

**KEY INFORMATION**

Ward Hilltown

**Proposal**

Change of use to hot food take away and new flue outlet

**Address**

34 Constitution Street  
Dundee  
D3 6ND

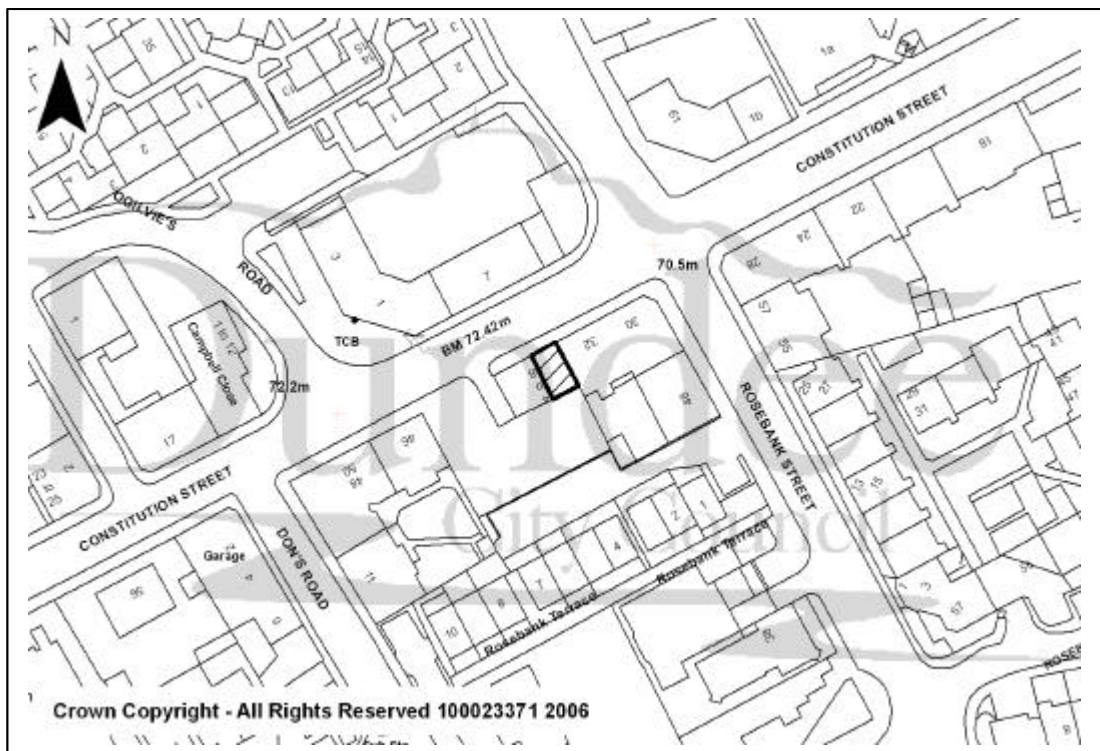
**Applicant**

Mrs Poon  
41 Grange Road  
Monifieth  
Dundee  
DD5 4PT

**Agent**

Registered 8 Jan 2007

Case Officer Eve Jones



## Proposed Hot Food Takeaway in Constitution Street

The change of use to hot food take away is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed development is contrary to Policy 1 Vibrant and Sustainable Communities and Policy 53 Licensed and Hot Food Premises outwith the City Centre of the Dundee Local Plan Review 2005 and the objection is supported. It is therefore Recommended that planning permission be **REFUSED**.

**SUMMARY OF REPORT**

- Planning permission is sought for the change of use of an existing shop to a hot food take away with the installation of a 2.3 metres long steel extract flue on the roof of the building.
- This is a small (40m<sup>2</sup>) single storey, flat roofed unit, on the south side of Constitution Street, adjoining the neighbouring tenement. There is an open grassed site to the west of these shops which wraps around the rear of the premises.
- Policy 1 - Vibrant and Sustainable Communities and Policy 53 - Licensed and Hot Food Premises outwith the City Centre apply. The proposal does not comply on grounds of proximity to housing, potential for noise and smell and lack of acceptable waste storage.
- One letter of objection was received on behalf of a neighbouring resident and the objection is supported.
- The Waste Management Department advises that a 240 litre bin is to be stored off the street but the site has no rear access door. The Head of Environmental Health and Trading Standards advises that the introduction of a flue has the potential to raise the noise burden in the surrounding flats.

## DESCRIPTION OF PROPOSAL

Planning permission is sought for the change of use of an existing shop to a hot food take away with the installation of a steel extract flue on the roof of the building. No details are submitted of hours of opening. The flue is 0.7 metres high and is approximately 2.3 metres long.

## SITE DESCRIPTION

The application property is a small single storey, flat roofed unit, one of a terrace of three similar units, on the south side of Constitution Street, close to its junction with Rosebank Street. This unit adjoins the neighbouring tenement. There is an open grassed site to the west of these shops which wraps around the rear of the premises. The building is very small, being 5 metres wide by 8 metres deep with a door and window to the street and no door access to the rear. The surrounding area is predominantly residential.

