

COMMITTEE REPORT

Committee: West/Centre Area
Date: 19 March 2009

Ward: Westfield
Parish: No Parish

Reference: 08/01989/FUL
Application at: Yan's Express Cantonese Takeaway 11 Acomb Court Front Street York YO24 3BJ
For: Erection of two storey flat roof building comprising shop unit located at ground floor level with two flats at first floor level
By: Mr Y F Cheung
Application Type: Full Application
Target Date: 8 December 2008

1.0 PROPOSAL

1.1 The application is for erection of a two storey flat roof building comprising a shop unit located at ground floor level and two flats at first floor level.

1.2 The application comes before committee at the request of Cllr Stephen Galloway as this is a prominent site, in addition there is some concern regarding the amenity of the occupants of the proposed flats, and potential traffic generation.

1.3 The site is within the Acomb District Centre as specified in the Proposals Maps, it is just outside the Acomb Conservation Area which covers the opposite side of the street. The character of this part of the district centre is two storey flat roofed buildings.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

2.2 Policies:

CYGP1
Design

CYGP4A
Sustainability

CYL1C
Provision of New Open Space in Development

CYGP15
Protection from flooding

CYGP16
Shopfronts

CYH4A
Housing Windfalls

CYS3
Mix of use in certain shopping streets

3.0 CONSULTATIONS

3.1 INTERNAL CONSULTATIONS

HIGHWAY NETWORK MANAGEMENT - The site is fronted by a pinch point in the footway of 1.6 metres, yet it is in the vicinity of a shopping area. It is therefore recommended that to cater for the increased pedestrian movement at the shop, the pinch point should be relieved by setting back the footway to 3 metres.

STRUCTURES AND DRAINAGE - Comments yet to be received on revised drainage information submitted.

ENVIRONMENTAL PROTECTION UNIT - No objections

- However they have concerns that the noise from deliveries to the commercial unit and use of the commercial unit may have a detrimental effect on the amenity of residents of the proposed development.

- Concerned that noise from the air conditioning units to the rear of the development may have a detrimental effect on the amenity of the residents of the proposed development.

- Have concerns that odour from number 11 Acomb court would have a detrimental effect on the amenity of the residents of the proposed development.

- Recommend that the following conditions: A1 use, opening be confined to hours of 09.00 - 18.00; Deliveries only between certain hours; all windows facing onto Acomb Court shall be non-opening; The building envelope of the proposed flats, shall be constructed so as to achieve internal noise levels of 30 dB LAeq 1 hour and 45 dB LAMax (23:00 - 07:00) in bedrooms and 35 dB LAeq 1 hour (07:00 - 23:00) in all other habitable rooms.

LIFELONG LEARNING AND LEISURE - As there is no on-site open space commuted sums should be paid to the Council for (a) amenity open space - which would be used to improve a local site such as Acomb Green or West Bank Park (b) play space - which would be used to improve a local site such as Acomb Green or West Bank Park (c) sports pitches - which would be used to improve a facility within the West Zone of the Sport and Active Leisure Strategy. The contribution to off site provision is to be based on the latest York formula through a Section 106 Agreement.

CITY DEVELOPMENT - No objections

CONSERVATION (TREES) - No objections

CONSERVATION (URBAN DESIGN)

- The proposed building is of a simple design with a relatively bland principal elevation that will rely upon the quality of materials and finishes to make a positive contribution to the setting of the conservation area adjacent. The scale of the proposed two storey building relates to the form and proportions of the existing building to the east. Design details such as the parapet, string course and vertical emphasis window openings at first floor level, respect the architectural character of the neighbouring building.
- The full height dressed stone sections proposed at the corner of the principal elevation are likely to provide a visual focus to the building when viewed from the west. The raised parapet level of the stone faced section could be reduced in height so that the design appears less contrived.

