

1.5 The application has been called-in for a Committee decision at the request of Councillor Orrell if it is recommended for approval on the grounds that there is considerable local interest in and opposition to the application. However, following discussion with Councillor Orrell, whilst the application is recommended for refusal on highway safety grounds, it is considered that the application still be referred to Committee to allow a full debate about the issue of residential amenity, which is raised as a matter of concern by the parish council and local residents.

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 (2) 0005

2.2 Policies:

CYGP3

Planning against crime

CYS6

Control of food and drink (A3) uses

CYS9

No loss of local or village shops

3.0 CONSULTATIONS

3.1 PUBLICITY: The application was advertised by way of a notice posted at the site and letters to immediate neighbours and Huntington Parish Council as well as relevant internal consultees.

3.2 INTERNAL RESPONSES

(i) Environmental Protection Unit - No objections in principle.

This is mainly because the applicants have only applied to open until 22.30. In addition, the proposed kitchen extract system is to be sited towards the back of the property in a position such that noise nuisance is unlikely to affect nearby residents.

There would be concerns if the business were to be open later at night as is the usual practice with takeaways due to likely loss of amenity as a result of noise disturbance from customers, vehicle engines, car doors slamming, car radios, people talking and shouting loudly, plus noise from delivery vehicles used by the business.

In order to address possible loss of amenity due to noise and odour nuisance as a result of the activities of the restaurant/takeaway, request conditions regarding kitchen

extraction equipment, details of all machinery, plant and equipment and restriction of opening times and delivery times. Noise sources could include the kitchen extract system, any refrigeration or freezer equipment, music sound system etc. In addition it is possible that vehicle noise from both customers and delivery vehicles could disturb local residents late at night.

(ii) Highway Network Management - recommend refusal on highway safety grounds.

The proposed change of use complies with recommended parking standards and therefore a refusal on highway grounds would not normally be substantiated. However the parking facilities of up to seven places are not for the exclusive use of this proposed development. The parking areas also serve an electrical retailer and repair workshop and a separate office at first floor level.

It is claimed that there will not be a conflict of interests as the existing users operate at different times of the day. However, unless this can be controlled then there is no guarantee that a conflict cannot be avoided. This is particularly relevant as the restaurant seeks to open at 5pm, when it is not unreasonable for either the retail or office use to be still operating. In the absence of a practicable and enforceable arrangement or agreement whereby the various site occupiers would operate at separate times, the site as a whole and overall parking arrangements are considered as being inadequate.

Under such circumstances, it is recommended that the application be refused for the following reason: The Local Planning Authority considers that in the absence of adequate parking space the proposed development would be likely to result in vehicle parking outside the site on the Public Highway to the detriment of the free flow of traffic and road safety.

3.3 EXTERNAL

(i) North Yorkshire Police (Traffic) - Objects on the following road safety grounds:

- The application states that there are seven (7) car parking spaces. Intimating that these are available for the use of customers. Examination of the plan clearly indicates that this is not the case. At the most five vehicles could be accommodated for customer use, as the two most easterly would be blocked-in by other customers vehicles. I suggest that that this is a woefully low number to service a site which has a planned restaurant seating 20 guests and a take-away with home delivery service.
- would suggest that at least one motor car would be used for the Home delivery service, thus reducing parking available to visitors still further to possibly four (4).
- The lack of parking space both for restaurant clients and persons wishing to visit the takeaway side of the business, the restricted nature of the site, would inevitably lead to vehicles parking in the surrounding roads and on the grass verges/footpaths.
- Willow Glade is almost directly opposite Number 157 and would be an obvious venue to park. This could cause safety issues for persons wishing to enter or leave Willow Glade by vehicle into New Lane.
- The parking of vehicles in this vicinity could also make crossing of the minor road of Willow Glade junction with New Lane, difficult for pedestrians.

- Motor vehicle traffic would be increased along Firwood Whin, Priory Wood Way and Willow Glade, as this is an obvious 'loop'.

(ii) North Yorkshire Police (Architectural Liaison Officer) - Makes following comments:

Planning Context - Designing out Crime - Planning Policy Statement 1 (PPS1) makes clear that a key objective for new developments should be that they create safe and accessible environments where crime and disorder or fear of crime does not undermine quality of life or community cohesion.

Safer Places: The Planning System and Crime Prevention (Companion Guide to PPS1) states that "Places should be structured to minimise opportunity for conflict, especially when designing for mixed use development. The siting and design of potential honeypots (places where people congregate and linger) and hotspots (places where criminal and anti-social behaviour is concentrated) require particular attention so as not to bring crime to particular types of area. In certain circumstances it may be easier to manage a concentration of such places, so long as such concentration is not excessive."

It is recognised that increased numbers of customers around A5 (hot food takeaway) uses, particularly in the late evenings when trading activity tends to reach its peak, can lead to problems of disturbance, increased noise and anti-social behaviour.

From reading the comments received from local residents, it is clear that there is concern about the loss of amenity and that parking and anti-social behaviour are particular issues.

