

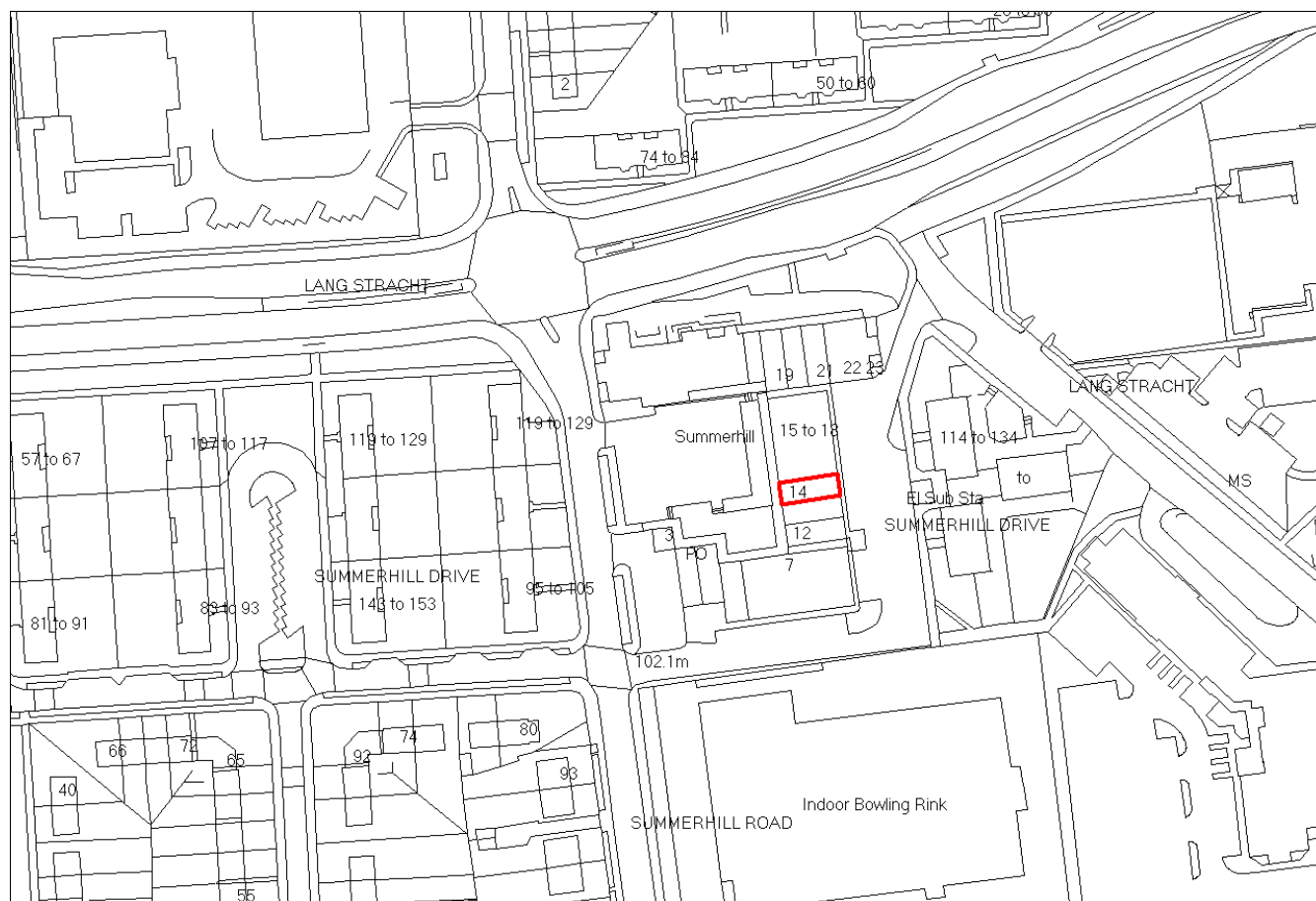
# UNIT 10 SUMMERHILL COURT

PROPOSED CHANGE OF USE FROM  
BARBER'S SHOP TO HOT FOOD TAKEAWAY  
INCLUDING THE INSTALLATION OF A  
VENTILATION CHIMNEY.

