

COMMITTEE REPORT

Date: 7 August 2014 **Ward:** Heworth
Team: Major and **Parish:** Heworth Planning Panel
 Commercial Team

Reference: 14/01039/FULM
Application at: Spar Stores Turner Close York YO31 9FD
For: Variation of condition 14 of permitted application
11/03269/FULM to allow deliveries to the retail store from
07.00hours
By: James Hall & Co Ltd
Application Type: Major Full Application (13 weeks)
Target Date: 6 August 2014
Recommendation: Approve subject to Section 106 Agreement

1.0 PROPOSAL

1.1 The application relates to the retail unit, approved as part of application 11/01039/FULM, which was for the retail unit and a vets at the front of the site, and houses behind. There are now 5 houses which have boundaries with the car park and service yard area to the retail premises. 196 Huntington Road also has a rear garden by the service yard.

1.2 The Spar convenience store is to re-locate to the retail unit and the application is to vary the allowed delivery times. The applicants wish to receive deliveries as of 07.00 Mondays to Saturdays. A time of 08.00 was imposed at planning committee when the scheme was determined. Sunday and bank holiday delivery times would remain at 10.00. The shop is permitted to open between 07.00 and 22.00 each day of the week (condition 23 of permission 11/01039/FULM).

1.3 The application is brought to sub-committee, as the permitted delivery hours were imposed by Members at the East Area Sub-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 (1) 0003

2.2 Policies: GP1 Design

3.0 CONSULTATIONS

Environmental Protection Unit

3.1 Object. Time restrictions are placed on deliveries and collections from retail stores to prevent a loss of amenity to residents, I am concern a variation of condition 14 to allow deliveries to the store from 07:00 a.m. rather than 08:00 a.m. will cause a loss of amenity for the residents in houses numbered 1 - 6, closest to the loading bay area.

Highway Network Management

3.2 No objection

Planning Panel

3.3 No comment received.

Neighbour Notification and Publicity

3.4 No written representations have been made.

4.0 APPRAISAL

Key Issue

- Impact on residential amenity

Relevant Planning Policy

4.1 The NPPF states planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. DEFRA guidance referred to in the NPPF advises that it is not possible to have a single objective noise-based measure that defines significant impact. Impact is likely to be different for different noise sources, for different receptors and at different times.

4.2 The relevant Local Plan policy is GP1:Design. GP1 is consistent with the NPPF in that it requires proposals ensure no undue adverse impact from noise disturbance.

Assessment

4.3 The proposals are to allow deliveries to the store from 07.00 Monday to Saturday to correspond with the shop opening time. The Environmental Protection Unit have objected to this proposal on the grounds of harm to residential amenity, and this is consistent with their advice provided in 2011, when they asked for delivery times to be as of 08.00.

4.4 The applicant's case is that it would be beneficial to have the store stocked as early as possible, in particular with fresh goods and newspapers, in the interests of their viability and to avoid conflict with other traffic. They state that other Spar stores receive deliveries as of 07.00 and there is no undue noise disturbance. The Spar store opposite is directly next door to residential and opens at 06.00. There are no restrictions on delivery times.

4.5 The store has approximately 200 sq m net retail floor space. The 2011 permission was considered at the May 2012 Sub-Committee. At the meeting members were advised that the applicants wished for deliveries to be allowed from 07.00 and that planning officers did not object to this request. However Members considered that due to the size of delivery vehicles there could be disturbance to the nearby residents and varied the condition so that deliveries were not allowed before 08.00 Monday-Saturday and 10.00 on Sundays.

4.6 In assessment of noise impact, daytime is typically considered to be between 07.00 and 23.00. It is officer opinion that to allow deliveries to be from 07.00, which was previously specified as 'daytime' in national planning guidance, and would be in line with the permitted opening times, when there could be a degree of disturbance from customers, would not cause a significant adverse impact. As such the proposal would not conflict with the NPPF.

5.0 CONCLUSION

5.1 The proposal is to allow delivery times to be consistent with the store opening times between Mondays and Saturdays. The 07.00 opening time is regarded as day-time and there would not be an undue impact on residential amenity.

5.2 If planning permission were granted, it would replace the 2011 permission. As such the previous legal agreement will need to be updated and the relevant planning conditions re-applied.

