

**KEY INFORMATION**

Ward Maryfield

**Proposal**

Change of use to hot food takeaway and installation of ventilation flue

**Address**

117 Albert Street  
Dundee  
DD4 6PR

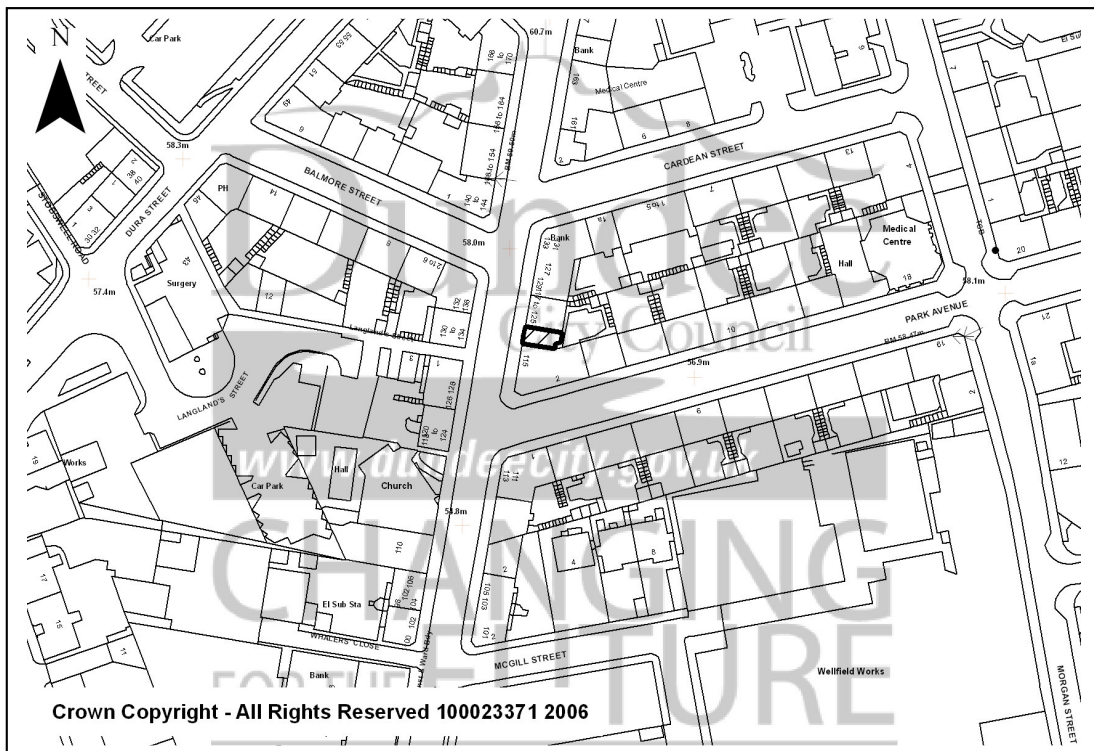
**Applicant**

Ian Tait  
2 Emmock Lane  
Dundee  
DD4 9FN

**Agent**

Registered 19 June 2007

Case Officer Paul Macari



# Proposed Hot Food Takeaway in Albert Street

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

**RECOMMENDATION**

The proposal is contrary to Policy 53 of the Dundee Local Plan Review 2005. However it is considered that any adverse impact on residential amenity due to noise or smell can be addressed by the implication of a planning condition. Accordingly the application is recommended for **APPROVAL** subject to conditions.

**SUMMARY OF REPORT**

- Planning permission is sought for change of use to a hot food takeaway and erection of a high level extraction flue at 117 Albert Street. The hot food takeaway is already in operation and operates from 8am to 3.30pm from Monday to Saturday.
- This application was first reported to the Development Quality Committee on 20 August 2007. Decision was deferred until the applicant submitted details of the proposed extraction and ventilation system. Sufficient details have now been received to the satisfaction of Environmental Health and Trading Standards to allow the Development Quality Committee to consider the application.
- Three letters of objection were received from an adjoining resident on the grounds of the adverse impact on residential amenity due to smell and noise as well as loss of daylight and loss of view caused by the proposed extraction flue.
- Policies 39 and 53 of the Dundee Local Plan Review 2005 are of relevance to the determination of the application.
- It is considered that if the applicant installs appropriate ventilation equipment with noise reducing measures, then the amenity of adjoining residents will not be adversely affected. Therefore the proposal is recommended for approval with conditions.

