

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Holgate
Date: 14 December 2009 **Parish:** No Parish

Reference: 09/01851/FUL
Application at: 3 Acomb Road York YO24 4EN
For: Change of use to a mixed use comprising cafe and hot food take-away
By: Mr M Altin
Application Type: Full Application
Target Date: 28 December 2009

1.0 PROPOSAL

APPLICATION SITE

1.1 The application relates to the cafe at 1-3 Acomb Road. 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, next door at 5 Acomb Road and at no.8 also. 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 The application is for planning permission to allow takeaway sales from the premises. This would include a delivery service.

SITE HISTORY

1.3 1-3 Acomb Road was previously in retail and office use until planning permission was granted to convert it into a cafe in 1999. Originally the premises were opened to serve workers in the surrounding area and the hours were predominantly during the daytime and not on Sundays. In 2005 permission was granted to allow Sunday opening. At planning committee in September 2009 planning permission was granted to extend the hours of opening to 07:00 to 23:00 and 24:00 (midnight) on Friday and Saturday evenings. There were objections from 5 different households with regards the proposals and permission was granted on a temporary basis only, to assess the impact on amenity .

COMMITTEE

1.4 The application comes to committee as members decided the last application at this site. Councillor Bowgett has also requested the application be determined at committee on the grounds of impact on residential amenity and due to a lack of parking.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Floodland GMS Constraints: Flood Zone 3
Floodland GMS Constraints: Flood Zone 2

2.2 Policies:

CYS6 Control of food and drink (A3) uses
CYS7 Evening entertainment including A3/D2
CYGP1 Design

3.0 CONSULTATIONS

HIGHWAY NETWORK MANAGEMENT

3.1 No objection to the proposed takeaway use. Report that there is no written confirmation on file that the delivery vehicle may park at the nearby public house. As such the application was appraised on the assumption that the delivery vehicle would either park in a res-park area nearby or on the 'double yellow lines' on Falconer Street (the latter is permitted under highways legislation, for 'loading'). Officers advise that the res-park zone would allow vehicles to wait for 60 mins. and then return 60 mins. later during the day. Res-park restrictions only apply until 17:00 Monday to Saturdays.

SAFER YORK PARTNERSHIP

3.2 No objection. Advise that based on evidence held by the police and local knowledge the host premises, and the existing takeaways in the area do not directly generate crime or anti-social behaviour.

COUNCILLOR ALEXANDER

3.3 Objects on the grounds that delivery vehicles park on Acomb Road, to the detriment of highway safety, hours of operation, including deliveries, exceed 23:00 hours and the premises have offered free alcohol to customers.

PUBLICITY

3.4 The application was publicised by site notice and letters of neighbour notification. The deadline for comments being 4.12.09.

3.5 Two objections have been made to date -

- Question whether the Council will act in the interest of residents, or the business, who operate as they please regardless of any consents they may have from the Planning and Licensing departments. The premises has opened until late and

operated the takeaway service prior to obtaining planning permission and without applying for a premises licence.

- Opening hours of this type of premises lead to noise disturbance from customers and groups congregating in the area. This is already experienced and would worsen as a consequence of the proposed takeaway.
- Litter caused by food outlets. This will increase with further takeaways in the area. Suggest the applicant is required to carry out a litter pick of the surrounding area after closing.

4.0 APPRAISAL

KEY ISSUES

4.1 The main issues relating to this proposal are the amenity of surrounding residents and highway safety.

POLICIES OF THE LOCAL PLAN

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:

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

4.3 Policy S7 relates to evening entertainment, it includes uses such as take-aways. It states that proposals for such uses that complement the city centre or district centres will be permitted provided that there is no adverse cumulative effect on the vitality and viability of the respective centre, and there is no adverse effect on residential amenity.

4.4 Policy GP1 relates to all types of development and asks that there is no undue harm caused to residential amenity through noise disturbance.

RESIDENTIAL AMENITY

4.5 Permission is sought for the takeaway service to operate until 24:00 (midnight) on Friday and Saturday evenings and 23:00 otherwise. The takeaway element would also include home delivery, for which the applicant has a private vehicle. The supporting statement advises that there is an agreement in place with the Fox public house over the road, which allows the vehicle to park in their car park. However, there is conflicting information as to whether an agreement is in place. Officers have contacted the public house and been informed that there is no agreement, and the

vehicle has been observed parked on Falconer Street. Residents report this is a regular occurrence.

4.6 Persons visiting the premises by vehicle to collect food, and also the delivery van are likely to park on Falconer Street or Park Lane. This would be most convenient due to the volume of traffic on Acomb Road and as there are no waiting spaces on Acomb Road outside the premises. Falconer Street and Park Lane are both residential streets. In officer's opinion, the noise that would occur from associated activity; persons coming and going from vehicles (including the delivery van), manoeuvring of vehicles, engines running, amplified music, and raised voices would occur at random times, and may involve short sharp increases in noise level. This noise would cause significant harm to the existing levels of residential amenity as it would occur in the evening when people are in the home and potentially trying to sleep.

4.7 There is less concern about persons walking to the premises to obtain food and take it away. There is already a takeaway next door and Acomb Road is a main route between Acomb and the City Centre. Persons frequenting the premises are likely to be passing through, or in the area already. Such practice is unlikely to cause a material increase in any disturbance in the area, in particular during the daytime.

4.8 There is a litter bin directly between 1-3 and 5 Acomb Road. Furthermore if the premises does apply for a premises licence (required if hot food is served after 23:00), then a condition of the licence would be to carry out a litter pick after closing. It has been reported that litter from takeaways is a problem in the area therefore the litter pick requirement could also be a condition if planning permission were granted, in case a premises licence were not required. It is also noted that it would be difficult to attribute litter creation directly to this premises. There are two other takeaways nearby, and there may not be a material change in litter creation whether or not this premises offered takeaway food.

4.9 The premises is existing and has acceptable kitchen flues and means of extraction.

HIGHWAY SAFETY

4.10 Due to the location of the premises and parking restrictions in place customers are likely to park vehicles in the adjoining residential streets. They may wait in the res-park zones here for up to 60 minutes, until 17:00. After 17:00 the res-park restrictions no longer apply. Whilst this may at times obstruct residents from parking directly outside their premises, this activity would not in itself have a material impact on highway safety.

5.0 CONCLUSION

5.1 In officer's opinion customers visiting by car and the delivery vehicle(s) are likely to park on the nearby residential streets; Falconer Street and Park Lane. The noise that would occur as a consequence of such practice in the evenings would harm the

amenity of surrounding residents. As such the proposal is contrary to the requirements of policies GP1, S6 and S7 of the York Local Plan. Refusal is recommended.

6.0 RECOMMENDATION: Refuse

1 The proposal would cause harm to the levels of amenity presently enjoyed by the residents in Falconer Street and Park Lane. Customers visiting by car and the delivery vehicle(s) used by the premises are likely to park on the nearby residential streets, in particular Falconer Street and Park Lane due to convenience and the lack of parking available on Acomb Road. The noise that would occur as a consequence of such practice in the evenings: the manoeuvring of vehicles, engines running, amplified music, and raised voices would occur at random times, and may involve short sharp increases in noise level. On such occasions there would be significant harm to the levels of amenity presently enjoyed, and reasonably expected by residents. As such the proposal is contrary to policies GP1, S6 and S7 of the York Local Plan.

7.0 INFORMATIVES:

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