

FALKIRK COUNCIL

Subject: **CHANGE OF USE OF SHOP TO CAFE, SHOP AND HOT FOOD TAKEAWAY AT 3 PRETORIA PLACE, STATION ROAD, BRIGHTONS FOR GIANNINO'S RESTAURANTS LTD - P/09/0897/FUL**

Meeting: **PLANNING COMMITTEE**

Date: **21 April 2010**

Author: **DIRECTOR OF DEVELOPMENT SERVICES**

Local Member: **Councillor Steven Jackson
Councillor Malcolm Nicol
Councillor Alan Nimmo**

Community Council: **Brightons**

Case Officer: **Kevin Brown (Planning Officer) ext. 4701**

UPDATE REPORT FOLLOWING SITE VISIT

1. This application was initially considered by the Planning Committee on 24 March 2010 (copy of original report appended) at which members agreed to continue the application in order to allow a visit to the application site. The site visit took place on 15 April 2010.
2. The case officer highlighted the main changes between this planning application and the previous planning application P/08/0189/FUL which was refused by the then Regulatory Committee on 3 December 2008 with a subsequent appeal to Scottish Ministers being dismissed on 2 July 2009. The Committee were shown the newly proposed parking area and buildings which are to be demolished to accommodate this parking area. The revised positioning of the proposed extraction flue on the southern elevation was viewed from first floor level to the rear of 1A Pretoria Place and the elected Members present also visited the courtyard area to the north of the application site to view the window openings that would be blocked up and to assess the potential impact of the development on residential properties in this area.
3. The applicants' agent addressed Committee to outline the operational intentions of his client and re-iterated that the proposed use of the premises would be primarily for a Bistro style café with much of its business being focused during the day. It was expressed that, should Committee feel it appropriate, the applicants would be happy to have opening hours restricted by way of condition to no later than 10pm and, similarly, the applicants are happy for any take-away element to be restricted to no later than 9pm. In addition, the applicants' agent stated that they would be prepared to investigate further odour suppression techniques which could remove the need for an external flue.

4. A number of local residents took the opportunity to address the Committee and expand on their concerns which were set out in the appended 24 March Committee Report. The focus of these concerns related primarily to parking, access rights, noise and odour and general residential amenity concerns.
5. Councillor Jackson reiterated a number of the concerns raised by local residents in a letter read out by the Convener in Councillor Jackson's absence.
6. Members of the Committee asked for clarification on matters relating to access rights and car parking appraisals in the area. Whilst the applicants and the objectors disagree about access rights to the car park area, access rights are not a material planning consideration and this issue cannot therefore be resolved through the planning application process. At the time of writing this report an up-date on any current car parking appraisals in the wider area was not available.

7. RECOMMENDATION

7.1 Taking into consideration the above points, it is recommended that the application be approved subject to the following conditions:-

- (1) The development to which this permission relates must be begun within three years of the date of this permission.

Reason(s):

- (1) To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.

Informative(s):

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 to 06 inclusive.
- (2) In the event that unexpected contamination is encountered following the commencement of development, all work on the affected part of the site shall cease. The developer shall notify the Planning Authority immediately, carry out a contaminated land assessment and undertake any necessary remediation works. Development shall not recommence without the prior written approval of the Planning Authority.

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Director of Development Services

