

FALKIRK COUNCIL

Subject: PARTIAL CHANGE OF USE OF EXISTING SHOP TO ALLOW LIMITED HOT FOOD TAKEAWAY SALES (RETROSPECTIVE) AT 12A BLINKBONNY ROAD, FALKIRK, FK1 5DA FOR MR KALEEM RASHID – P/09/0740/FUL
Meeting: PLANNING COMMITTEE
Date: 16 June 2010
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Gerry Goldie
Councillor Joe Lemetti
Councillor John Patrick
Councillor Georgie Thomson

Community Council: Camelon and District

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 the 19 May 2010 (copy of previous report appended), when it was agreed to continue the application and to undertake a site visit. This visit took place on the 31 May 2010.
2. At the site meeting, it was highlighted to members that applications had previously been submitted for the unit at 12A Blinkbonny Road, for a Change of Use of all of the unit to a hot food takeaway. These applications plus one appeal to the Scottish Government had been refused. It was clarified that these were not by the current owner, and the application before the Committee was for a partial Change of Use.
3. The concerns of the Road Development Unit were discussed in relation to the lack of parking and delivery bays surrounding the grouping of shops of which the site forms part. It was noted that there is a high level of on-street parking at the location, and due to the road layout and nearby junction, a use which would generate significant additional traffic would be likely to exacerbate the existing situation.
4. The applicant and agent spoke in support of the proposal and stated that hot food sales were an important but ancillary part of the business, and that the use did not exacerbate existing problems.

5. Objectors, including residents representatives of the Bantaskine Residents Association, adjacent businesses and the Head Teacher of Falkirk High School were also heard in relation to the concerns. This included the previous history of refusals for hot food uses, on street parking, vehicle movements and road safety, noise disturbance and anti social behaviours, adverse impact on the amenity of the area, litter, adours, and use of the premises by pupils of Falkirk High School.
6. Local Members Councillor John Patrick and Councillor Georgie Thomson were heard in support of the concerns of the objectors.
7. **It is therefore recommended that Planning Committee grant planning permission subject to the following conditions:**
 - (1) **The use hereby approved shall be strictly operated in accordance with the apparatus as identified on the approved layout plan (Ref 614 drawing 01 dated September 2009 – Falkirk Council Drawing No 02); the hours of operation for the hot food takeaway are restricted to 7.30am to 4.00pm, Monday to Saturday only.**

Reason(s):

- (1) **To control the scale and operation of the Development, in the interests of local amenity.**

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.**

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Director of Development Services

Date: 8 June 2010

LIST OF BACKGROUND PAPERS

1. Falkirk Local Plan.
2. Falkirk Council Local Plan Finalised Draft (Deposit Version).
3. Petition submitted by applicant's agent with upwards of 150 signatures in favour of the proposal.
4. Letter of objection from Mrs Kaye Findlay, 21 Shannon Drive, Falkirk FK1 5HU on 13 November 2009.
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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).

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Meeting: PLANNING COMMITTEE
Date: 19 May 2010
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Councillor Gerry Goldie
Councillor Joe Lemetti
Councillor John Patrick
Councillor Georgie Thomson

Community Council: Camelon and District

Case Officer: Stephen McClure Ext, 4702

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

1.1 The application site is a small shop unit within a row of neighbourhood shops, which is used as a general store/newsagent with a hot food takeaway element within a well established residential area to the south of Falkirk High school. This application seeks to regularise the situation with a planning application for partial change of use of the unit to allow limited hot food takeaway sales. The majority of the shop unit would remain as a newsagent store and there are no planned amendments to the hours of operation.

2. REASON FOR COMMITTEE CONSIDERATION

2.1 This application has been called to Committee by Councillor Georgie Thomson and Councillor Joe Lemetti.

3. SITE HISTORY

3.1 F/96/0331 – change of use of workshop/wholesale unit to 3 shops, one workshop and installation of the shop frontages – granted.

3.2 F/96/0905 – part change of use of storage/distribution premises (class 11) to form 2 shops (class 1) and a hot food takeaway (class 3) – appeal dismissed.

3.3 F/98/0764 – change of use of workshop/wholesale unit to 3 shops and a workshop and installation of shop frontages – granted.

- 3.4 F/2003/0574 – change of use from shop (class 1) to hot food takeaway – withdrawn.
- 3.5 F/2003/0644 – change of use of shop (sandwich bar) to hot food takeaway – refused.
- 3.6 P/07/0952/FUL – change of use from shop (sandwich bar) to hot food shop – refused.

