

**FALKIRK COUNCIL**

**Subject:** CHANGE OF USE OF OFFICE (CLASS 2) TO FORM HOT FOOD TAKE-AWAY (SUI GENERIS) AND EXTERIOR ALTERATIONS AT 11 MAGGIE WOODS LOAN, FALKIRK FK1 5HR FOR MR JATESH SANDHU - P/13/0317/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 18 September 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Falkirk South

Depute Provost John Patrick  
Councillor Colin Chalmers  
Councillor Dennis Goldie  
Councillor Gerry Goldie

**Community Council:** No Community Council

**Case Officer:** Stephen McClure (Planning Officer), Ext. 4702

**UPDATE REPORT FOLLOWING COMMITTEE SITE VISIT**

1. Members will recall that this application was originally considered at the meeting of the Planning Committee on 22 August 2013 (copy of previous report appended), when it was agreed to continue the application and to undertake a site visit. This visit took place on 2 September 2013.
2. At the site meeting the specific unit was highlighted to Members, and a description of the proposal was then given, as well as an overview of the assessment of the proposal in terms of the relevant policies and material planning considerations. It was also noted that, within the site history, there had been previous proposals for hot food takeaways, although these had been withdrawn. It was also highlighted that the unit had received permission for a change of use to a Café (P/10/0858/FUL), although this permission had never been implemented. It was also noted that no objections had been received following consultation with the Falkirk Council Roads Unit and the Falkirk Council Environmental Protection Unit.

3. The applicant was in attendance and spoke in support of the proposal. It was stated by the applicant that the proposal was for a fish and chip shop. However, it was intended to offer a different product in that it would use healthy cooking methods and also sell pastas, salads etc. The applicant also stated that the proposal would create up to six jobs, and that it was an initial start up business directly owned by him. It was also confirmed that the intended opening hours would be from 12 midday to 10pm although the premises may close for a few hours between 2pm and 4/5pm if there was considered to be insufficient demand. The applicant also noted that he proposed to recycle as much of the unit's waste as possible, and would enquire about gaining all the relevant equipment and bins to do so.
4. Objectors to the proposal were heard in relation to the following points:
  - There was not another hot food shop required within the area;
  - There would be an unacceptable increase in traffic;
  - There would be an increase in litter;
  - There would be an increase in noise;
  - Would like to see a Chemists open within the units.
5. These issues raised in paragraph 4 above have been considered and assessed within the report, and were not found to warrant refusal of the application. The Road Units Officer present explained that the previous use as a DVLA office was considered in capacity terms to generate as much vehicular movement as the proposed hot food takeaway, and that there were 21 spaces available at the site. The Environmental Protection Unit Officer present also highlighted that they could consider the issue of litter now and in the future. It was also noted that the Environmental Protection Unit had not received any complaints about litter at the site.
6. Members enquired as to whether the hot food takeaway use could be altered between different types of hot food uses, and it was confirmed that this was the case. The issues of parking, littering and opening hours were again highlighted, although it was noted that these issues had already been considered by the relevant officers in relation to the objections. The issue of the nearby school was also highlighted by Members, although this had been assessed within the report and it was not seen as a material planning consideration that would warrant refusal of the proposal in this case. It should also be noted that in relation to the items above, Licensing legislation would also be involved in regards to any extended opening hours and proposals for litter collection.
7. Councillor Gerry Goldie as a Local Member in attendance intimated that there did not appear to be a problem with parking or access in the evening at the site, and that in relation to a proposal for a chemist, this had been turned down in the past by the relevant NHS body. However, it was also stated that this was not a material consideration in regards to the current proposal. It was also highlighted that the unit along with two other units at the site have been empty for an extended period of time.
8. Councillor Goldie also enquired as to the further details in respect of the proposed extraction system to be used. It was explained by the Environmental Health officer that the proposed extraction system was suitable for this type of unit, and would ensure that both the noise of the actual extraction system and odours produced would be kept under control and not cause a nuisance to neighbours.

9. No matters were therefore considered to have been raised at the site visit that would amend the original recommendation to grant planning permission.

## **10. RECOMMENDATION**

- 10.1 It is therefore recommended that the Planning Committee grant planning permission subject to the following conditions:-**

- (1) The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.**
- (2) Anti-vibration fixings shall be utilised where appropriate with the cooking odour extraction system equipment. A plan of the final layout of the cooking odour extraction system, including the details of the fixings, shall be submitted to and approved in writing by the Planning Authority prior to work commencing on-site.**

### **Reason(s):-**

- (1) As these drawings and details constitute the approved development.**
- (2) To safeguard the environmental amenity of the area.**

### **Informative(s):-**

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 and 02.**
- (2) In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of a period of 3 years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.**
- (3) Any plant or equipment associated with the completed development should be sited and operated in such a manner as to prevent any noise/odour nuisance occurring at nearby dwellings. If complaints are received about noise/odour from the development, the Environmental Health Unit would be obliged to investigate and take action as necessary if the complaints were found to be justified under Statutory Nuisance legislation contained in the Environmental Protection Act 1990.**

- (4) Separate formal Advertisement Consent may be required for any signs associated with the proposed development. It is the applicant's responsibility to obtain this before any signs are displayed on site. For advice please contact Falkirk Council Development Management, Abbotsford House, David's Loan, Falkirk, FK2 7YZ (tel: 01324 504748).

