

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 15 AUGUST 2023

PLANNING APPLICATION – 67 – 69 CASTLE STREET FORFAR
GRID REF: 345564 : 750739

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

Abstract: This report deals with planning application No. [23/00160/FULL](#) for the change of use of a retail unit to form a hot food takeaway with associated works at 67 – 69 Castle Street, Forfar. 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 The applicant seeks full planning permission for the change of use of a retail unit to form a hot food takeaway and external alterations to elevations at 67 – 69 Castle Street, Forfar. A plan showing the location of the site is provided at Appendix 1.
- 3.2 The application property is a 2½ storey building with a single storey rear extension. It is mid-terrace with a pitched roof and fronts Castle Street. The building occupies the full extent of the site with 4 Myre Road attached to the rear (west) of the building. The upper floors of the property are accessed by a stairway within the ground floor of the property. 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. The property is located within the Forfar Conservation Area.
- 3.3 The proposal seeks permission for the change of use of the ground floor premises to a hot food takeaway. Internally, a counter and waiting area would be formed along with food preparation and cooking areas. A cold room, store, office, wash area and w/c would also be provided. An external bin storage area is proposed at the rear of the ground floor. A new access stair to the upper floors is to be formed by partitioning a section of the ground floor and providing a new separate access door into the shopfront. The ground floor frontage would be altered to accommodate the proposed entrance door. A ventilation system to discharge cooking odours would be installed with the associated equipment located at the rear of the building, including a 3.5m high, 500mm wide galvanised flue located on the single storey roof. A fresh air intake would also be provided on the single storey roof with an air conditioning unit and cold room compressor unit attached on the first floor rear elevation of the building.

3.4 The application has been varied to amend the location of the plant equipment attached to the rear elevation of the building, and to provide a bin storage area and acoustic shrouds around the plant equipment.

3.5 The application has been subject of statutory neighbour notification, a site notice was posted, and it was advertised in the press as required by legislation.

4. RELEVANT PLANNING HISTORY

There is no planning history of direct relevance to the determination of this application.

5. APPLICANT'S CASE

The following supporting information has been submitted and can be viewed on [Public Access](#) and are summarised at Appendix 2: -

- Supporting Statement
- Noise Impact Assessment;
- Supplementary Noise Information;
- Odour Risk Assessment; and
- Extraction system product specifications.

6. CONSULTATIONS

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

6.2 **Angus Council – Environmental Health** – has offered no objection to the proposal in terms of amenity impacts subject to conditions to regulate noise from plant and delivery times, a requiring a scheme for the ventilation and abatement of cooking odours.

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

6.4 **Scottish Water** - there was no response from this consultee.

7. REPRESENTATIONS

7.1 9 letters of representation have been received, 7 in objection and 2 offering general support. Those letters are provided at Appendix 3 and are available to view on the council's [Public Access](#) website.

7.2 The following matters have been raised in objection: -

- **Amenity impacts on adjacent residents caused by cooking smells;**
- **Access, traffic and parking issues;**
- **Acceptability of bin storage; and**
- **Unacceptable delivery arrangements.**

7.3 The following matters are raised in support: -

- **Brings a vacant property back into use;**
- **Employment opportunities would be created; and**
- **Introduces more competition and choice between hot food takeaways.**

7.4 Material planning issues are addressed below but the following matters are addressed at this stage: -

- **Impact on other similar businesses** – it is not the purpose of the planning

system to restrict commercial competition and there is no planning policy basis to favour one business in a town centre location over another.

- **Local businesses should be protected and favoured over multi-national businesses** – the identity of the applicant and/or objectors is generally not a material planning consideration, and it is not the purpose of the planning system to favour one business over another.
- **The proposed occupant of the property is a reputable company** – the applicant's reputation is 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 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.
- 8.3 In this case the development plan comprises: -
- [National Planning Framework 4](#) (NPF4) (2023)
 - [Angus Local Development Plan](#) (ALDP) (2016)
- 8.4 The development plan policies relevant to the determination of the application are reproduced at Appendix 4 and have been taken into account in preparing this report.
- 8.5 The ALDP was adopted in September 2016 while NPF4 was adopted on 13 February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and a provision of a local development plan, whichever of them is the later in date is to prevail.
- 8.6 Policy DS1 in the ALDP states that within development boundaries, proposals will be supported where they are of an appropriate scale and nature and are in accordance with other policies of the local development plan. NPF4 Policy 9 indicates that development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported.
- 8.7 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 conservation area.
- 8.8 NPF4 seeks, amongst other things to promote a town centre first approach to development. It seeks to encourage, promote and facilitate development in our city and town centres, recognising they are a national asset. Policy 27 *City, town, local and commercial centres* is supportive of development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses. Proposals for uses which will generate significant footfall, including commercial, leisure, offices, community, sport and cultural facilities, public buildings such as libraries, education and healthcare facilities, and public spaces will be supported in existing town centres. Development proposals for non-retail uses including hot food takeaways will not be supported if further provision of these services will undermine the character and amenity of the area or the health and wellbeing of communities, particularly in disadvantaged areas.

