

**FALKIRK COUNCIL**

**Subject:** CHANGE OF USE FROM CLASS 1 (SHOP) TO HOT FOOD TAKE-AWAY (SUI-GENERIS) AT 52 HIGH STATION ROAD, FALKIRK FK1 5QX FOR MR & MRS IJAZ SARDAR - P/13/0689/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 26 March 2014

**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

**CONTINUED REPORT FOLLOWING PLANNING COMMITTEE**

1. Members will recall that this application was originally considered at the meeting of the Planning Committee on 29 January 2014 (copy of previous report appended - appendix 2), when it was agreed to continue the application for a site visit. This visit took place on 10 February 2014. The application was then considered at the meeting of the Planning Committee on 26 February 2014 (copy of previous update report appended- appendix 1), when it was agreed to continue the application to allow for the details of the planning history of the neighbouring property (54 High Station Road, Falkirk) to be presented to the Planning Committee.
2. The most recent site history for the neighbouring unit of 54 High Station Road is listed below:-
  - F/2005/0202 - detail – granted - 13 July 2005 - alterations and extension to shop and erection of garage;
  - 06/0714/FUL - detail – granted - 6 September 2006 - change of use from shop to flatted dwellinghouse;
  - P/07/0119/FUL - detail – granted - 6 March 2007 - change of use from shop (Class 1) to cafe (Class 3);
  - P/09/0597/FUL - detail – granted - 21 January 2010 - change of use from cafe to hot-food takeaway;

- P/10/0284/FUL - detail – granted - 18 August 2010 - erection of 1.8 metre high fence to rear (retrospective);
  - P/10/0618/ADV - advertisement consent granted - 1 November 2010 - installation of internally illuminated advertisement.
3. From this history, it will be seen that a planning application (P/09/0597/FUL) was submitted for the neighbouring commercial unit and granted permission on 21 January 2010 for a change of use from a café (Class 3) to hot food takeaway (Sui-Generis). Although not currently trading, the use was implemented and therefore the authorised use, in planning terms, for the neighbouring unit is a hot food takeaway (Sui-Generis).
  4. A copy of the relevant Report of Handling is attached (appendix 3). During the assessment of application P/09/0597/FUL the Roads Development Unit and the Environmental Protection Unit were consulted and raised no objection. In deciding not to raise an objection on road safety grounds, it was considered by the Roads Development Unit that the traffic generated by a café would not be dramatically different to that generated by a hot food takeaway. Therefore, as planning application P/09/0597/FUL was granted and the use implemented, there are now two existing hot food takeaway premises in close proximity to the current application site. By granting permission to the current proposal, this would add a further hot food takeaway that could generate further on-street parking at an already busy area of the road network. It is acknowledged that there are a limited number of on-street parking spaces at this location for the use of businesses and residents. It is considered by the Roads Development Unit that an additional hot food takeaway would exacerbate parking problems at a time of day when residents demand for the on-street parking spaces would be at its peak.
  5. No further matters have arisen with regard to the above mentioned planning history, which would amend the original recommendation to refuse planning permission.

**6. RECOMMENDATION**

**6.1 It is therefore recommended that Committee refuse planning permission for the following reason:-**

- 1. The proposed development does not accord with the terms of Policy EP9 (Food and Drink) of the Falkirk Council Local Plan and Policy TC04 (Food and Drink) of the Falkirk Local Development Plan (Proposed Plan April 2013). It is considered that the hot food takeaway would have an adverse impact on adjacent residential properties and the surrounding area generally, as parking, access and traffic generation requirements have not been satisfied, and the proposed use would therefore not be in the interests of road safety.**

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**Director of Development Services**

**Date: 14 March 2014**

**LIST OF BACKGROUND PAPERS**

1. Falkirk Council Local Plan.
2. Falkirk Local Development Plan (Proposed Plan April 2013).
3. Letter of objection received from Miss Louise Bell, 44 High Station Road, Falkirk, FK1 5QX on 7 November 2013.
4. Letter of objection received from Mr Gary Grugen, 6 Cauldhame Street, Falkirk FK2 7GP on 19 November 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 FROM CLASS 1 (SHOP) TO HOT FOOD TAKE-AWAY (SUI-GENERIS) AT 52 HIGH STATION ROAD, FALKIRK FK1 5QX FOR MR & MRS IJAZ SARDAR - P/13/0689/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 26 February 2014