Michael Frith, Safer York Partnership Crime Analyst, has carried out an analysis of police-recorded incidents within 50m of the application site covering a period from 1.12.08 to 30.11.09. During this period there were no crimes recorded, however, there were two anti-social behaviour incidents relating to vehicle nuisance from the car parking area outside the proposed premises. From the analysis, it can be seen that we do not suffer from any significant crime problems at this location. However, this could change if the hot food takeaway went ahead.

For information, there are three hot food takeaway premises already located nearby at Monks Cross Shopping Park e.g. McDonald's, Starbucks and Pizza Hut. There is also a fish and chip shop situated in Huntington Village.

Has responded recently to a planning application for a further two takeaways at Monks Cross. Did not raise any objection to these as their introduction would have had no impact in respect of loss of amenity of residents and they would both be covered by shopping park security, e.g. 24hr security patrols/guards and CCTV.

Have liaised with our Police Licensing Department and unless there is an application for a Premises Licence to operate after 1am at night, they have no comment to make. If the developer applies for such a licence, then our Licensing Department would be asking for conditions to apply e.g. CCTV coverage of the premises and all areas to which the public have access including entrance area, and the carrying out of a litter pick after closing.

Based on planning policy guidance, there could be crime and disorder implications associated with this change of use. However, based on recent planning appeal decisions, not sure that 'perceived risk' would be sufficient grounds for objecting to the proposal.

(iii) Huntington Parish Council - Strongly object to this application:

- Such a change of use would result in a loss of amenity to local residents due to the extension of business hours. The present use means hours of business are 6 days per week during the hours of 8:00 and 17:00. The hours of business for the proposed change of use are 7 days per week from 17:00 until 22:30;
- The increase in traffic that the proposed change of use would attract on a stretch of busy road, already identified as a speeding hot spot;
- Lack of adequate off street parking to accommodate such an additional facility at the site would result in congestion as customers' park on New Lane and adjacent residential areas.

(iv) 27 letters/emails from local residents objecting on following grounds:

- Highway safety from increased traffic and limited parking, exacerbating existing parking problems;
- Increased disturbance to residential amenity from noise, smells, litter and traffic;
- Fear of crime and anti-social behaviour;
- Issues with frequent drainage problem in the immediate area;
- Existing facilities/lack of local need - NB Not material to the consideration of this application;
- Appropriateness of extension to accommodate electrical retail/repair business - NB Separate matter;
- Concerns that claims made about need for extension to property not true intention - NB Not material to consideration of this application;
- Devaluation of property - NB Not material planning consideration.

(v) One submission from local resident - supports a good quality Indian or Chinese takeaway/restaurant, which is not available in Huntington.

4.0 APPRAISAL

4.1 KEY ISSUES:

- loss of shop;
- residential amenity;
- parking provision and highway safety;
- fear of crime.

4.2 POLICY CONTEXT: Planning Policy Statement 1 (Delivering Sustainable Development) makes clear that a key objective for new development should be that they create safe and accessible environments where crime and disorder or the fear of crime does not undermine quality of life or community cohesion. Further good practice advice is contained in Safer Places - the Planning System and Crime Prevention.

The City of York Draft Development Control Local Plan policies contained in section 2.2 are material to the consideration of this application. The three relevant policies are GP3 (Planning Against Crime), S6 (Control of Food and Drink A3 Uses) and S9 (Loss of Local or Village Shops).

Policy S6 states that planning permission for the development of food and drink uses (after the change to the Use Classes Order in 2005 covers A3, A4 and A5 uses) will be allowed provided there are no adverse impacts on the amenities of surrounding occupiers, there is adequate car and cycle parking and external flues and means of extraction are acceptable.

Policy S9 only grants permission for a change of use that would result in the loss of a local shop where it is demonstrated that either a local need for the shopping facility no longer exists or appropriate alternative facilities exist within the local area. The supporting text to the policy makes references to the important service to residents that local shops offer through the provision of a range of convenient goods and associated services.

4.3 LOSS OF SHOP: The applicant's case states that the existing use is not an essential local facility, but is a specialist use which attracts customers from the City rather than from the local area. It also points out that the area is close to Monks Cross and there is a range of local shops in Brockfield Park Drive to the west (these are within walking distance). Furthermore, marketing of the premises has been undertaken since June 2009, with limited interest other than A3/A5 users (the pre-application enquiries received by the Council would confirm this statement). The above comments are accepted and, in addition, the intention to retain the existing retail and repair business at the site albeit with reduced floorspace. As a result, it is considered that there are no grounds for refusal on the basis of the loss of a local shop.

4.4 RESIDENTIAL AMENITY: Concerns have been expressed by the parish council and local residents about the impact on the amenity of surrounding residential occupiers from the proposed use, primarily through the extension of business hours and increase in noise disturbance created by the nature of the use. Whilst the site is adjacent to the large Portakabin manufacturing site and has traffic passing along New Lane visiting Monks Cross and the city centre, local residents confirm that it is largely residential in character and relatively quiet after the early evening. The activity associated with Portakabin is largely contained within its large site and no other uses have been identified along this stretch of New Lane that open later into the evening. There are residential properties to the north and opposite the property.

