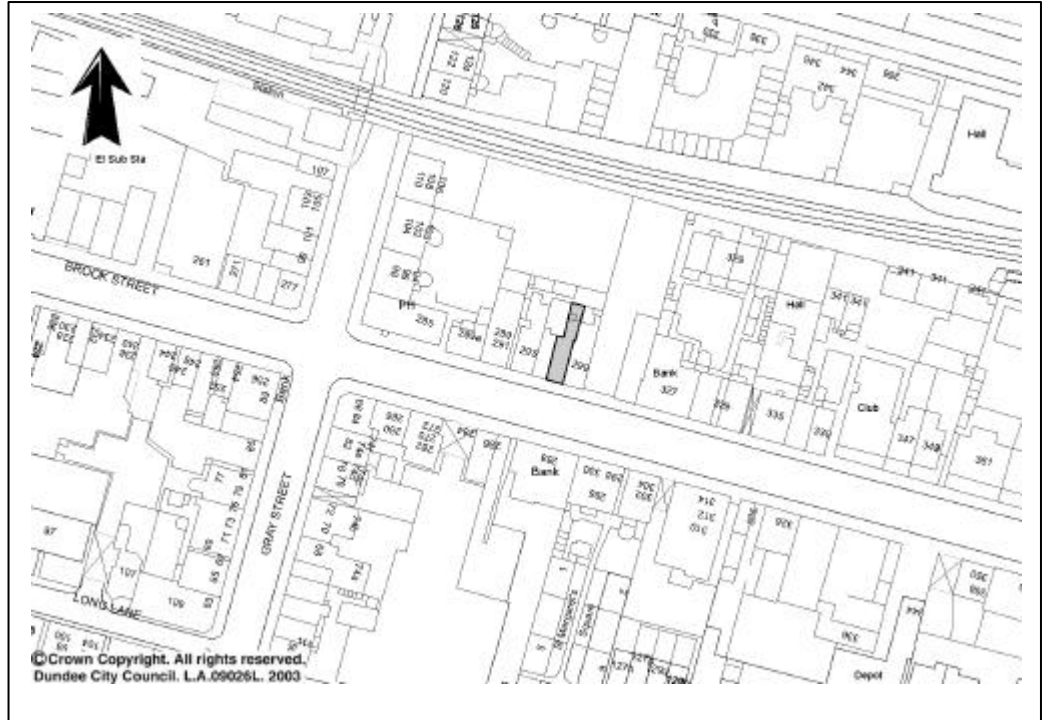


KEY INFORMATION**Ward** Broughty Ferry**Proposal**

Change of use from office to hot food takeaway

Address297 Brook Street
Broughty Ferry
Dundee
DD5 2DS**Applicant**Iain Mackenzie
60 Pitairlie Road
Dundee
DD4 8XP**Agent****Registered** 7 December
2004**Case Officer** C Walker

Proposed Hot Food Takeaway in Brook Street

A change of use from an office to a hot food takeaway is **RECOMMENDED FOR APPROVAL SUBJECT TO CONDITIONS**. Report by Director of Planning and Transportation

RECOMMENDATION

The establishment of a takeaway at this site complies with the intention behind but not the exact wording of Policy LT8 of the adopted Local Plan 1998 and will not have an adverse impact on residential amenity. It is considered that these factors provide a justification for **APPROVING** the application.

SUMMARY OF REPORT

- Planning permission is sought to change the use of a small vacant office unit to a hot food takeaway. Proposed opening hours are until midnight on Friday and Saturday and until 10pm on other nights.
- The site is in a single storey parade of 3 units in the Broughty Ferry district centre. The adjoining unit to the east is a hot food takeaway and to the west is a clothes shop. There is a public house further to the west. There are dwellings within 30 metres of the site on both sides of Brook Street above ground floor commercial uses.
- Policy LT8 of the adopted Local Plan states that no premises selling hot food are acceptable within 30 metres of existing housing. Policy 53 of the Finalised Dundee Local Plan Review states that within District Centres the distance requirement from housing can be relaxed.
- 3 letters of objection have been received, 2 from the occupiers of nearby commercial premises and 1 from a nearby resident. Their concerns relate to fears of late night noise and disturbance, food odour, littering, nuisance, the creation of a dead frontage and the overprovision of takeaways in the locality.
- Although the preamble to Policy LT8 suggests that the distance standard can be relaxed in district centres the actual wording of the policy does not. It is therefore concluded that the proposal does not comply with this policy. The proposal complies with Policy 53 of the finalised Local Plan and in addition the case for relaxing the distance rule is strengthened by the nature and character of the district shopping centre at this location. The concerns of the objectors can be satisfactorily resolved by planning conditions.

