

**KEY INFORMATION**

Ward Maryfield

**Proposal**

Conversion of existing tanning studio into proposed bakery/cafe that will serve hot and cold food and cook on site

**Address**

14-16 Arbroath Road  
Dundee DD4 6EP

**Applicant**

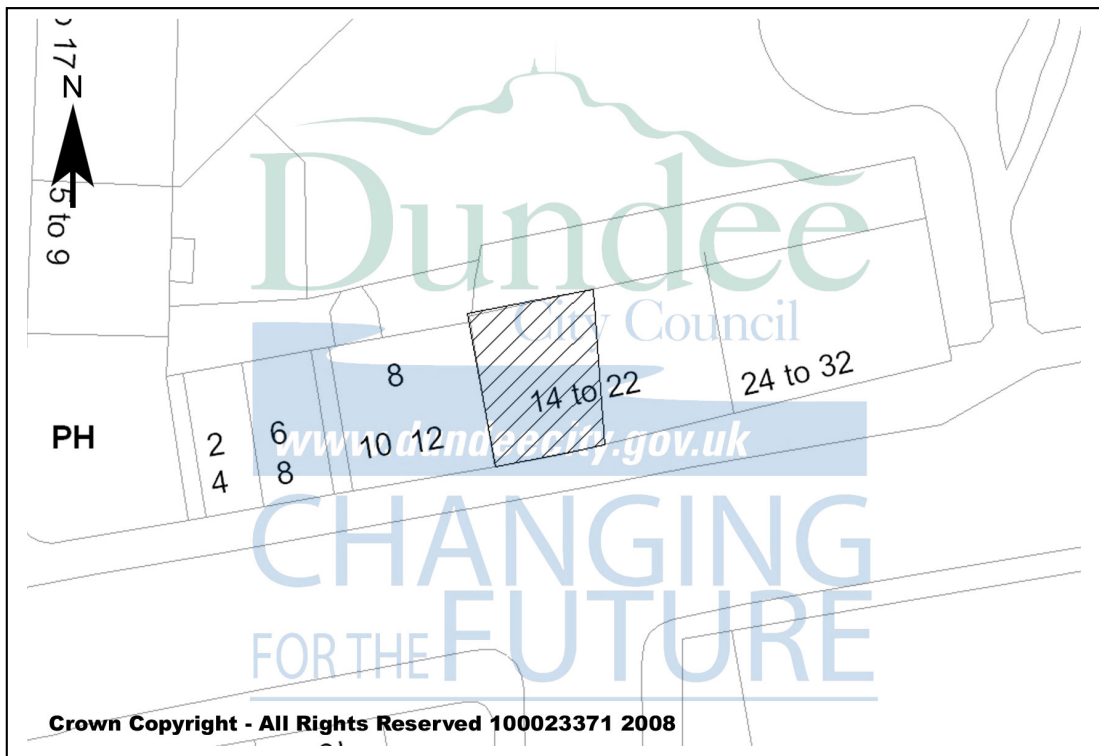
E & A Ceynan  
14-16 Arbroath Road  
Dundee DD4 6EP

**Agent**

Project Management  
Scotland  
Wester Meathie Farm  
Inverarity  
By Forfar  
Angus DD8 1XJ

Registered 11 Sep 2008

Case Officer Paul Macari



## New Cafe Proposed In Arbroath Road

The conversion of a tanning studio into a bakery/cafe is **RECOMMENDED FOR APPROVAL** subject to **conditions**. Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed change of use is contrary to the provisions of Policy 53 but meets the requirements of Policy 1 of the Dundee Local Plan Review 2005. The views of the objector are not supported and there is reasoned justification to support a departure to the requirements of Policy 53.

**SUMMARY OF REPORT**

- This application seeks planning permission for the change of use of an existing tanning studio to a bakery/cafe and in the installation of an external flue.
- 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 are relevant to the outcome of this application.
- This application was advertised as a bad neighbour development and a development contrary to the requirements of Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Dundee Local Plan Review 2005.
- One letter of objection has been received from a neighbouring business owner.

## DESCRIPTION OF PROPOSAL

This application seeks planning permission for the change of use of a tanning studio to a bakery/cafe selling hot and cold foods, and, the installation of a high level extraction flue.

The proposed change of use will also involve significant internal alterations to create a kitchen, serving and display area, customer seating area and customer WC facilities. The external high level extraction flue will be located to the rear of the building and will vent above all opening windows.

The proposed cafe/bakery will be open from 7.00am until 4.00pm and will serve a range of hot and cold foods.

## SITE DESCRIPTION

The application site comprises a ground floor commercial unit situated within a mid terraced 4 storey tenement building on the northern side of Arbroath Road. The 3 upper floors of the building are currently occupied by residential flats. The application site takes the form of a vacant former greengrocer.

The application site is located at the western end of Arbroath Road, 100m from the junction with Albert Street. The application site therefore lies on the boundary of Albert Street District Centre as defined in Appendix 5 of the Dundee Local Plan Review 2005.

