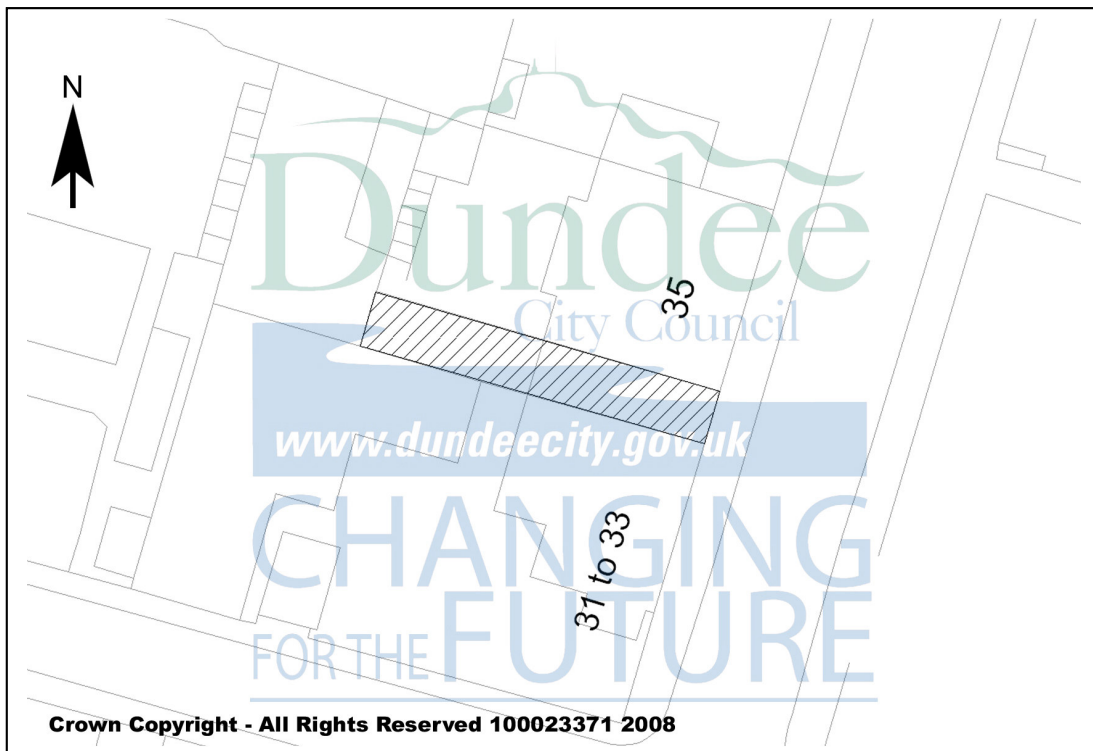


KEY INFORMATION**Ward** The Ferry**Proposal**Change of use to hot good
takeaway**Address**33 Lawrence Street
Broughty Ferry
Dundee**Applicant**Pa Pete's Takeaway
33 Lawrence Street
Broughty Ferry
Dundee
DD5 1ES**Agent**Paul Doig
7 The Esplanade
Broughty Ferry
Dundee
DD5 2EL**Registered** 26 Sep 2008**Case Officer** C Walker

Proposed Hot Food Takeaway in Lawrence Street

A change of use to hot food takeaway is **RECOMMENDED FOR APPROVAL** subject to conditions.
Report by Director of Planning and Transportation

RECOMMENDATION

The restricted hours of operation and the fact that there will only be limited cooking on the premises means that the development is in accordance with the Local Plan and will not have an unreasonable impact on neighbours. The application is recommended for **APPROVAL** with conditions.

SUMMARY OF REPORT

- Planning permission is sought to the change of use of a small shop unit to a hot food takeaway. The site is in Broughty Ferry district centre between a cottage and a flatted block. The hot food takeaway has operated for a number of months with a restricted range of food served and day time hours of operation.
- Policy 53 of the Local Plan is relevant to the determination of this application. An objection was received from the occupier of the adjoining cottage concerned about litter, anti social behaviour, odour and parking problems.
- The development complies with the Local Plan and there will not be an unacceptable adverse impact on the amenities enjoyed by adjoining residents.

DESCRIPTION OF PROPOSAL

Planning permission is sought to the change of use from a retail premises to a hot food takeaway. The applicant has occupied the premises since February this year and a complaint from a member of the public that hot food was been served was received in June 2008.

