

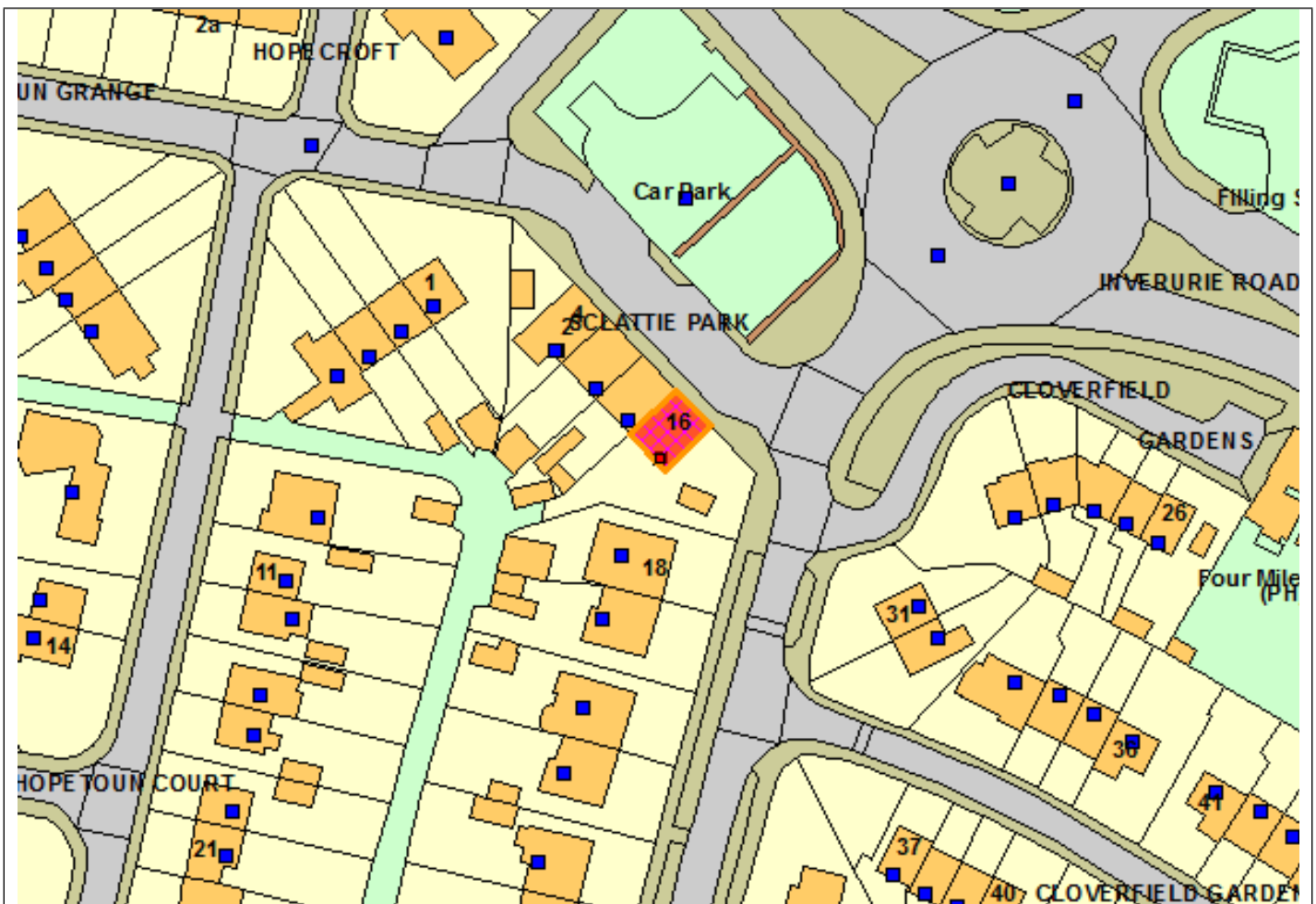


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 30 May 2019

Site Address:	16 Slattie Park, Aberdeen, AB21 9QR,
Application Description:	Change of use from class 1 (shops) to hot food takeaway (sui generis) and installation of ventilation duct
Application Ref:	190532/DPP
Application Type	Detailed Planning Permission
Application Date:	2 April 2019
Applicant:	Ciysel Sofra Ltd.
Ward:	Dyce/Bucksburn/Danestone
Community Council:	Bucksburn And Newhills
Case Officer:	Robert Forbes



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RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

This site comprises a ground floor retail unit (previously used as a butcher shop) located within a pink granite-built 2 storey terrace which fronts onto and is accessed from the road bounding its north-east elevation. The upper floors are used as residential flats with separate access. The site forms part of a neighbourhood centre which serves the wider residential area but is located close to Inverurie Road. A fish and chip shop is located at the opposite end of the terrace, with one intervening retail unit. That fish and chip shop has existed since at least 1991. The roof of the building is hipped and slate clad. Opposite the site is a public car park. Construction work has recently taken place at the site and been completed, including the installation of an external flue on the (south east) gable wall.

