

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 20 JUNE 2017

PLANNING APPLICATION – 89 NORTH STREET, FORFAR, DD8 3BL

GRID REF: 345861 : 751229

REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

Abstract:

This report deals with planning application No 17/00328/FULL for a change of use from a nightclub to a gym, hot food takeaway and two bedroom flat, including elevation alterations, at 89 North Street, Forfar, DD8 3BL by Blue Spark Limited. This application is recommended for conditional approval.

1. RECOMMENDATION

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

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME AGREEMENT/ CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Our communities are developed in a sustainable manner
- Our natural and built environment is protected and enjoyed

3. INTRODUCTION

- 3.1 The applicant seeks planning permission for change of use of an existing nightclub to form a gym, hot food takeaway and a 2 bedroom flat, as well as alterations to the external appearance of the building.
- 3.2 The application site was most recently used as a nightclub and is located in a mixed use area in the north of Forfar. The site lies to the west of North Street and is adjoined by a tattoo parlour to the south, and hot food takeaway to the north. There are residential properties above the adjoining commercial uses and residential properties to the west of the site. The site has existing water supply and drainage provisions and no dedicated parking.
- 3.3 The proposal would provide a hot food takeaway which would occupy the majority of the buildings ground floor frontage to North Street. It would measure approximately 55sqm. A 315sqm gym would occupy the remainder of the ground floor to the rear of the proposed hot food takeaway. The proposed flat would occupy the first floor of the building, with a floor area of approximately 85sqm and would provide 2 bedrooms. Each use would be served by its own external door. Externally, the existing signage would be removed and the principal elevation would be repainted with 3 existing doors on that elevation replaced. A new ventilation duct would be installed in the rear (west facing) roof plane and 4 new rooflights would be provided in the front (east facing) roof plane.
- 3.4 The application has not been subject of variation.
- 3.5 The application was advertised in the Dundee Courier as required by legislation.
- 3.6 This application requires to be determined by the Development Standards Committee due to the recommendation of approval, where the proposal has attracted an objection from the Community Council.

4. RELEVANT PLANNING HISTORY

The property has a long history of use as a licensed premises/nightclub. The most recent planning application dates from 2006 and relates to alterations to the front elevation of the building.

5. APPLICANT'S CASE

- 5.1 A Supporting Statement was submitted which suggests that the site is ideal for the multi-use proposal as it is within a mixed use area. All three proposed uses will operate independently of one another but the building is under the control of the applicant. It is suggested that as the building is currently used as a nightclub significant sound proofing should already be in place for the proposed flat. There is ample on street parking outside the premises with public footways providing safe and hazard free access. New ventilation systems to replace those serving the nightclub are also proposed. The proposed hours of operation are from 7am until 10pm for the gym and from 4pm until 1am for the hot food takeaway. The statement suggests this would be an improvement to the existing situation, where the current nightclub normally operates from 8pm to 2am. The statement concludes that given the size of the building, which will not readily convert to one use given its size and layout, a conversion to a mix of uses is felt to be the most appropriate redevelopment option for the premises.
- 5.2 A Preliminary Roost Assessment for Bats was conducted by Northern Ecological Services in May 2017. The report notes the background, statutory context, methodology and findings of the assessment. The report concludes that the structure of the building appears to be sound with no roof defects or design features that would provide entry points for bats into the fabric of the building, and there is no internal loft space available. The building is located in an urban environment with negligible foraging habitat for bats in the immediate locality. Therefore given the structure of the building and its location, occupation by bats seems highly unlikely and no further survey work in respect of bats at this property is necessary.

- 5.3 The supporting information is available to view on the Council's [Public Access](#) system.

6. CONSULTATIONS

- 6.1 **Angus Council Roads** – has no objections to the proposal.
- 6.2 **Forfar Community Council** – objects to the proposal based on insufficient parking, amenity impacts, lack of litter and food waste provisions, and sufficient gym facilities already available.
- 6.3 **Scottish Water** – there was no response from this consultee at the time of report preparation.
- 6.4 **Angus Council Environmental Health** – has no objections to the proposal subject to conditions regulating the ownership of the flat and takeaway, noise emissions from the gym and fixed takeaway equipment and details of the hot food takeaway odour extraction equipment.