**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 29 January 2014 (copy of previous report appended), when it was agreed to continue the application for a site visit. This visit took place on 10 February 2014.
2. The case officer summarised the proposed development to the Planning Committee and referred to the salient points of assessment as set out in the Committee report.
3. The applicant's representative spoke in support of the proposal, stating that the current use of the unit had existed for around 50 years. It was also intimated that they were not aware of any issues with the current business in relation to parking, and that the unit in its current use, could offer cold and limited hot foods. A similar example cited was Greggs the bakers operation. It was also noted that the technical issues of air extraction required for such a business could be resolved. Although the Roads Unit could not support such a proposed use, it was acknowledged that the existing retail use can operate without the need for dedicated or off street parking provision.
4. The applicant also spoke in support of the proposal, stating that new local routes such as Lionthorn Road had resulted in a reduction in traffic flow on High Station Road, and as a result had impacted adversely on sales. It was noted that the business had been in operation with the current owners for 13 years, operating from 4:30am to 9.00pm, but the current product / sales were now not sufficient to support the viability of the business. As such, they wished to diversify the business and add hot food sales in addition to the current operation to ensure that their business remains viable.

5. An owner of one of the adjacent flatted dwellings spoke in objection to the proposed hot food takeaway use. It was noted to the Planning Committee that there were already two units adjacent to the application site which were hot food takeaways. It was also highlighted that the parking was extremely limited, and the surrounding road had double yellow line restrictions. Parking was noted as an issue at the site, both for persons trying to use the commercial units and for residents of the flatted dwellings. It was also stated that the external areas were common ground, and therefore the siting of bin storage could be an issue. It was finally noted that there are also noise concerns associated with a hot food takeaway in relation to extraction fans and hours of operation. It was also raised that the installation of an extraction fan on the common wall could raise legal matters of a civil nature.
6. Members of the Planning Committee sought clarification in relation to the opening hours of the proposed food takeaway, and what would be allowed without a late hour's license. It has since been clarified that the business could operate between 05.00hrs and 23.00hrs, without the need for a late hours catering license. However, the area that the business premise is within is classed for such licenses as residential, and as such, the terminal hour of operation would generally be 12:30hrs, if a license were to be granted. Clarification was also sought at the site meeting in relation to the rubbish bins, and the current location for the commercial bins and where they would be located. The applicant confirmed that the current rubbish for the business was stored internally, and then taken directly to the refuse collection plant. The applicant indicated the location of ground at the property that could be used for external rubbish bins if required. Members of the Planning Committee also noted that the parking provision to the front of the site appeared limited, and sought clarification from the Roads Officer present in respect of parking provision and road safety. The Planning Committee also sought clarification on the issue of noise, and noted that information was outstanding in relation to the proposed extraction system, but this could be resolved by the imposition of a planning condition.
7. The site meeting was also attended by Depute Provost John Patrick as a Local Member who wished to highlight that the extraction system could create amenity related issues for neighbouring property owners, that parking was a problem on the street as a whole, both for persons using the businesses and the residents and waste provision from the business proposed was a concern.
8. No matters were raised which would amend the original recommendation to refuse planning permission.

**9. RECOMMENDATION**

**9.1 It is therefore recommended that Committee refuse planning permission for the following reason:-**

- 1. The proposed development does not accord with the terms of Policy EP9 (Food and Drink) of the Falkirk Council Local Plan and Policy TC04 (Food and Drink) of the Falkirk Local Development Plan (Proposed Plan April 2013). It is considered that the hot food takeaway would have an adverse impact on adjacent residential properties and the surrounding area generally, as parking, access and traffic generation requirements have not been satisfied, and the proposed use would therefore not be in the interests of road safety.**

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**pp Director of Development Services**