- 8.9 Policy TC18 of the ALDP, relates to core retail areas and indicates development proposals seeking to change the use of existing ground floor retail premises 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.
- 8.10 The application site is currently vacant and available survey information indicates the vacancy rate of retail units within the core retail area is around 20%. 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 70% 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. Survey information suggests that around 5% of the units within the core retail area are in use as hot food takeaways and there is no evidence that a further unit of this nature in an accessible town centre location would have any significant adverse impact on the health or wellbeing of the community. 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.
- 8.11 A hot food takeaway is a use that attracts visitors and development plan 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.
- 8.12 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.
- 8.13 The application site does not directly abut residential properties at ground floor level and the upper floors of the building which provide residential accommodation are under the control of the applicant. The adjoining two storey property to the north accommodates offices and does not include any residential accommodation abutting this site. The adjoining property to the south has no upper floors although the ground floor is a hot food takeaway.
- 8.14 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 which would minimise odour impact on occupants of neighbouring residential properties. The environmental health service is satisfied that an appropriate extraction and ventilation system could be provided to deal with cooking odours. That service has offered no objection to the proposal subject to suggested planning conditions. Council policy indicates that proposals which 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. A condition is also proposed that links operation of the business to a person with an interest in the upper floor residential accommodation. Applying such a condition significantly reduces the scope for future conflict and the associated risk of statutory nuisance.

- 8.15 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 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 are existing public houses, and the application property is adjacent to a wide footway with public seating nearby 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 itself, 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.
- 8.16 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 is easily accessible by pedestrians. The roads service has confirmed no objection in terms of road traffic, pedestrian safety, and car parking. There are several existing 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 likely 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 through the planning process. Whilst restrictions on the opening hours are not proposed, as there are residential properties within proximity of the application property, a condition is proposed to control the timing of deliveries to the premises to ensure these do not give rise to impacts on residential amenity. Bin storage is incorporated at the rear of the property within the enclosed internal path access between the property and the Myre Road car park. The environmental health service has reviewed the bin storage arrangements and is satisfied that these are acceptable.
- 8.17 The external alterations to the building are relatively minor. The alterations to the frontage of the property involve the reconfiguration of the ground floor glazing and entrance door arrangement to accommodate a second door that would provide a standalone access to the upper floor of the building. The current frontage is modern in appearance and as such the alterations would not result in the loss or alteration of a traditional shop front. A flue and plant equipment are proposed to the rear of the building and while these additions would be of reasonable height and utilitarian appearance, they would be predominantly screened by existing buildings and where they are visible, they would be viewed against the backdrop of the rear of the building. The location to the rear of the building would minimise visual impact associated with the equipment, and they would have no significant impact on the character or appearance of the conservation area. Precise details of the equipment could be regulated by condition.
- 8.18 The conservation area is characterised by a mix of commercial uses and includes uses that attract activity outwith normal day-time hours. There are other hot food takeaway premises in the wider area, but there is not a concentration of uses such that it would undermine the character and amenity of the area. The proposal would reuse an existing vacant property and would help maintain activity in the town centre area. As indicated above the alterations to the front of the building are minor and the erection of the flue and plant equipment 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. A condition is proposed that requires precise details of external material finishes to the front (Castle Street) elevation to be approved to ensure they are appropriate for the conservation area. Similarly, a condition is proposed to require the external colour of the flue and associated equipment on the rear elevation to be approved to ensure they are recessive to minimise impact. The site is not within an area designated for natural heritage reasons and there is no reasonable basis to consider that the proposals would adversely impact biodiversity.

