

COMMITTEE REPORT

Date: 12 April 2012 **Ward:** Osbaldwick
Team: Major and **Parish:** Murton Parish Council
 Commercial Team

Reference: 12/00309/FUL
Application at: Inner Space Stations 339 - 341 Hull Road Osbaldwick York YO10
3LE
For: Variation of condition 3 of approved application 03/02728/FUL
(extension to sales building) to allow 24 hours use
By: Inner Space Stations
Application Type: Full Application
Target Date: 21 March 2012
Recommendation: Approve

1.0 PROPOSAL

LOCATION

1.1 The application site is Inner Space Stations petrol station located on Hull Road to the west of the large B&Q store. The rear gardens of residential properties (Tranby Avenue) adjoin the western side of the site. Vehicular and pedestrian access is from Hull Road.

PROPOSAL

1.2 In 2003 planning permission was granted for a single storey flat roof extension to the sales and control building at the petrol station. The extension was 65sqm in size and almost doubled the sales floor area of the building. The total floor area of the building at the time was 100sqm. A condition was included on the consent that 'The hours of operation of this approved use shall be confined to 6.45 hours to 22.45 hours from Monday to Saturday, 7.30 hours to 22.45 hours on Sunday'

1.3 This application is to vary the condition to allow 24 hour use of the shop premises. Prior to the inclusion of this condition no restrictions were in place in respect to the opening hours of the shop. The petrol station, including the shop has been opening for 24 hours, for the past 18 months or so.

PLANNING HISTORY

1.4 It is understood that a garage with petrol pumps has existed on the site for at least 50 years. The scale and intensity of the use has increased in recent years. In the 1980's the site was granted consent and re-developed to provide a petrol filling station with a car wash, canopy and sales building. Since this period a number of

other planning applications have been submitted. The additions that have been permitted have included extensions to the shop and the provision of jet wash facilities with associated staff room. In 2007 planning permission was granted to use the petrol station car park to the north of the site for a van/car hire depot. The applicant has confirmed that this use was implemented, although not functioning at the current time.

1.5 In December 2011 an application to extend the retail sales area was withdrawn. The intention was to open the extended retail sales area for 24 hours. As there is a condition in place seeking to restrict opening hours of the existing shop it was felt that it would be preferable if this issue could be addressed in advance of considering an application for an extension.

1.6 The application is brought to Committee at the request of Cllr. Mark Warters because the proposal is to remove a condition that had previously been deemed necessary.

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:

CYS10 New local and village shops

CYGP1 Design

3.0 CONSULTATIONS

3.1 Internal

ENVIRONMENTAL PROTECTION UNIT

No objections. The proposal is not to actually expand the overall size of the facility. It is understood that the facility has been open for 24 hours in the past 18 months. During this time the only complaint received has related to spray from the car wash operation.

3.2 External

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Object because of the impact on residents living in Tranby Avenue. Support neighbours concerns in respect to breaching the 24 hour alcohol licence. There is not the need for another outlet to be open for 24 hours. If it is approved meaningful conditions should be applied and monitored.

OSBALDWICK PARISH COUNCIL

Object because the condition was put in place to protect neighbours amenity. The 2007 York Retail study says the need for convenience shopping has been met and there is no policy support or demand for 24 hour opening. The aim is to provide a late night facility for students that will inconvenience residents due to noise and light pollution.

NEIGHBOURS

Letters have been received from 3 households in support of the proposal and 2 households who object to it.

The letters of support raise the following issues:

- The 24 hours shop is a useful and convenient facility through the night.
- Having a manned shop through the night adds comfort in case of an emergency.
- Not aware of any problems associated with the 24 hour opening.

The letters of objection raise the following issues:

- There have been on-going noise problems with the site, particularly from use of the jet washes after 23:00.
- The condition to restrict opening hours was done to protect residents living conditions and should remain.
- Visitors to the site shout and bawl, the facility is only for students, taxi drivers and late night revellers.
- Because of noise from the facility nearby houses are being converted to short term lets.
- The site is already overdeveloped.
- It will increase traffic congestion at the entrance to the site.