4. CONSULTATIONS

- 4.1 The Roads Development Unit have advised that the shop units currently have no dedicated parking provision with vehicles having to park on-street. It is suggested that it may be possible to construct parking bays within the front area of the shop units, without which there may be road safety concerns and parking pressures in the surrounding area.
- 4.2 The Environmental Protection Unit have no objections to the proposals, and note that the appliances are effectively domestic rather than commercial.

5. COMMUNITY COUNCIL

- 5.1 The Camelton and District Community Council did not comment.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, 19 letters of representation were received. The following salient issues raised are summarised below:
- Cooking odours.
 - Increase in litter.
 - Increased traffic (pedestrian and vehicular).
 - Due to close proximity of schools, the use could encourage unhealthy eating habits amongst children.
 - Given history of previous similar applications, this application should be refused.
 - No material changes have occurred since the last application for a hot food takeaway and this application.
 - Planning Enforcement Officers have been involved with the previous and existing owners in relation to the selling of hot food.
 - If planning permission were to be granted it would give the impression that if you ignore planning enforcement long enough, you will get permission.
 - The applicant has made a bad business decision and is now seeking approval purely on a financial basis.

- There is no parking at the shop units and it can become very congested.
- This proposal will cause an issue with noise (especially if open at night).
- Falkirk High School is trying to keep pupils in at break time and promote healthy eating, this hot food takeaway would be used by pupils.
- There are several sandwich shops and hot food premises within a one mile radius of Blinkbonny Road, and there is no need for another one.
- The use would detract from the environment in a residential area.
- Increased loitering and possible anti-social behaviour, particularly late evening/night.
- The use would send the wrong message to school children in the nearby school with regards to healthy eating, which is being promoted by the Scottish Government.
- A petition letter in favour of the proposals has been submitted with upwards of 150 signatures of support.

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 Local Plan

7a.2 Policy FAL 7.8 'Food and Drink Outlets' states:

"Proposals for food and drink outlets (Class 3 as defined by the Town and Country Planning (Use Classes)(Scotland) Order 1997), public houses and hot food takeaways will only be permitted where:

- (i) 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;*
- (ii) the proposal meets the terms of Policy FAL 7.9 on protected shopping frontages; and*
- (iii) the proposal is satisfactory in terms of parking, access and traffic generation."*

7a.3 The proposal is not for a full change of use of the unit for hot food sales, but for a partial change of use. The unit would continue to operate as a newsagent, with no planned change of operating hours, and therefore it is not considered that noise would be an issue to neighbouring residential dwellings. The unit should also not cause an issue with regards to odours, as the property only requires a domestic fan extraction system, due to the limited amount of hot food prepared/sold within the unit. It is also considered that litter would not be an issue as the use has existed for sometime without issues of this nature arising. The unit is also located in an existing group of neighbourhood shops, and is accessible by pedestrian and vehicular traffic. It is not considered that the partial change of use would generate a significant amount of extra traffic to the unit. Therefore, it is considered that the limited change of use being ancillary to the main use as the newsagents, would not have an adverse impact on the amenity of the adjacent residential properties, or the surrounding area generally. It is therefore considered that the proposal accords with Policy FAL.7.8.

7a.4 Policy FAL 7.10 'Neighbouring Shops' states:

"The Council will support the provision, retention and improvement of neighbourhood shops. Accordingly, it will:

- (i) encourage the provision of neighbourhood shops to serve major new housing developments, and also existing residential areas which have poor access to such facilities; and*
- (ii) promote schemes to improve the condition and viability of local shops within designated areas of need."*

7a.5 The current newsagent/store is providing a service to the residential area, and the current owner has improved the appearance and condition of the unit. As with similar small businesses, the owner wishes to diversify the range of products sold, to keep the operation of the unit viable. The partial change of use would allow this, whilst allowing the unit to remain primarily as a newsagent/store, providing and retaining this neighbourhood shop. It is therefore considered that the proposal accords with Policy FAL 7.10.

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

7b Material Considerations

7b.1 the material considerations are the Falkirk Council Local Plan Finalised Draft (Deposit Version), assessment of public representations and additional planning considerations.

