

KEY INFORMATION

Ward East End

Proposal

Change of use of retail units to Classes 1, 2 and 3 of the Use Classes Order

Address

140-142 Arbroath Road
Dundee
DD4 7PU

Applicant

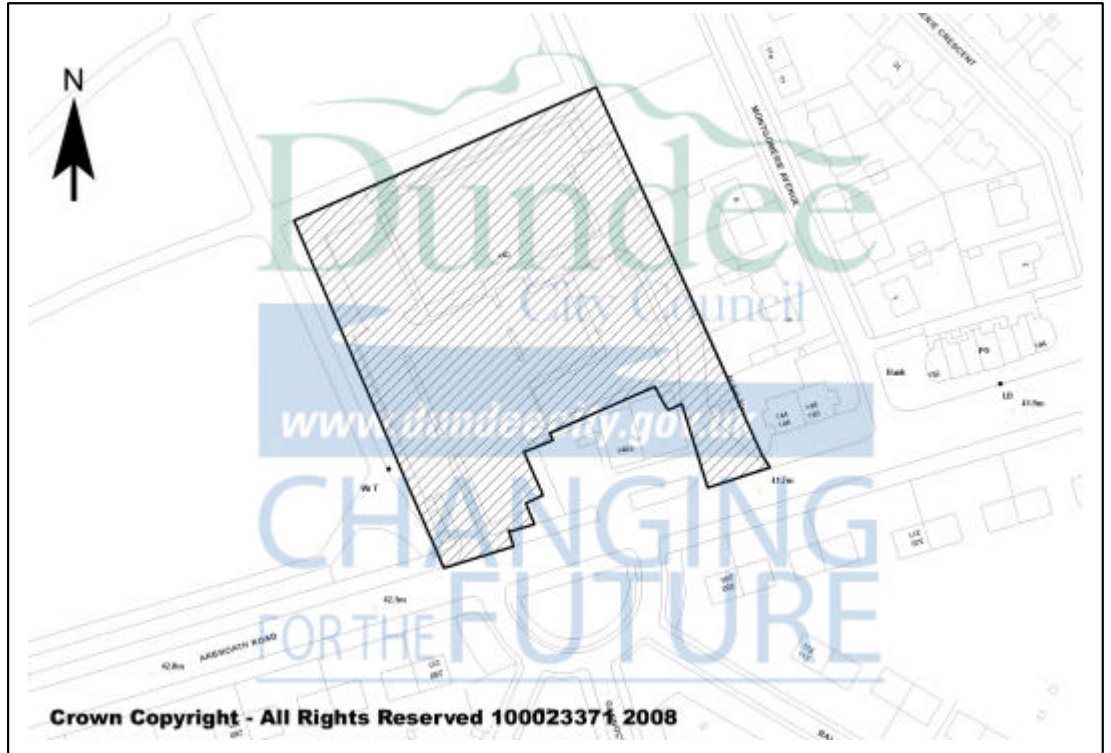
Aldi Stores Ltd
c/o GVA Grimley Ltd
Quayside House
127 Fountainbridge
Edinburgh
EH3 9QG

Agent

GVA Grimley Ltd
Quayside House
127 Fountainbridge
Edinburgh
EH3 9QG

Registered 30 June 2008

Case Officer Julie Young



Proposal to Change Use of Shops in Arbroath Road

A change of use of retail units is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of Planning and Transportation

RECOMMENDATION

Although the proposal was advertised as contrary to Policies 46 and 53 of the Dundee Local Plan Review 2005, it is considered that there are material considerations, as submitted by the applicant, to justify setting aside the Development Plan in these circumstances. The application is therefore recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- Planning permission is sought for change of use of retail units at 140-142 Arbroath Road to Classes 1, 2 and 3 of the use classes order.
- The foodstore is occupied by Aldi and is included within the application site boundary. This unit has been operating for sometime. The applicant has confirmed that it does not wish the retail use of this unit to be changed to any other use within classes 1, 2 or 3. Therefore a condition will be attached to remove this part of the site from planning permission, if granted.
- The application was advertised as contrary to Policy 46: Commercial Development and Policy 53: Licensed and Hot Food Premises Outwith City Centre of the Dundee Local Plan Review 2005 on 15 July 2008.
- It is considered that there is scope the smaller units to operate under uses other than retail and within classes 1, 2 and 3, without undermining the vitality and viability of the City Centre and District Centres.

DESCRIPTION OF PROPOSAL

Planning permission is sought for the change of use of retail units on the site of the Aldi store at 140-142 Arbroath Road to classes 1, 2 and 3 of the Use Classes Order 1997. The proposed foodstore has a gross internal floorspace of 1,540.8m² and the 6 smaller units have a total gross internal floorspace of 678m². The total site area is approximately 8,782m².

The foodstore at the north end of the site has been built and has been occupied by Aldi for approximately one year.

The smaller units at the south end of the site have been built and remain vacant and it is these units which are the subject of this application.