- 8.19 The proposal does not give rise to any significant issues in terms of other development plan policy. The proposal would help maintain the vibrancy, vitality, and viability of the town centre and would provide some local economic benefit. In circumstances where the proposal does not give rise to unacceptable impacts on amenity, environment, or infrastructure, it is broadly compatible with the strategy of the development plan.
- 8.20 In addition to development plan policy, it is relevant to have regard to other material considerations. Representations have been received both in support and opposition to the application. Issues are largely addressed above in relation to the relevant policy discussion and assessment. However, specific matters are addressed below.
- 8.21 One of the main issues raised relates to impact on similar business uses in the area, and in particular the neighbouring hot food takeaway. However, as indicated above, and for the avoidance of any doubt, competition between businesses is not a material planning consideration and similarly, it is not appropriate for the planning system to favour one individual over another due to their identity.
- 8.22 Some comment is made regarding 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. The proposal incorporates bin storage arrangements and some bin storage would be required for the existing lawful use of the property as a retail unit.
- 8.23 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.
- 8.24 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.

- 8.25 The general points offering support to the proposal are noted but the application must be determined based on the site-specific assessment having regard to development plan policy and other material planning considerations.
- 8.26 In conclusion, the proposal provides a new use for a 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. Development plan policy allows 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, 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. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.

Reason: In order to clarify the duration of this permission in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 (as amended) and to ensure that it will lapse if not implemented within that period.

2. That the use hereby approved shall only be undertaken by a person or persons who occupy and/or own the first-floor residential accommodation within the building.

Reason: In order to clarify the terms under which the application has been assessed and in order to minimise potential for the amenity of occupants of the residential unit to be adversely affected by the operation of the hot food takeaway.

3. Prior to the commencement of the development hereby approved the following shall be submitted to and approved in writing by the planning authority: -
 - a. a scheme for the ventilation and abatement of cooking odours. For the avoidance of doubt the scheme shall include: -
 - i. 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;
 - ii. full design calculations of the discharge velocity which should be a minimum 10m/s;
 - iii. detailed drawings showing all ductwork and the discharge position and height in relation to adjacent properties; and
 - iv. a detailed maintenance and cleaning schedule for the kitchen extraction equipmentThe approved scheme shall be fully operational prior to the commencement of the use hereby approved and the equipment shall be maintained in accordance with the approved scheme thereafter.
 - b. a scheme for the mitigation of noise emissions from fixed plant associated with the development. The scheme shall incorporate the recommendations detailed in Section 5 of the document "Noise impact assessment for the proposed 'Change of Use' (formation of a new hot food premises at 67-69 Castle Street, Forfar DD8 3AG" produced by McIntyre Acoustics and dated 10 May 2023, and submitted alongside this application. The approved scheme shall be fully operational prior to the commencement of the use hereby approved and the development shall be undertaken and maintained in accordance with the approved details thereafter.
 - c. precise details of the external finish materials for the windows and doors on the Castle Street elevation, and for the external colour of the flue, air conditioning unit, and other equipment on the rear elevation of the building. Thereafter the development shall be undertaken in accordance with the approved details prior to the opening of the unit to the public.

Reason: To ensure that suitable measures are in place to deal with the ventilation and abatement of cooking odours and noise from fixed plant associated with the approved use; to ensure the does not result in any unacceptable impacts upon the amenity of nearby residential properties by way of air or noise pollution; and to ensure the proposed external finish details and materials are appropriate for and minimise impact on the conservation area.

4. That the waste management system (bin storage) as detailed on drawing number 3610 03 Rev. A: 'Plan as Existing and Proposed' by G Gray Studio dated February 2023, shall be provided prior to the commencement of the use hereby approved and shall thereafter be retained for the lifetime of the development.

Reason: To ensure that waste generated by the premises is effectively managed in a manner that does not give rise to adverse impacts on the amenity of the area.

5. Noise from any ventilation, refrigeration and extraction plant associated with the development 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 Noise Rating curve 35 between 07:00 and 22:00 and Noise Rating curve 25 at all other times.

Reason: 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.

6. Service deliveries to the premises shall only be carried out between 0730 and 2100 Monday to Sunday.

Reason: In order to ensure the deliveries associated with the approved use would not result in any unacceptable impacts upon the amenity of nearby residential properties.

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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APPENDIX 1: LOCATION PLAN

APPENDIX 2: SUMMARY OF APPLICANTS SUPPORTING INFORMATION

APPENDIX 3: LETTERS OF REPRESENTATION

APPENDIX 4: DEVELOPMENT PLAN POLICIES