SUSTAINABILITY

- Welcome that the applicant is committed to achieving CSH level 3 as required under the IPS. In order to ensure this is achieved recommend that a condition be placed on this application ensuring we receive level 3 and including the submission of a CSH Design and Procurement Stage Pre- Estimator prior to commence on site.
- Satisfied that the applicant has looked into and supplied details on how the development has considered installations to generate 5% of the developments energy demand from renewable sources. Again, recommend a condition to ensure this % is achieved and that we receive a full energy statement with details on the developments total energy demand (in kWh/yr) and the total to be generated (in kWh/yr) by the renewable solar panels before commencement on site - so we can be sure the 5% is likely to be met.

3.2 EXTERNAL CONSULTATIONS/REPRESENTATIONS

No external representations were received within the consultation period

4.0 APPRAISAL

4.1 RELEVANT SITE HISTORY

07/01773/FUL - Erection of three storey building comprising ground floor hot food takeaway with 1 no. two bed flat at first floor and 1 no. one bed flat at second floor - Withdrawn

4.2 ADDITIONAL PLANNING POLICY

Planning Policy Statement 1 - Delivering Sustainable Development

Planning Policy Statement 3 - Housing

Planning Policy Statement 6 - Planning for Town Centres

Planning Policy Statement 25 - Development and Flood Risk

City of York Council Sustainable Design and Construction Interim Planning Guidance (2007)

4.3 KEY ISSUES

1. Visual impact of the building on the area
2. Amenity of the occupants of the proposed building
3. Impact on highway safety
4. Ground floor A1 use

4.4 ASSESSMENT

PLANNING POLICY

4.1 Policy GP1 'Design' of the City of York Council Development Control Local Plan includes the expectation that development proposals will, inter alia; respect or enhance the local environment; be of a density, layout, scale, mass and design that is compatible with neighbouring buildings and spaces, ensure residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures, use materials appropriate to the area; avoid the loss of open spaces or other features that contribute to the landscape; incorporate appropriate landscaping and retain, enhance or create urban spaces, public views, skyline, landmarks and other features that make a significant contribution to the character of the area.

4.2 Policy GP4a 'Sustainability' of the City of York Council Development Control Local Plan (2005) states that proposals for all development should have regard to the principles of sustainable development. Development should: provide details setting out the accessibility of the site by means other than the car and, where the type and size of development requires, be within 400 metres walk of a frequent public transport route and easily accessible for pedestrians and cyclists; contribute towards meeting the social needs of communities within the City of York and to safe and socially inclusive environments; maintain and increase the economic prosperity and diversity of the City of York and maximize employment opportunities; be of a high quality design, with the aim of conserving and enhancing the local character and distinctiveness of the City; minimize the use of non-renewable resources, re-use materials already on the development site, and seek to make use of grey water systems both during construction and throughout the use of development. Any waste generated through the development should be managed safely, recycled and/or reused. The 'whole life' costs of the materials should be considered; minimize pollution, including that relating to air, water, land, light and noise; conserve and enhance natural areas and landscape features, provide both formal and informal open space, wildlife area and room for trees to reach full growth; maximize the use of renewable resources on development sites and seek to make use of renewable energy sources; and make adequate provision for the storage and collection of refuse and recycling.

4.3 Policy GP15a 'Development and Flood Risk' in the City of York Council Development Control Local Plan (2005) states that there will be a presumption against built development (except for essential infrastructure) within the functional floodplain outside existing settlement limits. Proposals for new development on previously undeveloped land outside defined settlement limits will only be granted where it can be demonstrated that the development will not result in the net loss of floodplain storage capacity, not impede water flows and not increase flood risk

elsewhere. All applications in the low to medium risk or high risk areas should submit a Flood Risk Assessment (FRA) providing an assessment of additional risk arising from the proposal and the measures proposed to deal with these effects.

4.4 Policy GP16 'Shopfronts' of the City of York Council Development Control Local Plan states that planning permission for new or alterations to existing will only be granted if the proposals respect the scale, proportion, materials and the architectural style of the building to which the attached an the area in which they are located.

4.5 Policy H4a 'Housing Windfalls' of the CYCDCLP states that permission will be granted for new housing development on land within the urban area providing: it is vacant/derelict/underused or involves infilling, redevelopment or conversion; has good access to jobs, shops and services by non-car modes; and, is of an appropriate scale and density to surrounding development and would not have a detrimental impact on existing landscape features.

