

KEY INFORMATION

Ward Maryfield

Proposal

Change of Condition 4 of
Consent Ref 08/00651/COU
to open up until 11.00pm

Address

14-16 Arbroath Road
Dundee
DD4 6EP

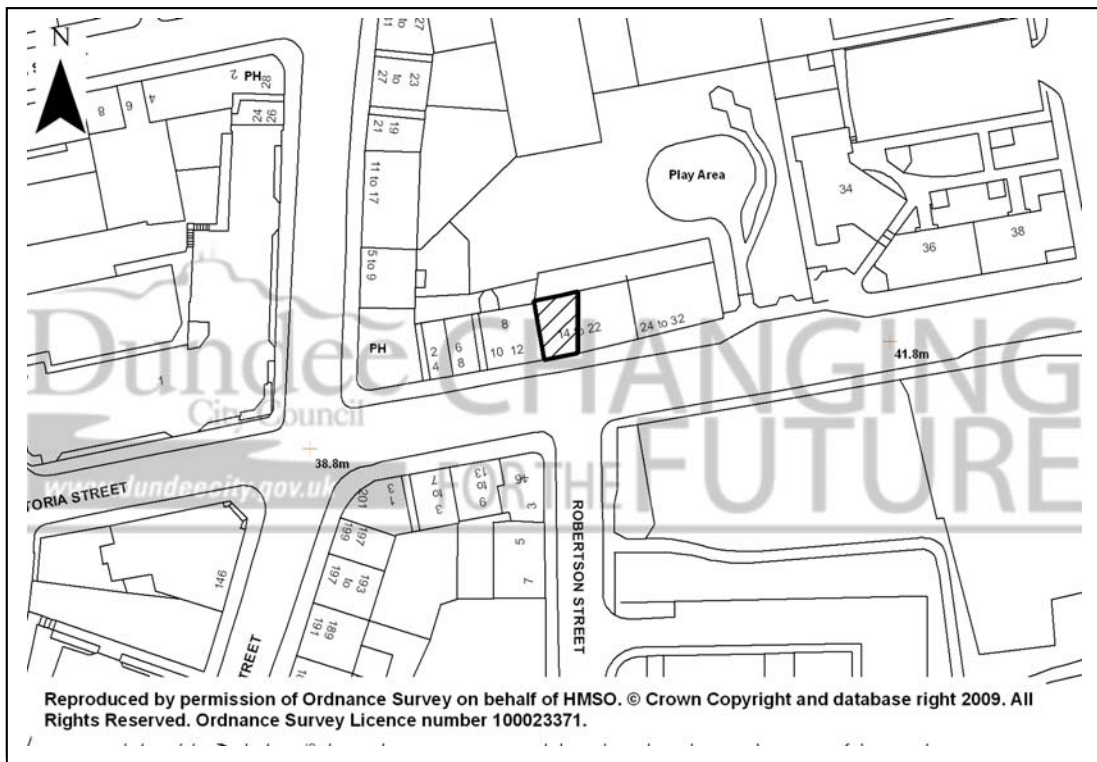
Applicant

Erdogan Ceyhan
20 Marnie Park
Northmuir
Kirriemuir
Angus
DD8 4TR

Agent

Registered 15 June 2009

Case Officer P Macari



Extension of Opening Hours Proposed for Arbroath Road Cafe/Bakery

A change of Condition 4 of Consent Ref 08/00651/COU to open up until 11.00pm is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The extension to the operating hours of the cafe/ bakery 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 objectors 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 to vary condition 4 of planning permission 08/00651/COU to allow additional operating hours between 7pm and 11pm Monday to Saturday.
- 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 planning application.
- Four letters of objection were received from neighbouring residents and business owners. The concerns raised include; noise disturbance, anti-social behaviour of customers, use of the premises as a takeaway instead of a bakery/cafe, impact upon residential amenity of neighbouring flats, smell nuisance, the premises already open until 11pm, no neighbours notified, increased on-street parking pressures.
- The concerns of the objectors are not supported.
- There are material considerations which justify approval of the proposals contrary to the requirements of Policy 53 of the Dundee Local Plan Review 2005.

DESCRIPTION OF PROPOSAL

This application seeks planning permission to vary condition 4 of planning permission 08/00651/COU to allow operating hours between 7am and 11pm Monday to Saturday.

The existing cafe/bakery is permitted to open from 7am until 4pm and serves a range of hot and cold foods. However, in light of the current application the cafe/bakery has been operating for some time between 7am and 11pm Monday to Saturday.

SITE DESCRIPTION

The application site comprises a ground floor cafe/bakery situated within a mid terraced four storey tenement building on the northern side of Arbroath Road. The three upper floors of the building are currently occupied by residential flats.

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 modern glazed frontage with brown timber stallriser and brown painted stone pillars where the door and window openings have been formed. The windows and doors are secured by aluminium roller shutters with the shutter boxes concealed behind an acrylic fascia sign. 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 150m² gross floor space (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 7.00 am and 7.00 pm, 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 08/00651/COU sought permission for the change of use of a former tanning studio to a cafe/bakery including the erection of an external flue on the rear of the building. This application was approved subject to conditions by the Council's Development Quality Committee on 17 November 2008.

Planning application ref: 09/00098/FUL sought retrospective planning permission for the formation of a door opening in the rear elevation of the cafe/bakery. The applicant was requested to submit a formal application for this development after several neighbours complained that the door opening had been formed without any form of consent. This application was approved subject to conditions by the Council's Development Quality Committee.

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.

Four letters of objection have been received from neighbouring property and business owners. The grounds of objection are as follows:

- noise disturbance;
- anti-social behaviour of customers;
- use of the premises as a takeaway instead of a bakery/cafe;
- impact upon residential amenity of neighbouring flats;
- smell nuisance;
- the premises already open until 11pm;
- no neighbours notified;
- increased on-street parking pressures.

