



Report of the Chief Planning Officer

PLANS PANEL NORTH and EAST

Date: 11th July, 2013

Subject: Application 13/01866/FU – Variation of Condition 6 (hours of delivery) of application 12/03366/FU for a café and takeaway at 67 Penda’s Way, Stanks, Leeds LS15 8HU.

APPLICANT

Mr E Miah

DATE VALID

28th May, 2013

TARGET DATE

23rd July, 2013

Electoral Wards Affected:

Crossgates & Whinmoor

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: REFUSE permission for the following reasons:

1. The proposed extension of the hours of delivery would result in an intensification of the use of the site as a hot food takeaway leading to the potential for an increase in noise disturbance for residents living in close proximity of the site particularly during unsociable hours of the day / night. The proposal would therefore result in an adverse impact on the living conditions of those residents thereby being prejudicial their residential amenity. As such, the proposed development is unacceptable and therefore conflicts with Policies GP5, and SF15 of the Leeds Unitary Development Plan Review (2006).

INTRODUCTION:

- 1.1 The proposed variation of delivery hours is locally controversial and in the interests of transparency it has been decided to report the application to Plans Panel.

2.0 PROPOSAL:

- 2.1 The grant of planning permission restricted the hours of delivery to 0800 hours to 1800 hours Monday to Saturday with no deliveries on Sundays and Bank Holidays. The applicant is seeking to vary the hours to 1700 hours to 2300 hours Monday to Saturday and on Bank Holidays and from 1500 hours to 2300 hours on Sundays.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site is situated to the west side of Penda's Way. The unit is occupied and is one of a parade of 6 ground floor retail units with other uses being a newsagent's; a Chinese takeaway; a sandwich shop; a clothes shop; and a hair salon. The parade is constructed of brick to two storeys in height. The first floor premises are in residential use. The property has two small single storey extensions to the rear elevation and there is an extraction flue pipe projecting from the roof scape at the rear. There is an access road that links Penda's Way and Penda's Grove directly in front of the parade with a narrow access road to the rear of the parade serving a block of 4 garages and off street parking for the flats above the parade. The site includes a triangular piece of land to the east side of the garage block. There is a mirror image of the parade to the north side of Penda's Grove also with ground floor retail uses with residential accommodation at first floor level. The site is level.
- 3.2 With the exception of the existing commercial properties within the parades, the site is within a residential area surrounded by pre-war semi-detached houses on Penda's Way, Grove and Walk. In addition to the flat above the site and other units within the parade, the nearest neighbouring residential properties are immediately to the south of the site, and to the east side of Penda's Way.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 12/03366/FU – change of use from A3 café to A3/A5 café and Takeaway. Permission Granted (12th November, 2012) subject to pre-commencement conditions relating to extract ventilation; sound insulation measures; and refuse and waste disposal.
- 4.2 The use as a café and hot food takeaway commenced prior to discharging pre-commencement planning conditions relating to sound insulation measures to prevent disturbance to the occupants of the first floor living accommodation; the provision of extract ventilation to dispel external cooking odours; and details of refuse disposal. In addition, the applicant was in breach of a condition by operating a delivery service to customers outside of the permitted delivery hours. The applicant has retrospectively submitted a discharge of conditions application (Ref: 13/01864/COND). The details relating to sound insulation and extract ventilation to date are unsatisfactory to discharge the conditions, however the applicant is preparing more details in consultation with the Council's Environmental Health Department to address the outstanding matters.
- 4.3 07/06294/FU – Change of use of vacant ground floor shop and part ground floor/part first floor residential to ground floor cafe and first floor self-contained flat, with new flue to roof and alterations to shop front. Permission Granted 4th December, 2007. This use also commenced without discharging pre-commencement conditions relating to sound insulation measures and extract ventilation. The applicant submitted some details of these works and did receive Building Regulations approval and took their implementation to have addressed the issues. The breach of conditions was not reported at the time. Shortly after opening the use as a café it ceased trading.

07/03429/FU – change of use of shop to café and single storey rear extension. Refused 4th September, 2007.

H32/414/80 – porch to rear of shop with living accommodation. Permission Granted 15th May, 1980.