For: Jasmine Property Investments Ltd

Application Type : Detailed Planning Permission  
Application Ref. : P130286  
Application Date: 05/03/2013  
Officer: Donna Laing  
Ward : Kingswells/Sheddocksley (L Ironside/S  
Delaney/D Cameron)

Advert : Section 34 -Proj. Pub.  
Concern  
Advertised on: 13/03/2013  
Committee Date: 16 May 2013  
Community Council : No response  
received



**RECOMMENDATION:**  
**Approve subject to conditions**

## **DESCRIPTION**

The site sits within a purpose built U shaped shopping complex with a hotel and commercial units facing Lang Stracht with the remainder of the commercial premises fronting a car park which is accessed off Summerhill Road. There are a number of commercial units within the complex mostly with a retail use including a mini-market, blinds company, and other uses including the hotel and 2 hot food takeaways. To the rear (east) of the complex is car parking and the refuse storage area for the site. There are a number of air conditioning units to the rear of the complex and a ventilation chimney from an existing hot food take away premises. Beyond this is residential accommodation in the form of 4 storey block of flats. The front of the flats sit approximately 24m from the rear of the site. More residential accommodation is present to the front (west) of the commercial premises and sits approximately 64m from the site. The site is located within a neighbourhood centre and within a mixed use area. The site comprises a single storey unit, occupied by a barber's shop at present, which faces on the Summerhill Road.

## **RELEVANT HISTORY**

There is no relevant history for the premises.

## **PROPOSAL**

The proposal is for change of use from a barber's shop to a hot food takeaway. It is also proposed to instal a flue to the rear of the premises. The flue would be 315mm in diameter and comprise of galvanised steel. The flue would project over the top of the front of the premise by 800mm.

## **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?130286>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

## **REASON FOR REFERRAL TO SUB-COMMITTEE**

The application has been referred to the Sub-committee because the application is a Schedule 3 Development. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

## **CONSULTATIONS**

**Roads Project Team** – response received – no observations

**Environmental Health** – response received – condition regarding ventilation, refuse and additional on street litter bin provision.

**Enterprise, Planning & Infrastructure (Flooding)** – response received – no observations

**Community Council** – no response received

## **REPRESENTATIONS**

1 of letter of objection has been received. The objections raised relate to the following matters –

## Competition

There is no more capacity within the area to accommodate a further hot food take away. The proposal would impact on the existing business and may result in the loss of jobs.

## **PLANNING POLICY**

### **Local Development Plan**

#### Policy H2: Mixed use areas

Applications for development or change of use within Mixed Use Areas must take into account the existing uses and character of the surrounding area and avoid undue conflict with the adjacent land uses and amenity. Where new industrial, business and commercial uses are permitted, development should not adversely affect the amenity of people living and working in the area.

#### Policy RT3 – Town, District and Neighbourhood Centres

Proposals for change of use from retail to non-retail use in town, district and neighbourhood centres will only be allowed if:

- The proposed alternative use makes a positive contribution to the vitality and viability of the shopping centre; and
- The proposed alternative use will not undermine the principle retail function of the shopping centre or the shopping development in which it is located; and
- The applicants can demonstrate a lack of demand for continued retail use of the premises (applicants may be required to demonstrate what efforts have been made to secure a new retail use since the property became vacant); and
- The proposed use caters for a local need; and
- The proposed use retains or creates a live and attractive shop frontage.

#### Policy D1: Architecture and Placemaking

To ensure high standards of design, new developments must be designed with due consideration for its context and make a positive contribution to its setting.

#### Policy R6 – Waste Management requirement for new development

Details of storage facilities and means of collection must be included as part of any planning application for development which would generate waste.

## **Supplementary Guidance**

### Harmony of uses Supplementary Guidance

In Mixed Use Residential Areas, H2, there is a presumption against the introduction of other activities including hot food shops, unless the development would cause no conflict with or any nuisance to residential amenity.

In assessing hot food shop proposals within town centres, district centres and neighbourhood centres, consideration will be given to whether or not a proposal will:

- make a positive contribution to the overall viability of a centre
- bring into use a vacant unit with consideration given to the length of time a unit has been vacant
- provide a locally required service
- retain an acceptable level of 'live' frontage

- be strategically situated within a shopping centre e.g. it is important that corner shop units provide live shop window displays to enhance the attraction of a shopping centre

Amenity issues such as noise, litter and smell need to be addressed.

Outwith the City Centre hot food shops generally seek to locate in district or local shopping centres. In many cases such centres are located beside or within residential areas. The importance of residential amenity in such areas is generally higher than for a City Centre location, especially if there are no other potential amenity conflicts such as licensed premises or a busy road.

#### Traffic and parking

A major issue here is the threat to road safety. The attraction of car borne customers can also be to the detriment of residential amenity through noise, particularly in cases of late opening and through overspill parking in nearby residential streets.

Where fringe, linear, local or district shopping centres are located in Residential and Mixed Use Residential areas, proposals for hot food shops in such centres require in the first instance to be assessed against the criteria set down in the Local Development Plan Policy RT3 - Town, District and Neighbourhood Centres. Where that policy allows, permission may be granted for a hot food shop provided no upper floors of the application property or adjacent properties are in residential use and/or the amenity of the Residential and Mixed Use Residential areas would not be adversely affected by such proposals.