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

CONSULTATIONS

No adverse comments have been received from Consultees.

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.

This planning application is seeking a variation to Condition 4 of the previously approved planning

application 08/00651/COU under Section 42 of the Town and Country Planning (Scotland) Act 1997. No new issues or areas of concern in terms of the development plan policies are raised.

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 and 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. Therefore the extended operating hours of the cafe/bakery will not have a significant impact upon existing levels of parking and traffic movement in and around the Arbroath Road/Stobswell area.

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 in the assessment of planning application 08/00651/COU conditions requiring the installation of a high level ventilation system as well as noise mitigation measures were incorporated into the grant of planning permission. The applicant has adhered to these conditions and this is considered to have overcome the potential issues of noise and smell disturbance. This is evident from the fact that no complaints of noise or smell disturbance have been received by the Council's Environmental Health and Trading Standards Department. Therefore the increase in operating hours is not considered to impact upon

the level of amenity afforded to the flats above the application site by virtue of smell or noise disturbance from mechanical and electric equipment.

It should be noted that there are several hot food takeaways and public houses in close proximity to the application site that open until midnight and 2am. Given the proximity of the application site as well as surrounding hot food takeaways to the Albert Street District Centre, the level of noise disturbance generated by the extension to the operating hours of the cafe/bakery at 14-16 Arbroath Road will not exacerbate existing levels of noise disturbance from neighbouring commercial properties with late night operating hours.

The proposed extension to operating hours 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 operating 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 the operating hours 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 located and the food prepared is cooked wholly on site. The principal of whether the application site is suitable for use as a cafe/bakery has already been established in the approval of planning permission 08/00651/COU. As the applicant only intended to operate between the hours of 7am and 4pm Monday to Saturday the use of the site as a cafe/bakery was considered acceptable.

The proposed extension to operating hours questions whether the use of the site as a cafe/bakery is suitable after 4pm given the requirements of Policy 53 as detailed above. However, there are material considerations that

justify a departure to the provisions of Policy 53 in support of the proposed extension to operating hours of the cafe/bakery. 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

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 in the assessment of planning application 08/00651/COU conditions requiring the installation of a high level ventilation system as well as noise mitigation measures were incorporated into the grant of planning permission. The applicant has adhered to these conditions and this is considered to have overcome the potential issues of noise and smell disturbance. This is evident from the fact that no complaints of noise or smell disturbance have been received by the Council's Environmental Health and Trading Standards Department since the cafe/bakery began trading. Therefore the increase in operating hours is not considered to impact upon the level of amenity afforded to the flats above the application site by virtue of smell or noise disturbance from mechanical and electric equipment.

It should be noted that there are several hot food takeaways and public houses in close proximity to the application site that open until 12am and 2am. Given the proximity of the application site as well as surrounding hot food takeaways to the Albert Street District Centre, the level of noise disturbance generated by the extension to the operating hours of the cafe/bakery at

14-16 Arbroath Road will not exacerbate existing levels of noise disturbance from neighbouring commercial properties with late night operating hours. Further, given that Arbroath Road and Albert Street are main thoroughfares through the city, it is considered that the level of noise disturbance from both electrical and mechanical equipment during the additional operating hours proposed will be no greater than noise disturbance from passing traffic on both Arbroath Road and Albert Street.

b Views of the Objector

Four letters of objection have been received from neighbouring business owners and residents raising concerns of:

- noise disturbance;
- anti-social behaviour of customers;
- use of the premises as a takeaway instead of a bakery/cafe;
- impact upon residential amenity of neighbouring flats;
- smell nuisance;
- the premises already open until 11pm;
- no neighbours notified;
- increased on-street parking pressures.

Concerns relating to impact upon amenity by way of smell, noise disturbance, and, traffic parking from the additional operating hours of the bakery/ cafe proposed are addressed in the assessment of the proposals 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.

Concerns relating to the use of the cafe/bakery as a hot food takeaway only are not supported. This is because planning permission 08/00651/COU granted consent for a mixed use development in the form of a cafe/ bakery whereby food can be sold for the consumption within and outwith the premises.

Prior to this application being reported to the Council's Development Quality Committee, the Planning Enforcement Officer had visited the application site and written to the applicant with regard

to the potential breach of condition 4 of planning permission 08/00651/COU. Should the Committee be mindful to refuse planning permission, the operating hours of the cafe/bakery at 14-16 Arbroath Road will be monitored with a view to pursuing formal enforcement action.

Concern has been raised that neighbouring properties surrounding the application site were not notified of the proposed extension to operating hours. The applicant has certified that all neighbours were notified and this application was advertised both as a Departure to the Dundee Local Plan Review 2005 and as a Bad Neighbour Development in the Dundee Evening Telegraph. On this basis the Council, as Planning Authority, are satisfied that neighbours have been given sufficient opportunity to contact this Department with their concerns in relation to the proposed operating hours. As the applicant has certified that all neighbours bounding the application site have been notified, the concern raised by the objectors with regard to neighbour notification is a legal matter to be pursued through the civil court system.

Concerns relating to anti-social behaviour are not material planning considerations but rather issues that should be reported to Tayside Police.

The concerns of the objectors 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 application site are proposed as part of this planning application.

CONCLUSION

The extension to the operating hours of the cafe/bakery 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 objectors 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:-

- 1 The development hereby permitted shall be commenced within three years from the date of this permission.

- 2 The cafe/bakery will operate between the hours of 7am and 11pm Monday to Saturday only.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2 In the interests of safeguarding the level of amenity afforded to Arbroath Road as a commercial and residential area.