

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 19 OCTOBER 2021**

**PLANNING APPLICATION – 152 HIGH STREET, ARBROATH, DD11 1HN  
GRID REF: 364322 : 741025**

**REPORT BY SERVICE LEAD - PLANNING & SUSTAINABLE GROWTH**

**Abstract:**

This report deals with planning application No. [21/00544/FULL](#) for the change of use of a Class 1 retail unit to form a hot food takeaway with associated works, at 152 High Street, Arbroath by Mr Bener Gul. This application is recommended for conditional approval.

**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 Full planning permission is sought for the change of use of a retail unit (Class 1) to form a hot food takeaway (sui generis) with associated works. A plan showing the location of the site is provided at Appendix 1.

3.2 The application site extends to approximately 265sqm and comprises a two storey, mid-terrace, pitched roof, property that fronts the High Street. It has a large, single storey, flat roof extension and an area of external yard to the rear (west). The site can be accessed to the rear, from Elgin Place, where there is a large car park beyond. The property is in a town centre location where there are a mix of commercial and residential properties and other uses typically found in town centre areas. It is indicated that the applicant owns the adjoining building to the north. The property is located within the Arbroath Abbey to Harbour Conservation Area.

3.3 The proposal is for a hot food takeaway but includes a 21-cover seating area within the unit and it would involve the erection of a 500mm diameter, 9m high galvanised metal extract flue to the rear of the building. The footprint of the building would not be altered and no other external alterations are proposed as part of this application. A waste storage area is proposed to the rear of the building.

3.4 The application has not been subject to variation.

3.5 The application has been subject of statutory neighbour notification and was advertised in the press as required by legislation.

#### 4. RELEVANT PLANNING HISTORY

There is no planning history which is relevant to the current application.

#### 5. APPLICANT'S CASE

5.1 The following documents have been submitted in support of the application:

- Design Statement
- Noise Impact Assessment
- Odour Impact Assessment

5.2 The supporting information is available to view on the council's [Public Access](#) website and the supporting information is summarised at Appendix 2 below.

#### 6. CONSULTATIONS

6.1 **Angus Council – Roads** – has offered no objection to the proposal.

6.2 **Scottish Water** – has offered no objection and advises there is sufficient capacity at the local water and wastewater treatment works to service the development.

6.3 **Community Council** – there was no response from this consultee.

6.4 **Environmental Health** – has offered no objection to the proposal in terms of amenity impacts subject to conditions to regulate noise from plant and a scheme for the ventilation and abatement of cooking odours.

#### 7. REPRESENTATIONS

7.1 The application has attracted 12 letters of representation. Those letters raise objection and concern regarding the proposal. The letters are provided at Appendix 3 and can be viewed on the council's [Public Access](#) website.

7.2 The following matters have been raised and are discussed at Planning Considerations: -

- Amenity impacts as a result of late night opening and noise, odour & light pollution
- Increased anti-social behaviour and littering in the area
- Unsuitable location for the proposed use
- Lack of parking and impacts upon traffic
- Impact upon the conservation area

Other matters raised include: -

- **Increase to existing seagull problem** – the proposal makes provision for commercial waste storage to the rear of the building and precise details of that can be controlled by condition. There are a number of public waste bins within proximity of the site to allow customers to dispose of waste in a suitable manner.
- **Impacts upon obesity and no need for additional takeaways in the area** - the council's planning policies generally seek to allow hot food takeaways in appropriate locations where they comply with relevant policies and guidance. There is no evidence to suggest that a hot food takeaway at this specific location would be any more likely to result in an increase in obesity than one located at another location. There is not an unusually high concentration of hot food takeaways in the locale and it is not the purpose of the planning system to regulate or restrict commercial competition.
- **May result in illegal or unsafe parking** - the approval of this application would

not permit individuals to park in an unlawful manner or to take unauthorised access to the pedestrianised area.

- **Set a precedent for further development of this nature** - there is no concept of binding precedent in planning law and each application must be assessed on its own merits having regard to relevant policy and material considerations.