**DESCRIPTION OF PROPOSAL**

Planning permission is sought for change of use to a hot food takeaway and erection of a high level extraction flue at 117 Albert Street, Dundee. The floor area of the proposed unit is approximately 50m<sup>2</sup>. The opening hours are Monday-Saturday 8:00am to 3.30pm. There are no proposed changes to the elevations. The type of food proposed to be sold are hot and cold fast food, baked potatoes and paninis. The hot food will consist of bacon, sausages, burgers, polony, black pudding, lorne and egg and will be cooked on a griddle. A flue will be installed on the rear elevation to control ventilation of the premises.

**SITE DESCRIPTION**

The application site is located on the east side of Albert Street. It is the ground floor unit of a four storey tenement block with flats above. To the north of the site are small retail premises and a newsagents is located immediately to the south. Albert Street is a busy arterial route into the City Centre. There is parking available on nearby streets but there are parking restrictions outside the premises. There is a shared amenity area to the rear of the premises. A ventilation fan has been installed in the premises which extracts into the communal amenity space to the rear. The proposed extraction flue will be located on the rear elevation in a recess. The proposed extraction flue will be located approximately 950mm from east facing kitchen windows of flats located on the 1st, 2nd and 3rd floors of 2 Park Place.

**POLICY BACKGROUND**

**Dundee and Angus Structure Plan 2001-2016**

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

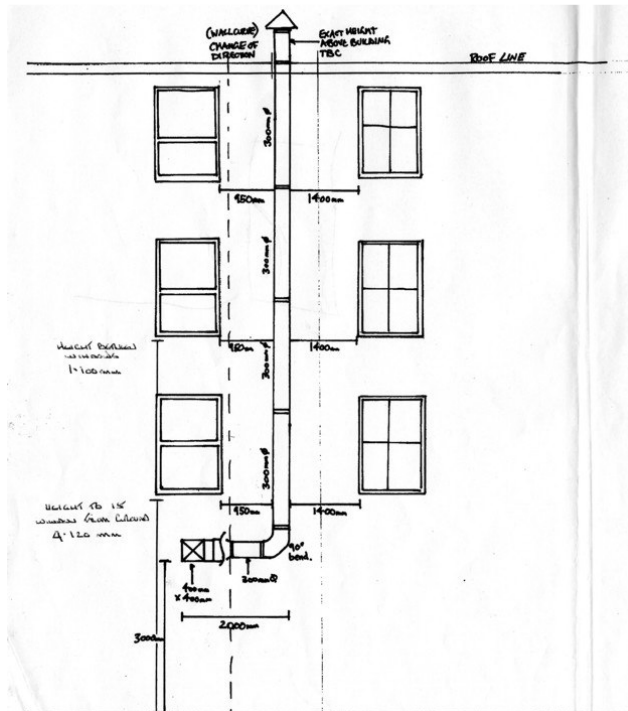
**Dundee Local Plan 2005**

The following policies are of relevance:

Policy 39: District Centre Core Areas - within the areas defined in Appendix 5, development proposals which would result in the loss of Class 1 (retail) or restaurant and café uses at ground floor level will not be acceptable:

- a where they are located within the retail core of the Broughty Ferry and Lochee District Centres and would result in more than one in five units in a single frontage being occupied by uses other than shops, restaurants and cafes; or
- b where they are located within the retail core of other district centres and would result in more than 2 in 5 units in a single frontage being occupied by uses other than shops, restaurants and cafes.

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 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 permission was granted on 5 April 1998 for a hot food takeaway at the same address. Since that date, the premises have operated as a retail store and therefore planning permission is required to change the use back to a hot food takeaway.

At the July 2007 meeting of the Development Quality Committee, the committee was mindful to defer recommendation of this application until sufficient details of the proposed ventilation/extraction system were submitted to this Planning Authority for consideration. Details of the proposed extraction flue have now been submitted with comments

received from the Council's Environmental Health and Trading Standards Department.

## **PUBLIC PARTICIPATION**

Statutory neighbour notification was carried out and one letter of objection was received from an adjoining neighbour on the grounds of noise and smell disturbance. The application was advertised as being contrary to Policy 53 of the Dundee Local Plan Review 2005. It was advertised as a bad neighbour development on 26 June 2007.

After submitting details of the proposed extraction flue, the applicant was required to again carry statutory neighbour notification. Two additional letters of objection were received detailing concerns about loss of daylight caused by the position of the proposed extraction flue. Concerns were also raised over the perceived loss of view that would arise from the erection of the extraction flue. However, this latter point is not considered to be material to the outcome of this planning application.

Copies of the objection letters are available for inspection in the Members' Lounges and the issues raised are discussed in the "Observations" section below.