7. REPRESENTATIONS

Five letters of representation were received, all of which object to the application. The letters of representation will be circulated to Members of the Development Standards Committee and a copy will be available to view in the local library or on the Council's [Public Access](#) website.

The main points of concern were as follows:

- Unrestricted and unsociable hours of operation of the hot food takeaway
- Insufficient parking, on street parking and road safety impacts
- Potential to attract antisocial behaviour

The above matters are discussed under Planning Considerations below. Other matters raised include:

- **Construction access/disruption and loss of privacy** – construction access is a civil matter between the relevant parties. The proposal makes provision for a ventilation duct in the west facing elevation no new windows would be formed in that elevation. New rooflight windows would be provided in the east elevation overlooking the public roadway.

- **Sufficient food outlets and gyms in the area** - the substantive issue in relation to this proposal is whether the proposed uses are acceptable at this site and that matter is discussed below. Issues regarding the number of existing food outlets and gyms in the area and competition between businesses are not a material planning consideration.

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 2012)
 - Angus Local Development Plan (ALDP) (Adopted 2016)
- 8.3 The development plan policies relevant to consideration of this application are provided in Appendix 3 and 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 of Forfar and is not allocated or otherwise identified for development.
- 8.5 The hot food takeaway and gym are commercial uses that attract visitors. ALDP policy advocates a town centres first approach for uses of this nature. However, the existing building currently accommodates a town centre use and a nightclub/discotheque could be used as a gymnasium without the requirement for planning permission. This is a longstanding commercial area of the town and the uses proposed at this location would not have a significant impact on the vibrancy, vitality and viability of the town centre. Similarly, the nature of the uses proposed would not significantly change the mixed use character of the area.
- 8.6 As noted the nightclub/discotheque falls within the same use class as a gymnasium. Accordingly, the existing building could be used as a gym without the requirement for planning permission. The principle of using the ground floor area of the building as a gym is acceptable having regard to the established use of the building. Indeed a gymnasium is likely to be a less onerous neighbour to surrounding residential properties. A condition is proposed that seeks to ensure that amplified music and sound from the gym (and takeaway) is controlled as to be inaudible within any dwelling or noise sensitive building. Third parties have raised concern about the number of gyms within the town but it is not a function of the planning system to restrict competition between businesses.
- 8.7 The key issue in relation to the proposed hot food takeaway is its impact on amenity. Policy DS4 indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the amenity or environment of existing or future occupiers of adjoining or nearby property. The Council's Advice Note 18 also provides guidance in relation to hot food takeaways. The Advice Note indicates that the preferred location for hot food takeaways are within the periphery of town centres outwith designated prime shopping areas, or in mixed-use areas, subject to compliance with other relevant criteria. The application site is in a mixed use area and is not directly abutting residential properties at ground floor level. The proposed flat would be located above the takeaway but would be in the same ownership and this is a circumstance considered acceptable by the Advice Note. The public footways in the vicinity of the site are not unusually narrow and the Roads Service has not raised any concern regarding the adequacy of those footways. The general location is compatible with the Advice Note guidance.
- 8.8 Advice Note 18 identifies other relevant matters relating to hot food takeaway amenity impacts. In that respect the Environmental Health Service has indicated it is satisfied that an appropriate extraction and ventilation system can be provided to deal with cooking odours. A condition is proposed that requires full details of that system before the hot food takeaway is brought into use. Similarly the Environmental Health Service has offered no objection in relation to noise emission but a condition is proposed that seeks to regulate such emissions.

The hot food takeaway is likely to generate less noise than the established use of the premises. There is an existing litter bin on the street in the proximity of the site and there is space within the building for the storage of food waste prior to disposal.