#### Waste Management Requirements in New Developments

Commercial developments vary in activity and scale. However, they will be expected to recycle waste and so multiple storage containers are likely to be required. The minimum size of storage area for a small shop is 2m x 1m. Areas of hard standing at storage and collection points are required and dropped kerbs along routes where waste is moved in wheeled containers. Where premises are accessible to the public, safe pedestrian access must be provided even where collection is from the public footway.

#### **EVALUATION**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that where, in making any determination under the planning acts, regard is to be had to the provisions of the development plan and that determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

#### Legal Challenge

Tesco Stores Ltd has submitted an appeal to the Supreme Court against the decision of the Inner House of the Court of Session to refuse its application to quash the Aberdeen Local Development Plan. Tesco has been unsuccessful regarding both an interim suspension and a full appeal in front of three judges in the Inner House and the Council has received robust advice from Counsel that the reasoning of the Inner House is sound and there are strong grounds to resist the appeal.

Planning applications continue to be determined in line with the Aberdeen Local Development Plan but the appeal is a material consideration and the Council has to take into account the basis for the legal challenge when determining applications. It should also be pointed out that the Court indicated that, even if Tesco's arguments had found favour, it would have been inclined to quash the plan only in so far as it related to Issue 64 (Allocated Sites: Woodend...Summerhill... etc.) and that it would be disproportionate to quash the whole plan.

This evaluation has had regard to and taken into account the legal challenge. None of the policies or material considerations which apply to this application would be affected by the terms of Tesco's challenge. The recommendation would be the same if the application were to be considered in terms of the 2008 Aberdeen Local Plan.

#### Principle of Development

A proliferation of non-retail uses can affect the viability and vitality of a shopping area and therefore each change of use from Class 1 (Shops) has to be assessed on its merits and how it may impact upon the overall centre.

Change of use proposals within a mixed use area must take into account the surrounding uses, avoid undue conflict with the adjacent land uses and should not adversely affect the amenity of people living in the area. Change of use proposals from retail to non-retail within neighbourhood centres are required to comply with a number of criteria, as outlined in Policy RT3: Town, District and Neighbourhood Centres. If proposals meet these criteria then change of use to non-retail use would be permitted.

The harmony of uses supplementary guidance outlines hot food takeaway premises within mixed use areas are not encouraged, unless the development would cause no conflict with or any nuisance to residential amenity. Within neighbourhood centres, hot food takeaways again have a number of criteria to fulfil before being permitted.

#### Change of Use

The first point to note is the unit is not vacant. The barber's shop is still in use currently, therefore the criteria relating to bringing back into use a vacant unit and demonstrating there is a lack of demand for a retail function cannot be met.

There are no shopfront alterations proposed with the application. The existing shopfront is open with large glass windows; therefore the requirement to retain a live and attractive shop frontage has been met. The criteria that the unit is strategically situated within the shopping centre relates to corner units having a live frontage. As the unit is not a corner unit this criteria is not valid to this application.

Although it is not for the planning authority to determine whether a business would be viable or to restrict competition between different operators, the guidance and policy does require the new use to cater for a local need. The shopping complex, at the time of the site visit, has a number of occupied units

which are open during typical working hours. There are also commercial premises which are open outwith typical working hours, including the hotel and 2 no. hot food takeaway premises. At the time of the site visit, 3 no. units were closed, with 1 no. unit facing Lang Stracht seeking to be let. The vacant status of the other 2 premises is unknown.

The proposed unit would be open at lunchtimes and until late at night providing additional presence at the shopping centre, yet the hours could be considered anti-social. At present, the shopping complex has a hotel with a Class 7 use, six units with a Class 1 retail use (two of these units occupy more than one premises within the centre), two units have a Class 2 Financial, professional and other services use, and two units are hot food takeaway premises therefore are classed as sui generis. The removal of the Class 1 use at the proposed site would leave five units within the shopping complex with a Class 1 use. Even with the removal of the Class 1 use at the site, the main Use Class within the site would still be retail; therefore the loss of one unit with a retail use would not result in a decrease in the viability of the centre, or undermine the principle retail function of the shopping centre.

The criteria to provide a locally required service has been unable to be established. There are 2 pizza hot food takeaway premises within the complex. Beyond these the next available hot food takeaway premises is located approximately 1.5km from the site. It is considered that a hot food takeaway at this location would provide residents with further choice should they wish to purchase takeaway food.

On balance, the change of use from retail to a non retail use complies with the principles of the guidance and meets the majority of the criteria therefore accords with the harmony of uses supplementary guidance and Policy RT3: Town, District and Neighbourhood Centres. The proposal would maintain a live frontage, would not undermine the principle retail function of the shopping centre, would not result in a decrease of the viability of the centre.

