

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE - 13 FEBRUARY 2024**

**PLANNING APPLICATION - 1A HIGH STREET, CARNOUSTIE, DD7 6AN**

**GRID REF: 356556 : 734605**

**REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH**

**1. ABSTRACT**

- 1.1 This report deals with planning application No. [23/00818/FULL](#) for the change of use from a vacant retail unit to hot food (Pizza) takeaway including alterations to building frontage, installation of oven extract, ventilation and wall mounted compressors at 1A High Street, Carnoustie. This application is recommended for conditional approval.

**2. RECOMMENDATION**

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

**3. INTRODUCTION**

- 3.1 The applicant seeks full planning permission for the change of use of a retail unit to hot food (Pizza) takeaway and delivery, including alterations to building frontage, installation of oven extract, ventilation and wall mounted compressors at 1A High Street, Carnoustie. A plan showing the location of the site is provided at Appendix 1.
- 3.2 The application site consists of one of four retail units in a single storey arcade on the south side of High Street. The application property is located at the eastern extent of the arcade and is a corner site with a frontage onto High Street and a side elevation onto Station Road. To the south of the unit is a service yard and bin storage area that is outwith the application site but is understood to collectively serve the adjoining units and a retail store to the east. The application property is currently vacant and the remaining three units in the arcade consist of a cafe, a general store, and a pet shop/groomers.
- 3.3 The property in question measures 103sqm, is currently vacant but was most recently a hair salon. The proposal would provide for a dry store, a cold room, a WC, an office, and food preparation area within the existing building. The customer area measures 12sqm and includes a high-level seating area in the window for around 4 covers. While a small number of customers could theoretically sit and consume food in this area, it is ancillary to the principal operation of the premises as a takeaway.
- 3.4 Externally, the proposal includes the installation of ventilation and air conditioning apparatus, with a fresh air intake and an oven extract projecting 600mm and 400mm respectively above the roofline, and two wall mounted air conditioning and refrigeration units located on the rear elevation, facing the service yard. Alterations to the frontage are proposed to reposition the access door.

3.5 The application has been varied to increase the height above ground level of the proposed projecting sign following comments from the roads service to the associated advertisement consent application (ref: [23/00819/ADV](#)). The acceptability of the signage is assessed as part of the advert consent application, but the amendment to the drawings submitted as part of this proposal ensure consistency between the two applications.

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

#### **4. RELEVANT PLANNING HISTORY**

4.1 Advertisement consent application ref: [23/00819/ADV](#) for 'Advertisement of the following types: Fascia Sign, Projecting Sign Additional sign on East Elevation wall' of the application property has been approved subject to conditions.

#### **5. APPLICANT'S CASE**

5.1 No specific supporting information has been submitted.

#### **6. CONSULTATIONS**

6.1 **Community Council** - There was no response from this consultee at the time of report preparation.

6.2 **Roads Service** - No objections.

6.3 **Scottish Water** - There was no response from this consultee.

6.4 **Aberdeenshire Council Archaeology** - No objections

6.5 **Environmental Health** – Offers no objection to the proposal subject to conditions to control noise and odour.

6.6 **Network Rail** - No objections.

#### **7. REPRESENTATIONS**

7.1 Three letters of representation and a petition containing 100 signatures were submitted in objection. Those letters and the petition are provided at Appendix 2 and are available to view on the council's [Public Access](#) website.

7.2 The main points of concern are as follows:

- Over provision of takeaways in the area and impact on the high street.
- Impacts upon access, parking, pedestrian, cyclist, and road safety, including impacts on bus routes, lack of parking provision for pick-ups/delivery drivers and potential to increase illegal parking.
- Potential for resultant litter and late-night noise and nuisance issues.

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

- **Impact on other nearby similar local/established businesses** – the identity of the applicant is generally not a material planning consideration, and it is not the purpose of the planning system to favour one business over another or to restrict commercial

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

## 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: -
- [National Planning Framework 4](#) (NPF4) (2023)
  - [Angus Local Development Plan](#) (ALDP) (2016)
- 8.3 The development plan policies relevant to the determination of the application are reproduced at Appendix 3 and have been taken into account in preparing this report.
- 8.4 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.
- 8.5 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.
- 8.6 The application proposes the change of use of a vacant retail unit to form a hot food takeaway within the defined town centre of Carnoustie, but outwith the core retail area.
- 8.7 Development plan policies seek, amongst other things, to promote a town centre first approach for proposals which generate significant footfall, including commercial, leisure, offices, community, sport and cultural facilities, public buildings such as libraries, education and healthcare facilities, and public spaces. ALDP Policy TC17 *Network of Centres* seeks to protect and enhance the scale and function of centres and supports 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 area. NPF4 seeks to encourage, promote and facilitate development in our city and town centres, recognising they are a national asset. NPF4 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. It states that 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.
- 8.8 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 "*in accordance with the town centre first approach, the preferred location for hot food takeaways is within town centres but outwith core retail areas*". The application site is located outwith the Carnoustie Core Retail area but within the town centre. The principle of the proposed use in this location is supported by relevant policies and guidance.