4.6 Policy S3a ' Mix of uses in Shopping Streets' states in York's City Centre Primary Shopping Streets, Acomb District Centre and Haxby District Centre development will be permitted where it provides the improvement and expansion of existing retail premises and the establishment of new shopping uses.

4.7 Policy L1c requires that all housing sites make provision for the open space needs of future occupiers. For sites of less than 10 dwellings a commuted payment will be required towards off site provision.

VISUAL IMPACT OF THE BUILDING ON THE AREA

4.8 Acomb district centre and this part of York Road are made up of two storey flat roofed buildings. The proposed building would be a two storey flat roofed building that follows the curve of the pavement. The proposed building is similar in design to those surrounding. The blank flank wall of 11 Acomb Court which the proposed building would be abutting is prominent, when travelling along York Road from the west approach. There is a sectional garage on site and two self-seeded sycamore trees. To the rear there is a small lane which gives access to 1 - 11 Acomb Court are in retail and commercial uses. There does not appear to be any residential use in any of these units. To the east of the site are public toilets.

4.9 The proposed building is in character and proportion with the surrounding buildings. The side elevation would be visible from the streetscene by virtue of the shape of the building and whilst not quite as dominant as the side elevation of 11 Acomb Court (as it would have windows at first floor level), the proposed side elevation would have little articulation and would have a neutral rather than a positive impact on the streetscene. The site would be capable of taking a striking design of building by virtue of being a prominent site, however the proposed design is similar to its surroundings and is not considered to have a negative impact on the streetscene. Neither is it considered to affect the setting of the nearby conservation area.

4.10 The agent has specified red brick but not the colour or type of the dressed stone to the front elevation which provides the visual focus, it is considered that it would be prudent to condition samples of materials.

AMENITY OF THE OCCUPANTS OF THE PROPOSED BUILDING

4.11 There is some concern regarding the residential amenity of the occupants of the residential units in the proposed building. The lane to the rear of the building has several air conditioning units creating an element of noise disturbance together with flues and extract fans from a takeaway and café causing possible causing smell issues. EPU have recommended that the windows to the rear of the building should be conditioned as fixed shut, to prevent any possible disturbance from rear lane. This would affect the one bedroom flat which is set to the rear of the building which has three windows two with an outlook of the rear land and one window in the side elevation. It is considered that it would be unreasonable to condition the windows to be fixed shut. The occupants of the one bed flat would be aware of these issues before taking residence. In the two bed flat the majority of the windows are in the front elevation.

4.12 There would be a yard to the side and rear which would accommodate the cycle store and refuse bins.

IMPACT ON HIGHWAY SAFETY

4.13 Highways Network Management have requested that the building be set back to allow for a wider pavement. It is not considered that this would be a reasonable request for the applicant to give up some of their land for a public footpath. It is considered that the widening of the footpath would have little impact on the use of the footpath. At its narrowest point the pavement would be 1.6 metres in width, this is considered to be sufficient in this case.

GROUND FLOOR A1 USE

4.14 A retail unit is considered to be an acceptable addition within the Acomb Centre. There are a significant proportion of ground floor non-A1 uses within the district centre and it is considered that an A1 use in this location may aid in the vitality and viability of the area.

4.15 The environmental protection unit have requested that the opening hours of the A1 unit be conditioned however this is considered to be rather restrictive in a shopping centre. The neighbouring units do not appear to have their opening times restricted.

OTHER ISSUES

4.16 There are two self-sown sycamore trees on the site it is stated that the tree closest to the public toilets will be retained.

4.17 In line with Policy L1c of the City of York Council Development Control Local Plan the applicant has agreed to make an open space contribution.

4.18 The applicant has confirmed that the building would be constructed to Level 3 of the Code for Sustainable Homes. The agents has confirmed that 5% of the energy requirements would be supplied by solar panels although no plans have been submitted with these shown and therefore would require an additional application. Therefore the 5% renewable target is reliant on the applicant submitted another application, and thus in this case it is considered that the 5% renewable target has not been met in this application.