The proposal would introduce a level of activity later into the evening, particularly from the likely frequent comings and goings associated with the takeaway and delivery element of the use, that does not occur at present in the immediate area. This has the potential to cause a significant increase in noise and disturbance, which would be likely to adversely affect the amenity that local residents presently enjoy. However, the Council's Environmental Protection Unit (EPU) has been consulted and raises no objection on the basis that the use would only open until 22:30 with kitchen extraction equipment being sited towards the back of the property. The response from EPU does state that there would be concern about loss of amenity if the business were to open

later at night. It is assumed that the business is considered by the applicant to be viable with a closing time of 22:30.

4.5 HIGHWAY SAFETY: There is an existing car parking area at the front of the site providing seven (7 no.) spaces that could be utilised by staff and customers. Two of these spaces are at the side of the building and have limited access that could only be practically used for staff parking. This would leave five (5 no.) spaces available in the front car parking area, which would be sufficient to meet the Council's maximum requirements for the proposed uses, based on the internal floor area of this element of the use. Whilst the Local Plan standards specifically refer to A3 uses rather than A5, the document has not been revised to take account of the revision to the Use Classes Order and separation of the various food and drinks uses that originally fell within the A3 Use Class.

However, given that the proposal includes a restaurant, takeaway and delivery service, there is the potential for vehicles parking on New Lane on busy nights when the restaurant is full and customers are visiting the takeaway facility. Furthermore, one of the parking spaces in the front area of the car park would also have to be used by the delivery service vehicle, to ensure it could enter and leave independently of customers vehicles in order to make deliveries. It is also noted that the space in front of the proposed new entrance to the relocated electrical retail and repair business, which would make it difficult to access.

The Council's Highway Engineer has been consulted and highlights the fact that whilst there is sufficient space to meet Council's standards, the parking facilities are not for the exclusive use of this proposed development and are shared with the other users of the building. The case put forward by the applicant is that the proposed use would operate outside normal daytime business hours and therefore would not conflict with the other users. However, the hours of opening sought are from 1700, when it would not be unreasonable for either the retail/repair business or office use to still be operating. Indeed, third party correspondence states that there is 'constant vehicular movements from 0730 to 1800'. This would potentially reduce the number of spaces available for the new uses resulting in the parking of vehicles on the highway at a particularly busy time of day. As a result, the Highway Engineer recommends refusal of the application. This would exacerbate an existing problem with parking at the site, identified by the Police Traffic Management Officer and local residents.

Consideration has been given to a method of ensuring the arrangement proposed by the applicant, but it not considered that this would meet the tests of Circular 11/95 in terms of being enforceable and reasonable. A later opening time for the proposed use may help, but this is considered to be unreasonable as it would potentially render the business unviable when coupled with a restriction on the closing time, and would prevent the use from catering for early evening (i.e. tea time) trade.

4.6 CRIME AND ANTI-SOCIAL BEHAVIOUR: Whilst the Police Architectural Liaison Officer notes that there can be problems of disturbance, increased noise and anti-social behaviour from hot food takeaway uses, and that there could be crime and disorder implications associated with this change of use, the 'perceived risk' is

considered not to be sufficient grounds for objecting to the proposal. It is noted that such a reason for refusal relating to the proposed uses has rarely been upheld at appeal. The potential for increased litter in the area, raised by local residents, is normally addressed through the provision of bins outside the premises.

5.0 CONCLUSION

5.1 The proposal involves the conversion of part of the ground floor of this two storey commercial building into a restaurant and takeaway with delivery service. The opening hours applied for are 1700 to 2230 Monday to Sunday.

5.2 Objections have been raised by the local parish council and residents surrounding the site as well as by North Yorkshire Police and the Council's Highway Network Management section on highway safety grounds. The potential for conflict by the various users of the building during the early evening (1700-1800 hours) and the subsequent impact on highway safety on the surrounding network, is considered to be significant to warrant refusal of the application. Whilst the potential for noise and disturbance to local residents from the introduction of an evening use of the building and the associated external activity is clearly an issue, it is noted that the Council's Environmental Protection Unit does not object due to the proposed 2230 closing time.

5.3 In light of the above, the proposal is recommended for refusal on highway safety grounds.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Refuse

1 The proposal would introduce additional uses into this commercial building with a time of opening that could conflict with the closing times of the existing businesses. This is likely to result in competition for the limited number of staff and customer spaces within the shared car parking area, leading to vehicles parking on the public highway at a particularly busy time of the day, to the detriment of the free flow of traffic and road safety. The proposal would, therefore, conflict with Policy S6 of the City of York Council Draft Development Control Local Plan (incorporating 4th set of changes, April 2005).

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