- 8.9 Interested parties have raised concern regarding unrestricted and unsociable hours of operation of the proposed hot food takeaway. However, Advice Note 18 indicates that planning conditions will not normally be used to restrict opening hours of hot food takeaways as these can be more appropriately addressed through the licensing system. In this case it is relevant to have regard to the established use of the premises as a nightclub and its associated operating hours. In these circumstances the Environmental Health Service has indicated that it does not consider restriction on the hours of operation are necessary and amenity can be suitably protected by the conditions proposed.
- 8.10 Policy TC2 deals with all proposals for residential development and is relevant to the consideration of the proposed flat. Amongst other things, that policy requires proposals to be compatible in terms of land use and to provide a satisfactory residential environment. In this case the building is in a mixed use area where first floor flatted accommodation is common. The flatted dwelling is broadly compatible with surrounding uses. However, the flat would be directly above the proposed hot food takeaway and this could give rise to amenity impacts. Indeed this is a situation that Advice Note 18 would not support unless the flat is in the control of the operator of the hot food takeaway. In this case the flat and takeaway are in the same ownership and this provides opportunity for the installation of appropriate sound insulation. This is addressed by condition. The proposal involves the addition of rooflight windows in the east facing roof that fronts the public road. These would not give rise to any significant adverse impacts on the amenity of occupants of neighbouring property. There are existing rooflights on the west facing elevation but views from these windows are largely screened by the existing gable that extends to the rear of the building. The formation of the flatted dwelling is unlikely to give rise to any other significant amenity impacts for neighbours, other than the improvement associated with the removal of the nightclub use. Impacts on the built and natural environment, access and infrastructure are discussed below. The proposal does not give rise to any affordable housing requirements in terms of Policy TC3.
- 8.11 Policy DS3 deals with design quality and place-making. The proposal would utilise an existing building and would not extend its footprint. Externally, the proposed alterations would be minor and would not cause detriment to the character or appearance of the area. Notwithstanding this the drawings note the principal elevation would be repainted and a condition is proposed that requires precise details of that repainting.
- 8.12 Policy PV5 deals with protected species. The front element of the building to which the application relates is of a construction potentially favourable for bats which are a European Protected Species. However, a protected species survey submitted in support of the application states that occupation by bats is highly unlikely and no further survey work is necessary.
- 8.13 The final policy consideration relates to car parking and traffic movement associated with the overall development. The lack of parking and increased pressure on available on-street parking is raised as an objection to the proposal by a number of interested parties. There is no off-street parking associated with the proposed development. However, the proposal involves reuse of an existing building where there is no potential to provide off-street parking. It would be unreasonable to require off-street parking in such cases as this could prejudice any reuse of existing buildings. The Roads Service has indicated that there is time limited on-street parking on North Street adjacent to the site and unrestricted on-street parking in the surrounding area. The site is located in an area which is accessible on foot. Advice Note 18 indicates that it would generally be unreasonable to expect dedicated off-street parking to be provided by a hot food takeaway business. It goes on to indicate that outwith town centre locations, availability or unavailability of public car parking will constitute grounds for refusal if parking impinges on the amenity enjoyed in nearby residential streets or is regarded as presenting a road safety hazard by the Roads Service. In this case the Roads Service has offered no objection to the proposal in terms of road traffic, pedestrian safety and car parking. The proposal may provide some additional pressure on parking in the area but as indicated that must be balanced against the desirability of finding a new use or uses for an existing building and securing the cessation of the established nightclub use.
- 8.14 In relation to other material considerations it is relevant to have regard to the established nightclub use of the building and the general desirability of securing the removal of that use

which has been undertaken very close to neighbouring residential properties. Representations made in respect of the application make reference to antisocial behaviour associated with the existing use. The cessation of the nightclub use may result in some improvement to the general amenity of the area. The hot food takeaway may generate some activity and congregation in the vicinity. However, the footways and street pattern in the area is not such that it readily lends itself to congregation by large groups. There is no reason to consider that the proposal would give rise to unusual amenity impacts and any particular issues regarding antisocial behaviour are matters for the police.

- 8.15 The concerns identified by third parties and the Community Council are noted and have been taken into account in preparing this report. There are no matters raised that are considered to justify refusal of the planning application.
- 8.16 In conclusion, the proposal provides for the reuse of a long established nightclub building to provide a gymnasium, hot food takeaway and a flat dwelling. The building is located in a mixed use area that has reasonably good accessibility to the surrounding area. The concerns raised by interested parties are noted but the proposal would facilitate the removal of the nightclub which provides opportunity for some improvement in the amenity of the area. Impacts on the amenity of the area can be mitigated through the imposition of planning conditions. The proposal is broadly compatible with development plan policy subject to the suggested planning conditions. There are no material considerations that justify refusal of the application.

