

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Holgate
Date: 17 September 2009 **Parish:** No Parish

Reference: 09/01382/FUL
Application at: 3 Acomb Road York YO24 4EN
For: Variation of condition 1 of permission 05/01917/FUL to extend opening hours of cafe from 07:00 - 16:00 hours Monday to Saturday, to 07:00 - 23:00 Sunday to Thursday and 07:00 - 24:00 on Friday and Saturday
By: Mr M Altin
Application Type: Full Application
Target Date: 11 September 2009

1.0 PROPOSAL

APPLICATION SITE

1.1 The application relates to the cafe at 1-3 Acomb Road. The premises do not sell alcohol, but advertises that customers may bring such onto the premises to consume with meals. There is a hot food takeaway at no.5 next door. The site is at a traffic junction where Holgate Road forks into Poppleton Road and Acomb Road. There are some commercial premises nearby, including a public house, Spar convenience store and two takeaways, none of which have opening hours, which are controlled by planning. However the surrounding area is predominantly residential, there are two streets comprising of housing, Park Lane and Falconer Street to the south of the application site along with a house (no.171) on the corner of Holgate Road/Falconer Street.

PROPOSALS

1.2 Planning permission is sought to extend the opening hours, to 23:00 Sunday to Thursday and midnight on Fridays and Saturdays. These hours have been reduced by an hour since the original submission.

SITE HISTORY

1.3 Planning permission was granted in March 1999 for the use of nos. 1-3 Acomb Road as a cafe (application 99/00052/FUL). The permission was subject to conditions restricting the use to being a cafe or restaurant only (i.e. not a takeaway), restricting the opening hours to 19:30 Monday to Saturday only and requiring the flat above the cafe to be used in conjunction with the cafe.

1.4 Originally 1-5 Acomb Road was a single unit. In 2002 planning permission was granted to divide the use, leading to a takeaway at no.5 and a café at 1-3 (see application 02/02763/FUL). The approval was subject to the conditions that 1-3 only opened during the day, the proposal was on the basis it would cater for workers in the

surrounding area, and that the means of extraction were supplied - as the only kitchen was in no.5.

1.5 In October 2005 permission was granted (05/01917/FUL) to extend the opening hours, to include Sunday Mornings (09:00 to 13:30).

COMMITTEE

1.6 The application is brought to planning committee at the request of Councillor Bowgett on the grounds of noise, nuisance and anti-social behaviour.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Floodzone 2 GMS Constraints: Flood Zones 2 & 3

2.2 Policies:

CYS6 Control of food and drink (A3) uses
CYGP1 Design

3.0 CONSULTATIONS

ENVIRONMENTAL PROTECTION UNIT (EPU)

3.1 EPU have not objected to the application, but do have some concern over people leaving the premises late at night. Officers are particularly concerned that people leaving the establishment will have a detrimental impact on the noise environment and amenity of local residents. As such recommend that the hours are restricted to those applied for, and that a temporary permission be given so the impact on residential amenity could be monitored. If disturbance were to occur residents would be expected to keep a log of incidents and report them to the Council's EPU section.

HIGHWAY NETWORK MANAGEMENT

3.2 No objection.

SAFER YORK PARTNERSHIP

3.3 No response to date.

PUBLICITY

3.4 The application was publicised by site notice and letters of neighbour notification. The deadline for comments was 3.9.09. 5 letters have been received. They make the following points -

Oversupply of takeaways in the area.

Loss of business for similar premises.

Cooking smells occur as the kitchen has no fan or extractor

Associated with use are people congregating and litter. Reports of people hanging around this premises and anti-social and violent behaviour (an incident was reported to the policy in late July according to one letter). Persons passing by the area will be encouraged to loiter, due to the open premises. This will cause noise disturbance in the evening, in what is essentially a residential area.

Lack of parking facilities lead to persons parking illegally on the adjacent residential streets, meaning residents with permits are unable to park. This is likely to be a problem in the evening when residents who commute by car return from work.

4.0 APPRAISAL

KEY ISSUES

4.1 The main issues with regards the extension of hours are any additional impact on residential amenity and highway safety.

PLANNING POLICY

4.2 Policy S6 states that planning permission for the extension, alteration or development of premises for food and drink uses will only be granted provided -

- a) There is no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter.
- b) The opening hours of hot food takeaways are restricted where this is necessary to protect the amenity of surrounding occupiers.
- c) Car and cycle parking meets the standards defined in the Local Plan.
- d) Acceptable external flues and means of extraction have been proposed.
- e) Where security issues have been addressed.

RESIDENTIAL AMENITY

4.3 Noise could occur from customers coming and going, noise inside the premises, if it were to break out onto the street and possibly from the day to day operation, for example staff putting out bins and noise from the kitchen and staff cleaning or leaving the premises. Although there will be traffic noise in the area, it is likely to reduce somewhat later in the evening when the extended opening hours are asked for. The sources of noise would, unlike traffic noise, not be constant, but at random times, and may involve short sharp increases in noise level, which are more likely to cause disturbance.

