

COMMITTEE REPORT

Date: 20 October 2011 **Ward:** Acomb
Team: Major and **Parish:** Acomb Planning Panel
Commercial Team

Reference: 11/02339/FUL
Application at: 134 Boroughbridge Road York YO26 6AL
For: Conversion of ground floor flat to fish and chip shop with ground floor extension at rear for storage and seating in eating area, plus first floor rear extension to flat to create three bedroom flat and alteration to vehicle parking and access in forecourt (resubmission)
By: Mr Kevin Pallister
Application Type: Full Application
Target Date: 26 October 2011
Recommendation: Approve

1.0 PROPOSAL

1.1 No.134 Boroughbridge Road comprises a two storey brick built semi-detached house circa 1930 associated with a small parade of shops to the north of Acomb District Centre. Planning permission is sought for the change of use of the ground floor of the property to provide a fish and chip shop (Use Class A5), to convert the existing first floor into a three bedroom flat with a rear extension and to construct a ground floor extension to provide a seating and storage area with alterations to vehicle parking and access within the front forecourt. The proposal represents a substantially amended resubmission of an earlier application ref:-11/00720/FUL refused on the grounds of poor design, adverse impact upon the amenity of future flat occupiers, lack of cycle and bin storage space, over development of the site and lack of information in respect of the proposed fume extraction and air circulation system. Work on implementing the development has already commenced.

1.2 The application has been called in for consideration Sub Committee by Councillor David Horton on the grounds that the development has had a significant adverse impact upon the residential amenity of neighbouring properties and by Councillor Tracey Simpson-Laing on the grounds of the loss of a residential unit, over-intensification in terms of the number of hot food outlets in the area and issues of pedestrian and vehicular conflict in the surrounding area.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: West Area 0004

York North West Boundary GMS Constraints: York North West Boundary CONF

2.2 Policies:

CYGP1 Design

CYT4 Cycle parking standards

CYE4 Employment devt on unallocated land

CYH8 Conversion to flats/HMO/student accom

CYS6 Control of food and drink (A3) uses

CYH9 Loss of dwellings or housing land

3.0 CONSULTATIONS

INTERNAL:-

3.1 Highway Network Management - any views will be reported verbally at the meeting.

3.2 Structures and Drainage Engineering Consultancy object to the proposal on the grounds of insufficient information being supplied with the proposal in respect of the disposal of surface water from the site.

3.3 Environmental Protection Unit object to the proposal on the grounds of insufficient information being submitted in respect of insufficient information being supplied with the proposal in respect of odour mitigation, hours of operation and storage of food at the premises.

EXTERNAL:-

3.4 Safer York Partnership raise no objection in principle to the proposal but raise concerns in respect of the suggested opening hours for the take away use and point out the potential risks in terms of anti-social behaviour arising from having a number of take-away uses gathered together in a single area.

3.5 Councillor T.Simpson-Laing objects to the proposal on the grounds of a loss of family housing and a saturation of take-away uses in the surrounding area.

3.6 One letter of objection has been received in respect of the proposal from a neighbouring residential property. The following is a summary of its contents:-

* Concern at the impact of parking generated by the proposed conversion and take away use on surrounding streets;

Application Reference Number: 11/02339/FUL

Item No: 5d

- * Concern at the impact of the development upon the residential amenity of neighbouring properties through noise, odours and loss of privacy;
- * Concern at the impact of the proposal upon local property prices.

4.0 APPRAISAL

4.1 KEY CONSIDERATIONS INCLUDE:-

- * Impact upon the residential amenity of neighbouring properties;
- * Impact upon the living conditions of future occupants of the proposed flat;
- * Loss of an existing family house;
- * Impact upon the safety and convenience of highway users;
- * Impact upon the local surface water drainage system.

IMPACT UPON RESIDENTIAL AMENITY:-

4.2 Policy H8 of the York Development Control Local Plan sets a firm policy presumption that planning permission for conversion of an existing dwelling to flats would only be forthcoming where there would not be an adverse impact upon residential amenity through noise disturbance or the residential character of the area by virtue of the conversion alone or cumulatively with a concentration of such uses. Similarly in relation to the fish and chip shop element of the proposal, Policy S6 of the Draft Local Plan sets a presumption that permission will only be forthcoming where any impact upon the amenities of occupiers as a result of traffic, noise, smell or litter would be minimal.