- 8.9 The proposal would see the reuse of a vacant building in a town centre location. Around 67% of commercial ground floor units within the town centre have a lawful use falling within class 1A of the Town and Country Planning (Use Classes)(Scotland) Order 1997 (as amended) which is broadly defined as shops and financial, professional and other services. Properties can generally change use within this broad use class without the need for planning permission. The predominance of that use class, combined with the associated town centre uses, including public houses, cafes, restaurants, and hot food takeaways, along with residential properties create the general character of the mixed use town centre area. Around 11% of the ground floor commercial units within the town centre 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 character of the area or the health or wellbeing of the community. The 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. 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.
- 8.10 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 property forms the eastern extent of a single storey parade of commercial units attached to a larger retail store to the southwest. There is no adjoining property to the east, or upper floor accommodation to the application property or the adjoining properties to the west. The area is characterised by a mix of uses, and the closest residential properties are located on the opposite side of the High Street (roughly 20m north) and Station Road (15m east approx.). The council's environmental health service has reviewed the proposal and has indicated that no site-specific noise or odour impact assessments are required given the scale and surrounding context of the site. Environmental health is satisfied any impacts could be appropriately mitigated by conditions to control noise levels and for the provision and maintenance of a scheme for the ventilation and abatement of cooking odours.
- 8.12 The proposal is also likely to generate activity throughout the day and in the evening. 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. There is a CCTV camera mounted in the immediate proximity of the site. The applicant has advised the intending opening hours would be between 11am and 11pm. It is not unusual to find hot food takeaways within Angus town centres that are open to 11pm. Advice Note 2/2018 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 and any opening between 11pm and 5am would require a late hours catering licence. 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. Access for deliveries is located to the rear, where a bin storage area serving the row of commercial units is enclosed by a brick

boundary wall. The environmental health service has raised no objection to the proposed bin storage arrangements.

- 8.13 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-street 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 including one directly in front of the building.
- 8.14 The external alterations to the building are relatively minor. The alterations to the frontage of the property involve the reconfiguration of the glazing and entrance door arrangement. 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 fresh air feed are proposed on the flat roof of the building, projecting to a height of 400mm and 600mm above the roof respectively. Air conditioning and refrigeration equipment is proposed to the rear of the building but will be mostly screened from the public road by the existing walled bin store enclosure. The proposed external alterations are minor and would be seen within the context of the existing commercial units. The external alterations are acceptable and would not detract from the character or appearance of the area.
- 8.15 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 development plan.
- 8.16 In addition to development plan policy, it is relevant to have regard to other material considerations. Representations have been received in opposition to the application. The issues raised have largely been addressed above in relation to the relevant policy discussion and assessment. However, specific matters are addressed below.
- 8.17 One of the issues raised relates to impact on similar business uses in the area. However, 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.
- 8.18 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 where required. 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. Furthermore, permitted development rights would allow for the unit to be used for the sale of food or

drinks for consumption on the premises without the need for planning permission. Therefore, a use such as a restaurant or café could lawfully commence operation from the site without any planning restrictions.

- 8.19 With regard to litter, Advice Note 2/2018 states that *“the problem associated with litter being dropped by customers is more likely to arise some distance away from the hot food takeaway proprietor and as it is covered by alternative primary legislation, it is not a relevant planning issue. However, a condition may be attached to any approval of planning permission requiring the provision of a litter receptacle outwith the approved premises.”* It is noted that there are existing bins on the public footpath in close proximity to the application site.
- 8.20 Issues regarding traffic congestion, 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.
- 8.21 This is a town centre 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 town centre 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.
- 8.22 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 area. 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. HUMAN RIGHTS IMPLICATIONS**

- 9.1 The decision to grant permission/consent, 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 decision 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

- 10.1 It is recommended that the application be approved subject to conditions for the following reasons, 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. Prior to the commencement of the development hereby approved a scheme for the ventilation and abatement of cooking odours shall be submitted to and approved in writing by the planning authority. 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 equipment.

The 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.

*Reason: To ensure that suitable measures are in place to deal with the ventilation and abatement of cooking odours from fixed plant associated with the approved use and to ensure the does not result in any unacceptable impacts upon the amenity of occupants of nearby residential properties.*

3. 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.*

**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: 2 FEBRUARY 2024**

APPENDIX 1: LOCATION PLAN

APPENDIX 2: LETTERS OF REPRESENTATION

APPENDIX 3: DEVELOPMENT PLAN POLICIES