

## COMMITTEE REPORT

**Date:** 17 March 2011                      **Ward:** Micklegate  
**Team:** Major and Commercial      **Parish:** Micklegate Planning Panel  
Team

**Reference:** 10/02850/FUL  
**Application at:** The Secret Garden 15 Bishopthorpe Road York YO23 1NA  
**For:** Change of use from retail (use class A1) to restaurant (use class A3) as extension to Lal Quila at 17 Bishopthorpe Road. Use of first floor of 17 as managers flat.  
**By:** Mr H Kabir  
**Application Type:** Full Application  
**Target Date:** 15 February 2011  
**Recommendation:** Refuse

### 1.0 PROPOSAL

1.1 The application relates to the ground floor of 15 Bishopthorpe Road, which was last used as a retail premises. There is a self-contained flat above. The premises are in a parade of local shops.

1.2 Planning permission is sought to use the premises as a restaurant/take-away. There is a restaurant next door at no.17, which the premises would merge with. The kitchen would remain at the rear of no.17. At no.15 there would be tables and chairs at the front of the premises, along with a seating area for take-away collection and new toilets at the rear. The 1st floor of no.15 is presently used as toilets and further seating for customers. This space would be used as a flat, associated with the premises. Upstairs at no.17 would remain as a self-contained flat.

1.3 The application is brought to committee at the request of Councillor Gunnell, to allow members to consider whether the application would affect the vibrancy of the street during the daytime and evening.

### 2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area 0006

2.2 Policies:

CYS6 Control of food and drink (A3) uses  
CYS9 No loss of local or village shops

### **3.0 CONSULTATIONS**

#### Design, Conservation and Sustainable Development

3.1 The site is in an area of archaeological importance. No works are proposed that would affect archaeology. No objection.

#### Highway Network Management

3.2 No objection. Ask for cycle stands to be provided at the premises (6 for customers, 2 for staff).

#### Environmental protection unit

3.3 Concern that an increase in capacity of the restaurant could lead to increased amounts of cooking smells/odours emanating from the kitchen. Details of the extraction system have been asked for, to ensure cooking odour/smells do not have an adverse effect on surrounding occupants.

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3.4 Object due to the loss of a retail unit on the street that would occur.

#### Publicity

3.5 Two objections. This is a thriving street during the daytime, with a strong sense of community, with small local/independent shops. This positive aspect will be lost if shops are turned into restaurants which only open in the evening. There are already 9 premises in the street that are either restaurants or takeaways, to turn a further premises into such a use would have an adverse impact on the vitality and unique character of the street. It is considered a retail, rather than a food outlet, would serve the community better.

### **4.0 APPRAISAL**

#### 4.1 Key Issues

- Vitality and viability of the street
- Amenity of surrounding occupants
- Highway Network Management

#### Vitality and viability of the street

4.2 Of PPS4: Planning For Economic Growth policies EC2 and EC13 are relevant. EC2 recommends that local planning authorities (LPA's) support existing business sectors, taking account of whether they are expanding. EC13 requires that when considering schemes in local centres, LPA's consider the importance of the shop or service to the local community and refuse applications which fail to protect facilities providing peoples everyday needs.

4.3 The objectives of the shopping policies in the Local Plan are to maintain and enhance the vitality, viability, diversity and range of shopping provision in neighbourhood shopping parades. Policy S9 advises that permission will only be granted for the loss of local shops where a local need for the facility no longer exists, or the area would retain appropriate facilities.

4.4 The proposal is to merge the premises with the restaurant at no.15, allowing the business to expand. The existing restaurant is predominantly a night-time use, (the opening hours applied for are 17:00 to midnight). It has an ancillary take-away element, which would be increased by the expansion proposed. There is a similar restaurant with ancillary takeaway at no.21. In the shopping parade there are some 32 traders overall. There are 7 premises which are either restaurants or take-aways and 3 retailers selling cold/processed food for consumption (1 sandwich bar, 2 bakers) and an unimplemented permission for a restaurant at 27/29 (retail premises).

4.5 Due to the extent of the shopping parade, the loss of the premises would still leave adequate retail premises to provide the community with everyday needs. In this respect there would not be unacceptable conflict with policy EC13 of PPS4 and S9 of the Local Plan. However the proposed change of use would be contrary to the objectives of the local plan with regards shopping. The premises has only recently become vacant and there is no evidence of a lack of demand to keep it in retail use. There are a number of premises that only operate during the evening already, the proposal would add to such uses, leaving a premises that would be closed during the daytime. To this extent there would be a detrimental impact on the retail offer, character, vibrancy and vitality of the street, in particular during the day-time.

#### Amenity of surrounding occupants

4.6 Policy S6 states that planning permission for the extension 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, where the opening hours 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 and where security issues have been addressed.

4.7 There is a flat above the application site, and a number of residents live above the shops in the parade. The proposal would provide extra space for customers to wait and collect take-away food. There is the potential that increasing this element of the business could harm the amenity of residents, due to the increased activity of persons coming and going, that would occur up to midnight each day of the week. There is the potential of a cumulative impact also, as there would be a group of restaurants/take-aways opening between 17:00 and midnight occupying premises 7, 9, 15/17 and 21. The applicants advise that presently customers do not tend to cause disturbance. No objections have been made on such grounds, either during the consultation process or reported from the Council's Environmental Protection Unit. As such, and because the application is for the extension of an existing restaurant, rather than a stand-alone take-away, from which noise disturbance is more likely, there is inadequate evidence to recommend refusal on the grounds of noise disturbance.

4.8 No change to the kitchen is proposed, nor the existing opening hours. Takeaway sales would be ancillary only. From restaurants litter is typically not a problem, as, unlike take-away only premises, persons have the option to eat inside. Overall the

kitchen extraction, hours of operation and litter are unlikely to have an undue adverse impact amenity.

### Highway Network Management

4.9 There is a car park and cycle parking to the south of the premises which would be adequate to serve customers. There is a yard area to the rear of no.15, which could provide secure cycle parking for staff. The arrangement of such could be secured as a condition if the application were supported.

### **5.0 CONCLUSION**

5.1 Due to the existing amount of premises that are in non-retail use in the street, and as the proposal is for the loss of a retail unit, to be replaced by a use that would have a negative impact on the shopping provision, character and vitality of the shopping parade during the day-time, refusal is recommended as the proposal would, in this respect, be contrary to the shopping objectives of the local plan.

### **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION: Refuse**

1 The proposed use would lead to the loss of a retail unit, and expansion of a premises which does not operate during the daytime. There are a significant amount of existing premises which are not in retail use and do not operate during the daytime, and to increase the representation of such in the shopping parade would have a detrimental impact on the character of the street and the vitality and viability, range and diversity of shopping provision in the neighbourhood centre, contrary to the shopping objectives of the Local Plan.

### **7.0 INFORMATIVES:**

#### **Contact details:**

**Author:** Jonathan Kenyon Development Management Officer  
**Tel No:** 01904 551323