4.3 The proposed development is a composite one incorporating a conversion and extension to form a 3 bed flat and a fish and chip shop with ancillary storage facilities and associated access and car parking work. The surrounding area is in mixed use with a shopping parade adjacent to the south east and residential development within the wider surroundings. The scheme as amended envisages the construction of single storey storage extension to the rear of the property with an area of external amenity space for the flat occupier some 6.4 x 8.2 metres in area. This would largely remove the harm to the residential amenity of nearby occupiers caused by the previous scheme. In relation to the proposed fish and chip shop element of the proposal, information has been submitted in relation to the proposed extraction and filtration system. Details of the specific location of the plant, its noise output and the precise means of odour mitigation have not however been submitted and neither have details of the proposed food storage units and any noise implications. On balance it is felt that a refusal of the proposal could not be sustained on these ground alone as they could be effectively conditioned as part of any permission.

4.4 The proposal envisages single and two storey elements projecting into the former rear garden area. The two storey element would be some 4.4x5.4 metres in area and 6.6 metres to the ridge and would parallel that previously approved in

respect of 136 Boroughbridge Road. The single storey extension would continue from the rear of the two storey element covering a further area of 5.6x5.4 metres. Both extensions would be cement rendered in terms of their external treatment. Nos. 130 and 132 Boroughbridge Road have even more substantial rearward extensions and it is felt that the proposals in terms of their scale and massing would not have a significant impact upon the amenity of neighbouring properties or the visual amenity of the wider street scene.

IMPACT UPON THE LIVING CONDITIONS OF FUTURE OCCUPANTS OF THE PROPOSED FLAT:-

4.5 The proposal as amended envisages the conversion of the upper floor of the existing property together with the addition of a rear extension to form a three bedroom flat. An external amenity area for drying out washing etc would be provided to the rear of the single storey storage extension some 6.4 x 8.2 metres in area. Access via a gate would also be afforded to the amenity area to the rear of 136 Boroughbridge Road. The application details indicate that storage for cycles and bins associated with the flat would be provided within the rear storage building associated with the fish and chip shop use. It is felt therefore on balance that the harm to the living conditions of future occupants of the proposed flat caused by the scheme as originally submitted has effectively been dealt with.

LOSS OF AN EXISTING FAMILY HOME:-

4.6 Policy H9 of the York Development Control Local Plan sets a firm policy presumption that planning permission will not be granted for development that would result in a net loss of dwellings or housing land, either allocated or with planning permission, loss of individual residential properties needing to be considered against individual site circumstances and the character of and desired uses in the surrounding area.

4.7 The application site was constructed as a single house for family occupation and was used as such up until recent times. In recent years it has without authorisation been converted into two flats. It lies within a small area of shops and is physically separated from the remaining residential properties along Boroughbridge Road by the unit at No 136. To the south east of the premises are a number of uses commonly found in a small shopping parade such as a cafe, a second hand dealer and a veterinary practice. The property has no readily defined curtilage along the street frontage with parking associated with the adjacent business premises directly adjacent to the building itself and the amenity of any occupant as a family home would thereby be compromised. The nature of the adjacent businesses would to a certain extent militate against single family occupation. A number of the business premises including the properties to either side have flats above. On balance it is therefore felt the loss of the property as single family accommodation would not be

harmful and that the terms of Policy H9 of the Draft Local Plan would therefore be complied with.

IMPACT UPON THE SAFETY AND CONVENIENCE OF HIGHWAY USERS:-

4.8 The proposal seeks the reconfiguration of parking and access arrangements associated with Nos 128 to 136 Boroughbridge Road. Rather than the existing somewhat disorganised pattern with vehicles accessing and egressing the paved forecourt at several points along the Boroughbridge Road frontage, the proposal would create a "one way" system with accessing traffic only coming from the access point adjacent to 136 Boroughbridge Road and egressing traffic leaving by the access point close to 130 Boroughbridge Road. Traffic accessing the spaces associated with 128 Boroughbridge Road would be two way. This arrangement does however give rise to a number of safety concerns in respect of pedestrians using the crossing of Boroughbridge Road in the near vicinity with a need to physically identify an area of clear separation between the crossing and the parking and circulation area. The applicant has suggested the erection of cycle stands associated serving the local businesses between the parking area and the area of the crossing. In terms of its impact upon the street scene and also in terms of highway safety the erection of a low wall up to 1 metre in height to separate the crossing from the parking and circulation area would be more appropriate. It is therefore recommended that any permission be conditioned to require the submission of further details of the proposed parking and circulation space within the street frontage forecourt area for further written approval. Subject to that approval it is felt on balance that any impact upon the safe and free flow of traffic would be within acceptable levels.

IMPACT UPON THE LOCAL PATTERN OF SURFACE WATER DRAINAGE:-

4.9 Policy GP15a) of the York Development Control Local Plan sets a firm requirement that developers must satisfy the Local Planning Authority that any flood risk will be successfully managed with the minimum environmental effect and ensure that the site can be developed, serviced and occupied safely. The application site lies within defined Flood Zone 1 and is therefore at the lowest identifiable risk of flooding. Difficulties do however exist in terms of the surface water drainage serving the site, which form part of the applicant's justification for the works being undertaken in part retrospectively. Concern has also been expressed in relation to the level of information submitted with the application relating to the surface water drainage of the site. In refusing the previous application at the site it was noted that surface water drainage was a matter which could clearly be conditioned in order to secure the achievement of an acceptable scheme in view of the relatively low risk to adjoining properties. It is therefore recommended that any permission be conditioned to require the submission for prior approval of a detailed drainage scheme.