6.0 RECOMMENDATION: Approve subject to Section 106 Agreement

1 The development hereby permitted shall be carried out in accordance with the following plans and approved details:-

Site layout - 1286/06/01 Q

Landscaping plan - Popplewells drawing 2282/3 B

House types:

Contemporary Sutton - AS 1286 06 11

Contemporary Fulstow - 1286 06 11E revision A and 11P

Contemporary Welton - 1286 06 08 Welton (con)

Contemporary Marston - AS 1286 06 08

Garages - G100, G200

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Retail premises - 1308 001 001 B
Veterinary unit - 1308 001 004 D

Bat mitigation as shown drawing 843/CSH/01b

Large scale drawings of commercial premises as agreed under AOD/13/00584

Materials and details of the boundary treatment as shown on drawing 843 MBP 01 revision B.

Houses to be insulated in accordance with Acoustic report PC-11-0273-RP1

Drainage details - Alan wood drawings 31541 203E, 205G, 207B, 209D, 211, 212B, 214B, 215C.

Dilapidation survey agreed under AOD/13/00584

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

2 Code for Sustainable Homes

The houses shall be constructed to at least Level 3 of the BRE Code for Sustainable Homes (CSH). A Post Construction stage assessment shall be carried out and a Post Construction stage certificate shall be submitted to the Local Planning Authority prior to occupation of the building. Should the development fail to achieve level 3 of the Code a report shall be submitted for the written approval of the Local Planning Authority demonstrating what remedial measures should be undertaken to achieve level 3 of the code. The approved remedial measures shall then be undertaken within a timescale to be approved in writing by the Local Planning Authority.

Reason: In the interests of achieving a sustainable development in accordance with the requirements of GP4a of the City of York Development Control Local plan.

3 Landscaping

The landscaping scheme shown on Popplewells drawing 2282/4C shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species within the site and its overall appearance.

4 Tree Protection

All trees shown as being retained on Popplewells drawing 2282/3 C shall be protected during construction works in accordance with BS 5837 2005: Trees in relation to construction and details approved under application AOD/12/00282.

Reason: to ensure trees to be retained are appropriately protected in the interests of amenity.

5 Highway construction

Prior to completion of the development, the areas to be used by pedestrians and vehicles shall be constructed in accordance with the approved plans and are surfaced, sealed and positively drained and street lighting has been provided on site.

Reason: To ensure appropriate access and egress to the properties, in the interests of visual amenity, highway safety and the convenience of prospective residents.

6 Cycle storage

There shall be covered and secure cycle storage (at least 1 space per house) for each dwelling which shall be provided prior to occupation and retained at all times. For houses without garages cycle storage shall be provided within the rear garden areas. The storage spaces shall be at least 1.8m by 0.7m.

Reason: To ensure adequate space for such storage, and to promote sustainable modes of transport in accordance with policies GP4a and T4 of the City of York Draft Local Plan and the National Planning Policy Framework.

7 Removal of PD rights

Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), development of the type described in Classes A, D, E, F; of Schedule 2 Part 1 of that Order shall not be erected or constructed.

The garages shall be retained for storage use and shall not be converted into living accommodation.

Reason: In the interests of the visual amenity, highway safety and the amenities of the adjoining residents the Local Planning Authority considers that it should exercise control over any future extensions or alterations which, without this condition, may have been carried out as "permitted development" under the above classes of the Town and Country Planning (General Permitted Development) Order 1995.

8 Details of all machinery, plant and equipment to be installed at the commercial premises, which is audible at any residential accommodation, shall be submitted to the local planning authority for written approval. These details shall include maximum (L_{Amax}(f)) and average sound levels (L_{Aeq}), octave band noise levels and predicted noise levels at the nearest noise sensitive receivers. Details of any proposed noise mitigation measures, if required, should also be provided. 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 fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Reason: To protect the amenities of adjacent residents

9 Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of the previous condition, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the previous condition.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

10 Flood Risk

The dwellings within Flood Zone 2 shall have finished floor levels set a minimum of 300mm above ground level.

INFORMATIVE: It is also recommended that flood resilient measures are considered in the construction of dwellings in flood zone 2. Further information is available from the Planning Portal. See Guidance on flood resilient design and construction.

Reason: To protect the houses from flooding in accordance with paragraph 103 of the National Planning Policy Framework.

11 The retail premises hereby approved shall only be open to customers between the hours of 07:00 and 22:00 each day of the week.

Reason: In the interests of the amenity of surrounding occupants.

12 Deliveries to commercial premises

The hours of delivery to and dispatch from each commercial premises shall be confined to the following times:

Monday - Saturday 07:00 - 18:00

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Sundays & Bank Holidays 10:00 - 18:00

REASON: To protect the amenities of adjacent residents

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome: the use of planning conditions.

2. LEGAL AGREEMENT

Your attention is drawn to the existence of a legal obligation under Section 106 of the Town and Country Planning Act 1990 relating to this development

Contact details:

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