**Date: 17 February 2014**

**LIST OF BACKGROUND PAPERS**

1. Falkirk Council Local Plan.
2. Falkirk Local Development Plan (Proposed Plan April 2013).
3. Letter of objection received from Miss Louise Bell, 44 High Station Road, Falkirk, FK1 5QX on 7 November 2013.
4. Letter of objection received from Mr Gary Grugen, 6 Cauldhame Street, Falkirk FK2 7GP on 19 November 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 FROM CLASS 1 (SHOP) TO HOT FOOD TAKE-AWAY (SUI-GENERIS) AT 52 HIGH STATION ROAD, FALKIRK FK1 5QX FOR MR & MRS IJAZ SARDAR - P/13/0689/FUL

**Meeting:** PLANNING COMMITTEE

**Date:** 29 January 2014

**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 an existing small store which is operated as a newsagent (Class 1 shop), located adjacent to several other small retail/business units and surrounded by mainly residential properties. The shop fronts onto the B8028 High Station Road, which is a busy commuter route in and out of Falkirk Town Centre, as well as between the Town Centre and Falkirk High railway station. There are several on-street parking bays to the front of the shop, with double yellow line parking restrictions on the remainder of the road on either side of the parking area. It is being proposed within the current application to convert the property from Class 1 shop to use as a Hot Food Takeaway (Sui-Generis).

**2. REASON FOR COMMITTEE CONSIDERATION**

2.1 The application was called in by Councillor Colin Chalmers.

**3. SITE HISTORY**

3.1 P/13/0104/FUL - Application Withdrawn - 29 April 2013 - Change of Use From Class 1 (Shop) to Hot Food Take-Away (Sui-Generis)

#### **4. CONSULTATIONS**

- 4.1 The Council's Roads Development Unit does not consider a hot food shop favourably at this location. There is no off-street parking, and the current on-street parking is limited. There are two existing hot food takeaways in the immediate vicinity, and the road is double yellow lined at either side of the limited on-street parking area. The road itself is the B8028, which is a busy commuter route in and out of Falkirk Town Centre. It is the view of the Roads Development Unit that an additional hot food takeaway at the location would add to the road safety concerns for the overall location and would not be favoured.
- 4.2 The Council's Environmental Protection Unit has stated that due to the nature of the business and the close proximity of neighbouring properties, further information is required from the applicant with regard to odour and noise control in order to provide a detailed response to the proposal. The information should include a detailed specification of:
1. The cooking odour extraction system, including its proposed exit point on the external facade of the property;
  2. Measures to control odour emissions; and
  3. Measures employed to control noise emissions from any extraction or ventilation systems and noise output from fan.
- 4.3 The applicant/agent has submitted details of the proposed canopy extract ventilation system, but this is not to the detailed level required by the Environmental Protection Unit to allow full comments. It is likely that a suitable system could be put in-place, but this would have to be demonstrated prior to any works commencing on-site if the application were approved.

#### **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 2 contributors submitted objection letters to the Council. The salient issues are summarised below:
- The same type of application was recently submitted and rejected for the premises.
  - Do not want the smell and waste of a hot food takeaway next door to flatted dwelling.
  - The most serious issue currently at this section of the road is parking. The unit is located at a busy point within the roadway, adjacent to a bend and near to a busy junction. There is nowhere for cars to park to use the proposed hot food takeaway, as parking is already very limited.
  - Noise - would soundproofing take place to ensure no issue with the adjacent flat?

- Smell would be a concern, and no agreement would be given to the venting being installed in the common wall.
- There is no space for bin storage, as this is currently being proposed in a common area, which has not been agreed with the relevant owners.
- No need for another hot food takeaway, as there is already one adjacent and within a mainly residential area.

## 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 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.3 The proposed use is located within a small grouping of commercial properties, with flatted dwellings above and mainly residential properties surrounding the site. As there are adjacent residential properties, the Environmental Protection Unit has requested further detailed information in relation to odour and noise control, as the information currently submitted is insufficient to provide a detailed response. Therefore, it is not possible to fully assess if there would be any adverse impact on the amenity of the adjacent residential properties in relation to noise, odours and general disturbance. It has not been noted by the Environmental Protection Unit that litter would be a concern at this location.