Date: 20 April 2010

LIST OF BACKGROUND PAPERS

1. Polmont Local Plan
2. Falkirk Council Local Plan Finalised Draft (Deposit Version)
3. Letter of objection received from Mr Richard Poodle, Pretoria Place, Station Road, Brightons, FK2 0UF on 18 December 2009
4. Letter of objection received from Mr Richard Poodle, Pretoria Place, Station Road, Brightons, FK2 0UF on 18 December 2009 (further letter)
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9. Letter of objection received from A & J C Allan & Co, North Bank Chambers, 34/36 Newmarket Street, Falkirk, FK1 1JG on 11 January 2010
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11. Letter of objection received from Ms Mandy Paterson, 1a Pretoria Place, Station Road, Brightons, FK2 0UF on 11 January 2010
12. Letter of objection received from L Sandy Monfries, Pretoria Place, Station Road, Brightons, Falkirk on 6 January 2010
13. Letter of objection received from Mr Gordon Honeyman, on 8 January 2010
14. Letter of support received from June Homer, 25 Standrigg Gardens, Brightons, Falkirk FK2 0GJ on 12 March 2010.
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17. Letter to support received from Mr and Mrs C Arnold, 3a Poolewe Drive, Redding, Falkirk, FK2 9XA on 12 March 2010.
18. Letter to support received from Mr and Mrs D Gardner, 5 Glen Lyon Court, Polmont, FK2 0PQ on 12 March 2010.

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

FALKIRK COUNCIL

Subject: **CHANGE OF USE OF SHOP TO CAFE, SHOP AND HOT FOOD TAKEAWAY AT 3 PRETORIA PLACE, STATION ROAD, BRIGHTONS FOR GIANNINO'S RESTAURANTS LTD - P/09/0897/FUL**

Meeting: **PLANNING COMMITTEE**

Date: **24 March 2010**

Author: **DIRECTOR OF DEVELOPMENT SERVICES**

Local Member: **Councillor Steven Jackson
Councillor Malcolm Nicol
Councillor Alan Nimmo**

Community Council: **Brightons**

Case Officer: **Kevin Brown (Planning Officer) ext. 4701**

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This detailed application proposes the change of use of an existing vacant shop unit to a café and delicatessen with an element of hot food takeaway. The proposed work includes the demolition of a previous rear extension and storage area, formation of a small car parking area and installation of a ventilation stack on the rear of the property facing south onto this parking area. The vacant unit was previously occupied as a wine shop.
- 1.2 The application site is located on the ground floor of an existing stone built building two storeys in height at 3 Pretoria Place, just to the south of Polmont railway station. The building is occupied by retail units on the ground floor and residential units above. The surrounding area comprises a mixture of residential and commercial units within close proximity to the application site.

2. REASON FOR CONSIDERATION AT COMMITTEE

- 2.1 This is a resubmission of a similar application, P/08/0189/FUL, previously refused planning permission by the Regulatory Committee on 3 December 2008.

3. SITE HISTORY

- 3.1 Application P/08/0189/FUL was refused planning permission on 3 December 2008. This decision was appealed and the appeal dismissed on 2 July 2009 for reasons relating to residential amenity.

4. CONSULTATIONS

- 4.1 The Roads Development Unit has assessed the application in terms of road safety and parking requirements and has no objections to the proposal.
- 4.2 The Environmental Protection Unit has not objected to the proposal and is satisfied that the details submitted in regard to noise and odour pollution satisfy their requirements.

5. COMMUNITY COUNCIL

- 5.1 The Brightons Community Council has not made comment on the application.

6. PUBLIC REPRESENTATION

- 6.1 Five letters of support have been received and eleven letters of objection have been received following the neighbour notification process. The issues raised can be summarised as follows:

- Noise and odours from the proposed unit may disturb residents in adjacent residential properties. Specific reference has been made to the communal courtyard area to the north of the site.
- Existing parking problems will be exacerbated.
- Litter will increase due to the introduction of a hot food takeaway into the area.
- The proposed ventilation stack would have an unacceptable visual impact.
- Anti social behaviour.
- Rights of access issues.
- Structural and health and safety matters associated with demolition.
- Possible loss of a traditional shop frontage.

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 policies in the Falkirk Council Structure Plan that relate to this development and therefore no strategic issues require to be addressed.