Relevant Planning History

None

APPLICATION DESCRIPTION

Description of Proposal

Permission is sought for a change of use to form a hot food take away with ancillary cold food sales / storage. The servery / kitchen area would include a fryer, cooker, soup kettles and panini grill, with ventilation via an external flue connected to an extractor. The public area would be located at the frontage of the site adjacent to the display window. Bin storage is proposed within the garden area to the south east of the building. The flue, which has been installed without the requisite planning permission, is of galvanised metal finish. It extends along the upper part of the gable and terminates above the wallhead in the flats above, but is set below the overall ridge height. The proposed opening hours would be from 7 am to 10-11pm.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PP4XTUBZMEQ00>.

Operating description relating to hot food sales. No information has been provided in relation to the length of vacancy of the unit or efforts to secure an alternative class 1 retail use.

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because the application has attracted 7 objections, which exceeds the threshold figure specified in the Council's Scheme of Delegation.

CONSULTATIONS

ACC - Environmental Health –Information submitted by the applicant does not fully demonstrate the effectiveness of the extract ventilation system at addressing malodour from cooking activities, impacting on residential amenity. As the installation of the extract ventilation system at this location introduces the risk of noising impacting on the amenity of neighbouring residential

property, it is requested that an extract ventilation assessment and noise impact assessment be submitted prior to determination of the application.

ACC - Roads Development Management Team –No objection. Advise that there is no requirement for provision of additional car parking. Proposed bin collection arrangements are acceptable.

ACC - Waste Strategy Team –No objection. Advise of technical requirements regarding waste storage requirements on site.

Bucksburn And Newhills Community Council –No response received.

REPRESENTATIONS

A total of 7 objections have been received raising the following concerns :-

Adverse impact on residential amenity (e.g. generation of odours / noise);
Traffic generation / parking; litter generation / attraction of vermin;
Lack of demand for further hot food uses; concern regarding opening hours;
Alleged lack of control of land to the rear of the property; concern regarding dumping of waste within the garden area;
Unauthorised works on site: adverse impact on property value (n.b. this is not a material planning consideration and will not be addressed in the evaluation).

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 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.

National Planning Policy and Guidance

Scottish Planning Policy (SPP) regarding retail / town centres encourages their protection. Para 70:

“Decisions on development proposals should have regard to the context provided by the network of centres identified in the development plan and the sequential approach.”

Aberdeen City and Shire Strategic Development Plan (2014) (SDP)

The purpose of the SDP is to set a spatial strategy for the future development of the Aberdeen City and Shire. The general objectives of the plan are promoting economic growth and sustainable economic development which will reduce carbon dioxide production, adapting to the effects of climate change, limiting the use of non-renewable resources, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility.

From the 29 March 2019, the Strategic Development Plan 2014 will be beyond its five-year review period. In the light of this, for proposals which are regionally or strategically significant or give rise to cross boundary issues between Aberdeen City and Aberdeenshire, the presumption in favour of

development that contributes to sustainable development will be a significant material consideration in line with Scottish Planning Policy 2014.

The Aberdeen City Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Proposed Aberdeen City & Shire SDP 2020 may also be a material consideration.

Aberdeen Local Development Plan (2017)

H1: Residential Areas

NC6: Town District Neighbourhood & Commercial Centres

NC7: Local Shop Units

D1: Quality Placemaking by Design

Supplementary Guidance and Technical Advice Notes

Harmony of Uses

Hierarchy of Centres

Other Material Considerations

Planning permission (ref. 151275) was granted for change of use of a single storey retail unit within Sclattie Park Shopping centre (around 400m from the site) to form a hot food take away but appears to have expired. (n.b. the application site does not lie within the same centre and there are significant physical differences between these cases).

EVALUATION

Principle of Development

Due to the small scale of this proposal, it is considered to raise no strategic matters such that SDP and SPP are of limited weight in this instance.

The site lies within an identified residential area, as designated in the ALDP. In such areas, the need to protect residential amenity is a key consideration in determining acceptable alternative commercial uses for the premises. This can take precedence over other considerations, notwithstanding the benefits of seeking active use of the premises.

Policy H1 states "Within existing residential areas, proposals for non-residential uses will be refused, unless -

(1) they are considered complementary to residential use; or

(2) it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity".

The Harmony of Uses SG further states "The protection of the living conditions of residents in close proximity to any proposed hot food shops....will form a major consideration in assessing applications of this nature". It goes on to say "It is not usually considered acceptable to create hot food shops.....directly adjacent to or beneath residential properties". The SG continues by stating "Applications within close proximity to residential units will be refused where it is considered that there may be significant adverse impacts on residential amenity in terms of noise, vibration, odour, traffic disturbance, litter or hours of operation."

Given that there are residential flats on the upper floor of the building immediately above the shop, it is considered that the proposal would likely result in adverse impact on residential amenity. This is due to the generation of odours, litter and late-night noise. No supporting / technical information has been submitted in relation to how these impacts could be satisfactorily addressed or mitigated. The proposal, therefore, conflicts with policy H1 (Residential Areas) and related supplementary guidance regarding Harmony of Uses. Although there is already an existing hot food take away

within the local centre located beneath residential flats, this is located at the opposite end of the terrace. It is considered that this historic situation does not justify introducing further potential conflict with residential use, contrary to the expectations of current policy and guidance.