## 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 As the application is not of strategic significance the policies of TAYplan are not referred to in this report and the policies of the ALDP form the main basis for the consideration of the proposal. The relevant policies of the ALDP are reproduced at Appendix 4.
- 8.4 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in determining this application.
- 8.5 Policy DS1 in the ALDP states that within development boundaries, proposals will be supported where they are of a scale and nature appropriate to the location and where they accord with other relevant policies in the ALDP.
- 8.6 The application proposes the change of use of a vacant retail unit to form a hot food takeaway within the defined town centre, central core retail area, and Abbey to Harbour conservation area in Arbroath. The site is not allocated or safeguarded for any particular use in the ALDP.
- 8.7 Policy TC18 relates to core retail areas and indicates development proposals seeking to change the use of existing ground floor retail premises (Class 1) will be acceptable where, amongst other alternatives, the proposed use is a restaurant or café or where at least 10% of the total number of retail units within the core retail area are vacant. Policy TC18 also indicates ground floor development should include an appropriate active frontage and that a condition may be applied to restrict the permission to the use specified.
- 8.8 The proposal includes an internal seating area with capacity for around 21 covers, but the predominant use would be as a hot food takeaway. The application site is currently vacant and available information indicates the vacancy rate of retail units within the core retail area is around 15%. Therefore, the principle of a non-retail use within the ground floor of this unit is compatible with policy TC18 and the proposal would see the reuse of a vacant building in a prime town centre location. Around 80% of ground floor units within the core retail area are in retail use and the general character of the area would not be significantly altered by the change of use of this property. A new use in the building would reduce vacancy and help maintain the vibrancy, vitality and viability of the area without significantly affecting its overall function as a retail destination. The inclusion of a small seating area could be complimentary to the primary function of the area.
- 8.9 A hot food takeaway is a use that attracts visitors and ALDP policy advocates a town centre first approach for uses of this nature. The council's Hot Food Takeaways

Advice Note 2/2018 states that the change of use from an existing ground floor retail or non-retail premise to a hot food takeaway within core retail areas will only be considered acceptable where the proposal satisfies relevant policies within the ALDP and other criteria within the advice note. For the reasons discussed above the principle of a non-retail use in the core retail area, would comply with relevant policies, and would not detract from the scale, function, vibrancy, vitality and viability of the town centre.

- 8.10 A key issue in relation to any hot food takeaway proposal is its impact upon amenity. Advice Note 2/2018 indicates that within town centre locations, hot food takeaways will not normally be considered acceptable where they occupy premises directly abutting (to any side, immediately or diagonally below) residential properties unless they are within the control (usually owned or leased) of the hot food takeaway proprietor, or it is demonstrated that impacts from noise and odour are not significant.
- 8.11 The application site does not directly abut residential properties at ground floor level and the upper floor of the building would be used to provide staff facilities. It is indicated that the applicant owns the adjoining 3 storey building to the north and it appears to include residential accommodation at upper floor level. The first-floor property to the south appears to be in residential use and is outwith the control of the applicant. There are other residential properties at upper floor level in the area.
- 8.12 Noise and Odour Impact Assessments have been submitted and those conclude that a suitably designed heating, ventilation, and air conditioning system could be provided in a manner that would meet identified noise criteria and that would minimise odour impact on occupants of neighbouring residential properties. The environmental health service has reviewed the proposal and is satisfied that an appropriate extraction and ventilation system could be provided to deal with cooking odours in a manner that would not unacceptably adversely affect amenity. That service has offered no objection to the proposal subject to suggested planning conditions. Council policy indicates that proposals that give rise to noise and odour impacts may be supported where the use of planning conditions will ensure appropriate mitigation. In this case expert advice indicates that conditions could be used to secure appropriate mitigation.
- 8.13 The proposal is also likely to generate activity throughout the day and in the evening as it is indicated that the business would be open until 11pm. The pedestrianised nature of the area is such that there is potential for congregation in the vicinity of the property and activity associated with that could impact the amenity of those that live in the area. However, this is a town centre location and as such is an area where council policy seeks to direct retail and associated commercial leisure type uses. Town centres are generally areas where activity might reasonably be expected beyond normal day-time hours and where uses associated with the evening or night-time economy can be found. In this area there is an existing public house in Kirk Square and the area is set out with seating to positively encourage people to congregate. Notably it is also an area that benefits from supervision by a town centre CCTV system. It is recognised that the presence of that system does not in its self guarantee any amenity protection, however it is an advantage of a town centre location that might not be available in other locations where similar impacts could occur without the benefit of official surveillance.
- 8.14 There is no dedicated parking proposed as part of the development, but the property is located within a town centre area where there are both on and off-street parking spaces. Advice Note 2/2018 indicates that it would generally be unreasonable to expect dedicated off-street parking to be provided by a hot food takeaway business. The property fronts a pedestrianised zone and the footways beyond this are not unusually narrow making it easily accessible by pedestrians. The roads service has reviewed the proposal and offers no objection in terms of road traffic, pedestrian safety, and car parking. There are several public waste bins within proximity of the

