



## Recent Planning History

1.3 The café is within the same ownership as the attached hairdressers and associated residential accommodation occupied by the owners of these two properties. The café building was granted consent in 2017 (Planning Permission reference 17/01573/FUL). The permission included condition 4 which stated that: “None of the other space within the building or within the garden or courtyard and pavement to the front or rear of the building shall be used by customers. The reason for the condition was to protect neighbour amenity.

1.4 Following the original consent for the café, the following permissions have also been granted:

1.5 18/00446/FUL - Variation of condition 2 of permitted application 17/01573/FUL to alter design of shop front.

1.6 18/01858/FUL - Variation of condition 3 of permitted application 18/00446/FUL to allow for retention of outdoor seating area. This permission granted consent for 1 table and two chairs immediately to the front of the cafe. Condition 1 of this permission provides “No other outdoor space to the front or rear of the building shall be used by customers eating or drinking.”

1.7 18/01968/FUL - Erection of retractable awning to front

1.8 19/00216/FUL - Installation of 3 no. roof lights to side elevation of cafe (retrospective). The roof lights were erected on the side roof slope facing the neighbouring property. Consent was granted to retain the roof lights subject to a condition that they remain fixed shut. The reason for the condition was to avoid noise from the use impacting unacceptably on neighbours living conditions.

## **2.0 POLICY CONTEXT**

2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise.

2.2 The National Planning Policy Framework (‘NPPF’) sets out the Government’s overarching planning policies. The NPPF is a material consideration in the determination of this planning application. Key policies / sections of the NPPF are as follows –

Section 4 Decision making

Section 6 Building a strong, competitive economy

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Section 8 Promoting healthy and safe communities.

Section 11 Making effective use of land

Section 12 Achieving well-designed places

2.3 The Publication Draft City of York Local Plan 2018 (2018 Draft Plan) was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019. The plan policies can be afforded weight in accordance with paragraph 48 of the NPPF. The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications. Of relevant to this application, the evidence base includes the Retail Study Update 2014.

2.4 Key relevant 2018 Draft Plan Policies are as follows –

D1	Placemaking
CC2	Sustainable Design and Construction of New Development
R2	District and Local Centres and Neighbourhood Parades.

2.5 The Development Control Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005 (DCLP). Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF, although the weight that can be afforded to them is very limited. The retail policies of the 2005 plan have been superseded by the Retail Study Update (2014) and the 2018 Draft Plan.

2.6 Key policies in the 2005 Plan are as follows:

GP1	Design
GP4	Sustainability
S6	Control of Food and Drink Uses.

2.7 Policy GP1 requires development proposals to respect or enhance the local environment, be of a design that is compatible with neighbouring buildings and the character of the area. Local Plan policy S6 relate to the extension, alteration or development of premises for food and drink uses. The policy includes a number of criteria when assessing proposals including any likely impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.

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### **3.0 CONSULTATIONS**

#### CYC Public Protection Unit (PPU)

3.1 This application includes a wooden structure that would act as a barrier between the residents adjacent to the area, however, the doors will be openable on two sides and no details of the sound insulation properties of the structure's material has been given. I would therefore recommend that the applicant commissions a noise impact assessment, by a qualified acoustician to assess the noise breakout from customer's voices and the activities of the business from the new structure and assess the likely impact on the residents at 54 Broadway and the closest residential property opposite the premises on Broadway.

3.2 Report should consider children's and parents/carers raised voices too.

3.3 If this is not done then I would advise that the application be refused due to insufficient information.

#### CYC Flood Risk Management

3.4 The scheme is unacceptable as it does not indicate how water will be discharged and as such concerns exist that water will discharge from the new structure directly on to the neighbouring property and also off the roof to the public highway.

#### CYC Highways Network Management

3.5 We are unable to support the proposed application in its current form.

3.6 The proposed building and opening doors would impinge on the area in which pedestrians' access the shops from the east. Though the forecourt is not adopted highway, there is a presumption that highway rights are established over at least part of the land to be occupied by the development. Section 31 of the Highways Act 1980 makes a presumption that, if the public at large have been using a way as of right for 20 years, the way will be deemed to have been dedicated as highway.

3.7 It is the opinion of the Highway Authority that the proposed building and doors, do not allow a reasonable width for pedestrian activity to the side of the service road at a point where pedestrians are expected to access from the adopted highway onto the guided pedestrian shop access way.

3.8 For a positive response, we would require a suitably wide (say 2.5 - 3m) unobstructed width (i.e. no doors) measured from the access road kerb, this would require a reduced floor plan.

