

COMMITTEE REPORT

Committee: West/Centre Area **Ward:** Westfield
Date: 15 October 2007 **Parish:** No Parish

Reference: 07/02001/FUL
Application at: 58 Green Lane Acomb York YO24 4PS
For: Continued use as a hot food takeaway (Class A5), including change of opening hours (approved as 12.00 hours (noon) to 22.30 hours on any day) to 12.00 hours (noon) to 23.00 hours Mondays to Thursdays; 12.00 hours (noon) to 24.00 hours (midnight) Fridays and Saturdays; 12.00 hours (noon) to 23.30 hours Sundays (amended description to include opening hours)
By: Mr H Dag
Application Type: Full Application
Target Date: 12 October 2007

1.0 PROPOSAL

1.1 Following the expiration of the a temporary permission (1 year) conditioned by a Planning Inspector, following a successful appeal against the refusal of application 04/02707/FUL. The applicant has submitted an application to continue using the premises as hot food takeaway (Class A5) with amended opening hours.

1.2 The application relates to a two storey semi detached building located within a small shopping parade in a predominantly residential area. The ground floor is currently occupied by a hot food takeaway.

1.3 A committee site visit is to take place because objections have been received and the application is recommended for approval.

Relevant History

1.4 04/02707/FUL - Conversion of retail shop (Class A1) to hot food takeaway (Class A3) - Refused 04.01.2005.

1.5 - Appeal - the Hearing held on the 25th July 2006 considered two appeals resulting from the refusal of planning application Ref.04/02707/FUL (Appeal A & B).

1.6 Appeal A: APP/C2741/C/062010833 (enforcement) and Appeal B: APP/C2741/A05/1178994 (planning) were both granted planning permission by the Planning Inspector, subject to three conditions. (appeal decision is appended to this report)

1.7 The conditions are as follows:

1)The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of 1 year from the date of this permission.

2) The use hereby permitted shall not be open to customers outside the times between 1200 hours (noon) and 2230 hours on any day.

3) Unless otherwise agreed in writing by the Local Planning Authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of permission shall be retained and operated at all times when food is being prepared. It should be inspected and maintained regularly in accordance with the manufacturer's recommendations.

1.8 Condition 1 was considered appropriate as it enabled the North Yorkshire Police and Local Planning Authority to assess properly the impact of the use on anti social behaviour problems.

1.9 A condition (2) restricting the opening of the premises to customers outside specified hours was required to ensure that undue disturbance, particularly in late evening hours, does not occur. The Inspector stated that "Conclusions suggest that activity up to 2300 hours would be reasonable in its noise impact", however as the 2300 hour closing time was not being adhered to and the applicant required a modest amount of flexibility because of the practical implications of customers and employees leaving the building an evening a closing time of 2230 hours was considered more appropriate.

1.10 06/02092/FUL - Variation of condition 2 of planning permission 04/02707/FUL approved by appeal to extend opening hours from 1200-2230 Mon-Sun to 1200-2330 Sun-Thurs and 1200-0000 (midnight) Fri-Sat - Refused 04.12.2006

1.11 06/00443/ADV - Display of externally illuminated fascia sign (retrospective) - Approved 12.05.2006.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Air safeguarding Air Field safeguarding 0175

City Boundary York City Boundary 0001

DC Area Teams West Area 0004

Schools Hob Moor Infant 0202

2.2 Policies:

CYGP1
Design

CYS6
Control of food and drink (A3) uses

3.0 CONSULTATIONS

INTERNAL

3.1 Highway Network Management - No Objections.

3.2 Environmental Protection Unit - No Objections.

"we have not received any complaints regarding the current use as a hot food takeaway"

3.3 Safer York Partnership - No Objections.

EXTERNAL

Two letters of objection have been received from one person regarding the applicants' proposals. The letters are summarised below and raise the following concerns/issues.

Please note a copy of the aforementioned letters have been forwarded to all members.

* Two applications for "takeaways" have been refused for this particular site. (following significant community involvement). The latter of the two was refused for the following reason "In the opinion of the Local Planning Authority the proposal would generate noise and odours and attract noisy late at night to a degree that would detract from the amenity of residents and the quiet enjoyment of their homes"

* The area is already adequately served with hot food takeaways.

* No local residents have indicated that a hot food takeaway would provide any benefit.

* Increase in traffic movements.

* Vandalism and Hooliganism, exacerbated by the neighbouring McCalls.