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 condition(s):

Reason(s) for Approval:

The development provides for the reuse of an existing building for a mix of uses that would not, subject to conditions, have a significant adverse impact on the amenity of the area. It would secure the cessation of a long established nightclub use which otherwise has potential to adversely affect the amenity of occupants of nearby residential property. The proposal complies with the relevant provisions of the development plan subject to the stated planning conditions. There are no material considerations that justify refusal of the application.

Conditions:

1. That upon implementation of any part of this planning permission the current use of the building as a nightclub/discotheque shall cease and such use shall not recommence unless otherwise through the grant of planning permission following the submission of an application of planning permission to the Planning Authority.

Reason: In order to prevent the reuse of the building as a nightclub/discotheque once the planning permission is implemented as this could affect the acceptability of other uses approved by this planning permission as there would be potential for materially different impacts on amenity that have not been taken into account in the grant of this permission.

2. That prior to the commencement of development precise details of the proposed finish paint colour for the exterior of the building shall be submitted to and approved in writing by the Planning Authority. Thereafter the building shall be painted only in accordance with the approved details.

Reason: In order that the planning authority may verify the acceptability of the proposed paint colour in the interests of the visual amenity of the area.

3. That the hot food takeaway shall not be brought into use until a system for the extraction of cooking odours has been installed in accordance with a scheme that has been approved in writing by the Planning Authority. The scheme for the extraction of cooking odours shall include:
 - Full details of the proposed odour abatement system including grease filters, pre-filters and carbon filters or any other odour abatement method as considered necessary;
 - Detailed drawings showing all ductwork and precise details of the discharge position and its height which shall be no less than 1m above roof ridge height with no restrictions i.e. caps or cowls;
 - A detailed maintenance and cleaning schedule for the odour extraction system.

Thereafter the approved odour extraction system shall be maintained and operated in accordance with the approved scheme and shall be fully operational at all times when the hot food takeaway is in use. For the avoidance of doubt the system for the extraction of cooking odours from within the hot food takeaway is not approved.

Reason: In order to ensure the provision and maintenance of a satisfactory cooking odour extraction system in the interests of safeguard the amenity of occupants of neighbouring property.

4. That the hot food takeaway shall not be brought into use until sound insulation has been installed in accordance with a scheme that has been approved in writing by the Planning Authority. The scheme shall address the impact of noise from the hot food takeaway and its associated ventilation/extraction system on the occupants of the flatted dwelling hereby approved.

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

5. That amplified music and sound from the gymnasium and hot food takeaway shall be controlled so as to be inaudible within any dwelling or noise sensitive building.

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

6. That noise from fixed equipment associated with the gymnasium and hot food takeaway shall not give rise to a noise level assessed with windows open 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.

7. That notwithstanding the provisions of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or any Development Order, the gymnasium shall be used solely for that purpose and shall not be used for any other purpose including any other purpose in Class 11 of the aforementioned Order, unless otherwise through the grant of planning permission following the submission of an application of planning permission to the Planning Authority.

Reason: In order to prevent the use of the building for an alternative activity that could give rise to materially different impacts on the amenity of the area without full consideration of the acceptability of those impacts by the planning authority.