3.9 It is noted that the proposed building is to be suitably sized and used as a garage. Whilst the need for a parking place could be argued to be necessary (as it is observed that the current area is utilised in this way); we would not require this for the following reasons:

- Any car would require access by driving over the adopted highway tactile crossing adjacent which should not be encouraged;
- The size of the garage, would lead to obstruction of pedestrian access (see above);
- There is insufficient room to accommodate the café furniture to allow car access.
- The loss of one parking space is not deemed significant

3.10 We recommend that any doors capable of swinging on to open/ public areas are built to swing in to the building (or be roller shutter type), and not out on to the forecourt. This aligns with section 153 of the Highways Act 1980. Cycle parking should also be provided along with details of where bins will be left for collection.

## **4.0 REPRESENTATIONS**

### Neighbour Notification and Publicity

4.1 A total of 106 letters of support have been received and 8 letters of objection.

4.2 The following issues have been raised when supporting the proposal:

- The café is wonderful and the additional space will help the business to thrive.
- It will make the area more vibrant.
- Businesses need to think outside the box to survive in the pandemic.
- It is beneficial for local people without transport.
- It will benefit adjacent houses by screening the shops, noise and car fumes.
- The additional space is particularly important due to covid restrictions.
- The proposal is not too big and is cosy and pleasant.
- The café has brought the community together and is particularly important for those people who live/work on their own and helps mental health. There are few places to sit and have a coffee in Fulford.

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- There is a step leading into the café and the proposal will improve facilities for wheelchair users as well as people with prams. The building will be warm in winter.
- Is a great use of a private driveway.
- The existing Gazabo is hard work to put up and take down each morning.
- The proposed building is attractive and sympathetic to the area/York.
- The extra customers will support other businesses.
- The Gazebo did not obstruct pedestrians.

#### 4.3 The following issues have been raised when objecting to the proposals:

- Concerns regarding the impact development, including the doors would have on pedestrian safety through restricting the width of the pavement and causing people to go on the road – particular concerns regarding the impact on children and those with mobility problems. Will seats also spill out from the shelter on to other parts of the path? The Gazebos that have been located there made it difficult for people to pass and remain off the road.
- The proposal will further increase on-street parking. The customers, owners and staff of the hairdressers and café park on nearby streets causing inconvenience. The land should remain as parking for visitors.
- The development will lead to the loss of the pavement as a public space.
- The building would be an eyesore and would detract from the street. In scale and appearance it would look like a timber garage. The novelty of the unauthentic Viking building would soon wear off. It conflicts with the established building line.
- The building and its use would harm the amenity of the neighbouring house. Loss of privacy and noise impact. Will lead to development along most of the front and rear garden boundary. Concerns in regard to fire safety. The proposal was approved as a modest enterprise. The Gazebos have been tolerated in the light of the temporary demands of the pandemic.
- The area of land where the building is proposed is not owned by the applicant so how can they build on it? All owners of the premises on the parade have a legal right of unobstructed access across the land.

## 5.0 APPRAISAL

### KEY ISSUES

#### 5.1 The key Issues in assessing the application are:

- Principle of development
- Design

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- Residential Amenity
- Highways and Parking
- Drainage and Flood Risk

### Principle of development

5.2 The NPPF sets out the government's planning policies for England and how these are expected to be applied.

5.3 The planning system should contribute to the achievement of sustainable development (Paragraph 7). To achieve sustainable development, the planning system has three overarching objectives; economic, social and environmental objectives. Paragraph 14 advises that at the heart of the NPPF there is a presumption in favour of sustainable development.

5.4 Section 6 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account local business needs and wider opportunities for development. Other sections of the NPPF that are relevant to this application include: section 9: Promoting sustainable transport; section 11: Making effective use of land and section 12: Achieving well-designed places.

5.5 The café is part of a row of buildings utilised for commercial uses that is defined in the 2014 retail study as a Neighbourhood Parade. Neighbourhood Parades typically cater for the day to day functions of the local population. The supporting text of Policy R2 (District and Local Centres and Neighbourhood Parades) of the 2018 Draft Plan states that it is important that the experience and quality of the shopping in district and local centres and neighbourhood parades is enhanced and maintained in order fulfil their role. It is considered that the enlargement of the café is in accordance with planning policies that seek to provide good quality local services and support healthy communities.