4.0 APPRAISAL

4.1 The key issue in assessing the proposal is whether allowing the 24 hour use of the extension to the shop would cause unacceptable harm to the living conditions of nearby residents.

4.2 Criterion i of policy GP1 of the Local Plan (design) states that proposals will be expected to ensure that residents living nearby are not unduly affected by noise. This requirement is also repeated in policy S10 that relates to new or extended local shops.

4.3 When the extension to the shop was approved in 2003 the applicant initially stated on the application form that he intended to have 24 hour opening. However, he later confirmed with the planning officer that he had no intention of changing the opening hours from those that existed at the time which was 06.45 - 23:00 hours. A resident living in Tranby Avenue and Murton Parish Council objected to the proposal believing that there was to be 24 Hour opening. To help address these concerns the condition that is subject to this application was included.

4.4 It should be noted that there are no restrictions in place in respect to the opening hours of the petrol station. Also it is doubted that the condition relates to the area of the shop building that existed at the time of the application, as the reason for the condition was to ensure the hours were 'in accordance with the current opening hours of the existing shop'. However the hours of the 'existing shop' were not restricted by any condition. In addition, a small extension (approximately 15sqm) to the shop was approved in 2006 (06/0178). There was no restriction included in respect to the operating hours of this element.

4.5 If the application to vary the condition were refused it is considered that it would still be possible to open the petrol station 24 hours each day and it would still be possible to sell produce from at least half of the shop. It is unclear whether customers would be able to enter the shop after 22:45 as the entrance door is through the extension approved in 2003, however, it would presumably be possible for customers to order goods from the kiosk. Around a third of the existing premises are used for storage and preparation, planning permission would not typically be required to use this space for shop sales.

4.6 On balance it is not considered that allowing all of the shop to be open 24 hours would have a material impact on noise levels. The premises are not currently of a size where people would typically seek to undertake a 'large shopping expedition' at night time. It is very likely that between 22:45 and 06:45 the vast majority of customers would wish only to purchase a small number of items from the shop and a reduction in the floor area would not have a significant impact on activity levels at such times. It is likely to be the case that most purchases would be associated with petrol sales, however, some customers might arrive on foot. The premises have a 24 hour alcohol licence for off sales.

4.7 If Members were minded to refuse the application, some regard should be given to whether it would be possible to enforce condition 3 of planning permission

03/02728. The condition is unclear in that it refers to a use being approved (a service station shop) whereas the description of development relates to operational development (an extension). It is very unlikely that the condition would apply to the whole shop and it may be the case that because the condition is not clear and precise it would fail the test for conditions set out in Department of the Environment Circular 11/95 "The Use of Conditions in Planning Permissions".

5.0 CONCLUSION

5.1 It is noted that the applicant did not object to the condition when it was imposed in 2003 as at the time it was understood there was no intention to open the Petrol Station overnight. This is not, however, a reason to retain the condition.

5.2 The concerns of some local residents and Murton Parish Council and Osbaldwick Parish Council in respect to late night noise coming from the site are noted. It is considered however, that closing a portion of the shop during night time hours would have negligible impact on actual noise levels. It is likely that most visitors to the shop would primarily be paying for petrol and those arriving on foot after 10.45 pm would just be purchasing a small number of items. It is unlikely that a reduction in what is a relatively modest shop sales area would have any significant impact on the number and nature of these visits.

5.3 Furthermore the enforceability of the condition is questionable given that it does not appear to have related to the original shop, and a more recent extension was not restricted.

5.4 It is recommended that the application to remove condition 3 of planning permission 03/02728/FUL is approved.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

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 local noise levels. As such the proposal complies with Policies GP1 and S10 of the City of York Development Control Local Plan.

Contact details:

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