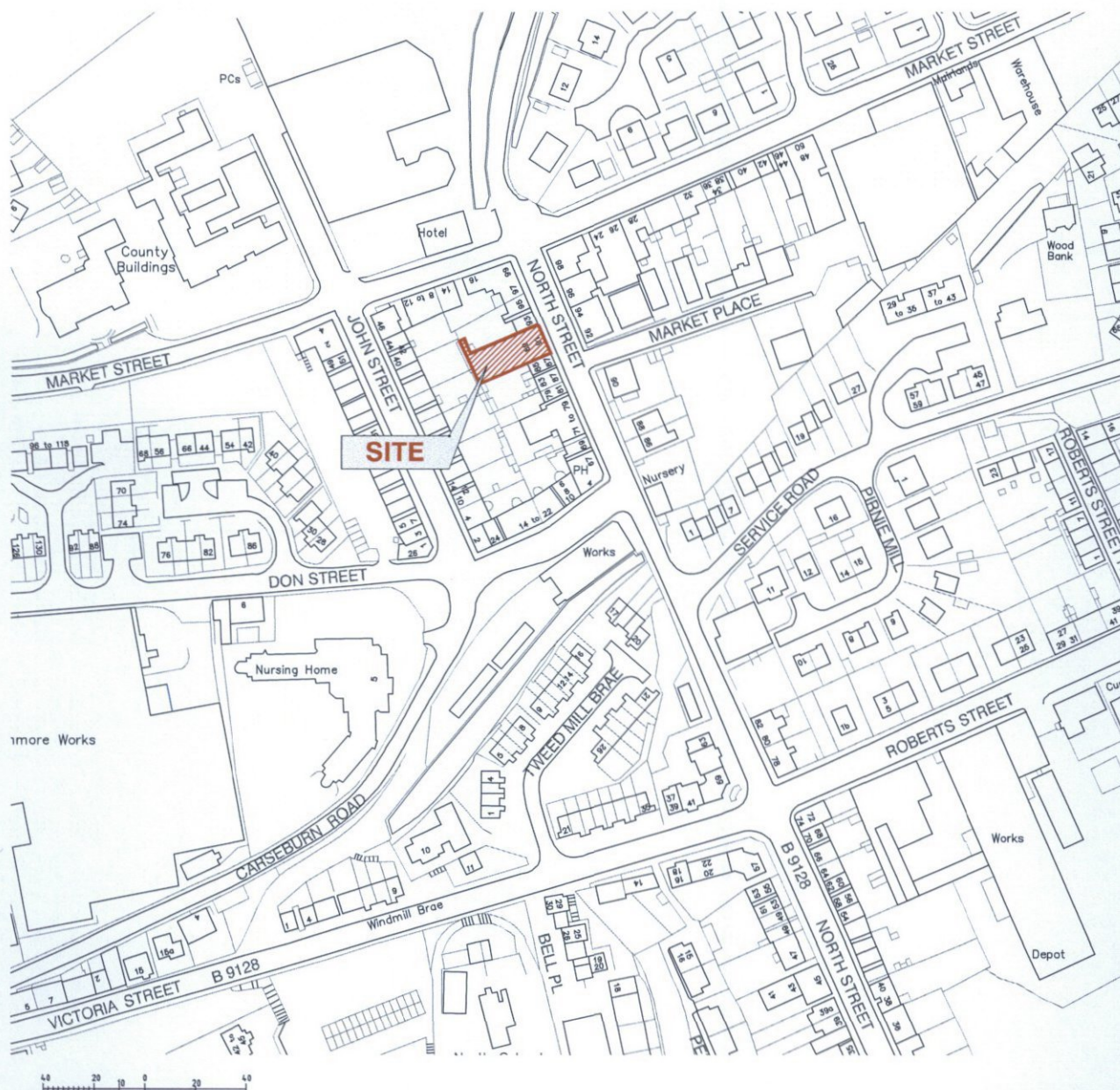
**STEWART BALL
HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES**

NOTE: No background papers, as defined 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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DATE: 12 JUNE 2017

Appendix 1 : Location Plan
Appendix 2 : Relevant Development Plan Policies



Location Plan

SCALE 1:2500 @A4

PLANNING

REVISIONS:

Project Title : Conversion of 'Candy' Nightclub 89-91 North Street Forfar	
Sheet : Location Plan	
Contents :	
Drawn by : KS	Drawing Number :
Checked by : RP	1847/PA/01
Date : 2017.04.19	Revision :
Scale : 1:2500 @ A4	

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Appendix 2 : Relevant Development Plan Policies

Angus Local Development Plan

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on 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.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- **Distinct in Character and Identity:** Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.
- **Safe and Pleasant:** Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of landscaping and open space are incorporated and linked to existing green space wherever possible.
- **Well Connected:** Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- **Adaptable:** Where development is designed to support a mix of compatible uses and accommodate changing needs.
- **Resource Efficient:** Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC2 : Residential Development

All proposals for new residential development*, including the conversion of non-residential buildings must:

- be compatible with current and proposed land uses in the surrounding area;
- provide a satisfactory residential environment for the proposed dwelling(s);
- not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and
- include as appropriate a mix of house sizes, types and tenures and provision for affordable housing in accordance with Policy TC3 Affordable Housing.