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Director of Development Services

Date: 6 September 2013

#### **LIST OF BACKGROUND PAPERS**

1. Falkirk Council Structure Plan.
2. Falkirk Council Local Plan.
3. Falkirk Local Development Plan (Proposed Plan April 2013).
4. Letter of Objection received from Depute Provost John K Patrick, [john.patrick@falkirk.gov.uk](mailto:john.patrick@falkirk.gov.uk) on 27 May 2013.
5. Letter of Objection received from Bantaskine Tenants Residents Association, 21 Shannon Drive, Falkirk, FK1 5HU on 30 May 2013.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504702 and ask for Stephen McClure, Planning Officer.

**FALKIRK COUNCIL**

**Subject:** CHANGE OF USE OF OFFICE (CLASS 2) TO FORM HOT FOOD TAKE-AWAY (SUI GENERIS) AND EXTERIOR ALTERATIONS AT 11 MAGGIE WOODS LOAN, FALKIRK FK1 5HR FOR MR JATESH SANDHU - P/13/0317/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 22 August 2013

**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Falkirk South

Depute Provost John Patrick  
Councillor Colin Chalmers  
Councillor Dennis Goldie  
Councillor Gerry Goldie

**Community Council:** No Community Council

**Case Officer:** Stephen McClure (Planning Officer), Ext. 4702

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 The site consists of a small commercial unit located within a row of commercial/retail units with flatted dwellings above, in a mainly residential area of Falkirk. The unit was previously used by the DVLA for office use (Class 2), but is currently vacant. It is now being proposed to change the use of the property to a hot food takeaway.

**2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 The application was called in by Councillor Colin Chalmers and Depute Provost John Patrick.

**3. CONSULTATIONS**

- 3.1 The Roads Development Unit has no objection to the proposal.
- 3.2 The Environmental Protection Unit has no objection to the proposal. However, it has been requested that the applicant ensures that anti-vibration fixings are utilised where appropriate with the cooking odour extraction equipment. This can be conditioned where necessary.

#### **4. SITE HISTORY**

- 4.1 P/10/0172/FUL - change of use from class 2 retail (office) to hot food takeaway - application withdrawn.
- 4.2 P/10/0858/FUL - change of use from office (class 2) to cafe (class 3) - granted permission
- 4.3 P/12/0520/FUL - change of use of office (class 2) to hot food take-away (sui generis) - application withdrawn.
- 4.4 P/13/0032/FUL - change of use of office (class 2) to form hot food take-away (sui generis) - application withdrawn.

#### **5. COMMUNITY COUNCIL**

- 5.1 There is no Community Council active in this area.

#### **6. PUBLIC REPRESENTATION**

- 6.1 In the course of the application, two contributors submitted letters to the Council. The salient issues are summarised below:
  - Will add additional traffic to the area.
  - Will add additional litter and create unwelcome odours.
  - Close proximity to Falkirk High School and Bantaskine Primary School will attract school children to another alternative to school meals.
  - Not required as there is already a hot food takeaway in one of the other commercial units.
  - Would cause an increase in cars to the site.
  - Would increase the rubbish at the site.
  - Would create noise at the site.

#### **7. DETAILED APPRAISAL**

Under section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, the determination of planning applications for local and major developments shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Accordingly,

## 7a The Development Plan

### ***Falkirk Council Structure Plan***

7a.1 There are no relevant policies within the Falkirk Council Structure Plan.

### ***Falkirk Council Local Plan***

7a.2 Policy EQ11 'Shopfronts' states:

- “(1) The design of new or altered shopfronts should be well-proportioned and sympathetic to the character of the building of which they are part. The retention and restoration of existing traditional shopfront features such as stallrisers, pilasters, cornices, friezes and mouldings will be required; and*
- (2) External security measures should not detract from the character of the building or the area in general. Where such measures are necessary, there will be a presumption in favour of perforated shutters and grilles, as opposed to solid roller shutters.”*

7a.3 There are only minor alterations proposed to the shop front, and these are well-proportioned and sympathetic to the character of the existing building. No new security measures are being proposed for the unit, and the extract duct to the rear of the unit has been positioned to ensure it is not visually intrusive. It is therefore considered that the proposal accords with Policy EQ11.

