

KEY INFORMATION

Ward Fairmuir

Proposal

Change of use from tanning salon to hot food take-away

Address

100 Clepington Road
Dundee
DD3 7SX

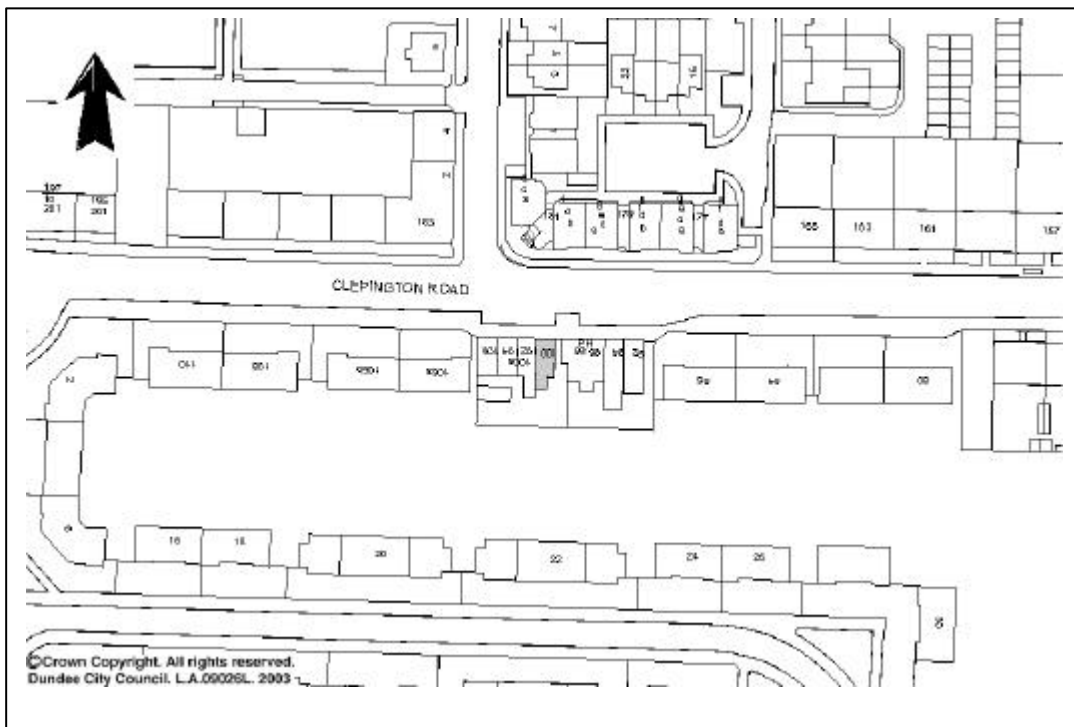
Applicant

Mr John Hume
Unit 8, 4/6 Staff Place
Dundee DD2 3SX

Agent

Registered 13 April 2005

Case Officer G S Reid



Hot Food Takeaway Proposed in Clepington Road

Change of use from tanning salon to hot food take-away is **RECOMMENDED FOR APPROVAL**.
Report by Director of Planning and Transportation

RECOMMENDATION

It is considered that the proposed development is an acceptable departure to the provision of the development plan.

The application is recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- Planning permission is sought for change of use from tanning salon to day-time hot food takeaway at 100 Clepington Road.
- The proposal raises issues for consideration in terms of the Leisure and Tourism Policies of the Dundee Local Plan 1998 Policy 53 of the Finalised Dundee Local Plan Review.
- One letter of objection was received from the owner of the flat immediately above the premises. The main points of objection relate to the potential adverse impact on residential amenity due to smell.
- The proposed development is contrary in terms of the hours of operation of Leisure and Tourism Policy LT9 of the Dundee Local Plan 1998. However the proposal is in accordance with in terms of hours of operation of Policy 53 of the Finalised Dundee Local Plan Review. It is considered that there are material considerations that outweigh the provision of the development plan in this instance. It is considered that the objection raised is not of sufficient weight to warrant refusal of the application.

DESCRIPTION OF PROPOSAL

Planning permission is sought for change of use from tanning salon to day time hot food takeaway at 100 Clepington Road.

The proposed opening hours are 07:00 to 16:00 daily.

The applicant has agreed to amend the proposal in light of concerns raised by an objector. The applicant now proposes to limit the cooking equipment to a microwave oven.

SITE DESCRIPTION

The application site is located on the south side of Clepington Road. The application property is a ground floor shop premises currently occupied by a tanning salon. There is a single residential flat directly above the premises. There are other shop units including a public house to the west and east of the premises. There are residential premises to the north and south.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 1998

The following policies are of relevance:

Housing Policy H1: Existing residential area.

Leisure and Tourism Policy LT8: Licensed and Hot Food Premises.

Leisure and Tourism Policy LT9: Hot Food Carryout Premises.

Dundee Urban Nature Conservation Subject Local Plan 1995

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

Finalised Dundee Local Plan Review

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities.

