

**KEY INFORMATION****Ward** Maryfield**Proposal**

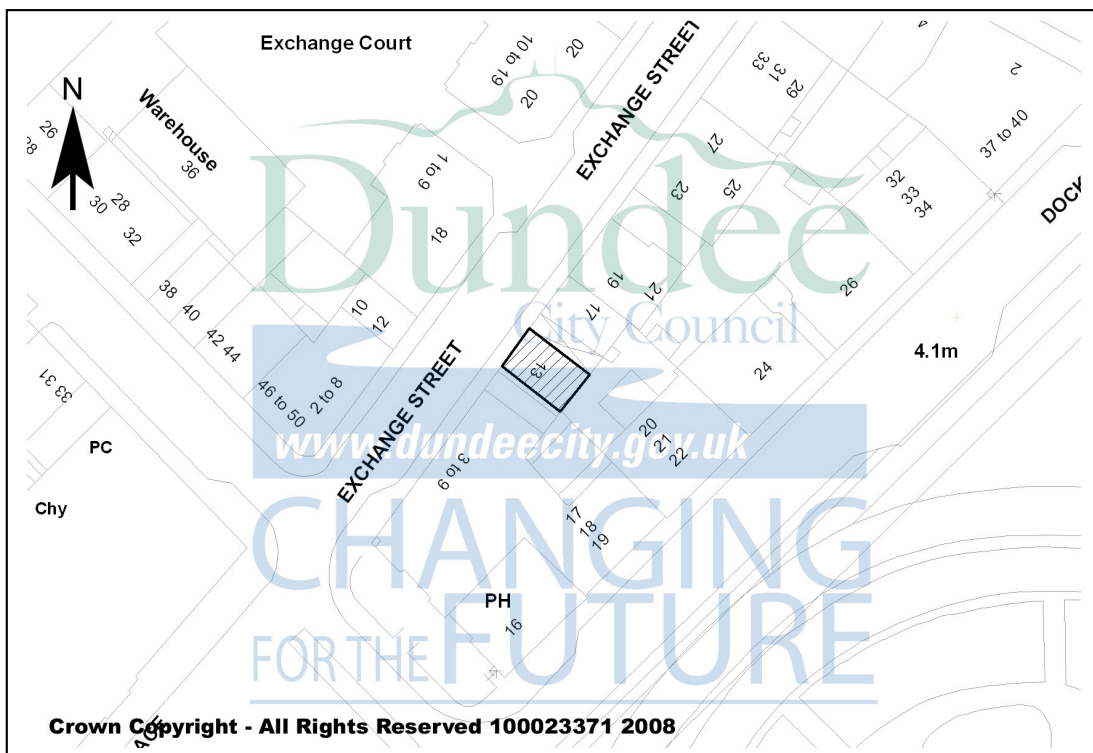
Change of use from clothes shop to sandwich takeaway bar serving hot and cold food

**Address**

13 Exchange Street  
Dundee  
DD1 3DJ

**Applicant**

Mr Gary Hibbert  
291 Craigie Drive  
Dundee  
DD4 7UE

**Agent****Registered** 13 Nov 2008**Case Officer** P Macari

## Proposed Hot Food Takeaway in Exchange Street

A change of use from a clothes shop to a sandwich takeaway bar serving hot and cold food is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of Planning and Transportation.

**RECOMMENDATION**

The proposals are contrary to the requirements of Policy 52 of the Dundee Local Plan Review 2005. However, the concerns of the objector are not supported and there are material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission. Accordingly it is recommended that planning permission be granted subject to conditions.

**SUMMARY OF REPORT**

- This application seeks full planning permission for the change of use to form a hot food takeaway at 13 Exchange Street, Dundee.
- Policy 36 (City Centre Speciality Shopping and Non-core Area), Policy 52 (Restraint on Licensed Premises in the City Centre), Policy 59 (Alternative Uses for Listed Buildings) and Policy 61 (Development in Conservation Areas) of the Dundee Local Plan Review 2005 are relevant to the outcome of this planning application.
- The applicant has followed the statutory neighbour notification procedure. This application was also advertised in the Dundee Evening Telegraph as a "bad neighbour development". Three letters of objection have been received from neighbouring proprietors concerned about insufficient waste storage facilities and littering, on street parking problems and traffic congestion, over-provision of hot food and food retail premises and littering and vermin.
- The concerns of the objectors are not supported. The proposals are contrary to the provisions of Policy 36 of the Dundee Local Plan review 2005. However, there are material considerations that warrant a departure to the Development Plan.