Polmont and District Local Plan

- 7a.2 Policy POL 5.8 '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), and outlets for the sale of hot food for consumption off the premises 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; and*
- (ii) *the proposal is satisfactory in terms of parking, access and traffic generation.'*

- 7a.3 The Environmental Protection Unit has assessed the proposals and is satisfied that the proposals do not represent a nuisance in terms of noise or odour. In the event that any disturbance on these grounds occurs, the Environmental Protection Unit has legislative powers to investigate and rectify this issue.

- 7a.4 The application site is located on a busy thoroughfare close to Polmont railway station. It is not considered that the proposal would exacerbate disturbance or litter problems in the area.

- 7a.5 The Roads Development Unit has assessed the proposals and is satisfied that the proposal would be acceptable in terms of road safety and parking.

- 7a.6 The proposal accords with the terms of Policy POL 5.8 and therefore the provisions of the Development Plan.

7b Material Considerations

- 7b.1 The material planning considerations to be addressed are the Falkirk Council Local Plan Finalised Draft (Deposit Version), the representations received and the planning history of the site.

The Falkirk Council Local Plan Finalised Draft (Deposit Version)

- 7b.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.'*

- 7b.3 Policy EP9 affirms the position of the Polmont Local Plan. The proposal therefore accords with the terms of this policy.
- 7b.4 The proposal is considered to be in accordance with the terms of the Falkirk Council Local Plan Finalised Draft (Deposit Version).

Representations Received

- 7b.5 Measures to mitigate noise and odours from the proposed unit have been assessed by the Environmental Protection Unit and have been found to be satisfactory.
- 7b.6 Parking provision and road safety have been assessed by the Roads Development Unit and no objections have been raised.
- 7b.7 It is not considered that the proposal would bring an increase of litter and anti social behaviour into an area which is already a busy thoroughfare.
- 7b.8 The proposed ventilation stack is not considered to cause an unacceptable visual impact. Its positioning to the rear of the property away from any garden areas and not being attached to any residential properties render this acceptable.
- 7b.9 Access rights disputes are a legal matter and are not controlled by the planning authority; as such, they are not a determining factor in the assessment of this application.
- 7b.10 Method of demolition, possible disturbances during construction work and structural stability issues are not material planning considerations.
- 7b.11 The current application does not propose any changes to the existing shopfront. Any changes to the shopfront or installation of advertisements may require further separate consents to be applied for.

Planning History

- 7b.12 The previous application P/08/0189/FUL was refused by the Regulatory Committee on the grounds that the proposed development would, by virtue of noise generation, be detrimental to the well established amenity of the area and, due to the lack of parking provision, would have an adverse impact on road safety. The subsequent appeal was dismissed on the grounds of disamenity to local residents arising from evening activity and disturbance at the front of the premises and the likelihood of noise, light and activity at the rear of the premises so affecting the amenity of residents' communal courtyard.
- 7b.13 Following the previous refusal and appeal dismissal for this site, the applicants have explored a number of amendments to address the concerns of residents, the Planning Committee and the Appeal Reporter. The main amendments made, which have resulted in this application submission, were to demolish a rear storage area to incorporate three car parking spaces, the blocking up of all windows and openings which face onto the communal courtyard to the north, the relocation of the proposed fire exit and the moving of the proposed flu stack to a less prominent location away from residential properties.

7b.14 It is considered that the above mentioned amendments would result in an improved situation in relation to residential amenity, particularly in reference to noise generation. The communal courtyard to the north would not be affected by any kitchen windows or fire doors opening out onto it and the courtyard would no longer be affected in any way by the proposed extraction system.

7c Conclusion

7c.1 The proposal is considered to be an appropriate form of development in accordance with the terms of the Development Plan. There are no material planning considerations that would warrant a refusal of planning permission in this instance.

8. RECOMMENDATION

8.1 It is recommended that detailed planning permission be granted, 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.

Reason(s):

(1) To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.

Informative(s):

(1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01 to 06 inclusive.