### Design

5.6 NPPF paragraph 127 states that planning decisions should ensure that developments are (amongst other things), visually attractive as a result of good architecture, layout and landscaping, are sympathetic to local character and history, while not preventing or discouraging appropriate innovation or change (such as increased densities) and should establish or maintain a strong sense of place;

5.7 Because of its proximity to the frontage and the canopy, the proposed structure will almost read as a front extension rather than a detached building. It is unusual to erect a large permanent structure forward of a premises in a retail parade. Typically

seating areas are in the open or under canopies. It is considered that it would appear incongruous and a little cramped so close to the existing shop front, neighbouring garden and footpath. The approach of using a timber design based on a Viking building is not considered to justify supporting the form of development.

### Residential Amenity

5.8 NPPF paragraph 127 (f) states that planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for existing and future users.

5.9 When determining previous applications an attempt has been made to strike a balance allowing local business with community benefits to be established and thrive whilst protecting neighbours living conditions.

5.10 When the application for the café was approved in 2017 the officer's report concluded that the small scale was such that it was considered acceptable in respect to the amenities of people living in the adjacent house (54 Broadway). In weighing up the overall merits of the scheme some regard was given to the fact that it is providing a local service within an existing shopping parade that would seem to be welcomed by a number of residents, including, those who find it less convenient to access similar facilities further afield. Planning Permission 18/01858/FUL which permitted a table and two chairs to be sited outside also had regard to the benefits it brought to people with prams and those with limited mobility.

5.11 It should be noted that the tables and chairs that in the last year have been placed on much of the land to the front (often with associated gazebos) are in breach of condition 1 of planning permission 18/01858/FUL that states that, "Furniture in the outside seating area shall be restricted to 1 table and 2 chairs only and they shall only be located in the seating area as indicated in the red line shown on drawing number 18021/301C received 3 June 2019. No other outdoor space to the front or rear of the building shall be used by customers eating or drinking. Reason: To safeguard the amenity of the occupants of the adjacent properties."

5.12 Public Protection have requested a noise assessment so that the likely impact on neighbouring properties – particularly 54 Broadway, can be better understood. The applicants have stated that they are unwilling to undertake this and suggest that the proposal is acceptable because of a number of reasons, including, the use being restricted to the daytime, the restriction to 10 occupants, the existing background noise levels and the acoustic protection provided by the structure. It is considered given the proximity of the structure to number 54 Broadway, that it is reasonable to seek a survey to assess the noise impacts. The structure would only be around 5m from the living room window and around 10m from the rear garden. It also contains

large openings on three elevations as well as roof lights on the rear. Regard would need to be given to the level, duration and nature of noise.

5.13 It is also considered that the structure would detract from the outlook from number 54 Broadway and appear intrusive. It is well forward of the established building line, abuts much of the front garden and is prominent when viewed from the lounge. It is considered that it changes the setting and character of the home and front garden by a degree that is considered unreasonable.

5.14 When the case officer has undertaken site visits to the area, vans and cars have on occasion parked partly across the drive of number 54 Broadway. This is mainly in relation to short trips to the Parade, including deliveries. It would be expected that the sale of takeaway food and drinks at the café would generate some of the short term parking. Although the actual seating is likely to be used by people who would park more responsibly, it could increase parking levels on nearby streets. This may lead to greater temptation for people to park across the drive of 54 Broadway. It is considered that the nuisance and intrusion from such parking when coupled with the physical presence and activity associated with the shelter would impact additionally on the reasonable enjoyment and use of the property.

#### Highway Safety and Parking

5.15 Broadway like many neighbourhood Parades has relatively limited off-street car parking. The 2014 Retail study at 5.01 states that it is important that York has a hierarchy of centres that are able to adequately service the day to day retail and community needs of the local population in as close a proximity to their homes as possible and that it is important that centres thrive. Furthermore the report states that the creation of a network for centres to serve local needs is particularly important for less mobile and vulnerable members of the community.

5.16 The neighbourhood parade is often heavily parked with cars parking in front of shops as well as on adjacent streets. The cafe is located on land to the side of the hairdressers that was previously available for use by the hairdressers and associated enlarged living accommodation for car parking, bin storage and cycle parking. There is a small remaining yard area to the rear of the property, however, it is understood that pedestrian access to the space is now reliant on the goodwill of the owner of the neighbouring yard whose land must be crossed to access it. When the café was approved it was recognised that it removed off street parking and storage space, however, in considering this, regard was given to the associated benefits to the community. A small bin store has been provided at the front of the property abutting the raised brick wall.