7a.4 Policy EP9 - 'Food And Drink' states:

*“Proposals for Class 3 uses, hot food takeaways and public houses will be encouraged to locate within centres, in association with other neighbourhood shops or services, or in other locations where they are capable of serving a tourism function. It must also be demonstrated that:*

- (1) There will be no adverse impact on the amenity of adjacent residential properties, or the surrounding area generally, by virtue of noise, disturbance, litter or odours;*
- (2) In the case of proposals within a centre, the proposal is consistent with the specific policies covering the relevant centre, particularly with regard to safeguarding the centre's retail function; and*
- (3) Parking, access and traffic generation requirements are satisfied.”*

7a.5 The proposed hot food takeaway would be located within a grouping of neighbourhood shops. It is not considered that the proposal would have an adverse effect on the amenity of adjacent residential properties, or the surrounding area in terms of noise, disturbance, litter or odours. The Environmental Protection Unit have not objected to the proposal, and are satisfied that the proposed extraction equipment would be sufficient in controlling odour. If any of these matters, including odours became an issue, the Environmental Protection Unit would investigate and, where necessary, could take the relevant action. During the assessment of the application, no issues were highlighted in relation to the current operating shop units and hot food takeaway unit, and it is not considered the proposed unit would operate any differently, or raise any additional matters. Parking, access and traffic generation are considered to be satisfied, as the units have dedicated parking and access. It is therefore considered that the proposal accords with Policy EP9.

7a.6 Accordingly, the proposal accords with the Development Plan.

## **7b Material Considerations**

- 7b.1 The material consideration to be assessed are public representations and the Falkirk Local Development Plan (Proposed Plan).

### ***Assessment of Public Representations***

- 7b.2 It is considered that the proposal would not create an unacceptable level of additional traffic to the area. The Roads Development Unit raise no concerns and the property shares the dedicated parking and access for the grouping of neighbourhood shops.
- 7b.3 There is no evidence to show that the proposal would increase litter in the area, and the Environmental Protection Unit have assessed the proposed extraction system, to ensure odours are properly controlled. If either became an issue, the Environmental Protection Unit could investigate and take action if appropriate.
- 7b.4 The location in relation to schools was not considered to be unacceptable, and would not in this case be seen to be a material consideration which would warrant refusal of the proposal.
- 7b.5 The presence of another hot food business at this particular location is not a material planning consideration, and therefore cannot be taken into account in the assessment of the proposal.
- 7b.6 It is not considered that the proposal would create an unacceptable increase in cars to the site. The Roads Development Unit have not objected to the proposal, and the site has the benefits of a dedicated car park and access.
- 7b.7 There is no evidence to show that the proposal would cause unacceptable noise issues at the site or to the surrounding area. If noise did become an issue for any reason, the Environmental Protection Unit could investigate and take action if necessary.

### ***Falkirk Local Development Plan - Proposed Plan***

- 7b.8 The Proposed Falkirk Local Development Plan was approved by the Council for consultation in March 2013, with the period for representations running from April to June 2013. It is expected to be adopted in early 2015, at which point it will replace the current Structure Plan and Local Plan. It provides the most up to date indication of Falkirk Council's views in relation to Development Plan policy and constitutes a material consideration in the determination of planning applications.
- 7b.9 Policy TC04 - 'Food and Drink' states:
1. *Proposals for Class 3 uses, hot food takeaways and public houses will be encouraged to locate within centres, in association with other neighbourhood shops or services, or in locations where they are capable of fulfilling a tourism function.*
  2. *Proposals must demonstrate that there will be no adverse impact on the amenity of adjacent residential properties, or the surrounding area generally, by virtue of noise, disturbance, litter or odours, and that parking and access requirements are satisfied.*
  3. *Temporary consent for mobile snack bar vans may be granted where a specific need is demonstrated, and there is no adverse impact on local amenity or the visual quality of the locality*



7b.10 Policy D06 - 'Shopfronts' states:

*"The design of new or altered shopfronts should be well-proportioned and sympathetic to the character of the building of which they are part, as specified within Supplementary Guidance SG04 'Shopfronts'."*

7b.11 Policy TC04 Food and Drink and Policy D06 Shopfronts - The relevant policies contained within the Falkirk Local Development Plan (Proposed Plan April 2013) are considered to highlight the same issues as those within the current adopted plan. There are no considerations within the policies which would cause the proposal to be assessed in a different manner, or justify a refusal of planning permission. It is therefore considered that the proposal accords with Policies TC04 and D06 of the Falkirk Local Development Plan (Proposed Plan April 2013).