5.0 HISTORY OF NEGOTIATIONS:

5.1 Continuing to negotiate/advise over the discharge of planning conditions.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application was advertised by site notices posted adjacent to the site dated 7th June, 2013. In addition, neighbour notification letters were forwarded to adjacent properties dated 29th May, 2013. 3 letters of representation have been received in response to the public notification process objecting on the following grounds:

- the extension of the hours of delivery would only exacerbate on-going issues relating to cooking odours; and
- noise disturbance from vehicle engines, doors slamming, late night restaurant use.

6.2 Councillor Coupar has been contacted by a number of local residents expressing concerns regarding the current application. Councillor Coupar asked for a determination by Plans Panel if Officers were minded to support the variation of the hours of delivery.

7.0 CONSULTATIONS RESPONSES:

Non Statutory Consultations:

Highway Development Services:

Highway officers commented 19th June, 2013 that the proposal would not create any specific highway safety issues and therefore raised no objection to the proposed variation of delivery hours.

8.0 PLANNING POLICIES:

8.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 The Development Plan for the area consists of the adopted Unitary Development Plan Review (UDPR), along with relevant supplementary planning guidance and documents.

8.3 The Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. On 26th April 2013 the Council submitted the Publication Draft Core Strategy to the Secretary of State for examination and an Inspector has been appointed. It is expected that the examination will commence in September 2013.

8.4 As the Council has submitted the Publication Draft Core Strategy for independent examination some weight can now be attached to the document and its contents recognising that the weight to be attached may be limited by outstanding

representations which have been made which will be considered at the future examination.

- 8.5 The application site is not allocated within the UDPR proposals map. Nevertheless, the following policies are considered to be of relevance:

GP5 seeks to ensure that development proposals resolve detailed planning considerations, including amenity.

BD5 requires new buildings to give consideration to both their amenity and that of their surroundings.

SF15 hot food takeaway shops

T2 developments need to be adequately served by existing or proposed highways, capable of being served by public transport and have provision for safe and secure cycle use and parking.

T24 parking provision to reflect the guidelines set out in UDP Appendix 9.

- 8.6 Supplementary Planning Documents
SPD Street Design Guide.

- 8.7 National Planning Policy:
The National Planning Policy Framework (NPPF) was published on 27th March 2012 and replaces previous Planning Policy Guidance/Statements in setting out the Government's planning policies for England and how these are expected to be applied. One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development.

9.0 MAIN ISSUES

Residential amenity: impact of the increase in the hours of delivery.

Highway safety

Representations

10.0 APPRAISAL

Residential Amenity

- 10.1 In considering the variation of hours of delivery Officers are mindful that the site is located in a residential setting characterised predominantly by semi-detached family houses where general background ambient noise levels during the evening are relatively low. The residential properties in closest proximity to the site are the flats at first floor level situated above the ground floor retail outlets on the parade. The closest houses in relation to the site are at No. 65a Penda's Way around 15m to the south of the site, and at No.100 Penda's Way around 30m to the east (opposite) side of Penda's Way.

- 10.2 The site has planning permission in principle for the use of a hot food takeaway which is accepted can include noise disturbance in the form of vehicles arriving to collect food from the takeaway shop, with the traditional incumbent issues of doors slamming, raised voices and music from car systems. However, the proposed extension of hours of delivery to, and perhaps more importantly from the site in the form of a delivery service, has the potential to intensify the level of vehicular activity above that already established. Officers consider that it would be difficult to control (by conditions) the numbers of deliveries and the type and number of vehicles involved with such a service. The proposal therefore has the potential to exacerbate noise disturbance around the site resulting in a harmful impact on the residential amenity of

local residents. As a consequence, the variation of the delivery hours cannot be supported.

Highway Safety

- 10.3 Given that the site benefits from an access road directly in front of the parade, and access to the rear of the parade for residents of the first floor flat Highway Officers raised no objection to the original change of use application. Similarly, Highway Officers consider that the current proposal to vary the hours of delivery does not raise any specific concerns regarding highway safety issues and consequently it is considered that a highway objection would be difficult to justify.

Representations

- 10.4 Officers note that local residents have highlighted concerns relating to the generation of unpleasant cooking odours, however the applicant is seeking to resolve this issue in relation to his own property/use. It should be noted however, that the existing Chinese takeaway in the same parade may be contributing to the current situation on this issue, however this use is of longstanding and the local planning authority is not in a position to take any remedial action. In any event this matter is not relevant to the consideration of the planning merits of this particular application.