4.19 Still awaiting comments from the Structures and Drainage Section regarding the revised drainage information submitted. The response will be provided at the sub committee meeting.

5.0 CONCLUSION

5.1 The proposed building is considered to be in keeping with the prevailing design of the buildings in Acomb Court it is not considered to be unduly prominent within the streetscene.

5.2 The proposed A1 use of the ground floor with the two flats above are considered to be acceptable in terms of use. Approval is recommended.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

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

Drawing Number: RSL/012 received 20 February 2009;

or any plans or details subsequently agreed in writing by the Local Planning Authority as amendment to the approved plans.

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

2 No development shall commence unless and until details of provision for public open space facilities or alternative arrangements have been submitted to and approved in writing by the Local Planning Authority. The Open space shall thereafter be provided in accordance with the approved scheme or the alternatives arrangements agreed in writing by the Local Planning Authority and thereafter implemented, prior to first occupation of the development.

Reason: In order to comply with the provisions of Policy L1 of the City of York Draft Local Plan.

INFORMATIVE:

The alternative arrangements of the above condition could be satisfied by the completion of a planning obligation made under Section 106 of the Town and Country Planning Act 1990 by those having a legal interest in the application site, requiring a financial contribution towards off site provision of open space. The obligation should provide for a financial contribution calculated at £1,602.

No development can take place on this site until the public open space has been provided or the Planning Obligation has been completed and you are reminded of the local planning authority's enforcement powers in this regard.

3 TIME2 Development start within three years

4 Notwithstanding any proposed materials specified on the approved drawings or in the application form submitted with the application, samples of the external materials to be used shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. A sample panel of the brickwork to be used on this building shall be erected on the site and shall illustrate the colour, texture and bonding of brickwork and the mortar treatment to be used, and shall be approved in writing by the Local Planning Authority prior to the commencement of building works. This panel shall be retained until a minimum of 2 square metres of wall of the approved development has been completed in accordance with the approved sample. The development shall be carried out using the approved materials.

Reason: So as to achieve a visually cohesive appearance.

5 All deliveries to and despatch from the proposed A1 use shall be confined to the following hours:

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Sundays and Bank Holidays	Not at all

Reason: To protect the amenity of future occupants of the proposed flats from noise

6 The building envelope of the proposed flats, shall be constructed so as to achieve internal noise levels of 30 dB LAeq 1 hour and 45 dB LAMax (23:00 - 07:00) in bedrooms and 35 dB LAeq 1 hour (07:00 - 23:00) in all other habitable rooms. These noise levels are with windows shut and other means of mechanical ventilation provided to all habitable rooms.

Reason: To protect the amenity of future occupants from noise

7 Prior to the commencement of development, a report demonstrating that the dwelling would comply with the Code for Sustainable Homes Level 3 assessment for the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved report.

Reason: To ensure that the proposal complies with the principles of sustainable development and the Council's adopted Interim Planning Statement on Sustainable Design and Construction

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 the visual amenity of the proposed building on the locality, highway safety, amenity of the occupants of the proposed building, and vitality and viability of the Acomb district centre. As such, the proposal complies with Policies GP1, L1c, GP10, GP16, H4a, E4 and S3a of the City of York Council Development Control Local Plan (2005).

2. Demolition and Construction - Informative

In the event that contamination is found at any time when carrying out the approved development, the findings must be reported in writing immediately to the Local Planning Authority. In such cases, an investigation and risk assessment must be undertaken, and where remediation (clean-up) is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Should City of York Council become aware at a later date of suspect contaminated materials which have not been reported as described above, the council may consider taking action under Part IIA of the Environmental Protection Act 1990.

The developer's attention should also be drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be attached to any planning approval, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

a. All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday	08.00 to 18.00
Saturday	09.00 to 13.00
Not at all on Sundays and Bank Holidays.	

b. The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of

practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

c. All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

d. The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

e. All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

f. There shall be no bonfires on the site.

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