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

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

### Dundee Local Plan 2005

The following policies are of relevance:

#### Policy 1 - Vibrant and Sustainable Communities

The City Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

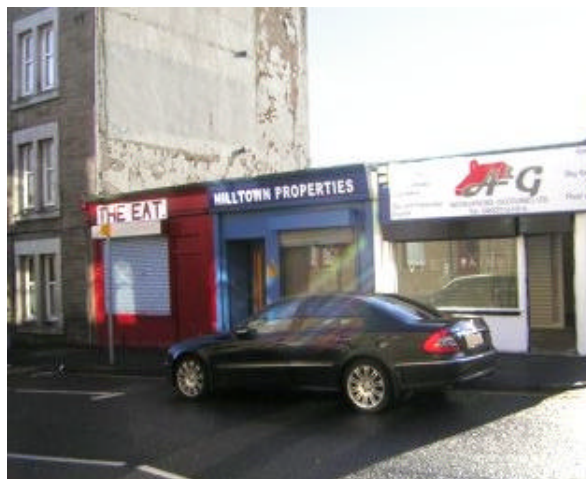
#### Policy 53 - Licensed and Hot Food Premises outwith the City Centre.

In general, outwith the District Centres no licensed premises other than off licences or hotels with a restricted license and no premises selling hot food is acceptable:

- a within 30 metres of existing and proposed housing if the outlet does not exceed 150m<sup>2</sup> gross floorspace (excluding cellar space) and;
- b within 45 metres if the 150 square metre figure is exceeded.



In the District Centres some relaxation of the above controls on distance from residential property may be appropriate. However, proposals for hot food takeaways other than those outlined below, will not be permitted in premises directly adjoining (i.e. directly above or to either side) residential property which is not within the control of the takeaway proprietor/operator.



Where hot food carryout premises and snack bars/cafes/tea rooms are proposed which would not meet the above requirements these may be permitted subject to:

- a a the hours of operation being limited to between 7.00 am and 7.00 pm, and,
- b b the hot food not requiring to be prepared on the premises and only requiring heating by means

of a microwave oven or other method which would not cause a nuisance to surrounding residential property by virtue of smell.

## 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.

## SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

## SITE HISTORY

There is no relevant site history.

## PUBLIC PARTICIPATION

The application was the subject of statutory Neighbour Notification and was also advertised as a Bad Neighbour development. One letter of objection was received from solicitors acting for a neighbouring resident. The objection is on the grounds that the development is contrary to the Local Plan, the new flue will result in noise pollution detrimental to the residential properties and there are no waste storage facilities leading to potential health hazards. The objection is available in Members' Lounges and the issues will be considered in the Observations below.

## CONSULTATIONS

The Waste Management Department advises that a contract has been agreed with the prospective operators for the provision of a 240 litre bin, to be stored off the street, to the rear of the premises and presented on Constitution Street for collection once weekly.

The Head of Environmental Health and Trading Standards advises that the

noise output of the equipment will be audible in the flats both adjacent and opposite during daytime (0700 - 2300 hours). However the noise is unlikely to result in a statutory noise nuisance within those flats.

Lacking late night environmental data against which to assess any night time disturbance (after 2300 hours) and no indication of trading times (although late hours are quite normal for such premises), no further comment can be made on late hours operations.

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## OBSERVATIONS

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

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b 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 1 - Vibrant and Sustainable Communities

The proposal is likely to increase the noise burden on adjoining residents by the installation of a roof top fan and the cooking smells vented via the flue are likely to also affect the amenities of neighbours. Whilst the contract with Waste Management is for the 240 litre bin to be stored off the street, there is no rear door to the premises and the land to the rear is not owned or controlled by the applicant. This land is an unsecured, vacant grassed gap site lacking any paths or paved storage area. Storage of the bin under these conditions is unlikely to be well regulated and may result in problems with refuse disposal to the detriment of the amenities of adjacent residents. The assessment against other policies is considered below.

Policy 53 - Licensed and Hot Food Premises outwith the City Centre.

The site does not lie within the Hilltown District Centre: the site immediately adjoins existing housing, has housing within 12 metres to the

north and within 20 metres to the west and south.

The proposal fails to comply with Policy 53 and therefore also fails to comply with Policy 1.

It is 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 as follows:

#### Objection

The terms of the objection are noted above and it is considered that these have been addressed in the policy assessment. The objection is supported.

The applicant has been invited to submit supporting justification but no statement has been received.

It is concluded from the foregoing that sufficient weight can be accorded to the material consideration such as to justify the refusal of planning permission in accordance with the provisions of the development plan.

#### Design

The flue will be a prominent feature on the flat roof of this unit and its appearance will be unacceptable.

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## CONCLUSION

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The proposed development is contrary to the Development Plan and the objection is supported. It is therefore recommended that planning permission be refused.

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## RECOMMENDATION

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It is recommended that consent be REFUSED for the following reasons:

### Reasons

- 1 The proposed development is contrary to Policy 1 Vibrant and Sustainable Communities of the Dundee Local Plan Review 2005 as the development will be likely to affect the environmental quality enjoyed by local residents by virtue of noise and smell from the proposed flue and the lack of acceptable waste storage facilities. There are no material considerations of sufficient strength to justify the granting of

planning permission contrary to the policy.

- 2 The proposed development is contrary to Policy 53 Licensed and Hot Food Premises outwith the City Centre of the Dundee Local Plan Review 2005 as the site immediately adjoins residential properties to the east and is within 30 metres of residential properties to the north, west and south. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy.