

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 19 MAY 2020

PLANNING APPLICATION – DENBURN WAY BRECHIN

GRID REF: 360180:760028

REPORT BY SERVICE LEADER PLANNING AND COMMUNITIES

Abstract:

This report deals with planning application No [19/00996/FULL](#) for the change of use of land to site a hot food takeaway van (retrospective) at Denburn Way, Brechin for Ms Charlotte Manning. The application is recommended for approval subject to conditions.

1. RECOMMENDATION

It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 Planning permission is sought for the change of use of land to site a hot food takeaway van (retrospective) at Denburn Way, Brechin. A plan showing the location of the site is provided at Appendix 1.

3.2 The application site comprises a small section of roadway located on the western side of the carriageway of Denburn Way, around 27 metres south of its junction with Commerce Street. A car park associated with an existing business premises is located to the east and a car park associated with a retail unit is located to the west. The site is located in a predominantly mixed use area. Denburn Way itself is a short length of public road that serves a number of residential units at Denburn Court and an existing business premises.

3.3 The application provides for the use of a section of roadway for the siting of a hot food takeaway van. It is understood that the van has been in situ for a period of time and that the use has been operational. The van itself does not require planning permission but it measures around 4.1 metres in length, 2 metres in width and 2.7 metres in height.

- 3.4 The application has not been varied but it has been subject to statutory neighbour notification and it was advertised in the local press as required by legislation.
- 3.5 This application requires to be determined by Committee because it is recommended for approval where Angus Council has an interest in the land and it has attracted objection.

4. RELEVANT PLANNING HISTORY

- 4.1 There is no planning history relevant to the application site.
- 4.2 At its meeting of [6 April 2017](#) the Civic Licensing Committee noted that a street trader's licence for a fixed pitch at Denburn Way, Brechin had been granted. It is understood that the licence related to the operation of the hot food takeaway van subject of this application.

5. APPLICANT'S CASE

Supporting information has been submitted and can be viewed on the council's [Public Access](#) website. The supporting information indicates the following: -

- a general waste bin and a recycling bin would be provided with waste collected and then disposed of at a local waste management facility;
- waste water is collected by the operator and then disposed of at their home;
- cooking oil is collected into containers and then disposed of at the local recycling centre; and
- operating hours are from 09:00 – 14:00 every Thursday – Saturday and from 12noon until 3pm on a Sunday. *Members should note that the licence relative to the site is subject to standard licence conditions and these allow the business to operate between the hours of 7a.m. to 12 midnight Monday to Friday and from 7a.m. to 11p.m. on Saturday unless special written permission is given by the licensing authority. (Trading shall take place on a Sunday only between the hours of 12 noon to 11p.m.).*

6. CONSULTATIONS

- 6.1 **Angus Council Environmental Health** – has confirmed no objection to the application subject to conditions restricting the hours of operation, limiting noise from all plant and equipment, and controlling waste management. It has confirmed no objection in relation to contaminated land issues.
- 6.2 **Angus Council Roads** – has confirmed no objection to the application subject to a condition restricting the location and orientation of the hot food takeaway van. In addition, it has advised that the applicant should be informed that the Roads Authority may require relocation of the hot food takeaway van at any point in the future if necessary for road safety.
- 6.3 **Archaeology** – has confirmed no objection.
- 6.4 **Community Council** – has provided no comment.
- 6.5 **Scottish Water** – has provided no comment.

7. REPRESENTATIONS

One letter of representation has been received in objection to the application. The letter will be circulated to Members of the Development Standards committee and a copy is available on the council's [Public Access](#) website. The following matters are raised in objection and are discussed under Section 8 of this report: -

- The noise associated with the use of a generator;
- The smell generated from the hot food takeaway van; and
- The loss of public parking due to the siting of the hot food takeaway van.

8. PLANNING CONSIDERATIONS

8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

8.2 In this case the development plan comprises:-

- [TAYplan](#) (Approved 2017)
- [Angus Local Development Plan](#) (ALDP) (Adopted 2016)

8.3 The application is not of strategic significance and the policies of TAYplan are not referred to in this report. The policies of the ALDP that are relevant to the determination of this application are provided in Appendix 2. These policies have been taken into account in the preparation of this report.

