



AGENDA ITEM 10

**Use of Ground Floor Premises as
Shop (Class 1) at 18 Nisbet Drive
Denny FK6 6AQ for Mrs Rajwinder
Kaur - P/17/0139/CPE**

FALKIRK COUNCIL

Subject: USE OF GROUND FLOOR PREMISES AS SHOP (CLASS 1)
AT 18 NISBET DRIVE, DENNY, FK6 6AQ FOR MRS
RAJWINDER KAUR - P/17/0139/CPE
Meeting: PLANNING COMMITTEE
Date: 22 March 2017
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Banknock

Councillor Jim Blackwood
Councillor Brian McCabe
Councillor Paul Garner
Councillor Martin David Oliver

Community Council: Denny and District

Case Officer: Kevin Brown (Planning Officer), Ext. 4701

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application relates to a Certificate of Lawfulness (Existing Use) for the use of a ground floor premises at 18 Nisbet Drive, Denny as a Class 1 shop. The applicant claims that the site has been used for this purpose since at least 2005.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 Following Member interest and recent application history at this location, the Director of Development Services considers it appropriate for this application to be considered by the Planning Committee.

3. SITE HISTORY

- 3.1 There is no history in the planning files to suggest that the premises have been used as a Shop (Class 1).
- 3.2 In 2000, Building Standards had correspondence with a Mr Khalid in respect of coping stones to the rear of a shop unit at 18 Nisbet Drive, Denny.

- 3.3 The Licensing Unit have confirmed that the premises had been licensed to sell alcohol for a number of years up until 2015, when the licence holder was sequestrated.
- 3.4 Previous application, P/16/0759/CPE, was originally due to be considered by the Planning Committee on 23 February 2017. This application was removed from the agenda and subsequently withdrawn by the applicant following concerns raised in respect of inaccuracies found on the submitted application form. The current application represents a resubmission of the same proposal with the relevant section of the submitted application form having been corrected accordingly.

4. CONSULTATIONS

- 4.1 None.

5. COMMUNITY COUNCIL

- 5.1 The Denny and District Community Council have not commented on this application.

6. PUBLIC REPRESENTATION

- 6.1 During consideration of the application, no letters of objection or representation were received.

7. PLANNING ASSESSMENT

- 7.1 Section 150(1) of the Town and Country Planning (Scotland) 1997 Act enables anyone (not just the landowner or a person with an interest in the land) to apply to the Council, as planning authority, for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation, which has already taken place, is lawful for planning purposes. For the purposes of this Act, uses and operations are lawful at any time if -
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- 7.2 There are no historical planning records to confirm the use of the premises as a shop, however evidence is available to suggest that the premises have operated at this location for in excess of 10 years, including lawyers' letters, licensing records, Scottish Assessors Association records and Building Standards correspondence. With this in mind, no enforcement action would be appropriate and the use of the premises as a Shop (Class 1) is deemed to be lawful.

Supporting Information

- 7b.4 In support of the application, the applicant has submitted a solicitor's letter dated 31 May 1989 detailing the offer of a lease agreement between two parties for the premises. This letter clearly refers to the premises as having an existing use as a grocers shop.
- 7b.5 An undated summary of premises licence issued by Falkirk Council has also been submitted in support of the application. This document refers to the existing use of the premises as being a general grocer store/off licence.
- 7b.6 Evidence from the Scottish Assessors Association demonstrates that the property has been assessed as having a rateable value as a 'Shop' since at least 2005, with a further assessment in 2010 also confirming the use of the premises as a 'Shop'.

7c Conclusion

- 7c.1 No evidence has been found to counter the claims made within the supporting documents submitted. A visit to the application site has also confirmed that the premises has the appearance of having been used as a shop for some time.
- 7c.2 Based on the evidence submitted in support of the application, it is considered that a Class 1 shop has operated at the site for in excess of 10 years. A Certificate of Lawfulness should therefore be issued.

8. RECOMMENDATION

8.1 It is therefore recommended that a Certificate of Lawfulness should be issued for the following reason:-

- 1. Based on the evidence submitted in support of the application and records held by Falkirk Council, it is considered that, in the balance of probability, a Class 1 Shop has operated at the site for in excess of 10 years. A Certificate of Lawfulness should therefore be issued.**

Informative(s):-

- 1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number 01.**

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pp Director of Development Services

Date: 13 March 2017

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan.