The building has a slate pitched roof and is finished in a buff coloured stone. The exposed gables are finished in a weathered buff render. The windows of the flatted dwellings are timber framed top hopper style. The application site itself has a brown painted timber fascia with a white painted timber sign displayed upon it. The windows and doors are secured by aluminium roller shutters with the shutter boxes concealed behind the timber fascia. The exposed stone work on the ground floor has been painted blue. Access to the rear of the premises and to the flatted dwellings above is taken from a close located to the east of the application site between 14 and 18 Arbroath Road.

## POLICY BACKGROUND

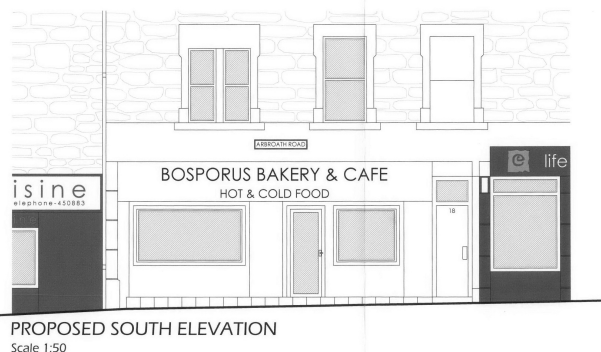
### Dundee and Angus Structure Plan 2001-2016

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 floor space (excluding cellar space) and;
- b within 45 metres if the 150m<sup>2</sup> 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 (ie 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 the hours of operation being limited to between 7.00am and 7.00pm,

and,

- 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

Planning application ref: 08/00524/COU sought planning permission for the change of use of an existing tanning studio to a cafe/bakery selling hot and cold food. After consulting with the Council's Environmental Health and Trading Standards Department the applicant submitted revised plans showing the proposed installation of an external high level extraction flue. The applicant was advised by the case officer that the proposed extraction flue could not be incorporated into the existing application as such a development would require planning permission alone and all neighbours would have to be notified as both owners and neighbours of the proposed revisions to the original plans. On this basis the applicant was advised to withdraw planning application ref: 08/00524/COU and submit a full application for the proposed change of use and installation of an external high level extraction flue

## PUBLIC PARTICIPATION

The applicant has followed the statutory neighbour notification procedure as stipulated by the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. This application has been advertised in the Dundee Evening Telegraph as a bad neighbour development and development contravening Policy 53 (Licensed and Hot Food premises Outwith the City Centre) of the Dundee Local Plan Review 2005.

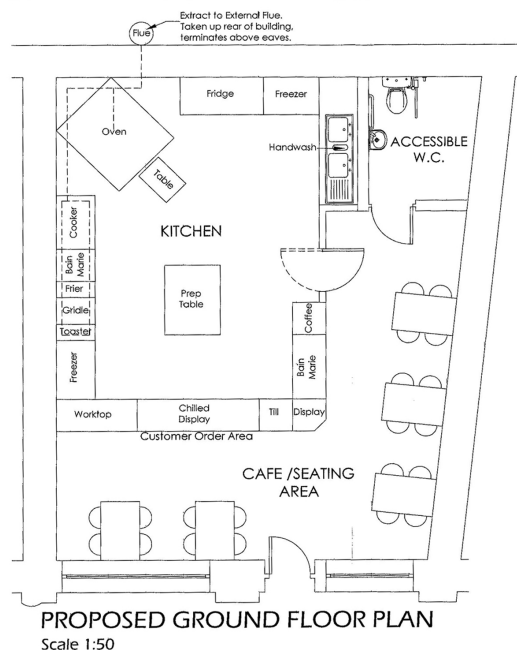
One letter of objection has been received from a neighbouring business owner. The grounds of objection are as follows:

- the proposed development is contrary to the provisions of the Dundee Local Plan review 2005;
- the proposed development would impact upon the amenity of the flats above the application site;
- the proposed development would have a significant impact upon road safety with regard to traffic, parking and access; and
- the proposals will impact upon neighbouring residents by way of noise and smell.

Copies of the objection letter are available to view in the Member's Lounge.

## CONSULTATIONS

The Council's Environmental Health and Trading Standards Department have stated that assuming the canopy captures all the cooking smells produced within the premises, the high level extraction flue will be satisfactory. Although no details of the proposed extraction flue have been received, should the Committee be



mindful to grant planning permission this issue can be addressed by way of condition.

With regard to the potential for noise disturbance from the proposed use, Environmental Health and Trading Standards have recommended that this matter be addressed by a condition limiting all noise from mechanical and electrical equipment to no more than NR25 within the residential accommodation above, and NR35, as measured one metre external to the facade of adjoining residential accommodation.

## OBSERVATIONS

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) promotes vibrant communities and encourages the development of an appropriate range of services and facilities close to and within housing areas. Therefore, to maintain high levels of residential amenity new development should seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic issues noise or smell.

In terms of parking and traffic issues, it is considered that although the application site is situated close to the Arbroath Road Albert Street junction there are several public car parks within close proximity to the site as well as several parking bays located immediately outside the premises. The proposed cafe/bakery will not have a significant impact upon existing levels of parking and traffic movement in and around the Arbroath Road/Stobswell area.

With regard to design and layout, no external alterations are proposed apart from the installation of an external high level extraction flue. The existing frontage will remain unchanged.

