

COMMITTEE REPORT

Date: 11 November 2010 **Ward:** Huntington/New Earswick
Team: Major and Commercial Team **Parish:** Huntington Parish Council

Reference: 10/00342/FUL
Application at: Minster Alarms Suncliffe House 157 New Lane Huntington York
For: Change of use of part ground floor from retail (use class A1) to sale of hot food (use class A5) providing delivery service only
By: Mr Hazan Hazar
Application Type: Full Application
Target Date: 22 April 2010
Recommendation: Approve

1.0 PROPOSAL

1.1 SITE

The application relates to part of the ground floor of a two storey detached building on east side of New Lane. The ground floor is currently in use as an electrical sales and repair shop with the first floor in use as offices by a burglar alarm supplier and installer. There is a hard surfaced car parking area at the front and side of the building for 7 cars (though two are not independent spaces). To the north and west of the site are residential properties. To the south is an electrical sub-station. To the east is the Portakabin manufacturing site.

1.2 PROPOSAL

The proposal relates to the conversion of the southern part of the ground floor for the sale of hot food providing a delivery service only. Access would remain via the existing shop entrance. The remainder of the ground floor, with access via new double doors in place of roller shutter doors, would remain as an electrical sales and repair business. The upper floor is unchanged. The proposed use would operate between the hours of 1700-2230 Monday to Sunday including Bank Holidays. Deliveries would be by private car by one of the two full time members of staff. It is intended that the existing car parking area would be used. No other physical external alterations are proposed.

1.3 APPLICANT'S CASE

A statement has been submitted confirming the site characteristics and layout of the ground floor. It states that the proposed use will commence at the end of the working day when the existing businesses are finishing/closed. In conclusion, it refers to the lack of interest in the unit following a marketing exercise, the retention of a facility that will serve the local community, the protection of residential amenity through the installation of fume extraction equipment along with restriction to delivery only, a reasonably early closing time and the provision of on-site parking arrangements.

The applicant has submitted correspondence in response to queries and objections raised, including:

1. Letter from applicant explaining that the application proposes 'shop-to-home' delivery service with no customers allowed indoors; that there is sufficient space for 2 vehicles; and that the proposed use would not devalue other properties.
2. Letter from the agent on behalf of the applicant providing some approximate costings relating to the 'delivery only' service to support the applicant's claim that a delivery only service would be a sustainable business and confirming that he has not come across the situation of customers ordering food for delivery to a vehicle outside the shop in his past 8 years of trading.

1.4 HISTORY

The relevant planning history for the site is as follows:

- 1986 - change of use of former brewery offices into private school;
- 1993 - change of use to television and electrical shop (A1), association workshop (B1) on ground floor and offices (B1) on first floor;
- 1994 - single storey rear extension;
- 2005 - two storey rear and side extension;

An application was submitted in 2009 (09/2186/FUL) for the change of use of the same ground floor area from retail to a restaurant and hot food takeaway with delivery (use classes A3 and A5). The application was withdrawn prior to its determination, after the applicant was informed of the officers' intention to recommend refusal on highway safety grounds. The Highway Authority had objected to the proposal due to the lack of sufficient off-street parking to serve the proposed use at a time when the other two existing users would still potentially be operating at the site. The application had been called-in for a Committee decision at the request of Councillor Orrell, due to the considerable local interest in and opposition to the application. As a result of this history, this application was flagged as an application requiring a committee decision.

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 or open subsequently as a traditional takeaway or restaurant. If that were the case, there would be more concerns 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.

The Unit does not see how a takeaway business relying on a delivery service only can be viable with only 1 or 2 delivery vehicles and as such remains concerned that additional delivery vehicles will be used and vehicle noise could then affect the amenity of local residents, particularly later in the evenings. It is also likely that customers will arrive at the premises thinking they can buy a takeaway and will add to the overall noise in that specific area of New Lane as vehicles stopping and starting, car doors being opened and closed and reversing of vehicles, creates more noise than vehicles simply driving along New Lane. They note that considerably more of the ground floor is now denoted as kitchen and questions why there is now a need to enlarge the kitchen unless the intention is to serve substantial numbers of customers from over a wider area of the City, requiring a fleet of delivering vehicles.

In order to address the possible loss of amenity due to noise and odour nuisance as a result of the activities of the takeaway, the Unit requests that conditions regarding kitchen extraction equipment, details of all machinery, plant and equipment and restriction of opening times and delivery times.

(ii) Highway Network Management - Should the planning officer consider that to restrict the use to deliveries only would be enforceable and reasonable then there are no highway objections to this proposed development.

These proposals would greatly reduce the potential for traffic movements into/from the site as theoretically the only vehicles that would be associated with the

development would be the owners' and the delivery vehicle. This would greatly reduce the possibility of conflicts with other site users as there would be no customers' vehicles. It is probable however that the number of delivery vehicle movements would potentially be greater than those associated with the original proposals but it is not thought that the overall effect on New Lane would be significant. No highway objections providing the use can be restricted to deliveries only.

3.3 EXTERNAL

(ii) North Yorkshire Police (Architectural Liaison Officer) - No comments to make in relation to 'designing out crime'.

(iii) Huntington Parish Council - Objects to this application:

- Impact on traffic as potential customers fail to realise it is delivery only;
- Lack of adequate off street parking to accommodate an additional facility resulting in congestion as staff and delivery drivers are forced to park on New Lane and adjacent residential areas;
- 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 'additional amenity' is provided by 'existing delivery service provision in the vicinity';
- Additional burden on local drainage structure.

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

- Highway safety due to increased traffic and limited parking, exacerbating existing parking problems;
- Increased disturbance to residential amenity from noise, smells, litter and traffic;
- Negative impact on 'tone' of residential area;
- Fear of crime and anti-social behaviour, especially for elderly and disabled people in area;
- Would impact on frequent drainage problem in the immediate area;
- Questions about viability of delivery only business in shop premises with kitchen larger than that for previous restaurant proposal and how prevent it from becoming hot food take away;
- 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

4.0 APPRAISAL

4.1 KEY ISSUES:

- loss of shop;
- residential amenity;
- parking provision and highway safety;
- fear of crime and anti-social behaviour;
- ability to restrict use.

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.

Planning Policy Statement 4 (Planning for Sustainable Economic Growth) seeks to protect the viability of town centres, whilst allowing appropriate local shopping provision in service centres and rural areas. Policy EC13 discourages planning applications which fail to protect existing facilities that meet day-to-day shopping needs and encourage those that improve their viability.

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). In particular:

- 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

National and local planning policy encourages the protection of existing local shopping facilities that serve a day-to-day need. 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, it is noted that the

intention is to retain the existing retail and repair business at the site albeit with a 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 regarding the impact on the amenity of surrounding residential occupiers from the proposed use, primarily through the extension of business hours into the evening resulting in increased noise disturbance. Whilst the site is adjacent to the large Portakabin manufacturing site and New Lane is a main thoroughfare for drivers visiting Monks Cross and the city centre, local residents confirm that it is largely residential in character and relatively quiet after the early part of the evening. The activity associated with Portakabin is largely contained within its extensive site perimeter 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. There is a distance of over 30m between the front elevations of those opposite and that of the application property. The house to the north, no.155, extends up to the northern boundary of the site with its garage - the distance between the house itself and the entrance into the application building (and beyond this the cooking area and counter) is approximately 20m. The majority of the proposed use would be confined to within the premises, with activity outside being from the delivery vehicles.

The proposal would introduce a level of activity at the premises into the evening that does not occur at present in the immediate area, mainly from the comings and goings associated with delivery vehicles. The applicant claims that the other two uses in the building have ceased by 17:00 when the proposed use is intended to commence, though it is noted that local residents experience activity after 17:00. Regardless, the later operating hours of the proposed use has the potential to cause increased noise levels and disturbance, which would impact on 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 operate 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, particularly if there were more than two delivery vehicles and from potential customers trying to buy food to takeaway. It is assumed that the business is considered by the applicant to be viable with a closing time of 22:30 as this forms part of the application. EPU have requested various conditions regarding restriction of operating hours and extraction equipment.

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 delivery vehicles - two of these spaces are at the side of the building with limited access making them only practical for staff parking. This would leave five (5 no.) spaces available in the front car parking area, which would be sufficient to serve the proposed use, even at the potential cross over

time of the existing and proposed businesses. The Council's Highway Engineer raises no objection in light of the above, subject to the imposition of a condition restricting the use to delivery only.

4.6 CRIME AND ANTI-SOCIAL BEHAVIOUR

Local residents are concerned that the use would potentially result in anti-social behaviour. The Police Architectural Liaison Officer has been consulted and does not wish to make comment with regards this revised application. As the proposal, by definition, would not involve sale of hot food to customers visiting the premises, there should be no congregation of people outside the building, dropping of litter nor the amount of comings and goings associated with a takeaway.

4.7 RESTRICTION OF USE TO DELIVERY ONLY

The operation is proposed in a retail unit with a large display window and it has been indicated that signage may be applied for separately. Given the location and characteristics of the premises, the business has the potential to attract passing trade resulting in additional vehicles parking on the front communal parking area. The impact on highway safety from vehicle parking was an issue with the previous application for a restaurant and takeaway with delivery, as the Highway Officer raised objections due to the potential conflict and subsequent highway safety hazard from an excess of vehicles relating to three different businesses using the one car parking area. The revision of the operation to delivery only, even with an overlap of operating hours with the existing two businesses, has addressed the objection of the Highway Officer.

However, concern has been raised by local residents, as well as by officers, about the ability to restrict the use of the operation proposed to 'delivery only' and the financial viability of a business with what seems to be excessive floor space for its needs - it is noted that a restaurant, hot food takeaway and delivery service were previously proposed in the same space. This has led to concerns about the future intentions of the applicant, though the application before the Council needs to be determined on the merits of the proposal.

