



and odour. The Inspector particularly questioned why the flue would need to be located on the side and not the back of the unit.

1.4 However, the Inspector did not agree with the Local Planning Authority regarding the potential impact of noise and disturbance on residential amenity, pointing out that the area already has evening activities and comings and goings associated with the adjacent Spar convenience store. The Inspector pointed out that all noise in and around the hot food takeaway would be likely to have ceased by 11pm. The Inspector also concluded that, given the scale of the proposed use, there would be no significant impact on traffic volume or safety. It was also concluded that there was no evidence that a hot food takeaway in this area would create crime or anti-social behaviour issues. With regard to litter, the Inspector concluded that most customers would either take food home for consumption or order a delivery, and that the additional litter caused by a small minority of customers would not be sufficient to justify the refusal of planning permission.

1.5 This application has been brought before Planning Committee due to the volume of correspondence received from local residents and the fact that the previous application was also determined by Committee.

## **2.0 POLICY CONTEXT**

### 2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: East Area (2) 0005

### 2.2 Policies:

CYS6  
Control of food and drink (A3) uses

CYGP1  
Design

## 3.0 CONSULTATIONS

### INTERNAL

3.1 Environmental Protection Unit - No objections, the applicant has demonstrated that a plant to deal with odour from cooking gases can be installed internally and not harm neighbouring amenity. Conditions are recommended to be added to any approval regarding the plant to be installed and opening hours.

3.2 Highway Network Management - No objections.

### EXTERNAL

3.3 Huntington Parish Council - No objections.

3.4 North Yorkshire Police - Crime and anti-social behaviour incidents in the surrounding area are low. Hot food takeaways can attract gatherings of people particularly at night, therefore it is important that such uses are controlled to protect neighbouring amenity. Previous objections to hot food takeaways on crime and disorder grounds, both locally and nationally, have generally been overruled by the Planning Inspectorate. There is difficulty in providing hard and fast evidence that would withstand scrutiny at a planning enquiry. Taking the analysis of the area into account, there is no evidence to justify an objection to this planning application on crime and disorder grounds.

3.5 Neighbours - Fourteen letters of objection received from local residents to date (site notice posted 11/07/11). The following points were raised:

- the proposal would create more litter, whilst bins can be provided people may not use them;
- teenagers already loiter in this area and have in the past caused noise and damage, a takeaway will encourage more of this;
- traffic and car parking is already a problem at these shops during busy times, a takeaway will add to this;
- smell from shops and its extraction flue will drift across the area which will make using gardens less pleasant;
- given the closeness between the unit and houses it will not be possible to stop smells spreading into houses;
- the area contains a large number of elderly residents who do not want this development;

- a lot of residents in this area go to bed by 10.15-10.45 and work involved in closing up the shop or people hanging around after it has shut may cause sleep disturbance;
- existing extractor fans in the area cause noise and it is not desirable to add anymore to this row of shops;
- queries raised regarding the frequency of bins being emptied to prevent smells and whether the drainage is sufficient;
- customers and delivery drivers will make noise through car doors opening and shutting;
- by moving the flue to the rear this has placed it closer to a number of residential properties, it would be better on the front away from houses;
- how is it going to be ensured that extractions systems are suitably maintained to stop them becoming noisy;
- it is felt that this application is an attempt to get a foot in the door leading eventually to later operating hours and the selling of alcohol;
- a hot food takeaway in this area would encourage local school children to eat unhealthy food.

One letter of objection was received from a local business owner who is concerned about the smell of cooking making it unpleasant for existing clients. Concerns were also raised regarding people hanging around the shops after other shops have closed and litter making the area less pleasant. Would much prefer the unit to become a shop to bring more shoppers to the area.

## **4.0 APPRAISAL**

4.1 It is considered that the key issues are:

- impact on the amenities of local residents through noise, odour and litter;
- visual impact on the character and appearance of the area;
- traffic and car parking; and
- anti-social behaviour.

4.2 The most relevant Development Control Local Plan Policy is S6 which controls food and drink uses. The five criteria which should be used to assess a hot food takeaway application based on this policy are:

- impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter; and
- the opening hours are to be restricted where this is necessary to protect the amenity of surrounding occupiers; and

- car and cycle parking meets local standards; and
- acceptable external flues and means of extraction have been proposed; and
- security where the consumption of alcohol is involved has been addressed.