site. The advice note 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. It is indicated that the business would operate between 11am and 11pm and any opening between 11pm and 5am would require a late hours catering licence. It is not unusual to find hot food takeaways within Angus town centres that are open to 11pm and there are no special circumstances in relation to this proposal that indicate it would be appropriate or necessary to otherwise restrict the hours of operation.

- 8.15 The external alterations to the building are minor and no alterations are proposed to the property's frontage. A flue is proposed to the rear of the building and while it would be of significant height and utilitarian appearance, it would be erected adjacent to an existing chimney breast. The location to the rear of the building and position adjacent to the existing chimney would minimise visual impact associated with the flue and it would have no significant impact on the character or appearance of the conservation area. Precise details of the flue could be regulated by condition.
- 8.16 The conservation area is characterised by a mix of commercial uses and includes uses that attract activity out with normal day-time hours. The proposal would not have an adverse impact on the character of the area and the reuse of an existing vacant property would help maintain activity in the town centre area and sustain the fabric of the building. As indicated above no alterations to the frontage of the building are proposed by this application and the erection of the flue would not result in any significant impact on the appearance of the area by virtue of its location. It would not significantly affect the setting of any listed buildings in the wider area. The proposal would not have any adverse impacts upon any built or natural heritage designations.
- 8.17 The proposal does not give rise to any significant issues in terms of development plan policy and is of an appropriate scale and nature for the location. No alteration is proposed to the frontage and no further change of use could occur without the grant of a further planning permission. Therefore conditions regulating these matters are not required in this case.
- 8.18 In terms of material considerations it is necessary to have regard to the relevant planning matters raised in the letters of representation. The main issues raised relate to impacts on the amenity of the area and its residents. These concerns are understandable and there can be little doubt that a hot food takeaway is likely to give rise to impacts that could adversely affect amenity. A hot food takeaway will give rise to odours, any ventilation or extraction system is likely to generate noise, and even a moderately successful business will generate activity. However, the key question in relation to the determination of this application is whether this is an acceptable location for this type of use, and whether adverse impacts can be adequately mitigated. For the reasons set out above this location is considered compatible with council locational policy and hot food takeaways are a common feature in town centres throughout Angus. Expert advice indicates that impacts associated with odour and noise can be appropriately mitigated in this case. Mitigation measures would not eliminate odour or noise but should ensure that emissions would be within acceptable limits. There are no special characteristics associated with this site that suggest it is any less appropriate for a hot food takeaway than others that have been approved and operate in town centre locations throughout Angus.
- 8.19 Issues regarding access and parking are addressed above, but council policy guidance does not require dedicated parking provision for hot food takeaways and there is on and off-street parking in the area. The roads service has offered no objection to the proposal.
- 8.20 This is a town centre conservation area and it is characterised by commercial uses at ground floor level that attract visitors. General movement and activity are an established part of the area and this includes activity beyond normal day-time hours.

A hot food takeaway would not significantly alter the character of the area and as discussed above the exterior alterations would not adversely affect the appearance of the area. The proposal would allow a vacant unit in the conservation area to be reused in a manner which complies with policy and a new use in a vacant building is likely to have a positive impact on the general appearance of the area. There are no matters raised in the letters of representation which would justify refusal of the proposal which is otherwise compatible with policy.

