
Report to: Planning Committee

Date of Meeting: 26th May 2016

Subject: Planning Application 15/00212/FULL - Change of Use of Shop Unit to Hot Food Takeaway and Installation of Flue to Rear, Shop, 61 Main Street, Clackmannan, Clackmannanshire

Report by: Keith Johnstone, Principal Planner

1.0 Purpose

- 1.1. The report comprises the Report of Handling on the above application for planning permission. It summarises the proposal, consultation responses, representations against the proposal, key planning policy issues and a recommended decision.
- 1.2. The proposal is for a Local Development, which would normally be determined by Appointed Officers. However, in accordance with the Council's Scheme of Delegation for such applications, this application requires to be determined by Committee following a request from a Local Member.

2.0 Recommendations

- 2.1. It is recommended that this application is APPROVED subject to; the prior conclusion of a Section 75 Obligation as described in 2.2 below; and to the conditions and reasons set out in 2.3 below.

2.2. Summary of Section 75 Obligation

- 2.3 In the event that planning permission is granted for the change of use of No 61, the permission could not be implemented until a Section 75 Obligation was concluded which would require the revocation of the lawful use of the applicant's premises at No 59 Main Street as a hot food takeaway.

2.4 Conditions and Reasons

Conditions

1. The details of the routing and termination point of the flue as submitted by the applicant is **NOT** approved by this permission. Before any works start on site, a specification of the proposed ventilation system, prepared by a suitably qualified and experienced ventilation engineer, shall be submitted to and approved in writing by the Council. The specification shall include details of:

- (a) the ventilation and filtration equipment
- (b) the location of fans, specific mounting points and installation
- (c) the routing, location, termination point in relation to neighbouring buildings and the method of support, of the flue from where it leaves the building to its termination point. The flue should be routed as far as practicably possible to enable the future redevelopment of the property at No 59 Main Street with an upper floor without requiring disruption to the flue once installed while minimising the impact on the amenity of the property at 61A Main Street.
- (d) the efflux velocity of the flue
- (e) confirmation that no cowl will be fitted
- (f) the colour and finish of any external elements of the system.

The ventilation system shall thereafter be installed in accordance with the approved details, before the hot food takeaway is brought into use.

2. Before any works start on site, a report prepared by a suitably qualified and experienced person demonstrating how noise and vibration from any fixed plant, machinery and equipment within or on the building shall be mitigated to avoid nuisance to neighbours and so that the noise shall not exceed a noise rating curve NR20 at any of the standard octave bands 31.5Hz to 8Khz when measured within a habitable room of any noise sensitive property shall have been submitted to and approved in writing by the Council.

The plant, machinery and equipment shall be installed and thereafter maintained in accordance with the details approved in the report, unless otherwise agreed in writing by the Council.

3. Before any works start on site, the following details shall have been submitted to and approved in writing by the Council, as planning authority;

- (a) details of any proposals to re-paint the exterior of the shop front or fascia signboard,
- (b) details of the proposed arrangements to store waste materials at the premises prior to collection.

Thereafter, the approved works shall be completed before the hot food shop is brought into use, unless otherwise agreed in writing by the Council.

Reasons for Conditions

1. In the interests of residential amenity and environmental quality, having regard to the relationship of the site to the first floor flat, in order to facilitate the future redevelopment of the adjacent property in the interests of the vitality and viability of the town centre and in the interests of visual amenity and the character of this part of the Clackmannan Conservation Area.

2. To consider these details yet to be submitted, in the interests of residential amenity of neighbouring properties.

3. In the interests of visual amenity, the character of the Clackmannan Conservation Area and environmental quality.

Approved Plans

1. 23072 - Location Plan
2. Site Plan
3. 23072/2 - Existing Floor Plan
4. 23072/3A - Proposed Floor Plan
5. 23072/4A - Existing Rear Elevation

2.5 Reasons for Decision

2.6 Subject to the proposed planning obligation and conditions, the proposal is considered to accord with the relevant provisions of the Clackmannanshire Local Development Plan, including Policies EP15, EP18, EA11, EA23 and SC12.

2.7 Subject to the proposed planning obligation and planning conditions, the concerns raised by the Community Council, individual objectors and the signatories to the petition are not considered to result in any unacceptable impacts on the existing standards of amenity, environmental quality, road safety or town centre vitality which would justify withholding planning permission.

2.8 The proposed development would satisfy the advice from Roads and Transportation and Environmental Health, subject to the proposed conditions.

2.9 There are no other material considerations which would outweigh the development plan position and justify withholding permission.

3.0 Considerations

3.1 Background

3.2 Planning permission is sought to change the use of the vacant former post office shop unit to a hot food takeaway on Main Street, Clackmannan. The application includes the installation of an external flue to ventilate the cooking odours and gases from the kitchen area.

3.3 The original proposal was to route the flue up through the flat roof of the shop and up the north facing elevation of the building at first floor level. The proposal was amended in order to re-align the flue so that it would emerge from the proposed takeaway at ground floor level towards the rear and with 2 changes in alignment, rise above the adjacent premises at No 59 Main Street, to terminate at a height and approximate location similar to the existing flue which is attached to the gable of No 61A which serves the takeaway at No 59. The precise route of the flue near to the gable has still to be agreed so that it could accommodate any future redevelopment of the shop to accommodate a 2 storey development at No 59 but it would be close to that shown on the amended drawing. The applicant owns the hot food shop at No 59. The

planning obligation would require the applicant to agree to the revocation of the lawful use of the shop at No 59 as a hot food takeaway in order to implement the permission. This would effectively mean that only one of the properties would be in use as a hot food takeaway at any one time. There would only be a requirement for one ventilation flue.