8.4 Policy DS1 of the ALDP identifies development boundaries for towns and, amongst other things, states that proposals for sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP. The application site lies within the development boundary for Brechin and is not allocated or otherwise identified for development.

8.5 The key issue in relation to the proposal is whether this is a suitable location for a hot food takeaway van having regard to locational criteria provided by development plan policy, and issues related to amenity, waste management and road safety/ parking. The council's [Advice Note 2/2018 Hot Food Takeaways](#) provides guidance in relation to hot food takeaway vans and the relevant planning considerations.

8.6 A hot food takeaway attracts visitors and constitutes a town centre use. ALDP policy generally advocates a town centres first approach for uses which attract visitors. However, the council's Advice Note 2/2018 indicates that hot food takeaways may be considered acceptable in locations such as industrial or other mixed use areas where the proposed use is complementary to other existing uses and where the proposal is unlikely to impact on the vibrancy, vitality and viability of town centres. In this case, the application site is not within the defined town centre but it is in a mixed industrial/ commercial use area where a facility of this nature is likely to serve a local demand. A small-scale facility of this nature would not have a significant impact on the vibrancy, vitality and viability of the town centre. The location of the hot food takeaway van is compatible with advice note guidance.

- 8.7 Development plan policy and advice note guidance require consideration of impact on amenity. The site is around 80m from the closest residential properties. Uses in the immediate vicinity of the application site include a depot/ recycling centre, a retail unit, a factory building and car parking associated with those uses. The closest non-residential building is around 15 metres from the application site. The council's Environmental Health Service has reviewed the application having regard to the operation of the takeaway van that has been in situ for a period of time. While complaints have been received regarding noise emission from a generator associated with the operation of the van, environmental health officers advise that a quieter generator has been installed and that associated emissions are not inappropriate for a mixed use commercial area. In any case it is suggested that a planning condition limiting noise emissions from plant and equipment associated with the operation would ensure no adverse noise impact having regard to the nature of the surrounding area and the relative proximity of neighbouring noise sensitive uses. Similarly, while issues have been raised regarding odour emission, environmental health officers have monitored the operation of the van and have not experienced any significant odour emissions. Some odour is to be expected from a hot food takeaway facility but given the relatively small-scale nature of the operation and the location of the site in a mixed use area, no significant or unacceptable impact has been detected from current use or is anticipated from any future use. Committee should note that the majority of neighbouring business premises are not subject to any planning restriction in terms of noise or odour emissions.
- 8.8 The applicant has indicated that a general waste bin and a recycling bin would be provided and waste would be collected everyday by the operator and disposed of at a local waste management facility. The applicant has also indicated that waste water is collected and then disposed of, and cooking oil is collected into containers and then disposed of at the local recycling centre. The Environmental Health Service has confirmed no objection in relation to the waste arrangements subject to a condition that requires approval of a scheme for the management of that waste, including food waste.
- 8.9 The operation of the hot food takeaway will attract vehicular and pedestrian movement and activity in the area. However, as indicated above the application site is reasonably well separated from residential properties and is located in a mixed use area adjacent to reasonably sizeable areas of car parking. Accordingly, this is an area where a degree of movement and activity can reasonably be expected throughout the day and additional movement and activity associated with this use is unlikely to result in significant adverse impact on the amenity of the area.
- 8.10 The Roads Service has reviewed the application and observed traffic movement in the vicinity of the operational van. It is satisfied that the location and operation of the hot food takeaway van does not result in unacceptable impacts in respect of the free flow of traffic or on-street parking in the vicinity. The van is sited on the opposite side of the carriageway from the vehicles parked in the private car park to the east of the roadway with sufficient space for access and egress to the parking bays. A condition is proposed to ensure that the hot food takeaway van would be sited with the serving hatch facing and directly abutting the western side footway of Denburn Way and located at least 25 metres from the nearside, southern channel line of Commerce Street. Subject to those conditions the Roads Service is satisfied that there should be no significant or unacceptable impact on road traffic and pedestrian safety.