SITE DESCRIPTION

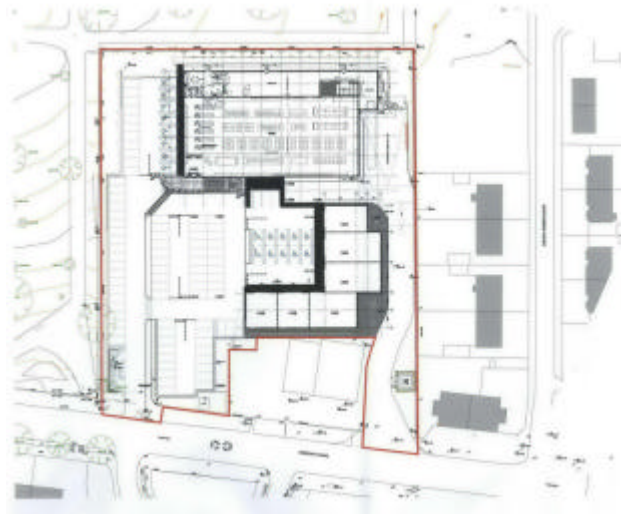
The application site is located on the north side of Arbroath Road. There is an existing single storey retail foodstore at the north end of the site with car parking spaces immediately to the south. The building dominates the site as it is located at the top of a slope. There are six smaller retail units to the south of the superstore and these remain vacant. There are two units at the entrance to the site and fronting onto Arbroath Road, one being a betting office and the other a funeral directors. The main entrance is at the west end of the site and a service access at the east end. A 4m high acoustic fence is situated on the east boundary adjacent to the Aldi superstore and along a length of approximately 22m.

There are single storey semi-detached dwellings immediately to the east of the site and 2 storey houses to the south, on the opposite side of Arbroath Road. Craigie Eastern Cemetery lies immediately to the north and west, bound by a 3m high stone wall and accessed from Arbroath Road. There are industrial units to the north east of the site.

POLICY BACKGROUND

Dundee Local Plan Review 2005

The following policies are of relevance:



Policy 46: Commercial Developments - proposals for new freestanding out of centre commercial developments involving uses other than leisure and retail and geared to visiting members of the public will only be accepted where it can be established that:

- a no suitable site is available, in the first instance, within and thereafter on the edge of the City



- Centre or District Centres;
- b the site is readily accessible by modes of transport other than the car; and
- c the proposal is consistent with other Local Plan policies.

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 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 (i.e. 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

SPP 8: Town Centres and Retailing provides advice on town centres, how to plan for their development and how to respond to development proposals for town centre uses wherever they are proposed. It also establishes the methods for treating proposals for development outside town centres. Advice is given on the location of commercial developments as well as retail use.

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 new sustainability policy implications arising from this application.

SITE HISTORY

Outline planning permission was granted on 28.05.03 for a retail unit and office on land to the south of the application site and to the east of the vehicular access into the site. The subsequent reserved matters application was granted on 26.01.04. The proposal has now been implemented.

Planning permission (06/00842/FUL) was granted on 7th December 2006 for the erection of a supermarket, 3 retail units, associated car parking and ancillary engineering and landscaping works. Conditions were attached to safeguard the units for Class 1 retail use only. This application applies to extend the use of the units for all uses within Classes 1, 2 and 3.

Planning permission (07/00458/FUL) was granted on 8th August 2007 for the erection of 6 retail units to the south of the foodstore and with a reduced floorspace of 678m².

PUBLIC PARTICIPATION

The application was advertised as contrary to Policies 46 and 53 of the Dundee Local Plan Review 2005 on 15 July 2008.

Statutory neighbour notification was carried out and no letters of objection were received.

CONSULTATIONS

No comments were received from statutory consultees or other bodies.

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.

Dundee and Angus Structure Plan 2001-2016

Given the limited scale of the proposal, it is not considered to raise strategic planning issues and therefore there are no Structure Plan policies of relevance to the determination of the application.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Dundee Local Plan Review 2005

The site has no specific policy allocation in the Dundee Local Plan Review 2005. The principle of retail



use for the entire site has already been established through the granting of previous permissions for the site. The application seeks to allow other uses within class 1, 2 and 3 of the Use Classes Order 1997. Non-retail uses within Class 1 include travel agents, hairdressers, funeral directors and launderettes. Class 2 uses include betting shops; the offices of lawyers, accountants and estate agents; health centres and surgeries of doctors, dentists and veterinary surgeons. Class 3 uses are those where food and drink is sold for consumption on the premises such as restaurants, cafes and snack bars. Hot food takeaways are not included within Class 3 and would need separate planning permission, which is not included as part of this application. Many of these uses are typically found within local centres. The following policies need to be considered in the determination of the application.

Policy 46 of the Local Plan states that proposals for new freestanding out of centre commercial developments

involving uses other than leisure and retail and geared to visiting members of the public will only be accepted where it can be established that there is no suitable site available in the City Centre or District Centres, the site is readily accessible by modes of transport other than the car and the proposal is consistent with other Local Plan policies. The applicant has found market demand for the smaller retail units in this location to be limited and this application seeks to introduce an element of flexibility for the future use of the units.