Officers had reservations about the ability to restrict the use by condition to 'delivery only' and whether such a condition would meet the tests of Circular 11/95 ("The Use of Conditions in Planning Permissions"), in terms of being 'enforceable' and 'reasonable'. With regards the latter, the applicant has applied for delivery only and has confirmed that such a restriction would still allow a viable business to operate from the premises, taking into account all expenses. Therefore, to address highway safety concerns and as the business is considered to be viable by the applicant, a condition restricting the use would meet the test of reasonableness. It is also considered that such a condition would be enforceable as it could be monitored by the Council's Enforcement Team if it was alleged that the applicant was selling hot food to individuals visiting the premises. A condition should also be attached requiring details of an appropriate notice to discourage members of the public from trying to enter the building.

5.0 CONCLUSION

5.1 The application represents a reduction in the scale of the operation proposed at the site and as such overcomes some of the objections previously raised to the use as a restaurant, takeaway with delivery. The applicant has applied for a delivery service only with specified operating hours and claims that this is a viable business proposition. As a result, it is considered that a condition restricting the use to that applied for would meet the tests of Circular 11/95, in terms of being reasonable and enforceable. Whilst the concerns of local residents about future applications to expand the use to takeaway or restaurant are noted, this would require a specific application that would need to be duly considered and determined.

5.2 Officers have some reservations about the impact of the use in terms of noise disturbance related to the operation on the amenity of local residents into the evening when other activity in the area has ceased or reduced. However, no objections are raised by the Council's Environmental Protection Unit to support this concern. The presence of large employment premises immediately next to the site, the location of this site on a thoroughfare into and out of the City and Monks Cross and the separation distances to surrounding houses from the proposed use itself are noted.

5.3 Therefore, on balance, the proposal is recommended for approval, subject to conditions restricting the use to delivery only, hours of operation and control of equipment.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 TIME2 Development start within three years

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

Unnumbered Location Plan dated February 2010 and received 24 Feb 2010;
Drawing no. SNL/1/03 'Proposed Floor Plan' dated February 2010 and received 24 Feb 2010;
Drawing no. SNL/1/04 'Proposed Floor Plan' dated February 2010 and received 24 Feb 2010;
Drawing no. SNL/1/05 'Proposed Elevations' dated February 2010 and received 24 Feb 2010;
Drawing no. SNL/1/06 'Proposed Site Plan' dated February 2010 and received 24 Feb 2010;

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

3 The use hereby approved shall be for the sale of hot food for consumption off

the premises by delivery only and there shall be no direct counter service or collection of orders by members of the public at any time. A notice shall be posted at the premises to inform members of the public that the facility is delivery only, with no access for members of the public and no takeaway by them from the premises. Details of this shall be submitted to and approved in writing by the Local Planning Authority prior to being displayed.

Reason: The use of these premises for the sale of hot food for consumption off the premises taken away from the premises by the purchaser is likely to be detrimental to the amenities of nearby residents and/or detrimental to highway safety.

4 The premises shall be used for the sale of hot food for consumption off the premises by delivery only and for no other purpose, including any other purpose in Class A2 or A3 in the Schedule of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order.

Reason: So that the Local Planning Authority may re-assess alternative uses which, without this condition, may have been carried on without planning permission by virtue of Article 3 of the Town and Country Planning (Use Classes) Order 1987.

5 Any kitchen extraction system proposed by the applicant must be adequate for the treatment and extraction of fumes so that there is no adverse impact on the amenity of occupiers of this or nearby premises by reason of fumes, odour or noise. Full details of the extraction plant or machinery and any filtration system required shall be submitted to the Local Planning Authority for approval. Once approved, it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenity of nearby occupiers of premises.

6 Details of all machinery, plant and equipment to be installed in the proposed premises, which is audible outside the site boundary, and the proposed noise mitigation measures, shall be submitted to the Local Planning Authority. These details shall include maximum ($L_{Amax}(f)$) and average (L_{Aeq}) sound levels (A weighted), and octave band noise levels they produce. All such approved machinery, plant and equipment shall not be used on the site except in accordance with the prior written approval of the Local Planning Authority. The machinery, plant or equipment and any approved noise mitigation measures shall be appropriately maintained thereafter.

Reason: To protect the amenity of occupiers of nearby buildings.

7 The use hereby permitted involving the delivery of hot food for consumption off the premises, shall be confined to the hours of 17:00 to 22:30 Monday to Sunday.

All deliveries of raw ingredients and supplies to the site shall be confined to the hours of 10:00 to 22:30 Monday to Sunday.

Reason: To protect the amenity of local residents.

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 loss of local shopping facilities, impact on residential amenity, highway safety and fear of crime/anti-social behaviour. As such, the proposal complies with the general aims of Planning Policy Statement 1 (Delivering Sustainable Development), Policy EC13 of Planning Policy Statement 4 (Planning for Sustainable Economic Growth) and Policies GP3, S6 and S9 of the City of York Development Control Local Plan.

Contact details:

Author: Hannah Blackburn Development Management Officer
Tel No: 01904 551325