Noise from persons coming and going

4.4 Previously the opening hours have been limited to daytime opening, as this was the stipulated market for the premises. However later opening hours could lead to noise disturbance from people coming and going, which is difficult to control. On such occasions noise can arise from talking/raised voices, slamming doors, starting engines, manoeuvring of vehicles and so on which can cause disturbance late at night if cars are present in any numbers near the housing frontages to side roads.

4.5 As the site is a café/restaurant people would spend more time in the premises, opposed to a takeaway where people come to collect food only. There is restricted parking on the two residential streets behind the premises, vehicles without a residents parking permit can only stop for an hour. The closest unrestricted parking area is some 75m to the west on Acomb Road. As such and due to the size of the host premises it is unlikely noise from people coming and going from cars would have a material impact on residential amenity.

4.6 Of more concern is persons leaving the premises after the consumption of alcohol. The premises advertise customers may bring their own alcohol to consume with meals. Customer behaviour can be controlled when they are inside the premises, but not after leaving, and there is concern that as this is predominantly a residential area, persons leaving the premises could cause disturbance to residents. On this basis the applicants have agreed to reduce the proposed hours of opening, to 23:00 on weekdays and midnight on Friday and Saturdays. A trial period of opening until such hours would allow officers to ascertain whether there were noise disturbance. Residents would be expected to report or log incidents if noise caused disturbance and report these to EPU - see paragraph 3.1.

Noise from the premises

4.7 The hours/times at which litter is put out can be controlled by condition as putting out bins, which include waste such as glass can cause considerable noise disturbance. This would have an undue impact on residential amenity at this site if it occurred late at night, as there is a house immediately behind the premises on Falconer Street. Because the premises are a restaurant, not a takeaway, customers leaving litter in the street should not arise from this premises.

4.8 Planning conditions can be applied to restrict any music emanating from the premises to an acceptable level.

Cooking smells

4.9 The statement submitted along with the application advises the kitchen has adequate extraction. There are two flues on the back of the building, outside the kitchen area which discharge at a high level above the eaves of the building. As such it is likely that cooking smells are dealt with adequately. EPU have received no complaints regarding cooking smells at the premises.

HIGHWAY SAFETY

4.10 Objections made suggest that this proposal would lead to visitors parking illegally in areas reserved to residents. It would not be unreasonable for customers to park and

walk from Acomb Road to the premises. Additionally it is suspected a significant amount of custom would come from the surrounding area and customers would use alternative means of transport.

4.11 The premises already have permission to operate during the day and highways have not objected to the proposed extension of hours. The concerns raised by residents are more so that people would not abide by the residents parking system, rather than that such practice would have a material adverse impact on highway safety. Overall officers consider the proposal would not have a material impact on highway safety.

SECURITY ISSUES

4.12 Reports have been made with regards anti-social behaviour occurring at or nearby the premises. It is considered that this should be either dealt with by the Police or the premises licence, which is required for premises trading after 23:00.

5.0 CONCLUSION

5.1 A temporary permission is recommended to allow a trial run for the later opening to assess the impact on residential amenity. Conditions are suggested to prevent any noise as a consequence of the premises operating causing harm to the amenity of surrounding occupants. Should noise and disturbance occur residents should log times of such disturbance and if necessary report it to the EPU section of the Council.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 PLANS1 Approved plans - ARY/01

2 The restaurant/cafe shall not be open to customers, and all customers shall have vacated the building outside the following hours:

Sundays to Thursdays 07:00 to 23:00
Fridays and Saturdays 07:00 to 24:00 (midnight).

The use shall adhere with these hours for a period of one year from the date of this permission after which the opening hours shall revert to 07:00 to 16:00 hours Mondays to Saturdays and 09:00 to 13:30 hours on Sundays, unless planning permission has been obtained from the Local Planning Authority for the continuation of the hours hereby permitted.

Reason: In the interests of amenity, so the Local Planning Authority may assess the impact of this use, in accordance with policy S6 of City of York Draft Local Plan.

3 No music, sound reproduction or amplification equipment shall be used that

would be audible outside the premises.

Reason: In the interests of amenity

4 Waste bins shall be stored within the curtilage of the premises at all times, apart from immediately before collection, and no emptying of waste shall occur outside the building between the hours of 22:00 and 08:00 the following day, on any day of the week.

Reason: To protect the amenity of neighbouring residents.

5 The flat above the cafe shall only be used in conjunction with the cafe.

Reason: In order to prevent the residents of the flat being affected by noise and odour.

7.0 INFORMATIVES:

Notes to Applicant

1. REASON FOR APPROVAL

Temporary permission is granted for a trial period to assess the impact on amenity, the conditions listed above seek to prevent undue harm to interests of acknowledged importance, with particular reference to residential amenity and highway safety. As such the proposal complies with Policies S6 and GP1 of the City of York Development Control Local Plan.

2. INFORMATIVE

USE OF PREMISES

You are reminded that the building has planning permission for a cafe / restaurant only and not to sell food for takeaway purposes.

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