7a.4 In relation to parking, access and traffic generation, the Roads Development Unit would not favour the proposal, as the current on-street parking provision is limited. On either side of this, double yellow line parking restrictions apply, and the road is a busy commuter route in and out of Falkirk Town Centre and to Falkirk High station. It has also been noted that there are already two existing hot food takeaways close by. The Roads Development Unit is concerned that the addition of another such business would cause additional on-street parking at an already busy area of the road network and add to overall road safety concerns at this location. There are currently no other options to provide additional on-street or off-street parking for potential customers. It is therefore considered that the proposal does not accord with Policy EP9.

## **7b Material Considerations**

7b.1 The material considerations to be assessed are Falkirk Local Development Plan (Proposed Plan) and assessment of public representations.

### ***Falkirk Local Development Plan (Proposed Plan)***

7b.2 The Falkirk Local Development Plan (Proposed Plan April 2013) (FLDP) 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.3 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.4 The relevant policy contained within the Falkirk Local Development Plan (Proposed Plan April 2013) is considered to highlight the same issues as those within the current adopted plan. There are no material considerations within the policy which would cause the proposal to be assessed in a different manner and/or justify an approval of planning permission. It is therefore considered that the proposal does not accord with Policy TC04.

7b.5 Accordingly, the proposal does not accord with the Development Plan.

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

7b.6 A previous application for the unit for a change of use to a hot food takeaway was withdrawn and no decision was therefore made by the planning authority.

- 7b.7 The Environmental Protection Unit does not have a concern with predicted waste from the site. However, further details in relation to odour control would be required to allow a detailed assessment of the site and ensure there would be no issue in relation to neighbouring dwellings.
- 7b.8 The Roads Development Unit has highlighted that there is an issue with on-street parking at this location, and that a further hot food takeaway with associated customer parking could potentially add to road safety concerns.
- 7b.9 The Environmental Protection Unit has stated that further information would be required to fully assess the noise issue in relation to cooking equipment. The noise levels would have to be controlled and meet the relevant criteria to be allowed to be installed and operated at the premises. This would ensure no noise nuisance to existing neighbouring dwellings.
- 7b.10 As with the above, the Environmental Protection Unit would require further details in relation to the equipment to be installed, to ensure that odours are adequately controlled and do not affect the amenity of adjacent dwellings. In relation to issues with common walls, this would be a legal matter between owners and not a material planning consideration.
- 7b.11 In relation to the bin storage, it has been shown that there is adequate space and the Environmental Protection Unit has not highlighted waste rubbish as an issue. If there are issues in relation to the ownership of the ground, this would be a legal matter between owners, and not a material planning consideration.
- 7b.12 There are no restrictions as to what applications can be submitted, and within this specific area, no policies which would restrict the use of hot food takeaways. Therefore, such a use will be fully assessed on the current policies and relevant material considerations specific to the proposal.

## **7c Conclusion**

- 7c.1 It is considered that the proposal is not acceptable development, as it is not in accordance with Policy EP9 of the Falkirk Council Local Plan and Policy TC04 of the Falkirk Local Development Plan (Proposed Plan April 2013).

**8. RECOMMENDATION**

**8.1 It is therefore recommended that Committee refuse planning permission for the following reason:-**

- 1. The proposed development does not accord with the terms of Policy EP9 (Food and Drink) of the Falkirk Council Local Plan and Policy TC04 (Food and Drink) of the Falkirk Local Development Plan (Proposed Plan April 2013). It is considered that the hot food takeaway would have an adverse impact on adjacent residential properties and the surrounding area generally, as parking, access and traffic generation requirements have not been satisfied, and the proposed use would therefore not be in the interests of road safety.**

**Pp .....**

**Director of Development Services**

**Date: 17 January 2014**

**LIST OF BACKGROUND PAPERS**

1. Falkirk Council Local Plan
2. Falkirk Local Development Plan (Proposed Plan April 2013)
3. Letter of objection received from Miss Louise Bell, 44 High Station Road, Falkirk, FK1 5QX on 7 November 2013.
4. Letter of objection received from Mr Gary Grugen, 6 Cauldhame Street, Falkirk FK2 7GP on 19 November 2013.