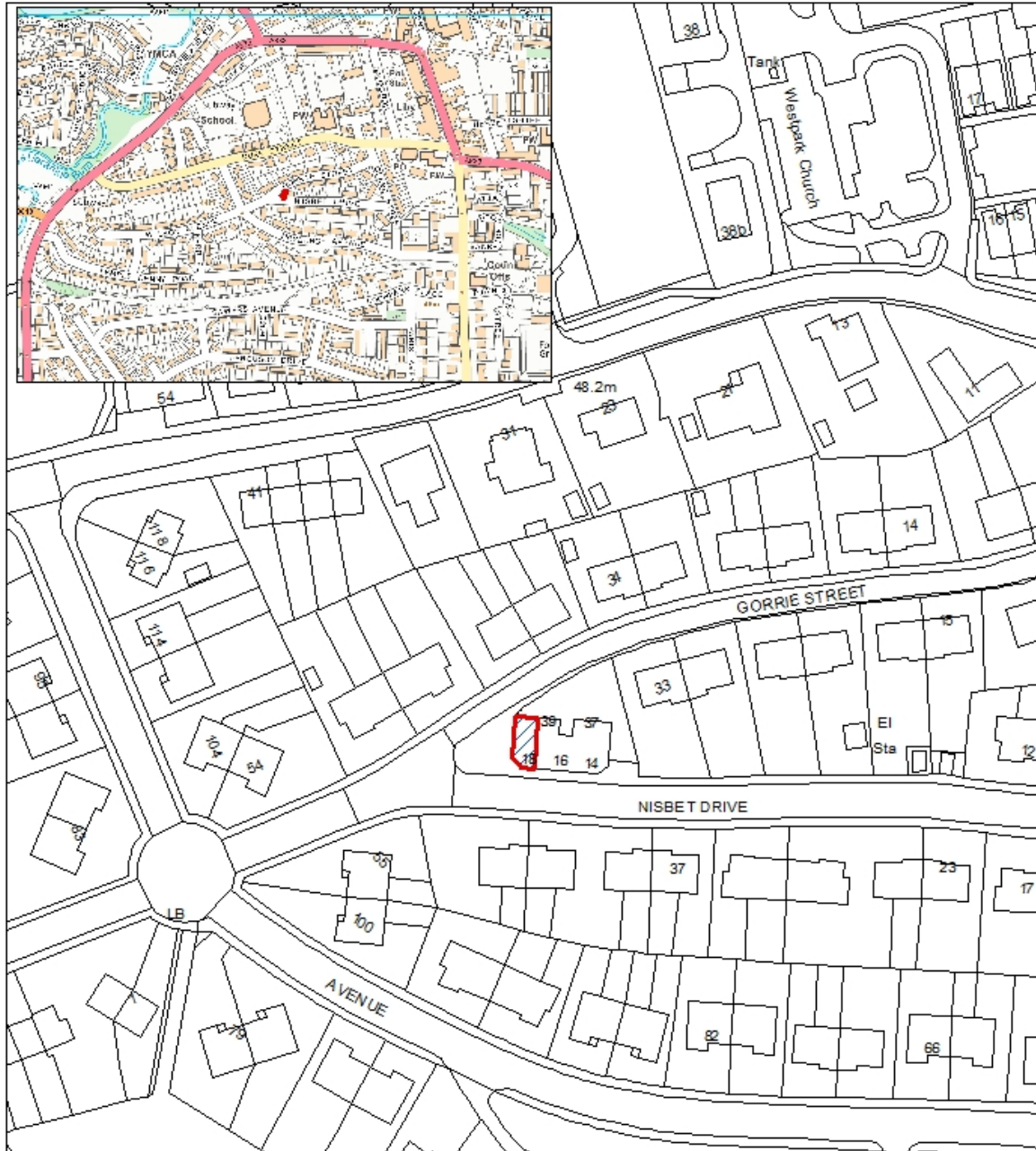
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

Planning Committee

Planning Application Location Plan

P/17/0139/CPE

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



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