11.0 CONCLUSION

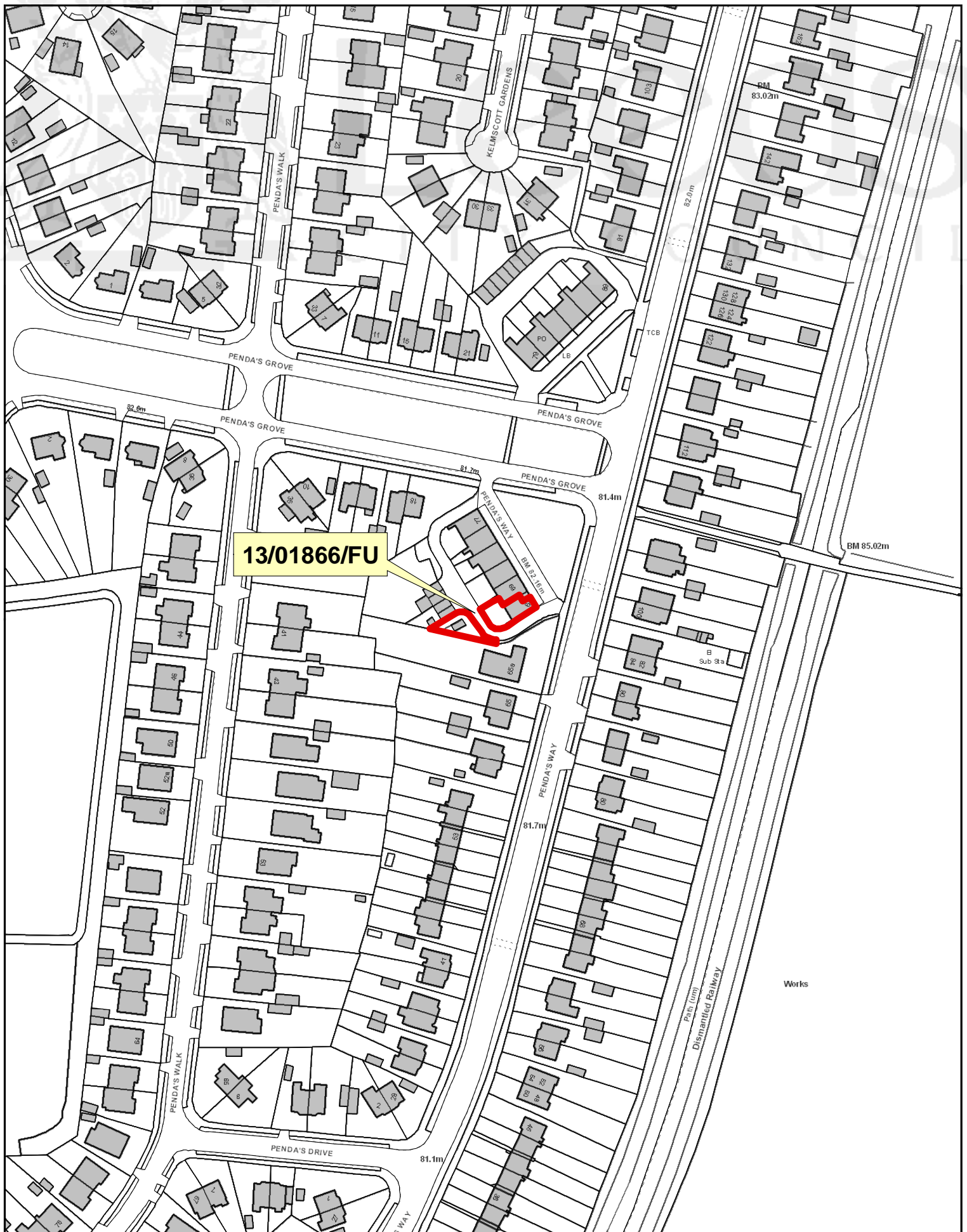
- 11.1 Officers consider that the longer delivery hours have the potential to intensify use thereby harming the living conditions of residents living in close proximity to the site. As a consequence, the application cannot be supported and is therefore recommended for refusal for the reason stated.

Background Papers:

Application file: 13/01866/FU.

Certificate of Ownership B completed and notice served on Mr D Worsley.

Notice served on David Worsley. 33 Elmete Avenue, Scholes, Leeds LS15 4BL on 22nd April, 2013.



NORTH AND EAST PLANS PANEL