## **CONSULTATIONS**

The Head of Environmental Health and Trading Standards originally raised concern regarding smell from the takeaway for residents above the premises and also related noise from any proposed ventilation equipment. Whilst concerns relating to noise disturbance generated by the proposed ventilation system persist, concerns over cooking smells entering the residential flats above the hot food takeaway have been satisfied by the proposed high level extraction flue. Should Members be minded to approve this application, a condition will form part of any planning permission to ensure that the ventilation system is installed with noise mitigation measures to protect the amenity of adjoining residents.

## **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 39 states that development proposals which would result in the loss of Class 1 (retail) or restaurant and café uses at ground floor level will not be acceptable where they are located in the retail core of District Centres and would result in more than 2 in 5 units in a single frontage being occupied by uses other than shops, restaurants and cafes. The other businesses within this frontage are all retail use and so the proposal complies with this Policy.

In terms of Policy 53, as the development will be operating during daytime hours the proposal complies with this element of the policy. The second part of Policy 53 indicates that cooking on the premises, where there are adjoining residential properties, should only be by means of a microwave oven. In these circumstances the applicant uses a griddle for cooking food, which subsequently requires ventilation. Although this does not technically comply with the terms of the policy, it is considered that if the ventilation is of an appropriate standard to protect residents from smell and noise, there will be no adverse impact on their amenity.

The loss of daylight to residential properties caused by the location of the proposed extraction flue is not considered to be of sufficient weight to merit a refusal of planning permission contrary to Policy 53. This is because the applicant has confirmed in writing that he would be pleased to alter the position of the proposed extraction flue so that it is located on the northern side of the existing foul drainage and down pipes servicing the building. This would mean that the proposed extraction flue would be located between the existing foul drainage down pipes and the 1st, 2nd and 3rd floor stairwell windows, over 1.5m from the 1st, 2nd and 3rd floor kitchen windows of flats located above the

application site and beyond the existing foul drainage and downpipes. The proposed extension flue in this revised position would not be visible from the kitchen windows of flats located above the application site and would therefore have no impact upon outlook or loss of daylight. Given that Environmental Health and Trading Standards have confirmed that the proposed extraction flue satisfies their concerns over smell, the revised location of the extraction flue can be addressed through the use of a condition should the Committee be mindful to grant planning permission. Further, the shape of the rear elevations of 117 Albert Street and 2-10 Park Place dictate that the 1st, 2nd and 3rd floor east facing windows of the flats above the proposed hot food takeaway will always be partially overshadowed and therefore the level of overshadowing caused by the proposed extraction flue in its original position would not be of a level more significant than the existing.

From the detail of the proposal outlined above it is considered that there are material considerations to allow the requirements of Policy 53 to be set aside. If Members are minded to grant planning permission a condition will be applied requiring details of noise mitigation measures to be submitted to the Council for approval.

It is concluded that the proposal does not comply with Policy 53 of the Dundee Local Plan Review 2005. There are material considerations such as the imposition of a condition requiring details of noise mitigation which can satisfactorily overcome any potential residential amenity issues.

## **Other Material Considerations**

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

### **Objections**

Three letters of objection were received on the grounds of smell, noise nuisance, loss of daylight and loss of view. The main issues relating to this objection have been discussed in the development plan section above.

With regard to noise the applicant has stated in correspondence dated 27 July 2007 that the opening hours will be Monday-Saturday from 8:00am to 3:30pm. As the business will be operating during daytime hours, the

proposal complies with this element of Policy 53, as discussed above. A condition will be attached to ensure that details of noise mitigation relating to the installed ventilation system are submitted and approved within two months of planning permission being granted, if Members are so minded. It is considered that any potential smell issues are dealt with satisfactorily through the proposed extraction flue.

### **Design**

The proposed ventilation system and extraction flue are considered to be of a design and location that will not significantly impact upon the visual appearance of the building.

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### **CONCLUSION**

It is concluded from the foregoing that insufficient weight can be accorded to the views of the objectors such as to justify refusing planning permission.

The applicant has provided details of the hours of operation, extraction flue and type of food to be sold from the premises. Given these details, it is considered that there are material considerations to justify approval of the application with conditions.

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### **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 Noise from the ventilation system shall not exceed NR 35 within any adjacent or adjoining residential property.
- 3 Within one month of planning permission being granted, details to a scale of no less than 1:50 showing the revised position of the extraction flue between the foul drainage down pipes and communal stairwell windows shall be submitted to this Planning Authority for written approval. The extraction flue will be installed no later than 2 months from the date the details are approved.

### **Reasons**

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To protect the amenity of neighbouring residents from unacceptable noise disturbance.
- 3 In the interests of safeguarding residential amenity.