Although the existing retail unit is vacant and not located within a designated retail centre (this lies 400m to the south) such that policy NC6 does not apply in this instance, this historic use provides a complementary supporting function to the residential area as a local shop. However, policy NC7 (Local Shop Units), which relates to proposals for change of use away from retail of premises located outwith any identified centre, does apply. The proposed alternative hot food takeaway use thus conflicts with policy NC7, as it has not been demonstrated that there is a lack of demand for the continued retail use of the premises, it has not been demonstrated that the new use would cater for a local need, whilst additionally the proposed use would conflict with the residential amenity of the area.

Although the installation of external ventilation equipment could to a degree address potential odour generation, it is likely that potential adverse odour and noise impact on residents could still occur due to the inability to terminate any extract ventilation at, or above, roof level. The likelihood of noise disturbance due to late night patrons (e.g. due to additional vehicle traffic generation) remain a concern, notwithstanding the existence of an existing hot food take away nearby. Notwithstanding that the agent has recently offered to reduce the hours of operation of the proposed use (to 10 or 11pm), it is not clear that these matters could be adequately addressed by imposition of conditions, particularly given the lack of supporting information in relation to these issues and the lack of clarity regarding the intentions of the applicant. No other material considerations are considered to exist which would justify granting approval contrary to the development plan.

Related Technical Matters

No noise or odour impact assessments have been submitted in support of the proposal. Given that Aberdeen Local Development Plan Policy T5 (Noise) expresses a presumption against noise generating development being located close to existing housing, as reinforced by Harmony of Uses guidance, there is a fundamental conflict with this policy. Notwithstanding the potential introduction of ventilation at the premises, for which no technical details have been provided, it is considered that the amenity concerns raised by the proposal cannot be adequately addressed by condition, particularly given that residential premises lies directly above the site.

Although no specific evidence has been provided that the proposal would create a live / attractive frontage, as expected by policy NC7, the layout plan indicates that the existing window / access would remain. Were the use acceptable details of the window treatment could be conditioned.

No details of refuse storage have been provided, as expected by policy R6 (Waste Management) and related guidance. However, the layout plan indicates a refuse storage area within the garden area at the side of the premises and details of this could be required by condition.

Visual Amenity

Although the proposed flue is a feature which does not match the design or materials of the existing building and, it is considered to be a relatively unobtrusive feature in the street scene, being largely obscured from public view, lower than the ridge height of the building and set on a side elevation which is largely screened by a conifer hedge. Thus, notwithstanding its contrasting appearance, it is considered that the flue as constructed accords with the design quality expectation of policy D1. Although it has been installed without the requisite planning permission, this cannot be used, in itself, as justification for refusal of this application.

Traffic / Road Safety Impact

Although it is likely that many potential customers would be nearby residents, with a notional similar catchment to the last retail use, the location of the site close to Inverurie Road and nature of the use is such that it has potential to draw increased car borne custom. Notwithstanding the possibility that the proposed use may increase numbers of drivers stopping at the premises (e.g. in relation to collection / delivery of food), given the absence of objection from ACC Roads officers on parking or safety grounds, the limited scale (floorspace) of the unit and given that a large surface car park exists opposite the site, accessed from Sclattie Park, it is considered that the traffic generation and any potential road safety impact of the development would not be so significant as to warrant refusal.

Matters Raised in Representation

These are considered to raise valid planning considerations which are addressed in the above detailed analysis. The agent has advised that the applicant controls land at the side of the premises where it is proposed to locate waste storage. Although it is recognised that an approved hot food take away around 400m from the site has not been implemented, the alleged lack of demand for further hot food uses in the area / commercial conflict with such existing use in the vicinity is not a material consideration which would justify refusal of the application.

Although it is noted that deposition of waste material has taken place with an adjacent garden, possibly associated with building works taking place at the site, it is not considered that this is a relevant material consideration in relation to determination of the current application. This matter has been raised with the agent and it has been requested that such waste material be removed from the site.

RECOMMENDATION

Refuse

REASON FOR RECOMMENDATION

01. The proposal would be likely to result in adverse impacts on, and thus conflict with, residential amenity due to generation of odour, litter and noise (e.g. from ventilation systems and increase in vehicle traffic late in the evening) and therefore conflicts with Aberdeen Local Development Plan policy H1 (Residential Areas) and related supplementary guidance regarding Harmony of Uses.

02. The proposal conflicts with Aberdeen Local Development Plan policy NC7 (Local Shop Units) as it has not been demonstrated that there is a lack of demand for continued retail use of the premises and the proposed use would conflict with the amenity of the area.

CONDITIONS

In the event that members are minded to grant the change of use, conditions relating to limiting the hours of operation, the provision of details for prevent odour nuisance, the provision of a noise assessment, details of display window treatment and details of refuse / waste storage are recommended.