4.3 The application under consideration contains two changes from the previously refused application. The first change is a minor increase in the proposed operating hours to 11:00 to 22:00 seven days a week. The previous application sought consent between the hours of 12:00 and 22:00 hours seven days a week. Given that the additional one hour of opening is at the start rather than end of the day, this change is not considered to be significant. Of more importance is the change in the extraction plant to be installed and the external flue location. The proposed flue is now located on the rear roof slope as opposed to the side elevation. The size of the flue is also significantly reduced. The extraction equipment would be located within the building.

#### NEIGHBOURING AMENITY

4.4 Noise - The application site is located at one end of a parade of shops which consist of a Spar retail unit, butchers, and hairdressers. There are a variety of opening hours within the existing retail units along this parade, the longest hours being the Spar shop which is understood to be open from 06:30 - 22:00 hours Mondays to Saturdays, and 07:00 - 22:00 hours on Sundays. It is proposed that the hot food takeaway would be open from 11:00 - 22:00 hours, therefore there would be no extension of opening hours within this parade of shops. In determining the appeal in relation to the previous application, the Inspector concluded: 'the proposed use would not introduce activity to an area which is currently extremely quiet and would be unlikely to add to existing levels of noise to an unacceptable degree'. The inspector then went on to state that any activities associated with the hot food takeaway should have died down well before 23:00 which is the specified time when people would normally be sleeping as outlined within Planning Policy Guidance Note 24: Planning and Noise. A condition could be added to any approval to both control opening hours and the time by which staff have to vacate the premises.

4.5 The second potential noise generator is the plant extraction system. It is worth noting that all of the existing shops within this parade of shops have plant systems at the rear of the building. The butchers shop has refrigeration plant contained within the storage building which is closer to

residential curtilages that the proposed hot food takeaway. These systems are audible from the surrounding area. Therefore the application site is not currently free from noise from the plant system and machinery. A supporting document has been submitted with the application which includes noise impact information relating to the proposed plant. This information states that average background recorded noise is 40.8dBA at this site. The proposed fan outlet would generate no more than 39dBA at 3m away. The extraction plant will be installed internally further reducing external noise levels. From noise recordings in the area the condensing unit attached to the butchers storage unit consistently generates over 65dBA at 3m away. Overall, this information indicates that it is unlikely that the sound of the proposed extraction plant would be discernible above background noise levels from 3m or more away. The nearest residential unit is approximately 7m away from the proposed hot food unit and a greater distance still from the proposed plant. Therefore, it is considered that subject to a condition controlling the plant equipment to be installed, there would be no significant harm to neighbouring amenity through noise. The Council's Environmental Protection Unit have raised no objections to the proposal on these grounds..

4.6 Odour - A number of letters of objection are concerned with odours and smells which can emanate from a hot food takeaway. The submitted supporting information states that filters would be in two parts, first would be panel filters configured in a V formation, followed by 6 carbon filters manufactured to be rechargeable to keep maintenance costs down. The filtered air would then be expelled through a high velocity discharge at the rear of the property. Air would be expelled at 15m/s in order to achieve a high level of dispersion thereby reducing concentrations of odour. It is considered that subject to conditions controlling plant, as stated in paragraph 4.5 above, the proposal would not harm neighbouring amenity through odour. Again, the Environmental Protection Unit has raised no objections on these grounds.

4.7 Litter - One of the reasons for refusing the previous application was the potential for litter generation. It is considered, however, that the majority of customers are likely to take food home or have food delivered. There is no significant sitting area provided within or outside the proposed hot food takeaway and therefore there is no incentive to consume the food within the area immediately surrounding the unit. However, a litter bin is provided outside the parade of shops should a customer wish to consume food in the area. The planning inspector concluded when determining the recent appeal that 'the likelihood of

additional litter caused by some inconsiderate customers would not be sufficient to justify rejection of planning permission'.