## DESCRIPTION OF PROPOSAL

Planning permission is sought for change of use to a hot food takeaway in the ground floor commercial unit of 13 Exchange Street, Dundee. The floor area of the proposed unit is approximately 45m<sup>2</sup>. The opening hours are Monday-Saturday 07:30 to 16.30. The type of food proposed to be sold are morning cereals served with yoghurt or honey, filled rolls, soups, pies, wraps and paninis.

No external alterations are proposed apart from the installation of a new extractor. The applicant proposes to store refuse within the property for daily collection by the Council's Waste Management Department.

## SITE DESCRIPTION

The application site is located on the south side of Exchange Street within the Central Conservation Area. It is the ground floor unit of a four storey stone built C(s) listed mid-terraced tenement building with flats above. The ground floor premises of the adjoining tenements comprise of a hairdressing salon, a roll shop and a dry cleaners. On the northern side of Exchange there are newly built three and four storey tenement blocks with commercial units on the ground floor and offices/flats above. These units take the form of an estate agents office, a cafe and a bike shop. Exchange Street is a busy route for traffic moving around the City Centre. There are pay and display car parks and parking bays available on nearby streets. There are parking restrictions outside the premises.

The application site is bound to the east and west by access pends providing vehicle access to the rear of application site and properties on Shore Terrace. There is a shared amenity area to the rear of the premises. The application site does not benefit from access to the rear courtyard.

The application site comprises a commercial unit with a floor area of 45m<sup>2</sup> and a basement area of 104m<sup>2</sup>. The front elevation is of a traditional

design with large blue painted timber framed windows set between stone columns that cascade down from the first floor to ground level to form window and door openings. The



windows are positioned either side of the centrally located blue painted timber door. The frontage also comprises blue painted timber stall risers.



The upper floor windows of 13 Exchange Street are green painted timber framed sash and case in style. Both the upper and lower panes of each window are glazed in multiple panes.

## 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 36: City Centre Speciality Shopping and Non Core Area - within the City Centre Speciality Shopping and Non Core Area defined on the City Centre Retail Area map proposals for retail use will be encouraged. Non retail uses within Classes 1 (Shops), 2 (Financial, Professional and Other Services) and 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 will also be supported. Proposals for ground floor premises involving uses falling outwith these Classes will not normally be permitted.

Policy 52: Restraint on Licensed Premises in the City Centre - within the City Centre as defined on the Proposals Map, care will be taken to avoid an excessive concentration of public houses and nightclubs, particularly those in close proximity to residential areas. A such, there will be a presumption against the establishment of licensed premises (excluding restaurants) in the City Centre:

- a with a total floor area in excess of 300m<sup>2</sup>; or
- b any more than one in five units in a single frontage where the combined floor area is in excess of 300m<sup>2</sup>.

This restraint will not apply in the Cultural Quarter although the development of night clubs will be carefully controlled so that they do not dominate its character and disrupt the Quarter as a daytime visitor environment.

Policy 59: Alternative Uses for Listed Buildings - suitable alternative uses will be considered for listed buildings where this is necessary to secure their future. Any adaptation of the fabric

must be undertaken carefully and sensitively and have minimum impact on the architectural and historic interest, character and setting of the building.

Reference should be made to other policies in the Plan.

Policy 61: Development in Conservation Areas - within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

## 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

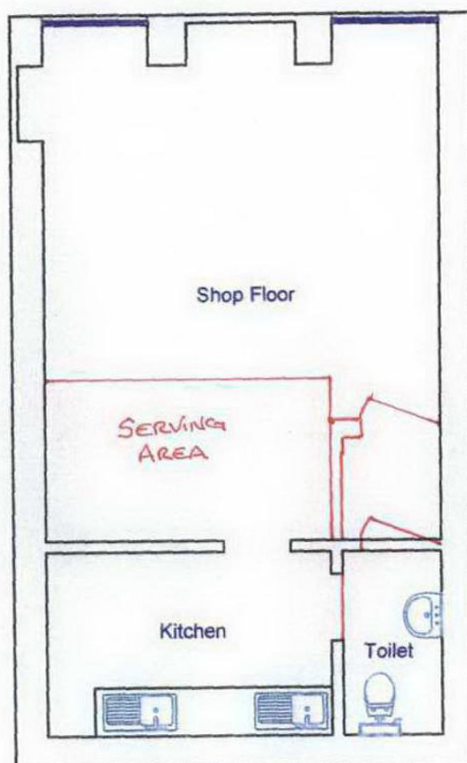
Planning permission was granted on 5 April 1989 for a cafe at 13 Exchange Street. Since then the premises has been used as a dental surgery/technicians workshop and a clothes shop.