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Director of Development Services

Date: 17 March 2010

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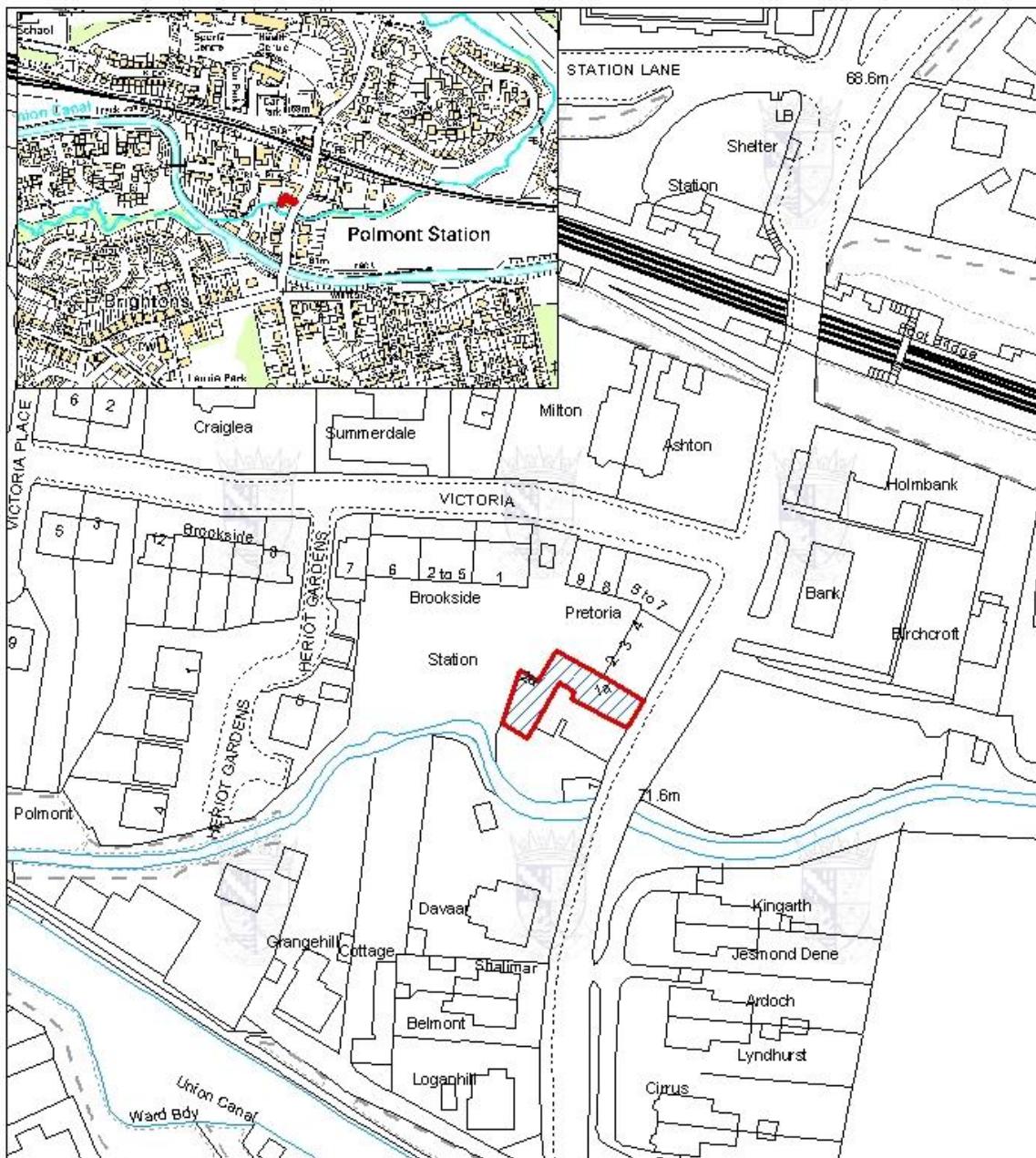
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown (Planning Officer).

Planning Committee

Planning Application Location Plan

P/09/0897/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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