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

**PLANNING APPLICATION DETERMINED BY DIRECTOR OF DEVELOPMENT SERVICES UNDER DELEGATED POWERS – REPORT OF HANDLING**

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**PROPOSAL** : Change of Use from Cafe to Hot-Food Takeaway  
**LOCATION** : 54 High Station Road, Falkirk, FK1 5QX  
**APPLICANT** : Mr Santok Sangray  
**APPN. NO.** : P/09/0597/FUL  
**REGISTRATION DATE** : 28 August 2009

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

The existing property is a vacant shop unit located on High Station Road, Falkirk. The existing unit is currently vacant, but was previously used as a café. It is proposed to change the use of the property from Class 3 (Food and Drink) to a sui generis use of the property for the sale of hot food to be taken away. The property is bounded by a shop unit to the east, residential properties to the north and west and open space to the south. There is a flatted dwelling above the existing shop unit.

**2. SITE HISTORY**

Planning permission (P/07/0119/FUL) was granted for a change of use from shop (Class 1) to café (Class 3) on the 6th March 2007.

Planning permission (06/0714/FUL) was granted for a change of use from a shop to a flatted dwellinghouse on the 6th September 2006.

Planning permission (F/2005/0202) was granted for alterations and extension to existing shop and erection of garage on the 13th July 2005.

**3. CONSULTATIONS**

The following responses to consultation were received:

Roads Development Unit

The Roads Development Unit stated that the premises are located outwith the town centre. There are parking restrictions in place that allow vehicles to use the local shops. Therefore, there are no roads conditions to be attached to any consent to be granted.

Environmental Protection Unit

The issues raised will be discussed in detail later in this report.

The local Community Council did not comment.

#### **4. PUBLIC REPRESENTATION**

In the course of the application, 13 contributor(s) submitted letter(s) to the Council. The salient issues are summarised below.

- would not like to live above a hot-food takeaway
- display of illuminated advertisements would act as distraction
- odour nuisance
- congregation of people during unsociable hours
- noise pollution
- abuse of parking spaces to rear of proposed takeaway
- harder to sell properties if a takeaway is located below
- inaccuracies in application form - there are no parking spaces afforded to the takeaway, the applicant would need to create his own, applicant does not own all of the neighbouring land, neighbour will not allow flue to be attached to his property and will not allow illuminated signage to be attached to any part of his property.
- detrimental to the character of the surrounding area
- properties in the surrounding area selling food also - will lead to a reduction in business
- residential amenity impacts
- parking and drainage concerns
- unsightly illuminated signage proposed.

#### **5. THE DEVELOPMENT PLAN**

The proposed development was assessed against the undernoted Development Plan(s):

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

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

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

The relevant policies against which assessment was made are:

FAL 7.8 Food and Drink Outlets

#### **5A. MATERIAL CONSIDERATIONS**

Falkirk Council Local Plan Finalised Draft (Deposit Version)

Responses to Consultation

Assessment of Public Representations

## **6. PLANNING ASSESSMENT**

### **The Development Plan**

There are no relevant policies in the Falkirk Council Structure Plan.

The relevant policy in the Falkirk Local Plan is Policy FAL 7.8 – Food and Drink Outlets.

The proposed hot food takeaway will not be introducing a new type of use in the area. High Station Road is a main access route into the town centre and contains a mixture of uses, including an existing hot food takeaway occupying a similar ground floor location. It is not considered that the current proposal would have any major adverse impact on the amenity of the area or adjacent properties. Steps have been taken to reduce any possible nuisance/odour impacts on the properties in the surrounding area. The Environmental Protection Unit has no objections to the proposal and has requested conditions to ensure that noise and odour issues will be adequately addressed. An informative has also been added to the planning permission stating that if any complaints are received by the Environmental Protection Unit, then they will be appropriately investigated under Environmental Health legislation. It is also considered that the proposal will not create significant additional disturbance, noise or litter, as the surrounding area has similar existing uses. The proposal has also been assessed to be satisfactory in relation to parking, access and traffic generation. It is therefore considered that the application accords with Policy FAL 7.8 of the Falkirk Local Plan.

### **Falkirk Council Local Plan Finalised Draft (Deposit Version)**

The policy of the emerging Falkirk Council Local Plan relevant to the proposed development is Policy EP9 (Food and Drink). Policy EP9 supports the use of hot-food takeaways where there are other neighbourhood shops, provided that it can be demonstrated that there would not be any adverse impact on the amenity of the surrounding area and parking and access requirements are satisfied.