Within development boundaries Angus Council will support proposals for new residential development where:

- the site is not allocated or protected for another use; and
- the proposal is consistent with the character and pattern of development in the surrounding area.

In countryside locations Angus Council will support proposals for the development of houses which fall into at least one of the following categories:

- retention, renovation or acceptable replacement of existing houses;
- conversion of non-residential buildings;
- regeneration or redevelopment of a brownfield site that delivers significant visual or environmental improvement through the removal of derelict buildings, contamination or an incompatible land use;
- single new houses where development would:
- round off an established building group of 3 or more existing dwellings; or
- meet an essential worker requirement for the management of land or other rural business.
- in Rural Settlement Units (RSUs)**, fill a gap between the curtilages of two houses, or the curtilage of one house and a metalled road, or between the curtilage of one house and an existing substantial building such as a church, a shop or a community facility; and
- in Category 2 Rural Settlement Units (RSUs), as shown on the Proposals Map, gap sites (as defined in the Glossary) may be developed for up to two houses.

Further information and guidance on the detailed application of the policy on new residential development in countryside locations will be provided in supplementary planning guidance, and will address:

- the types of other buildings which could be considered suitable in identifying appropriate gap sites for the development of single houses in Category 1 Rural Settlement Units, or for the development of up to two houses in Category 2 Rural Settlement Units.
- the restoration or replacement of traditional buildings.
- the development of new large country houses.

*includes houses in multiple occupation, non-mainstream housing for people with particular needs, such as specialist housing for the elderly, people with disabilities, supported housing care and nursing homes.

**Rural Settlement Units are defined in the Glossary and their role is further explained on Page 9.

Policy TC17 : Network of Centres

Angus Council will seek to protect and enhance the scale and function of the centres as set out in Table 2 below.

A town centre first policy is applied to uses including retail, commercial leisure, offices, community and cultural facilities that attract significant numbers of people. Support will be given to development proposals in town centres which are in keeping with the townscape and pattern of development and which conform with the character, scale and function of the town centres.

All development proposals within a Commercial Centre will have to satisfy criteria within Policy TC19 Retail and Town Centre Uses.

Policy TC18 : Core Retail Areas

Within the Core Retail Areas as identified within the Proposals Maps, development proposals for retail uses (Class 1) which are appropriate to the character, scale and function of the town centre will be supported.

Development proposals seeking the change of use of existing ground floor retail premises (Class 1) will be acceptable where the proposed use is a restaurant or café (Class 3) or where:

- it can be demonstrated that the existing business is no longer viable and the property has been marketed for sale or lease as a going concern for a reasonable period at a reasonable market price; or
- at least 10% of the total number of retail units within the Core Retail Area are vacant.

Where development proposals satisfy the above criteria the following will also apply:

- ground floor development should include an appropriate active frontage; and
- a condition may be applied to restrict the permission to the use specified.

Within the Core Retail Areas, development proposals for residential and non-residential uses will be supported within the upper floors subject to the proposal according with other relevant policies within the Local Development Plan. Residential use on ground floors will not be supported.

Policy PV5 : Protected Species

Angus Council will work with partner agencies and developers to protect and enhance all wildlife including its habitats, important roost or nesting places. Development proposals which are likely to affect protected species will be assessed to ensure compatibility with the appropriate regulatory regime.

European Protected Species

Development proposals that would, either individually or cumulatively, be likely to have an unacceptable adverse impact on European protected species as defined by Annex 1V of the Habitats Directive (Directive 92/24/EEC) will only be permitted where it can be demonstrated to the satisfaction of Angus Council as planning authority that:

- there is no satisfactory alternative; and
- there are imperative reasons of overriding public health and/or safety, nature, social or economic interest and beneficial consequences for the environment, and
- the development would not be detrimental to the maintenance of the population of a European protected species at a favourable conservation status in its natural range.

Other Protected Species

Development proposals that would be likely to have an unacceptable adverse effect on protected species unless justified in accordance with relevant species legislation (Wildlife and Countryside Act 1981 and the Protection of Badgers Act 1992) subject to any consequent amendment or replacement.

Further information on protected sites and species and their influence on proposed development will be set out in a Planning Advice Note.