- 8.21 Paragraph 33 of Scottish Planning Policy (SPP) states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. In this case TAYplan is less than 5-years old but the ALDP has recently become more than 5-years old as it was adopted in September 2016. The policies contained in the ALDP are generally consistent with TAYplan and SPP and are therefore considered to provide an appropriate basis for the determination of this application. However, the reuse of an existing building in an accessible location would contribute towards sustainable development. There are no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal when assessed against the wider policies in the SPP.
- 8.22 In conclusion, the proposal provides a new use for an existing vacant building in the town centre. The proposal would not have an adverse impact on the character or appearance of the conservation area and securing a new use for the building would help reduce the vacancy rate in the core retail area and retain the building in an appropriate condition. The council's policies allow this type of use in this type of location where amenity impacts can be appropriately mitigated. In this case consultation bodies have raised no objection to the proposal subject to conditions. The proposal is compliant with development plan policy subject to the proposed planning conditions which seek to mitigate impacts that may arise from the proposed use. The matters raised in letters of representation have been considered and where appropriate planning conditions are proposed to deal with issues raised. The proposal complies with development plan policy subject to the proposed conditions and 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.

## **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 proposal is in accordance with the development plan as it is compatible with the locational criteria identified in the plan and as it does not give rise to unacceptable

impacts on amenity, the conservation area, natural and built environment, road safety or infrastructure, subject to conditions. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

**Conditions:**

1. Prior to the commencement of development or the initiation of the use hereby approved the following shall be submitted to and approved in writing by the Planning Authority: -

a. a scheme for the ventilation, extraction, and abatement of cooking odours which shall include:-

- full details of the proposed odour abatement system including grease filters, pre-filters and carbon filters or any other odour abatement method to be used;
- a discharge velocity of at least 10m/s minimum supported by full design calculations;
- a high level discharge a minimum of 1m above the eaves height of the adjoining property as shown in figure 3 of the odour impact assessment by Paul Couper dated 1 July 2021 with no restrictions i.e. caps or cowls supported by detailed drawings showing all ductwork and the discharge position in relation to adjacent properties;
- details to demonstrate that the fan and any associated silencer in forming part of the extraction system is capable of meeting the requirements and specification identified in the Noise Impact Assessment ref: 0620212313 – V1 dated 1 July 2021 and prepared by Couper Acoustics;
- a detailed maintenance and cleaning schedule for the kitchen extraction equipment.

Thereafter the approved scheme shall be fully installed and operational prior to the commencement of the use hereby approved and subsequently maintained in accordance with the approved details.

b. precise details of the flue duct including its height, diameter, colour, and method of fixing to the adjacent chimney. The approved flue duct must be installed prior to the commencement of the use hereby approved and shall thereafter be retained for the lifetime of the development.

c. precise details of the waste management system to be implemented on-site, including the location and type of bins to be used which shall be designed and managed to reduce the likelihood of access by scavenging birds. The approved system must be installed prior to the commencement of the use hereby approved and shall thereafter be retained for the lifetime of the development.

*Reason: In order to ensure the proposed extraction equipment is acceptable and does not result in any unacceptable impacts upon the amenity of nearby residential properties; in order that the planning authority may verify the acceptability of the flue in the interests of visual and residential amenity; and to ensure that waste generated by the premises is effectively managed in a manner that does not give rise to adverse visual impacts on the amenity of the surrounding area.*

2. Noise from any ventilation, refrigeration, and extraction plant associated with the use hereby approved shall not give rise to an internal noise level assessed with windows open within any dwelling or noise sensitive building in excess of that equivalent to NR curve 35 between 0700 and 2300 and NR curve 25 at all other times.

*Reason: In order to ensure the fixed plant associated with the approved use would not result in any unacceptable impacts upon the amenity of nearby residential properties by way of noise pollution.*

**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 any material extent in preparing the above Report.

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**DATE: 11 OCTOBER 2021**

APPENDIX 1: LOCATION PLAN

APPENDIX 2: SUMMARY OF APPLICANTS SUPPORTING INFORMATION

APPENDIX 3: LETTERS OF REPRESENTATION

APPENDIX 4: RELEVANT DEVELOPMENT PLAN POLICIES

APPENDIX 5: PLANNING SERVICE PRESENTATION