In this instance, the proposed takeaway would be located in an existing Class 3 unit. There is a convenience shop located next door and a public house and second takeaway outlet to the north of the site. The area is comprised of a mixture of residential and retail uses. Measures have been taken by the applicant to reduce the potential impact of the hot food takeaway on neighbouring properties. A vapour barrier will be positioned below the existing ceiling to ensure that cooking odours do not permeate into the property above, and any fan shall be attached to the wall with acoustic fittings to prevent noise or vibration transmitting through the wall.

The Roads Development Unit were consulted on the application and stated that there are already parking restrictions in place that allow vehicles to use the local shops. Therefore, the Roads Department has no objections and no conditions were requested to any grant of planning permission.

Accordingly, it is considered that the proposal accord with Policy EP9 and the emerging local plan.

### **Responses to Consultation**

The Environmental Protection Unit initially raised concerns about the nature of the business and the close proximity to adjacent properties. Further information was requested from the applicant in relation to noise and odour control. This information has now been provided and after discussions with the applicant and the Environmental Protection Unit, planning conditions were agreed to control potential odour and noise nuisances.

Informatives have also been requested stating that any complaints received about noise or odours would be investigated by the Environmental Protection Unit if the claims were deemed valid. An informative has also been added in relation to hours of work.

### **Assessment of Public Representations**

The desire not to live above a hot-food takeaway is not considered to be a material planning consideration.

The display of any proposed illuminated advertisements would require a further application for advertisement consent.

The applicant has undertaken measures to ensure that potential odour problems are controlled. A condition has been added to the planning consent to prevent odours permeating to the upstairs property. If any complaints are received then they will be investigated by the Environmental Protection Unit.

The congregation of people at unsociable hours could occur within the opening hours of an existing approved use.

There is already a takeaway and public house in close proximity to the proposed takeaway. It is considered that any increase in noise pollution would not justify the refusal of planning permission in the context of approved existing uses.

The use of parking spaces to the rear of the property is a legal matter, not a material planning consideration. Acceptable parking arrangements have been demonstrated.

The fact that it may be harder to sell properties which are located below hot-food takeaways is not considered to be a material planning consideration.

The inaccuracies pointed out on the application form have been noted. However, the issues raised are legal matters and not material planning consideration. The applicants agent has confirmed that all the land involved is in the ownership of his client.

The fact that properties in the surrounding area sell food is not considered to be a material planning consideration.

Drainage arrangements are to remain unchanged from those for the existing café use.

There were no issues raised though the neighbour notification process which would warrant refusal of planning permission.

## **7. CONCLUSION**

It is considered that the proposal is acceptable development, is in accordance with Policy FAL 7.8 of the Falkirk Council Local Plan and Policy EP9 of the Falkirk Council Local Plan Finalised Draft (Deposit Version). There are no material planning considerations which would justify a refusal of planning permission.

## **8. RECOMMENDATION**

Grant Planning Permission

**Permission should be subject to the following condition(s):-**

1. The development to which this permission relates must be begun within three years of the date of this permission.
2. Prior to the approved use being open to the public, detailed specifications for an internal vapour barrier and mechanical odour extraction equipment shall be submitted to the Planning Authority. For the avoidance of doubt, the approved use shall not open to the public until written approval of these details has been given and the approved vapour barrier and odour extraction equipment has been installed.

Reason(s):

1. To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. To ensure that the occupants of adjacent premises are protected against excessive noise and odour intrusion.

Informatives:

1. For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 - 04.
2. If complaints are received regarding noise or odour nuisances from the approved use, 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.
3. The builder shall ensure that noisy work which is audible at the site boundary shall ONLY be conducted between the following hours:

Monday to Friday	08:00 - 18:00 Hours
Saturday	09:00 - 17:00 Hours
Sunday / Bank Holidays	10:00 - 16:00 Hours

Deviation from these hours of work is not permitted unless in emergency circumstances and with the prior approval of the Environmental Health Manager.

4. A separate application for advertisement consent will be required. Details of any proposed advertisements shall be provided to the Planning Authority for consideration and approval before the use commences.

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**Director of Development Services**

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**Date**

**Contact Officer : Gavin Clark  
(Assistant Planning Officer) 01324 504704**