## **7c Conclusion**

7c.1 It is considered that the proposal is acceptable development, is in accordance with Policies EQ11 and EP9 of the Falkirk Council Local Plan and Policies TC04 and D06 of the Falkirk Local Development Plan (Proposed Plan April 2013). There are no material planning considerations which would justify a refusal of planning permission.

## **8. RECOMMENDATION**

8.1 It is therefore recommended that the Planning Committee grant planning permission subject to the following conditions:-

- (1) The development hereby approved shall be implemented in accordance with the plan(s) itemised in the informative below and forming part of this permission unless a variation is required by a condition of the permission or a non-material variation has been agreed in writing by Falkirk Council as Planning Authority.
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Director of Development Services

Date: 13 August 2013

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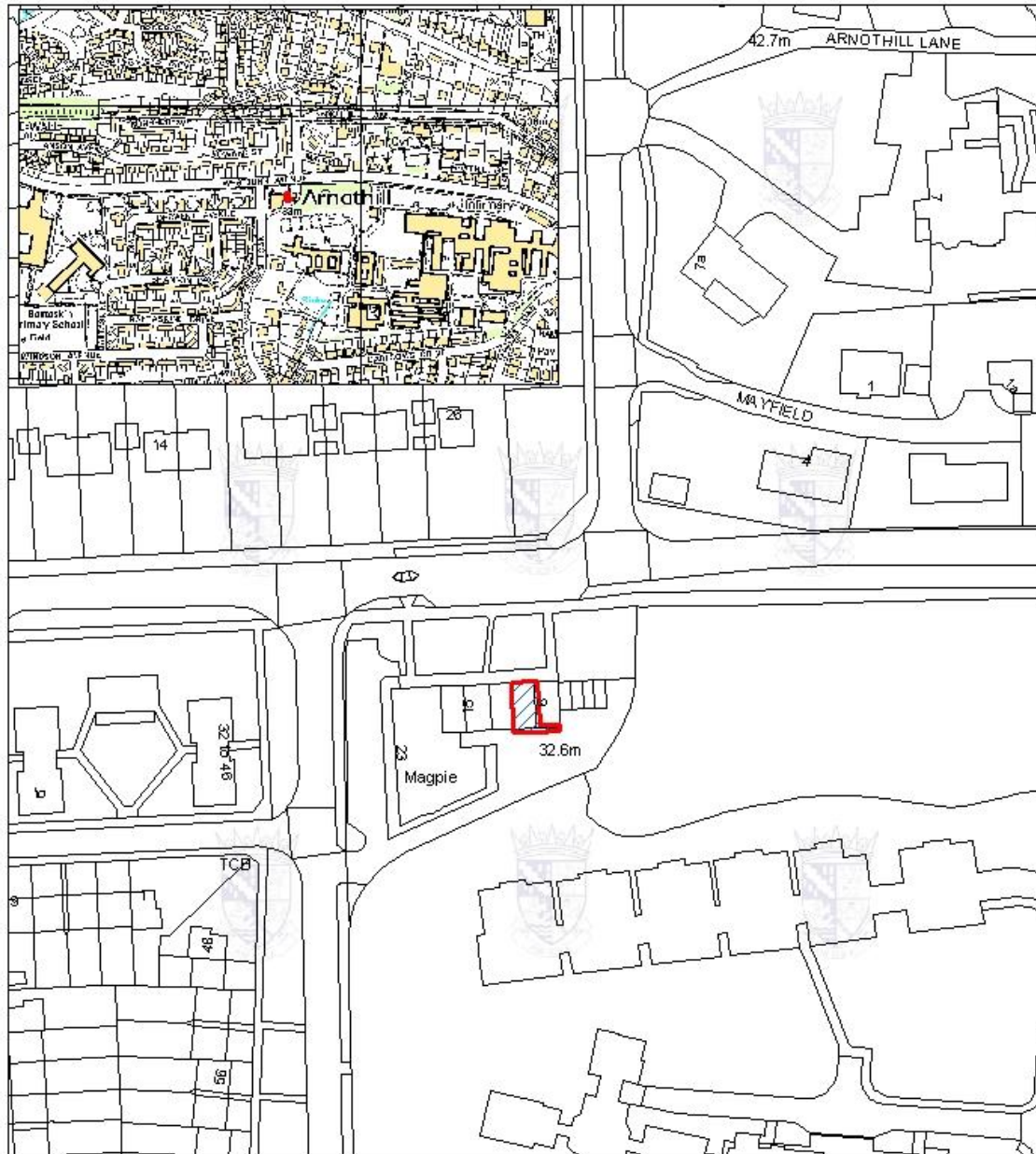
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504702 and ask for Stephen McClure, Planning Officer.

# Planning Committee

## Planning Application Location Plan

**P/13/0317/FUL**

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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