The applicant has written to state that the range of food served and the method of cooking will be restricted. Reference is made to the use of a grill, micro wave oven, soup kettle, oven and hot frame. Proposed opening hours are Monday-Saturday 8.00am until 5.00pm and closed all day Sunday.

The premises are small with a gross internal area of some 32m² including a customer waiting area of some 6m². A litter bin has been erected on the pavement adjacent to the premises.

There are no proposed changes to the elevations.

SITE DESCRIPTION

The application site is a small single storey retail premises at 33 Lawrence Street between a cottage and a 3 storey flatted block. It has the appearance of a small annex building attached to the cottage at 31 Lawrence Street although there is no connection between the 2 properties.

The small flat roofed retail unit has a 3 metre wide shop front and a gross floor area of some 32m². There is a small yard to the rear of just over 20m².

To the south is the adjoining cottage at 31 Lawrence Street and its garden ground. To the west and south west is a workshop building. To the north is an adjoining 3 storey flatted block. To the east, on the opposite side of Lawrence Street, is the Marks and Spenser premises, car park and service yard.

POLICY BACKGROUND

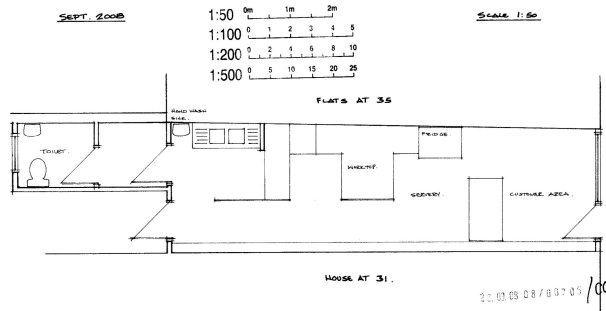
Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan Review 2005

The following policies are of relevance:

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:



PLAN OF PA PETE'S DELI - 33 LAWRENCE STREET, BRUGHITY FERRY, DUNDEE.
PAUL-DOUG ARCHITECTURAL SERVICES - 7 THE COYLADE, BRUGHITY FERRY, DUNDEE.

- a within 30 metres of existing and proposed housing if the outlet does not exceed 150m² gross floorspace (excluding cellar space) and;
- b within 45 metres if the 150m² 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

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

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the application was advertised as being potentially contrary to Policy 53 of the Dundee Local Plan Review 2005. A letter of objection was received from the occupier of the adjoining cottage to the south. The principal concerns raised relate to litter, grease stains on the pavement, house walls being splashed with food and customers sitting on window sills. The objector, who is elderly, feels a prisoner in her house between 12 and 1pm when the takeaway is frequented by school children. Concerns are also expressed about the

consumption of food on the premises, the absence of proper ventilation with consequent smell problems and vehicles parking on Lawrence Street and mounting the kerb. The objector considers that there are ample hot food takeaway businesses in the main shopping streets of Broughty Ferry without one having to be located close to dwellings.

Members will already have had access to this letter and the points raised are considered in the Observations Section of this Report.

CONSULTATIONS

The Head of Environmental Health and Trading Standards has no concerns about the cooking equipment listed by the applicant in his submission. However he points out that if in addition the applicant wished to operate a cooker then this would require a canopy and extraction through the flat roof. In terms of potential noise from mechanical and electrical equipment, it is suggested that a planning condition be imposed to cover this

OBSERVATIONS

Statutory Requirements

In accordance with Section 25 of the Town and Country Planning (Scotland) Act 1997 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.

In terms of Policy 53, although the development is located within the Broughty Ferry District Centre, it directly adjoins dwellings on either side. However the normal requirements for maintaining a distance from dwellings do not apply if the hot food business trades between

7.00am and 7.00pm and if the hot food does not require to be prepared on the premises and only requires heating by means of a microwave oven or other method which would not cause a nuisance to surrounding residential property by virtue of smell.

In this case the proposed hours of



operation are from 8.00am to 5.00pm so this requirement is clearly met. In terms of the preparation and cooking of hot food, the small scale of the operation and the restricted range of cooking equipment means that it would comply with the exceptions set out in Policy 53. However, if Members are minded to grant consent it is recommended that planning conditions should be applied relating to the hours of operation and cooking on the site.



It is concluded from the foregoing that the proposal complies with the provisions of the development plan.

Other Material Considerations

Letter of Objection - a letter of objection was received from the occupier of the adjoining cottage to the south. The principal concerns raised relate to litter, grease stains on the pavement, house walls being splashed

with food and customers sitting on window sills.