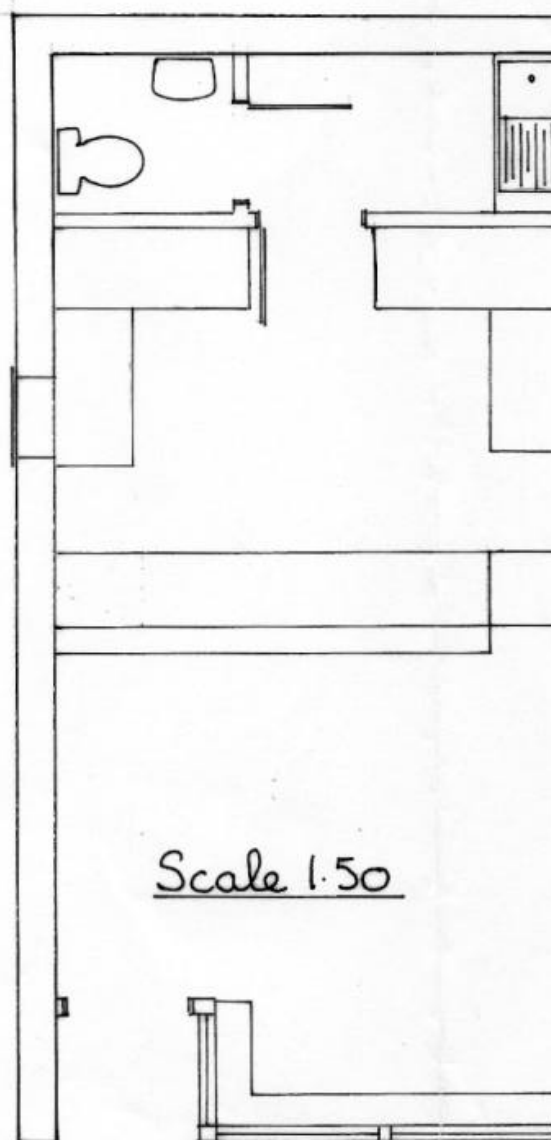
Policy 53: Licensed and Hot Food Premises

Scottish Planning Policies, Planning Advice Notes and Circulars

There are no policies 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

Key Theme 7 is of relevance and seeks to ensure that access to facilities, services, goods and people is not achieved at the expense of the environment and are accessible to all.

It is considered that the proposal would meet this key theme.

SITE HISTORY

There is no site history of relevance to the consideration of this application.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out by the applicant and the application was advertised in the "Dundee Courier and Advertiser" on 19 April 2005 under Section 34 of the 1997 Act as a potential bad neighbour.

One letter of objection was received from the owner of the residential property directly above the premises. The objection raised issues of concern regarding the potential of disturbance from odour given the equipment proposed and food to be sold.

A copy of the letter of objection is available for inspection in the Members Lounges and the points raised are considered in the Observations section of this Report.

CONSULTATIONS

The Head of Environmental Health and Trading Standards advised that subject to restrictions on the cooking equipment to be used and the installation of an appropriate ventilation system he had no objection to the proposal.

No adverse comments were received from statutory consultees.

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.

Leisure and Tourism Policy LT8 of the Local Plan 1998 does not support hot food takeaways within 30m of residential properties. However, Leisure and Tourism Policy LT9 does, subject to restrictions on hours and cooking equipment, allow for small scale hot food carryout premises.

In light of the concerns raised by the neighbour directly above the premises the applicant has amended the proposal to limit cooking equipment to a microwave oven. In terms of the hours of operation the applicant proposes to open between 07:00hrs to 16:00 hours. Policy LT9 seeks to limit opening hours of operation to 08:00hrs to 18:00 hrs. The proposal is therefore not in accordance with this part of the Policy. Whilst Policy LT9 seeks to limit hours to 08:00hrs opening the comparative Policy in the Finalised Local Plan does allow for an opening time of 07:00 hrs. In light of this it is considered that the proposal to open at 07:00hrs would be an acceptable departure in terms of Policy LT9.

Policy H1 applies as there is a residential flat above the premises and in the surrounding area. Given the proposed hours of operation and the cooking equipment to be used it is considered that the proposal is acceptable in terms of Policy H1.

It is concluded from the foregoing that whilst the proposal generally complies with the provisions of the development plan it is contrary to part of Policy LT9.

Other Material Considerations

The other material considerations to be taken into account are as follows:

Finalised Dundee Local Plan Review

Policies 53 sets out similar criteria as Policy LT9 but amends the hours of operation to 07:00 to 19:00 hours. It is considered that the proposed development is in accordance with this Policy. In addition, it is considered that this Policy is a material consideration of sufficient weight to allow for a departure to Policy LT9 of the Dundee Local Plan 1998 in terms of the opening hours proposed.

Policy 1 is similar to Policy H1 of the Dundee Local Plan 1998 and it is considered that the proposal complies

with this Policy for the same reasons as outlined above.

Objections

The objection received to the proposed change of use relates to the potential adverse impact on the amenity of the flat above the shop from odour. In response to the concerns raised the applicant has reduced the proposed cooking equipment to that allowed for by Policy Leisure and Tourism LT9 of the Dundee Local Plan 1998. This should therefore remove the potential of any adverse impact from odour on the objectors property. In order to ensure the equipment is in accordance with Policy LT9 it will be necessary to impose a condition seeking approval of the cooking equipment and the ventilation system to be used.

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.

Design

No external alterations are proposed to the premises at this stage.

CONCLUSION

The proposed development is contrary in terms of the hours of operation of Leisure and Tourism Policy LT9 of the Dundee Local Plan 1998. However the proposal is in accordance with in terms of hours of operation of Policy 53 of the Finalised Dundee Local Plan Review. It is considered that there are material considerations that outweigh the provision of the development plan in this instance. It is considered that the objection raised is not of sufficient weight to warrant refusal of 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 Details of the ventilation system to be installed shall be submitted to the Council for approval prior to the commencement of development and if approved the

proposed development shall be carried out only in full accordance with such approved details.

- 3 That the proposed opening hours shall be limited to between 07:00 - 16:00 hours.
- 4 That the cooking equipment shall be limited to the use of a microwave oven or similar as agreed in writing with the Council

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997
- 2 To ensure that the proposed development does not result in a detrimental impact on the amenity of residents due to odour.
- 3 To ensure that the proposal does not have an adverse affect on the amenity of surrounding residents
- 4 to ensure that the proposal complies with the Leisure and Tourism Policies of the Development Plan and to limit the potential of disturbance to residents from odour