Falkirk Council Local Plan Finalised Draft (Deposit Version)

7b.2 Policy EP8 - 'Neighbourhood And Rural Shops' states:

"The Council will support the provision, retention and improvement of neighbourhood and rural shops. Accordingly:

- (1) Proposals involving the loss of neighbourhood or rural shops (Class 1) and services (Class 2) which serve an important community function will be only be permitted where the Council is satisfied that the premises are no longer viable for such uses; and*
- (2) The provision of neighbourhood shops to serve major new housing developments and existing residential areas which have poor access to such facilities will be encouraged."*

7b.3 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.”*

7b.4 The relevant policies contained within the Falkirk Council Local Plan Finalised Draft (Deposit Version), can be seen to reinforce and affirm policies FAL 7.8 and FAL 7.10 of the Falkirk Local Plan. The current unit is located within a small group of neighbourhood shop units, not all of which are occupied. The partial change of use to the unit expands the current offerings and helps to maintain the viability of the newsagents. The partial change of use does not alter the current opening hours which are Monday to Saturday 7.30am to 7.00pm and Sundays 8.00 to 3.00pm. However, the applicant has agreed to restrict the hot food operation from 7.30am to 4.00pm, Monday to Saturday, with no hot food operation on Sundays. This has been covered by an appropriate condition. Therefore, it is not considered that there would be an adverse impact on the amenity of adjacent residential properties or the surrounding area generally, by virtue of noise, disturbance, litter or odours. The unit is within an existing grouping of neighbourhood shop units, which are accessible by pedestrian and vehicular traffic. It is not considered that the proposal would substantially increase the amount of traffic to the unit. It is therefore considered that the proposal accords with Policies EP8 and EP9.

Assessment of Public Representations

7b.5 The Environmental Protection Unit has considered the issue of odour and is satisfied with the current arrangements. Due to the limited amount of hot food to be prepared and sold within the unit, a domestic extraction system is acceptable. This therefore should not lead to odours being an issue to neighbouring units or residential properties. If odours become an issue, the Environmental Protection Unit would investigate under the relevant legislation.

7b.6 The proposals are for a partial change of use to allow limited hot food sales, with the unit remaining primarily as a newsagent/store. It is not considered that the hot food element in this case would exacerbate litter concerns within the area.

7b.7 There is no evidence to indicate that pedestrian and vehicular traffic would increase to an unacceptable level.

7b.8 The eating habits of children within the nearby schools is not a material planning consideration.

7b.9 Each application requires to be assessed on its own merits and the previous history is noted.

- 7b.10 The application which has been submitted is not for a full hot food takeaway as submitted previously, but for a part change of use which would be ancillary to the unit's main use as a newsagent/store. Therefore, there has been a material change to the previous submissions.
- 7b.11 Planning Enforcement officers have been involved with this particular unit on several occasions, and were involved with the current owner and the submission of this application.
- 7b.12 The decision of the applicant to take on the unit or his financial state is not a material planning consideration in this case.
- 7b.13 The group of shop units do not have parking provision and this cannot be addressed through this particular application. It is not considered that the proposed use would increase vehicular traffic to an unacceptable level.
- 7b.14 The main use of the shop unit will remain a newsagent/store, and there are no proposals to change the opening hours.
- 7b.15 There are no restrictions within the area on particular shop classes, the presence of other similar shops within a mile radius is not be a material planning consideration.
- 7b.16 There are no major external changes to the unit and the main use will remain as a newsagents/store, it is therefore not considered that the proposal would effect the residential environment of the area to an acceptable degree.
- 7b.17 Anti-social behaviour is not a material planning consideration.
- 7b.18 A petition with some 150 signatures in support of the application has been submitted.

Additional Planning Considerations

- 7b.19 The Roads Development Unit have stated that there is currently no dedicated parking at the shop units, with vehicles having to park to the front of the units on Blinkbonny Road. This is also the same for service vehicles supplying the units, and there have been complaints in the past about the vehicles stopping on the corner of the nearby junction. In mind of this, it has been suggested by the Roads Unit that parking be created to the front of the units. Without this in place, it is considered by the Roads Unit that persons visiting the unit in vehicles may park in and around the nearby junction creating a road safety hazard and causing additional parking pressure in the surrounding residential area. However, the unit is currently in use, and is located within a group of established neighbourhood shops. The applicant does not have control over the area to the front of the shop unit, or in front of the neighbouring units. It would not therefore be possible for this to be a requirement of a planning condition. In any case it is considered that the provision of additional parking spaces for a partial change of use would be unreasonable and would not satisfy the tests for planning conditions

7c Conclusion

- 7c.1 It is considered that the proposal for a partial change of use to a hot food takeaway is acceptable, is in accordance with Policy FAL 7.8 and FAL 7.10 of the Falkirk Local Plan and Policy EP8 and EP9 of the Falkirk Council Local Plan Finalised Draft (Deposit Version). There are no other material planning considerations which would justify a refusal of planning permission.