## VISUAL IMPACT ON THE CHARACTER AND APPEARANCE OF THE AREA

4.8 There are no physical alterations proposed to the shop front or the size of the building. The only external works are the installation of a flue on the rear roof slope. The flue proposed would be approximately 1.4m in length and 0.6m in width. The top of the flue would sit approximately 4.6m above existing ground level. The planning inspector raised concerns about the visual impact of the previously proposed flue as it was greater in length and located at the side of the property and was therefore visual prominent. The proposed flue within this application would not be visually prominent from Brockfield Park Drive in that it sits below the ridge line of the property. Whilst the flue would be visible from houses to the rear along Whitethorn Close, it would be seen in the context of other items of plant and machinery located to the rear of the existing parade of shops. It is not considered, therefore, that the proposal would have any significant impact on the visual amenity of the area.

## TRAFFIC AND CAR PARKING

4.9 The parade of shops along Brockfield Park Drive benefit from a number of "echelon" car parking spaces to the front. These spaces can be used by visitors to any of the retail premises. It is estimated that around ten cars could park in this area at any time. Hot food takeaways tend to be busiest in the evening when the other retail units, other than Spar, will have closed. It is considered that there are adequate car parking spaces for visitors and delivery vehicles.

4.10 Brockfield Park Drive is a busy road for traffic as it provides access to a large number of residential units as well as being used as an access road to the surrounding area including Monks Cross retail park. It is not considered, however, that the proposed hot food takeaway would in itself have a significant impact on the level of traffic in the area or its free flow. Highway Network Management raise no objections to the application.

## ANTI-SOCIAL BEHAVIOUR

4.11 An additional evening use within the parade of shops has the potential to increase the number of people visiting the area at this time. However, it does not automatically follow that there will be an increase in crime and anti-social behaviour. The Police Architectural Liaison Officer has concluded that there is no evidence to justify an objection to this planning application on crime and disorder grounds. The recent appeal decision concluded that there were insufficient grounds to conclude that the addition of a takeaway to this parade of shops would result in a harmful increase in anti-social behaviour. Alcohol is not to be sold or consumed at the premises. Opening hours would be no later than the existing retail unit which already attracts people into the area in the evening. The proposal would be the only hot food takeaway within the immediate area and therefore the proposal would not result in an over-concentration of such uses.

## 5.0 CONCLUSION

5.1 Overall, it is considered that the proposed development overcomes the concerns raised by the Planning Inspector in respect of the previous planning application. Subject to conditions, it is considered that the impact of the proposal on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter would be acceptable, and as such the proposal complies with Draft Local Plan Policy S6. Hours of operation can be controlled by condition and would not exceed those of the adjacent Spar convenience store. Sufficient car parking is available to meet the operational needs of the proposed use and it is feasible to install an extraction system which would satisfactorily remove odours without harming neighbouring amenity through noise.

## 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:-

Ductwork Layout and Elevations drawing number ES1544-001 Revision



B

Block Site Plan drawing number 1873/PS01 Revision A  
Proposed Elevations drawing number 1873/P02 Revision A all received  
by CYC 09/06/11

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 permitted shall only operate between the hours of 11:00 hours and 22:00 hours on any day. All plant and machinery shall have been switched off and all customers shall have vacated the premises by this time.

Reason: To protect the amenity of local residents.

4 Prior to the first use of the hot food takeaway hereby approved, details of all machinery, plant and equipment to be installed in or located on the building which is audible outside of the site boundary when in use, shall be submitted to the Local Planning Authority for approval. All such approved machinery, plant and equipment shall be used in complete accordance with the approved details. The machinery, plant and equipment and any approved noise mitigation measures shall be fully implemented and operational before the first use of the hot food takeaway and shall thereafter be appropriately maintained.

Reason: To protect the amenity of local residents.

5 There shall be adequate facilities for the treatment and extraction of fumes so that there is no adverse impact on the amenities of local residents by virtue of fumes, odour or noise. Details of the extraction plant or machinery and any filtration system shall be submitted to and approved in writing by the Local Planning Authority. The approved system shall be installed in complete accordance with the approved details and fully operational prior to the first use of the premises as a hot food takeaway.

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:

- the impact on the amenities of local residents through noise, odour and litter;
- visual impact on the character and appearance of the area;
- traffic and car parking; and
- anti-social behaviour.

As such the proposal complies with Policies S6 and GP1 of the City of York Development Control Local Plan.

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