## PUBLIC PARTICIPATION

The applicant has carried out the statutory neighbour notification procedure as detailed in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. This application was also advertised as being a bad neighbour development in the Dundee Evening

Telegraph. Consequently, three letters of objection have been received from neighbouring proprietors concerned about:

- Insufficient waste storage facilities and littering.
- On street parking problems and traffic congestion.
- Over-provision of hot food and food retail premises.
- Littering and vermin.



Ground Floor

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

## CONSULTATIONS

The Council's Environmental Health and Trading Standards Department originally raised concern regarding smell from the takeaway for residents above the premises. This was because the applicant had originally proposed to retail hot food in the form of bacon and egg rolls cooked on a griddle.

The applicant has sought to change the menu by removing the need for food prepared on a griddle or in a deep fat

fryer to alleviate the concerns of Environmental Health and Trading Standards. Regardless of the conditions attached to this report that seek to minimise the impact of the proposals on neighbouring properties through restricting operating hours, cooking equipment and foods to be cooked on site, Environmental Health and Trading Standards are remain of the view that the only way to extract and ventilate the premises without causing nuisance to neighbouring properties is through a high level flue.

## 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.

In accordance with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

## 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 36 is supportive of proposals that seek to retain Class 1 (Retail), Class 2 (Financial and Other Professional Services) or Class 3 (Food and Drink) uses in ground floor premises in the city centre. Proposals falling outwith these use classes will

not normally be supported. The proposed change of use does not fall within either Class 1 or of the Town and Country Planning (Use Classes)(Scotland) Act 1997. The proposals do not fall within the brackets of Class 3 (Food and Drink) because the hot food prepared is for consumption off site and not within the premises. Therefore, the proposals are contrary to the provisions of Policy 36. However, as the application site comprises a vacant ground floor commercial unit in a city centre location, its re-use for commercial purposes is considered to contribute to the commercial vitality and vibrancy of the surrounding area. It is therefore evident that there are material considerations that warrant a departure from Policy 36.

In terms of Policy 52, the location of the proposed hot food takeaway within Dundee City Centre is acceptable because the application site does not have a floor area in excess of 300m<sup>2</sup> and there is not a concentration of licensed premises within the same frontage.

There are two restaurants and a cafe on the northern side of Exchange Street at the east end. On the southern side of Exchange Street adjacent to the application site there is a filled roll takeaway shop and a cheese shop. The roll takeaway shop and cheese shop are not licensed premises. The application site is bound to the east and west by access pends that give vehicle access to the rear of 13 Exchange Street and Shore Terrace. The application site therefore forms an individual frontage on to Exchange Street. On this basis it is concluded that the proposed hot food takeaway will not result in a concentration of licenses premises within Exchange Street.

Policy 59 is supportive of alternative uses for listed buildings where the existing use has ceased and the use proposed will have least impact upon the historic fabric. This is because the future of historic buildings is dependant on viable uses, effective maintenance and repair, and minimising the impact of adaptation and modernisation on historic fabric. The application site has a traditional green painted timber frontage with a modern interior. The interior consists of white painted walls, modern partitions, laminate flooring, a modern kitchen and hard-board doors. The proposed change of use will not

involve any alterations to the existing timber frontage with the only external alteration being the installation of a new extractor. Internally the applicant proposes to create a serving area and erect a new partition wall to separate the public serving area from the food preparation area and WC facilities. It is considered that the proposed alterations will not significantly impact upon the historic fabric of the building. This is mainly because the application site has already been modernised with the proposed alterations having very little impact upon the remaining historic fabric. The proposed use of the building as a hot food takeaway will secure the future of the building through the continued maintenance and repair. The proposals are considered to comply with the provisions of Policy 59 (Alternative Uses for Listed Buildings).

Policy 61 is supportive of development proposals where such proposals have respect for the character and setting of conservation areas. Indeed proposals will only be supported where they aim to restore or enhance the visual appearance of the historic streetscapes and existing buildings. The proposed change of use to form a hot food takeaway will not involve any alterations to the exterior of the building with the exception of the installation of a new extractor to the rear. The application site is currently vacant. This redundancy detracts from the visual appearance of the conservation area and C(s) listed building in which the commercial unit is located. The proposals will bring the commercial unit back into use while also respecting the level of amenity afforded to adjoining properties. This is demonstrated by the proposed operating hours and choices of foods available. The proposed change of use will therefore have a positive impact upon the appearance of the historic streetscape while also promoting the continued maintenance of the C(s) listed building. The proposals are considered to comply with the criteria of Policy 61 (Development in Conservation Areas).

It is concluded from the foregoing that the proposals comply with the requirements of Policy 59 and Policy 61 of the Dundee Local Plan Review 2005 but fail to meet the criteria of Policy 36.

The Statutory Requirements stipulated under Section 59 and Section 64 of the

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 are discharged in the assessment of the proposed change of use against the criteria of Policy 59 (Alternative Uses of Listed Buildings) and Policy 61 (Development in Conservation Areas) of the Dundee Local Plan Review 2005.