- 8.11 The hot food takeaway van does not give rise to any other significant amenity issues. The Environmental Health Service has suggested that hours of operation could be restricted by planning condition but the council's advice note indicates that this matter is generally more appropriately controlled through licensing powers. In this case the hours of operation are controlled through a Street Traders Licence. There are no special circumstances regarding this particular location that merit a planning control on the hours of operation and therefore a condition limiting or restricting the hours of operation would not comply with government policy on the use of planning conditions.
- 8.12 The proposal does not give rise to any other significant issues in terms of development plan policy and is of a scale and nature appropriate for the location. It is compatible with the council's published advice note guidance and complies with relevant development plan policy subject to the proposed conditions.
- 8.13 While the application complies with development plan policy, it is also relevant to have regard to other material considerations. In this case there is a representation that offers objection to the application for reasons related to noise, odour and impact on parking provision in the area. Those matters are relevant to the determination of the application. As indicated above environmental health officers have observed operation of the van as it has been in use for some time. It is understood that while noise may still be audible in neighbouring business premises, such noise emissions are within recognised limits in a mixed use area and a planning condition is proposed to ensure noise emissions can be controlled within acceptable limits. Officers have monitored the existing use and have not experienced any significant or unacceptable odour impacts. This is a mixed use area where a degree of activity, noise and smell might reasonably be anticipated, particularly as existing business in the area are generally not subject to planning restrictions. The Roads Service has indicated that, based on its observation of the situation, the location of the van does not adversely affect the free flow of traffic on the public road and does not significantly affect the private parking area to the east of Denburn Way. The siting of the van and parking by visitors will involve use of some on-street parking but that is considered acceptable at this location. It is not unusual to find hot food takeaway vans coexisting with businesses in mixed use areas where they meet a local demand. The concerns raised by the interested party are noted and, where appropriate, are addressed by the proposed planning conditions. However, there are no material considerations that justify refusal of planning permission.
- 8.14 In conclusion, this is a mixed use area where a hot food takeaway would not adversely affect the town centre. The specific siting of the hot food takeaway van does not result in any significant or unacceptable adverse impacts on amenity, waste management or road safety and parking subject to the proposed planning conditions. The development is compatible with the council's advice note guidance on hot food takeaways and is compatible with development plan policy. There are no material considerations that justify refusal of planning permission.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this

report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

EQUALITIES IMPLICATIONS

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

10. CONCLUSION

It is recommended that the application be approved for the following reason and subject to the following conditions:

Reason for Approval:

The application is in accordance with the development plan as it is compatible with the locational criteria identified in the plan and as it does not result in any significant impact on the town centre and as it does not give rise to unacceptable impacts on amenity, waste management or road safety and parking having regard to the council's planning advice note guidance on hot food takeaways subject to the stated planning conditions. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

Conditions:

1. That the hot food takeaway van shall be sited with the serving hatch being located directly adjacent to and facing the public footway on the western side of Denburn Way, and located a minimum of 25 metres from the nearside, southern channel line of Commerce Street.

Reason: In the interests of road traffic and pedestrian safety.

2. That noise from all plant and equipment associated with the hot food takeaway van shall not give rise to a noise level assessed with windows open at least 50mm within any dwelling or noise sensitive building, in excess of that equivalent to Noise Rating Curve 35 between 0700 and 2200 and Noise Rating Curve 25 at all other times.

Reason: In order to safeguard the amenity of occupants of neighbouring noise sensitive property.

3. Within 1 month following the date of this permission, a scheme for the management of waste, including food waste shall be submitted for the written approval of the planning authority. Thereafter management of all waste from the hot food takeaway van shall be undertaken only in accordance with the scheme as approved by the planning authority.

Reason: In order to ensure the appropriate management of waste in the interests of the amenity of the area.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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APPENDIX 1: LOCATION PLAN
APPENDIX 2: DEVELOPMENT PLAN POLICIES
APPENDIX 3: REPRESENTATIONS
APPENDIX 4: COMMITTEE PRESENTATION