The use of ground floor premises in tenement buildings for the preparation of food is synonymous with issues of noise and smell disturbance. However, following on from comments received from the Council's Environmental Health and Trading Standards Department it is considered that through the installation of an efficient ventilation system as well as effective noise mitigation measures issues of noise and smell disturbance can be overcome. Therefore should the Committee be mindful to grant planning permission, issues of noise and smell disturbance will be addressed by condition.

The proposed change of use is therefore considered to comply with the requirements of Policy 1 (Vibrant and Sustainable Communities) of the Dundee Local Plan Review 2005.

The sale of hot food for consumption on the premises raises amenity issues. The problems associated with them can be minimised by restricting such uses in the vicinity of housing, limiting their operation and hours and requiring adequate car parking. Policy 53 (Licensed and Hot Food premises Outwith the City Centre) aims to safeguard the level of amenity afforded to neighbouring properties through restricting premises selling alcohol and hot food in terms of distance from residential properties, operating hours and the method of food preparation.

In terms of floor area and the method of food preparation proposed, this application is contrary to the provisions of Policy 53 because there are flats located on the upper floors of the building in which the cafe/ bakery is to be located and the food is to be prepared and cooked wholly on site.

There are material considerations that justify a departure to the provisions of Policy 53. With regard to impact upon amenity by virtue of noise and smell disturbance these matters have been addressed in the assessment of the proposed change of use against the criteria of Policy 1. In meeting the requirements of Policy 1, there is no need to meet the distance or cooking requirements of Policy 53 as issues of noise and smell disturbance have been addressed sufficiently.

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:

- a Reasoned justification to warrant a departure to Policy 53 - following comments received from the Council's Environmental Health and Trading Standards Department it has been concluded above that an efficient extraction system coupled with the installation of a high level extraction flue will prevent neighbouring properties being affected by smells from the proposed cafe/ bakery. This is because gasses and vapour will

exhaust above opening windows in the rear elevation of the tenement building in which the application site is located.

The issue of noise disturbance can be overcome through implementing effective noise mitigation measures to restrict mechanical and electrical noise levels to NR25 when measured within neighbouring residential properties and NR35 when measured one metre from the facade of adjacent residential properties. To ensure that an efficient ventilation system is installed and the appropriate noise mitigation measures implemented both of these issues will be addressed by way of condition should the Committee be mindful to grant planning permission.

It should be noted that the proposed cafe/ bakery will only be open between the hours of 7.00am and 4.00pm. It is considered that the level of noise disturbance from both electrical and mechanical equipment during these hours will be no greater than noise disturbance from passing traffic on both Arbroath Road and Albert Street.

b Views of the Objector - one letter of objection has been received raising concerns that:

- the proposed development is contrary to the provisions of the Dundee Local Plan review 2005;
- the proposed development would impact upon the amenity of the flats above the application site;
- the proposed development would have a significant impact upon road safety with regard to traffic, parking and access; and
- the proposals will impact upon neighbouring residents by way of noise and smell.

With regard to concerns that the proposed development is contrary to the provisions of the Dundee Local Plan Review 2005, it has been demonstrated that in terms of Policy 53 the proposals are contrary to the provisions of the Local Plan. However, there is reasoned justification as detailed above in the Observations section under the subheading The Development Plan that addresses and overcomes issues of

noise and smell disturbance that render the proposals contrary to Policy 53.

Concerns relating to impact upon amenity by way of smell, noise disturbance, and, traffic parking and access are also addressed in the assessment of the proposed development against the criteria of Policy 1 and Policy 53 of the Dundee Local Plan Review 2005 under the subheading The Development Plan in the Observations section above. These concerns are not supported.

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 external alterations to the front elevation of the application site are proposed. However, the internal layout of the proposed cafe/ bakery is a very effective use of limited floor space.

### CONCLUSION

The proposed change of use is contrary to the provisions of Policy 53 but meets the requirements of Policy 1 of the Dundee Local Plan Review 2005. The views of the objector are not supported and there is reasoned justification to support a departure to the requirements of Policy 53.

### RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

The development hereby permitted shall be commenced within five years from the date of this permission

- 1 BEFORE WORK STARTS ON SITE, details of the proposed extraction and ventilation system shall be submitted to this Planning Authority for written approval and thereafter the approved system shall be installed in accordance with the approved plans. For the avoidance of doubt, the details submitted should include the exact position and elevational drawings of the proposed extraction flue.

- 2 All noise from mechanical and electrical equipment associated with the proposed bakery/ cafe will not exceed NR25 when measured within the residential accommodation above, and NR35, as measured one metre external to the facade of adjoining residential accommodation.
- 3 The proposed bakery/ cafe shall operate between the hours of 7.00am and 4.00pm Monday to Saturday only.

### **Reasons**

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 In the interests of safeguarding residential amenity and preventing nuisance by way of smell disturbance.
- 3 In the interests of safeguarding residential amenity and preventing noise disturbance.
- 4 In order to respect the opening hours expressed by the applicant whilst also retaining control of the proposed development to avoid impacting upon the amenity of neighbouring residents.