DESCRIPTION OF PROPOSAL

Planning permission is sought to change the use of these vacant former office premises to a hot food takeaway. The proposed opening hours are until midnight on Friday and Saturday and not later than 10pm on other nights. No external changes proposed.

The proposed floor plans indicate a counter set back some 3.7 metres from the front of the premises with the cooking area behind.

SITE DESCRIPTION

The site comprises a central vacant unit in a row of 3 single storey shop units. It was last used as a property office and has a gross floor area of just over 40 sq. metres. The unit to the west is a clothes shop and to the east there is a hot food takeaway. The units are constructed of brick and have flat roofs. They share a yard area to the rear which is accessed through a close in 2 and a half storey building further to the west at 289-291 Brook Street. This building contains a ground floor restaurant and upper floor offices. Further to the west is a public house at the junction of Gray Street and Brook Street.

To the rear of the site is a vacant yard accessed from Gray Street. Further to the east is the Bank of Scotland building and car park. To the south, on the opposite side of Brook Street, is the Royal Bank of Scotland building with an upper floor flat. To the south west is a modern 3 storey building of ground floor shop units and upper floor flats, with an access to a public car park through a pend in the building.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan 1998

Policy LT8 Licensed and Hot Food Premises: No premises selling hot food is acceptable within 30 metres of existing housing.

The site is in the Broughty Ferry District Shopping Centre but outwith

the retail core area. Policy S18 permits changes of use from retail at this location.

Dundee Urban Nature Conservation Subject Local Plan 1995

There are no policies relevant to the determination of this application.

Finalised Dundee Local Plan Review

Policy 53 states that outwith District Centres no premises selling hot food is acceptable within 30 metres of existing housing. It adds that within District Centres this distance requirement can be relaxed but hot food takeaways will not be acceptable where they directly adjoin residential property.



Policy 38 permits this change of use as the site is not within the core area of the District Centre.

Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

LOCAL AGENDA 21

The reuse of these premises in a central and accessible location is considered to be sustainable and in

conformity with the Council's Agenda 21 policies.

SITE HISTORY

There is no relevant history of planning applications relating to this site. Planning permission for the hot food takeaway at 299 Brook Street immediately to the east of this site was granted on appeal having initially been refused by the Council contrary to the Directors recommendation (application ref. No. D22100 refers). A planning condition restricts the hours of operation up until midnight on weekdays and 10pm on Sundays.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the application was advertised as a bad neighbour development and as a potential departure from the development plan. 3 letters of objection have been received, 2 from the occupiers of nearby commercial premises and 1 from a nearby resident. Their concerns relate to fears of late night noise and disturbance, food odour, littering, nuisance, the creation of a dead frontage and the overprovision of takeaways in the locality.

CONSULTATIONS

The Head of Environmental Health and Trading Standards has asked that the proposals for ventilation and filtration should be clarified and that noise from all mechanical and electrical plant should be controlled by a condition.

OBSERVATIONS

In accordance with the provisions of Section 25 of the Act the Committee is required to consider

- whether the proposals are consistent with the provisions of the development plan; and if not
- whether an exception to the provisions of the development plan is justified by other material considerations.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy LT8 of the adopted Local Plan states that no premises selling hot food is acceptable within 30 metres of existing housing. In this case the nearest house on the opposite side of Brook Street above the bank is only 15 metres from the front of the premises and within 30 metres of the premises are some of the upper floor flats on the opposite side of Brook Street to the south west, the flat above the Bank of Scotland to the east of the site and the flat at 302 Brook Street further to the south west.

The preamble to Policy LT8 states that in the District Shopping Centres the distance standards may be relaxed in recognition that the impact of proposals for licensed premises or hot food takeaways in commercial areas will be relatively less severe and are important uses within these areas if they are to fulfil their function as district centres. It is considered that this is a case where the distance standards should be relaxed given the character of the surrounding area and that the proposed development complies with the intentions behind Policy LT8. However the actual wording of the policy does not incorporate this relaxation to the distance rule. It is therefore concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

Other Material Considerations

The other material considerations to be taken into account are the preamble to Policy LT8 in the adopted Local Plan, the Finalised Dundee Local Plan Review and the character and nature of the Broughty Ferry District Centre in the immediate vicinity of the application site and the concerns raised by objectors.