#### Impact on Amenity

Due to its location, adjacent to the Lang Stracht there is an abundance of vehicular movement within the area creating an impact on amenity through noise. There are 2 no. existing hot food takeaway premises within the shopping complex, one 2 doors from the proposed site. It is proposed the unit would be open until midnight Sunday to Wednesday and on a Thursday, Friday and Saturday night for an additional 30 minutes, until 00:30. The existing hot food takeaway within the complex are open until 22:45 and 00:00. A late hours catering license from the Councils Licensing Committee would be required to allow the premises to open between the hours of 2300 and 0500. There are no residential premises above or adjacent to the site. The nearest residential accommodation is located 24m from the rear of the site. Due to the distance between the proposed use and the residential accommodation, the presence of the Lang Stracht and the existing licensed premises it is deemed that the introduction of an additional hot food takeaway would not result in an unacceptable level of disturbance being experienced by residents in the area. To

further ensure the residential amenity would be preserved a condition on the opening hours has been recommended to protect the occupants of nearby housing from noise/disturbance late in the evening.

In terms of traffic generation, the shopping centre has a car park associated with it which would be used by patrons. The Council's Roads Projects Team have assessed the application and have submitted no observations on the proposal. It is therefore considered there is no roads safety issue with the proposal.

The proposed plans show that a ventilation system would be installed to collect smoke and grease particles from the cooking appliances in the kitchen and disperse cooking odours via a flue at the rear of the premises. Environmental Health officers have asked for a condition to be attached requiring details of the extract system to be installed. It is considered that with a suitable system installed there would be no adverse impact upon the amenity of the area in terms of cooking odours. Conditions regarding refuse storage and bin provision have been discussed with environmental health who have agreed sufficient refuse storage has been provided on site through the refuse collection point to the rear of the complex, and additional litter bin provision would be a recommendation rather than a condition as there is an existing litter bin in close proximity to the site. The pavement area of the shopping centre is not in Council ownership, and although a condition can be applied asking for additional litter bins to be supplied if the use is felt to raise this concern, it is deemed that this would not be required. The area surrounding the site was in good order on the site visit with no litter being present on the walkways.

The provision of refuse collection for the shopping centre accords with Policy Policy R6 – Waste Management requirement for new development, and with the supplementary guidance harmony of uses.

There are existing ventilation systems within the shopping complex. The top of the flue would project above the roof line of the shopping centre but this would be deemed to be acceptable. The design and location of the flue would cause no concern, therefore would comply with Policy D1: Architecture and Design of the Aberdeen Local Development Plan.

### **Matters raised through Written Representaion**

Overprovision of hot food takeaways is not a material planning consideration and would a matter for the market to resolve. The planning system operates in the public interest and is not here to protect one commercial enterprise from another.

Subject to condition and on balance, it is considered the change of use application complies with Policy H2: Mixed Use, Policy RT3: Town, District and Neighbourhood Centres, Policy D1: Architecture and Placemaking, Policy R6 – Waste Management of the Aberdeen Local Development Plan requirement for new development and with the supplementary guidance harmony of uses. The proposed development would not adversely affect the amenity of people living and working in the area, there is sufficient parking and refuse facilities within the area, and noise would not be considered an issue due to the existing licensed

premises within the shopping complex and the traffic generate noise from the Lang Stracht. The external alterations are considered acceptable.

## **RECOMMENDATION**

**Approve subject to conditions**

## **REASONS FOR RECOMMENDATION**

Subject to condition, it is considered the change of use application complies with Policy H2: Mixed Use, Policy RT3: Town, District and Neighbourhood Centres, Policy D1: Architecture and Pacemaking, Policy R6 - Waste Management of the Aberdeen Local Development Plan requirement for new development and with the supplementary guidance harmony of uses. The proposed development would not adversely affect the amenity of people living and working in the area, there is sufficient parking and refuse facilities within the area, and noise would not be considered an issue due to the existing licensed premises within the shopping complex and the traffic generate noise from the Lang Stracht. The external alterations are considered acceptable.

## **CONDITIONS**

**it is recommended that approval is granted subject to the following conditions:-**

- (1) that the use hereby granted planning permission shall not take place unless a detailed scheme showing the proposed means of filtering, extracting and dispersing cooking fumes from the premises has been submitted to and approved in writing by the planning authority and that the said scheme has been implemented in full and is ready for operation - in order to prevent cooking odours from creating a nuisance to nearby residential properties
- (2) that the premises shall not be open for business outwith the hours of 0700 and 0000 - in order to protect the nearby residents from unreasonable disturbance late in the evening.

**Dr Margaret Bochel**

Head of Planning and Sustainable Development.