neighbouring properties. As such the proposal complies with Policies GP1 and S6 of the City of York Development Control Local Plan.

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