As discussed in the Development Plan section above, the preamble to Policy LT8 of the adopted Local Plan contains an exception to the distance rule for premises selling hot food in district centres. This exception is almost identical to the wording of Policy 53 of the Finalised Plan.

Policy 53 of the Finalised Plan states that outwith District Centres no premises selling hot food is acceptable within 30 metres of existing housing. It adds that within District Centres this distance requirement can be relaxed but hot food takeaways will not be

acceptable where they directly adjoin residential property.

The application site is within the Broughty Ferry district shopping centre. It does not adjoin any residential properties. This is therefore a case where the Plan suggests that the distance requirement should be relaxed.

It is considered that the case for relaxing the distance rule is strengthened by the nature and character of the district shopping centre at this location. There is a hot food takeaway in the adjoining unit to the east of the application site. In addition there is a public house just 27 metres to the west at the junction of Brook Street and Gray Street.

The nearest houses are upper floor flats on the opposite side of Brook Street. However these flats are as close to the existing hot food takeaway to the east of the site or the public house further to the west.

It is considered that the proposed takeaway will have no adverse impact on these flats. The level of noise and activity associated with the existing nearby restaurants, takeaways and public houses in Broughty Ferry district centre as well as traffic on Brook Street means that the proposed takeaway will have no perceptible impact. This probably explains why only 1 objection was received from a residential property. Planning conditions are proposed to restrict the hours of operation, to control the emission of noise from electrical and mechanical plant and to ensure an adequate system of ventilation.

The concerns of the objectors relate to fears of late night noise and disturbance, food odour, littering, nuisance, the creation of a dead frontage and the overprovision of takeaways in the locality. The imposition of a condition restricting the hours of operation can ensure that these premises open no later than other similar facilities in the vicinity (in fact it will close earlier than most) and should not therefore lead to any late night noise problems. Conditions can also be imposed to control any odour problems (the primary concern of the occupiers of the shop immediately to the west) through the provision of an adequate system of ventilation and to control litter through the provision of appropriate facilities. Although takeaways can result in the creation of

a dead frontage, in this case the proposed use is in line with the retailing policies of the Local Plan and the existing use is an office use. In addition the proposed hours of operation suggest that the premises will be open during the day. Finally the issue of overprovision is not a material planning consideration in this instance where it is considered that the premises can operate without detriment to residential amenity.

It is concluded from the foregoing that sufficient weight can be accorded to the material considerations such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be granted with conditions.

Design

No design issues arise as a result of the proposed change of use.

CONCLUSION

The establishment of a takeaway at this site complies with the intention behind but not the exact wording of Policy LT8 of the adopted Local Plan. It also complies with Policy 53 of the Finalised Dundee Local Plan 1998 and will not have an adverse impact on residential amenity. It is considered that these factors provide a justification for approving the application.

RECOMMENDATION

It is recommended that planning permission be GRANTED subject to the following conditions:-

- 1 The development hereby permitted shall be commenced within five years from the date of this permission
- 2 Noise from all electrical and mechanical plant shall not exceed NR35, as measured 1 metre from the façade of the nearest residential property.
- 3 Details of the ventilation of the premises which shall ensure that adjoining commercial and residential premises are not adversely affected by food smells shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full

accordance with such approved details.

- 4 A litter bin shall be provided at a location to be agreed with the Council for use by members of the public. Details of the location and type shall be agreed in writing prior to the commencement of the use and shall be available at all times from the commencement of the use.
- 5 The use hereby approved shall operate only between the hours of 0900 hours until midnight on Friday and Saturday and 0900 hours to 2200 hours on all other days. The premises shall not be open to the public at any other time and the premises shall be vacated by staff and be unoccupied no later than 15 minutes after the evening closing time.
- 6 Details of refuse storage facilities for the premises shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full accordance with such approved details.

disturbance to the occupiers of nearby properties.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997
- 2 to ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
- 3 to ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
- 4 to ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
- 5 to ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
- 6 to ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or