The applicant has submitted supporting information stating that uses other than retail at this location will not undermine the success of retail and other uses in the city centre and district centres.

The applicant considers that the proposed wider range of land use classes, are seeking to enhance the quality and range of local facilities already established and recognised at this location. In this regard they seek to serve the immediately resident population, which is within easy walking distance of the existing site. Other uses could enhance this local shopping centre and provide facilities for the local community, which are only normally available outwith the local community.

With regard to criteria b, the site is an established local shopping facility that is readily accessible by modes of transport other than the car. A Transport Assessment by Colin Buchanan was submitted with the original application (06/00842/FUL). The site already benefits from being within easy walking distance of an extensive resident population.

It is accepted that a local centre such as this can support a certain element of other uses which will be complementary to retail use, whilst not undermining the vitality and viability of the city centre and district centres.

Although the proposal does not in theory comply with Policy 46 there are material considerations to justify approval.

Policy 53: Licensed and Hot Food Premises Outwith the City Centre aims to protect the amenity of neighbouring residents from unacceptable noise or smell issues related to the preparing and selling of hot food. Class 3 does

not include hot food takeaways as they are a "sui generis" class and separate planning permission would be required for their establishment at this location.

Parking for the units is at the west end of the site and is over 60m from the nearest residential property. Therefore it is not considered that there will be an issue of noise from cars for neighbouring residents. Ventilation may be required, where hot food is being cooked within premises and a condition will be attached to ensure that further details of any proposed ventilation are submitted. The nearest private garden area of residential property to the east is 9m away and the nearest house is 25m away. In terms of full compliance with Policy 53, the proposal for class 3 use does not comply. Therefore, if Members are minded to grant approval of the application, conditions will be attached to ensure that the noise from any ventilation equipment is limited in order to protect the amenity of those adjacent residents to the east of the site.

It is concluded from the foregoing that although the proposal does not strictly comply with the provisions of the development plan, there are material considerations and conditions to ensure that the amenity of adjacent residents is adequately protected.

Other Material Considerations

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

- 1 SPP 8: Town Centres and Retailing states that a sequential approach is also required for commercial uses and advises that:

"Planning authorities and developers should adopt a sequential approach to selecting sites for all retail and commercial uses, unless guidance in this SPP or the development plan provides for a particular exception. The principles underlying the sequential approach also apply to proposals to expand, or change the use of existing developments, where the proposals are of a scale or form sufficient to change their role and function."

The applicant states that:

"in granting planning consent 06/00842/FUL, the sequential

approach has already been satisfactorily addressed"; and

"In this particular case and taking into account the draft "Land Use" related conditions, the scale and form of non retail uses arguably would not change the role and function of the overall development in question."

2 Applicant's Supporting Statement

The applicant submitted supporting information stating that the principle of retail use at this location has already been established by the previous planning consents for the site. Other uses can satisfactorily be accommodated within the site without undermining the vitality and viability of the City Centre and other District Centres.

It is concluded from the foregoing that the material considerations are of sufficient strength such as to justify the approval of planning permission. It is therefore recommended that planning permission be granted with conditions.

Design

The application raises no new design issues.

CONCLUSION

The proposal was advertised as a departure to Policies 46 and 53 of the Dundee Local Plan Review 2005. It is considered that there are material considerations to justify an element of uses other than retail within the units at the site, without compromising other areas within the City such as the City Centre and District Centres.

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 all mechanical and electrical plant should not exceed NR45 during the day and NR35 at night, as measured 1m to the external wall of the nearest residential property. For the avoidance of doubt, day time shall be 7.00am - 11.00pm, and

night time shall be 11.01pm - 6.59am.

- 3 Deliveries to all premises involving vehicles shall be restricted to between 7.00am - 9.00pm, Mondays to Saturdays and 9.00am - 6.00pm on Sundays.
- 4 The noise mitigation measures identified in the noise impact assessment submitted to the Council on 4 October 2006, by "The Airshed" consultants, should be implemented.
- 5 The existing units at the south end of the site, which are the subject of this planning permission, shall only be used for class 1, 2 and 3 uses, as defined by the Use Classes (Scotland) Order 1997. For the avoidance of doubt, the existing supermarket unit at the north end of the site shall be removed from this permission. It shall operate solely under class 1 retail use and in accordance with the conditions attached to the previous granted permission 06/00842/FUL.
- 6 None of the proposed units at the south end of the site shall have a gross internal floor area in excess of 332m² and the total gross internal floor area of all units shall not be in excess of 678m².

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To protect the amenity of adjacent residents from unacceptable noise levels.
- 3 To protect the amenity of adjacent residents from unacceptable noise levels.
- 4 To protect the amenity of adjacent residents from unacceptable noise levels.
- 5 To conform with the approved shopping policies of the development plan.
- 6 To conform with the approved shopping policies of the development plan.