5.17 The applicant has indicated that the new structure could also be used as a garage when not needed for customers, though this would be difficult to manage and it is likely that it would be convenient to keep tables and chairs in the structure overnight. The proposed new building would remove another daytime car parking space (and subject to its management by the owners one overnight space). It is not considered that the potential loss of one off-street parking space would raise significant parking concerns. The enlargement of the café would put additional parking pressure on nearby streets and it is noted that a number of people living in the area have stated that they are inconvenienced by parking associated with staff and visitor parking associated with the parade. Although the proposal would increase on-street car parking it is not considered that the overall harm caused to the amenity of residents in the wider area as a whole would justify refusal when balanced against the social and economic benefits associated with an enlarged café. It is also not considered that the increased parking demand would create highway safety concerns. It is considered however, that additional parking does negatively impact on some neighbours, particularly number 54 Broadway and the impacts do contribute to the negative factors associated with other issues of concern.

5.18 It is noted that concerns have been raised regarding the impact that the actual shelter itself would have on pedestrian safety. Revised plans that have been submitted indicate the gap between the open bi-fold doors and the kerb edge would be 1.63 metres. Highway Network Management have suggested a gap of around 2.5 – 3m should be retained to allow people to safely pass. Accordingly, it is considered that the proposal is unacceptable in respect to pedestrian safety as it will lead to people being forced on to the road and with particular concerns for those with limited mobility.

### Drainage and Flood Risk

5.19 The structure is small in scale and located on a hard surfaced area. The agent has stated that water from the roof would eventually drain into the gulleys in the road. It is not considered that the proposal would have a material impact on wider flood risk. It is the case that no gutters are proposed on the structure and if this remained the case it would raise potential concerns regarding water draining on to the boundary wall and neighbouring garden. The structure is of a size and location that building regulations would be required and it is considered that drainage could be addressed at the building regulations stage. In addition, civil law would typically require that water from a roof is not discharged on to neighbouring land.

## 6. CONCLUSION

6.1 When granting consent for the café in 2017 its small size was a significant factor in allowing the use adjacent to a dwelling. In addition, regard was given to the applicant's willingness to accept a condition not allowing the use of land to the front for customers' tables and chairs. It was originally envisaged as a small scale initiative and in part an adjunct to the adjacent hairdressers that is also owned by the applicant.

6.2 It is recognised that the café has become a popular venue and helps to improve community cohesion and the wellbeing of those who visit. There would clearly be benefits to the owners and wider community if further customer space were available at the site. It is considered however, that the proposed enlargement would cause harm. Significant concerns exist in respect to harm to the living conditions of the occupants of 54 Broadway, harm to the appearance of the streetscene and harm to the safety of pedestrians using the narrowed pathway past the proposed structure.

6.3 The application fails to accord with the requirements of the NPPF and policies D11, T1 and R2 of the Draft City of York Local Plan 2018.

## 7.0 RECOMMENDATION: Refuse

1 The proposed shelter would abut the front garden of 54 Broadway. In the absence of a noise impact assessment submitted by the applicant, concerns exist that noise from people using the structure would harm the reasonable living conditions of occupiers of the home and garden of number 54. Furthermore, the structure would appear intrusive when viewed from the lounge and front garden of the property and the expansion would further increase the prevalence of parking across the home's driveway. It is considered that the impacts are such that the proposal is unacceptable and would conflict with Central Government guidance regarding how an area functions contained within paragraph 127 (a) and (f) of the National Planning Policy Framework, and the fourth bullet point of policy D11 and the fourth bullet point of policy R2 of the Draft City of York Local Plan 2018.

2 The proposed shelter would be located immediately in front of the existing shop front and conflict with the established building line in Broadway. It is considered that it would appear cramped in its setting and incongruous. As such, it is considered that the proposal conflicts with Central Government guidance regarding appearance and local character contained within paragraph 127 (b) and (c) of the National Planning Policy Framework, and the first bullet point of policy D11 of the Draft City of York Local Plan 2018.

3 The proposed shelter would, when the doors are open, leave a gap of only 1.63m to pass on the adjacent footpath. It is considered that more than one person passing, including, those pushing prams could be forced to step onto the roadway. This is considered to be unacceptable in respect to the safety and convenience of pedestrians. As such the proposal conflicts with Central Government guidance regarding safety and accessibility contained within paragraph 127 (f) and paragraph 110 (a) and (c) of the National Planning Policy Framework, and policy T1 of the Draft City of York Local Plan 2018.

## **8.0 INFORMATIVES:**

### **Notes to Applicant**

#### 1. 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 (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve an acceptable outcome:

Concerns were expressed to the agent regarding the impact of development on the streetscene, neighbour amenity and pedestrian safety on 15 December 2020.

Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

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