## Other Material Considerations

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

- a Material Considerations to Warrant a Departure to the Development Plan

In its current form, the application site is a vacant commercial unit on the ground floor of a C(s) listed building. There are several vacant commercial units on Commercial Street, Castle Street and Exchange Street that have a negative impact upon the appearance of the respective streetscapes as well as the vitality and vibrancy of the non-core city centre area. Although the proposals do not fall into Class 1, Class 2 or Class 3 of the Town and Country Planning (Use Class)(Scotland) Order 1997, the occupation of the application site will enhance the appearance of the Exchange Street streetscape. This is because the vitality and vibrancy of the City Centre is enhanced and characterised by the variety that is available to visitors, commuters and workers in Dundee. With this in mind, in a non-core area of the City Centre the re-use of a vacant listed building as a hot food takeaway is a positive development that will enhance the appearance of the Exchange Street streetscape as well as the variety of facilities available to visitors, commuters and workers in Dundee.

- b Views of Environmental Health and Trading Standards

Although there are residential properties above and adjacent to the application site, the restrictive conditions attached to this application would ensure that the potential for smell disturbance is minimal should the Committee be mindful to grant planning permission.

Given the city centre location of the application site, the level of amenity already afforded to flats adjacent to the premises is compromised through smell and noise disturbance from passing traffic and the three restaurants

located within close proximity to the application site that do not benefit from high level flues but rather low level extraction systems. These premises also have residential flats located directly above. It is with this in mind that the extractor proposed by the applicant is considered to be adequate to ventilate the premises without further impacting upon the level of amenity afforded to neighbouring properties.

#### c Views of the Objections

Three letters of objection were received from neighbouring proprietors raising the following concerns:

- Insufficient waste storage facilities, littering and vermin.

Concern has been expressed that the proposed change of use will give rise to increased levels of litter in and around Exchange Street as well as the potential for vermin. The applicant has confirmed that refuse will be stored within the application site for daily collection by the Council's Waste Management Department. It should be noted that the Council's Waste Management Department has not voiced concern over the proposed change of use. There are several public litter bins within close proximity to the application site. However, it should be noted that it is not the responsibility of the applicant to ensure that patrons of the proposed hot food takeaway dispose of litter within the available receptors. With reference to the potential to attract vermin, no concerns have been raised by the Council's Environmental Health and Trading Standards Department regarding this issue. The concerns of the objectors are not supported.

- On street parking problems and traffic congestion

While Exchange Street is a busy route through the City Centre, there is an abundance of pay and display on-street parking facilities as well as several car parks in close proximity to the application site. There are existing businesses located on Exchange Street as well as within High Street and Commercial Street that receive daily deliveries where the vehicles park on Exchange Street due to the pedestrianised nature of High Street and Murraygate. Therefore, it is considered that the proposals will not be solely responsible for a significant

increase in traffic congestion or on-street parking pressure. The existing issues of traffic congestion and on-street parking pressure are attributed mainly to the City Centre location of Exchange Street and the growing number of people visiting the City Centre. These concerns are not supported.

- Over-provision of hot food and food retail premises.

While there are several restaurants and cafes on Castle Street, Commercial Street, Exchange Street and High Street, the vitality and vibrancy of the City Centre is enhanced and characterised by the variety that is available to visitors, commuters and workers in Dundee. With this in mind, in a non-core area of the City Centre the re-use of a vacant listed building as a hot food takeaway is a positive development that will enhance the appearance of the Exchange Street streetscape as well as the variety of facilities available to visitors, commuters and workers in Dundee.

The concerns of the Objectors are not supported. However, sufficient weight can be accorded to the material considerations such as to justify laying aside the provisions of the Development Plan to grant planning permission.

### Design

The proposed change of use will not result in any external alterations to the front elevation of application site.

### CONCLUSION

The applicant has provided details of the hours of operation, extraction/ventilation and type of food to be sold from the premises. The concerns of the objectors are not supported. However, there are material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission. Accordingly, it is recommended that planning permission be granted subject to conditions.

### 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 The proposed Hot Food Takeaway will operate between the hours of 07.30am and 4.30pm Monday to Saturday only.
- 3 The only hot foods to be cooked on site will be:
  - Soup
  - Pies
  - Wraps
  - Paninis

For the avoidance of doubt no bacon, eggs or sausages are to be cooked on site and the cooking equipment installed will not comprise of a griddle or deep fat fryer.

### Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 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.
- 3 In order to respect the specifications expressed by the applicant whilst also retaining control of the proposed development to avoid impacting upon the amenity of neighbouring residents.