8. **RECOMMENDATION**

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

- (1) The use hereby approved shall be strictly operated in accordance with the apparatus as identified on the approved layout plan (Ref 614 drawing 01 dated September 2009 – Falkirk Council Drawing No 02); the hours of operation for the hot food takeaway are restricted to 7.30am to 4.00pm, Monday to Saturday only.

Reason(s):

- (1) To control the scale and operation of the Development, in the interests of local amenity.

Informative(s):

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Pp Director of Development Services

Date: 11.05.10

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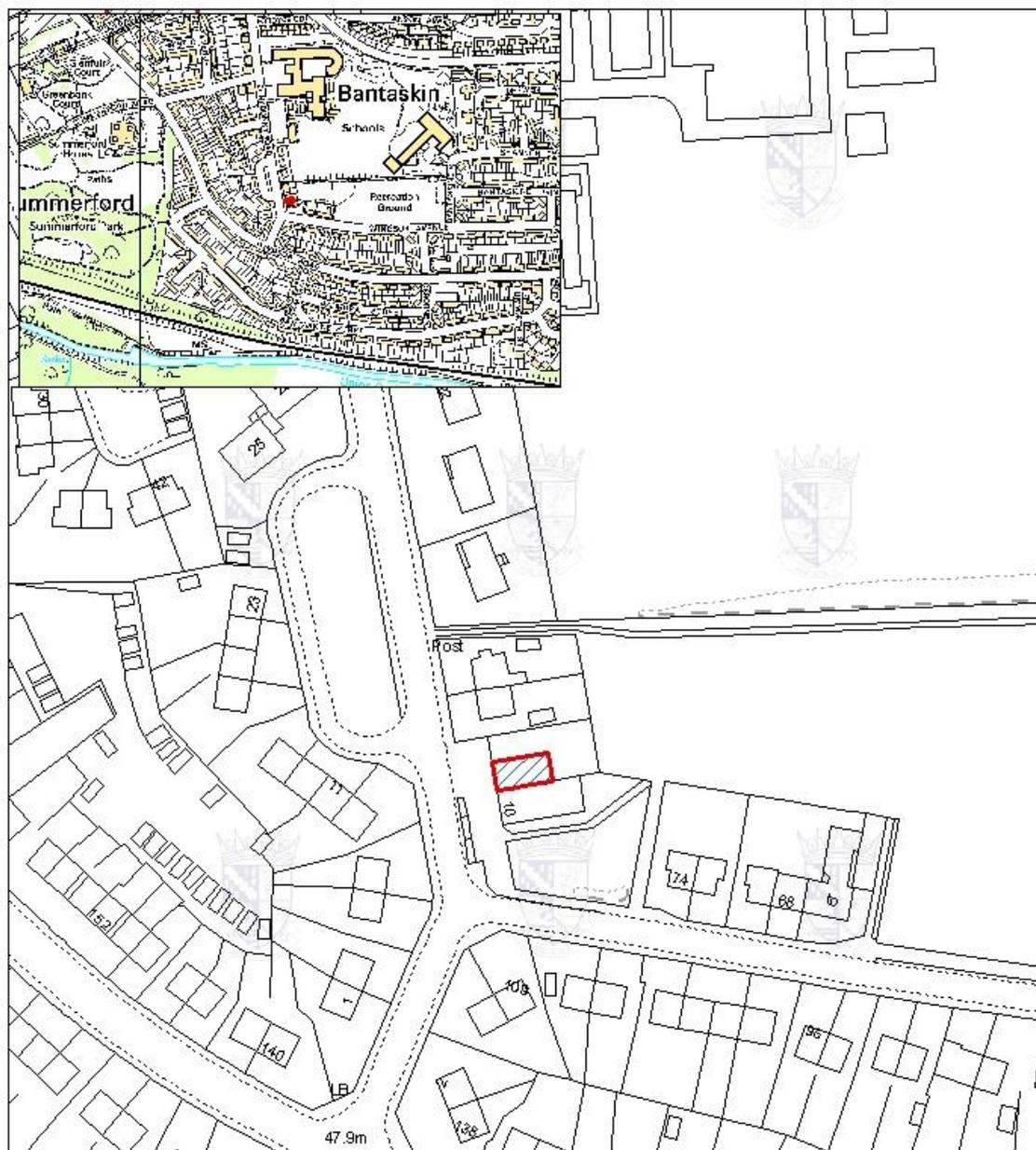
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Planning Committee

Planning Application Location Plan P/09/0740/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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