OTHER ISSUES:-

4.10 Concerns have been expressed in relation to the part retrospective nature of the proposal. Whilst the commencement of development without the requisite authorisation is clearly an issue of concern it is not a material consideration in terms of determining the planning application. Concern has been expressed in relation to an over intensification in the number of hot food outlets in the vicinity. The applicant has indicated the intention to provide an internal seating area which would help ameliorate a number of the problems commonly associated with hot food takeaway uses such as litter, which should be conditioned to remain ancillary to the main take away use. The issue of the number of take away uses in the vicinity is clearly acknowledged, however the level of intensity is not such as to give rise to an issue of cumulative impact and in any case Central Government Planning Guidance outlined in PPS4 "Planning and Economic Development " strongly discourages the use of commercial competition as a material consideration in these circumstances.

5.0 CONCLUSION

5.1 The development envisages a composite proposal incorporating the conversion of the ground floor to a fish and chip shop, the first floor to a three bedroom flat with a two storey rear extension, together with a single storey rear extension incorporating a storage and seating area for the proposed fish and chip shop with associated alterations to the external forecourt space. The application site as a dwelling house, albeit one that has had a recent unauthorised use as two flats, does not readily provide an acceptable environment as a single family house. The proposals envisage the creation of a pattern of development more in line with that prevailing in the immediate surroundings. However, a number of concerns remain notably in respect of surface water drainage and the nature and location of the proposed odour mitigation and fume extraction system. It is felt on balance however that these matter matters may be the subject of a condition on any planning permission. Other concerns have also been raised such as the largely retrospective nature of the development. Whilst these are quite understandable they do not amount to a significant material planning consideration in terms of determining the application. On balance it is therefore felt that an acceptable form of development can be achieved through an appropriately conditioned approval.

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:-

Drawing Refs: - 7D, DP4E, BP2, DP1 and P1 Date Stamped 30th August 2011

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

3 VISQ8 Samples of the external materials

4 Notwithstanding the application details hereby approved full details of the proposed refrigeration, air circulation, extraction and odour mitigation system including its location, acoustic detail and the finishes of any components external to the building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the cafe/takeaway use. The development shall thenceforth be undertaken in strict accordance with the details thereby approved prior to the development being first brought into use.

Reason: - To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 of the York Development Control Local Plan.

5 The cafe/hot food take-away use shall operate only between the following hours:

Monday to Saturday 12.00hours to 22.00 hours

Sundays or Bank Holidays 12.00hours to 14.00hours

Reason: - To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 and S6 of the York Development Control Local Plan.

6 The rear seating and storage area hereby authorised shall be used solely in conjunction with the cafe/takeaway use.

Reason: - To safeguard the residential amenity of neighbouring properties and to secure compliance with Policy GP1 of the York Development Control Local Plan.

7 DRAIN1 Drainage details to be agreed -

8 Notwithstanding the application details hereby approved full details of the layout of parking space and circulation arrangements within the front forecourt of the application site, including measures to prevent pedestrian/vehicular conflict shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the date of this permission. The development shall thenceforth be undertaken in strict accordance with the details thereby approved prior to the development being first brought into use and shall be maintained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: - To secure the safety and convenience of highway users.

9 Notwithstanding the submitted details, the doorway giving access from the Cafe/Takeaway seating area to the rear amenity area shall be single leaf only in dimension and shall be solely used for the purposes of an emergency exit and shall be clearly identified as such. The amenity area shall not be used as an outside seating or storage area for the cafe/takeaway use.

Reason:-To safeguard the residential amenity of neighbouring properties and to secure adequate amenity space for the residential use at the premises in compliance with Policy GP1 of the York Development Control Local Plan.

7.0 INFORMATIVES: Notes to Applicant

1. HIGHWAY WORKS

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Works in the highway - Section 171/Vehicle Crossing - Section 184 - Stuart Partington (01904) 551361

2. 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 impact upon residential amenity of neighbouring properties ,impact upon the living conditions of future occupants of the proposed flat, loss of an existing family house, impact upon the safety and convenience of highway users and impact upon the local surface water drainage system. As such the proposal complies with Policies GP1, T4, E4, H8, H9 and S6 of the City of York Development Control Local Plan.

3. CONTROL OF POLLUTION ACT:-

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the

following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

Contact details:

Author: Erik Matthews Development Management Officer

Tel No: 01904 551416