The letter does state that these problems were encountered when the premises first opened. Since then the applicant has inserted railings on the window sills of the objectors cottage and a litter bin is positioned on the street. No significant littering or vandalism problems have been encountered on the various occasions when the site was visited but it is accepted that one of the consequences of hot food takeaways is the possibility of litter problems on adjoining streets. It is considered that the day time nature of the operation and the provision of a litter bin will result in a situation where litter can be kept under reasonable control. If problems are encountered then there is separate legislation to deal with this matter.

The objector, who is elderly, states that she feels a prisoner in her house between 12 and 1pm when the takeaway is frequented by school children. No reason is given as to why this is the case and it may be simply a perception that there may be instances of anti social behaviour. The applicant has already placed barriers preventing school children sitting on her window sills and the inclusion of planning conditions restricting the consumption of food on the premises may help to alleviate these perceived problems. However instances of anti social behaviour are ultimately a matter for the police.

Concerns are expressed about the consumption of food on the premises and the absence of proper ventilation with consequent smell problems. Taking into account the small scale of the facility, there is very limited space to consume food on the premises and if Members are minded to approve the application a condition could be imposed preventing the consumption of food on the premises. The restricted range of cooking equipment, in line with Policy 53, means that there is not a requirement for ventilation equipment and the Head of Environmental Health and Trading Standards concurs with this view.

Concerns about vehicles parking on Lawrence Street and mounting the kerb are expressed. The site is within the Broughty Ferry District Shopping Centre opposite a major retail unit. The very small scale of the facility means that no significant deliveries will be involved and it is anticipated that most customers will arrive on foot given the parking restrictions at this location. Although invariably some customers may choose to drive to the premises and park illegally, this is possible at any commercial unit in the district centre and there is separate legislation to deal with such problems.

The objector considers that there are ample hot food takeaway businesses in the main shopping streets of Broughty Ferry without one having to be located close to dwellings. There is no doubt that there are ample takeaway facilities in the District Centre but this is not a valid reason for preventing other such facilities provided they comply with policy as is the case here. Regard must also be had to the fact that the objector lives in the commercial heart of Broughty Ferry and must expect a certain level of disturbance not encountered in a purely residential area.

Head of Environmental Health and Trading Standards - the Head of Environmental Health and Trading Standards has no concerns about the cooking equipment listed by the applicant in submission. However he points out that if in addition the applicant wished to operate a cooker then this would require a canopy and extraction through the flat roof. However such additional cooking equipment would run counter to the limited form of hot food takeaway permissible at this location and therefore should Members be minded to approve the application a condition restricting wider cooking equipment should be attached.

It is concluded from the foregoing that insufficient weight can be accorded to the views of the objector such as to justify refusing planning permission. It is therefore recommended that planning permission be granted with conditions.

Design

As this is a change of use application with no elevational alterations proposed, there are no issues relating to design.

CONCLUSION

The restricted hours of operation and the fact that there will only be limited cooking on the premises means that the development is in accordance with Policy 53 of the Dundee Local Plan Review 2005. It is also considered that there will not be an unacceptable adverse impact on the amenities enjoyed by adjoining residents.

RECOMMENDATION

It is recommended that consent 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 No use shall be made of the premises before 8.00am or after 6.00pm Monday - Saturday and the premises will remain closed all day Sunday.
- 3 The hot food operations shall be confined to the range of foods as stated in the applicant's submission with this planning application and shall not extend to any other hot food items. Any changes to this list of hot food should be agreed in writing with Dundee City Council prior to providing any additional hot food items for sale.
- 4 The cooking equipment shall be restricted to the list of equipment (microwave ovens, oven, baguette/panini machine, kettle, hot frame and soup kettle) provided from the applicant with this planning application. In particular, no cooker shall be operated on the premises and no food shall be fried on the premises. Any changes to this equipment shall be agreed in writing with Dundee City Council prior to installation.
- 5 No food shall be consumed on the premises and no facilities shall be provided to enable food to be consumed on the premises.
- 6 Noise from mechanical and electrical equipment should not exceed NR35 at the facade of adjoining dwellings.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To protect the residential amenities enjoyed by adjoining residents.
- 3 To protect the residential amenities enjoyed by adjoining residents.
- 4 To protect the residential amenities enjoyed by adjoining residents.
- 5 To protect the residential amenities enjoyed by adjoining residents.
- 6 To protect the residential amenities enjoyed by adjoining residents.