* Litter and discarded food is a health hazard and environmentally repulsive.

* All incidents can be confirmed by the Police.

* The existing CCTV camera was installed to impress the Planning Inspector.

* Anti social behaviour is tolerated by the applicants'.

* Approval of this application by any Committee is inconceivable as it would overturn the Inspectors "without appeal" ruling.

- * The applicants' have ignored all statutory opening times from the 5th January 2005. In practice selecting opening and closing times based solely on their own business interests and profits.
- * The applicants' have made no attempt to integrate with the Local Community.
- * The applicant is still in breach of agreed opening times.
- * The applicant has displayed two illuminating signs without consulting the Local Planning Authority or obtain planning approval.
- * Impacts on residential amenity.
- * Concerns that the initial neighbour consultation letter failed to include the opening times (this was addressed, with additional letters and a site notice re-sent/posted).
- * The Planning Officer dealing with the application has allegiances to the applicant.

4.0 APPRAISAL

4.1 The Local Planning Authority and the North Yorkshire Police for the last 12 months have assessed the impact of the "Pizza King" operation and any anti social behaviour problems or within the area.

4.2 The main issue is therefore whether the hot food takeaway use is likely to add to established problems in the neighbourhood arising from anti social behaviour, and thereby increase the harm to residential amenity experienced by occupants of properties in the vicinity of the roundabout junction.

4.3 To assess the issues and in response to the requirements of the "appeal decision" the Local Planning Authority consulted North Yorkshire Police who were able to analysis 21 months of data relating to this particular site and have found there to be virtually zero reported crime. The only reported arrest was in respect to a youth breaching the terms of an Anti Social Behaviour Order.

4.4 In response to the extended opening times North Yorkshire Police could "not offer any objection", however, in order to assess the impact of extended hours another temporary permission would be beneficial, especially as the majority of the surrounding area is residential in character.

4.5 The Local Planning Authority have also surveyed the site throughout the time period of the temporary permission. Surveillance times have varied considerably and involved a number of planning and management personnel. The overriding conclusion following the aforementioned site visits was that the current operation represented little harm to the amenities of the area nor did it appear to encourage/attract anti social behaviour.

4.6 The Environmental Protection Unit (EPU) were also consulted, so any environment nuisance could be considered. EPU had no recorded complaints for the site and therefore raised no objections.

4.7 Based on the evidence and consultation advice before the Local Planning Authority, it is considered appropriate to grant planning permission for the existing use and a temporary permission for a period of 1 year for the extension in hours,

which will allow the Local Planning Authority in conjunction with North Yorkshire Police to ascertain the impact of the use on the locality beyond 2230 hours.

5.0 CONCLUSION

5.1 For the above reasons, the A5 use is considered appropriate for the locality. As the impact of the extended hours can not be ascertained without being put into practice a temporary consent to monitor the premises would be the most appropriate option. Consequently, if there were evidence of a detrimental impact on residential amenity, there would be a substantial material planning reason for the premises to revert to the previous hours.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 The use hereby permitted shall not be open to customers outside the following hours:

Monday to Thursday 12:00 (noon) to 23:00 hours.
Fridays and Saturdays 12:00 (noon) to 24:00 (midnight).
Sundays 12:00 (noon) to 23:30 hours.

The premises shall be vacated by staff by:

Monday-Thursday 23:30 hours
Friday, Saturday 00:30 following day
Sunday 24:00 (midnight)

The use shall adhere with these hours for a period of one year from the date of this permission after which the opening hours shall revert to 12:00 (noon) to 22:30 hours, with staff and customers vacating the premises by 23:00 hours, unless planning permission has been obtained from the Local Planning Authority for the continuation of the hours hereby permitted.

Reason: In the interests of amenity, so the Local Planning Authority may assess the impact of this use, in accordance with policy S6 of City of York Draft Local Plan.

2 Unless otherwise agreed in writing by the Local Planning Authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of permission shall be retained and operated at all times when food is being prepared. It should be inspected and maintained regularly in accordance with the manufacturer's recommendations.

Reason: In the interests of environmental health.

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

2. Any application to extend opening hours from 12.00 hours (noon) to 23.00 hours Mondays to Thursdays; 12.00 hours (noon) to 24.00 hours (midnight) Fridays and Saturdays; 12.00 hours (noon) to 23.30 hours Sundays, during the course of the 1 year temporary permission is likely to be resisted by the Local Planning Authority.

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