3.4 The Council, in consultation with other interested parties, including the applicant, has been examining ways to secure the re-development of the vacant, unsightly or derelict buildings to the west and north of the application site to help regenerate this part of the village centre and Conservation Area and deliver investment in residential and possibly commercial development. The applicant has indicated that he would sell his takeaway building at No 59 to the Council to help secure a more comprehensive re-development but is seeking an alternative premises to relocate the existing takeaway business.

3.5 The proposed opening hours would be 0800 to 2300.

3.6 The premises comprises a vacant ground floor shop unit which was last occupied by the post office. The original 2 storey building has been extended at the rear by a flat roofed extension. The roof of the extension is used as a garden terrace and access to the flat located above the shop and the adjoining hot food shop at No 63.

3.7 **Consultations**

3.8 Roads and Transportation have advised that they have no objection to the proposed change of use on the basis that the site is located within a town centre area where on street parking is common place and parking currently takes place on the north side of Main Street fronting the site.

3.9 Environmental Health raised concern about the original proposed location and design of the external ventilation flue and the potential risk of noise and odour nuisance due to its proximity to and relationship with the rear elevation of the first floor flat. They have commented that the proposed amended design, and the termination point on the west gable of No 61A should address these concerns but would wish to agree in advance the detailed specification. *Comment - subject to the planning obligation and conditions, we are satisfied that the amended proposal would be likely to satisfy the advice from Environmental Health. The planning obligation would address the concerns raised about the potential cumulative environmental impacts on neighbours from the proposed takeaway with the existing takeaways at Nos 59 and 63.*

3.10 Clackmannan Community Council has objected to the application. They endorse the concerns raised by other objectors relating to; potential odour nuisance to neighbours; parking issues; litter; increased anti social behaviour; general disturbance and advise that the development would not accord with the vision for the village set out in the Community Action Plan. *Comment - these issues are discussed in the next Section below.*

3.11 **Representations**

3.12 24 neighbouring proprietors were notified of the application and the application was publicised in the Alloa Advertiser and Edinburgh Gazette as Development in the Conservation Area. In response, 11 objections have been received from the following parties;

- James Norval, Valhalla, Linn Mill, Clackmannan who owns the flat above the shop.

- Alberto Rossi, who owns the hot food shop at 63 Main Street, Clackmannan
- Helen White, 3 Kennet Village, Clackmannan
- Kathryn Clark, 17 Brucefield Crescent, Clackmannan
- Gary Blues, 56 Main Street, Clackmannan
- Mrs L Cairns, 61A Main Street, Clackmannan - this is the occupier of the flat above the shop.
- Monica Wilson, 2 Kirk Brae, Clackmannan
- Graham Roy, 40 Cattlemarket, Clackmannan
- John Scott, 62 Main Street, Clackmannan
- Mr Nicola Del Giudice, 63 Main Street, Clackmannan

3.13 A 320 signature petition against the provision of another hot food shop in Clackmannan was also received from Mr. A Rossi.

3.14 The main issues received in the objections can be summarised as follows;

1. there are already 2 takeaways on either side of the building. There is no need for another takeaway. Rather, the village needs more diversity of shops or a coffee shop. Comment - *the issue of need would not be a material planning consideration. The proposal could have resulted in 3 hot food shops in a row on Main Street. However, the applicant owns the premises at No 59 Main Street and has stated that the proposed shop would not open as a hot food takeaway until the Council had acquired the premises at No 59 from him, thereby enabling the Council to ensure there would be no net increase in the number of hot food shops if the application was to be approved. We are satisfied that a Section 75 planning obligation could be used to prevent the change of use taking place until the cessation of the use of the existing hot food shop at No 59 which is under the control of the applicant. If approved, the Decision Notice would not be issued until the Council was satisfied that a suitable obligation had been concluded. The recommendation in Section 2 above has been drafted accordingly.*

(2) there would be inadequate parking available for the development and it would exacerbate the existing parking problems on Main Street near to the site including parking on footways and blocking access to other properties. Comment - *Roads and Transportation have not objected to the application. Furthermore, the planning obligation would mean that, if approved, the on street parking demand and nature would not significantly change from the existing situation in the locality as the number of hot food shops would not increase. The site is also located on the main commercial street in the village where demand for short term parking would be expected during trading hours. The enforcement of illegal parking is a Police matter. Consequently, it is concluded that there would not be sufficient grounds to withhold permission for these reasons.*

(3) there has been problems with people hanging around the existing takeaways resulting in issues of anti social behaviour and this would exacerbate these impacts. Comment - *the planning obligation would mean any impacts are unlikely to be exacerbated as the number of hot food shops would not increase if permission was granted.*

(4) the impact on the residential amenity of the flat above the shop from; the odour from the ventilation flue; the cumulative impact in addition to the ventilation flues on either gable of the building associated with the existing hot

food shops; the impact on the flue on enjoyment of the roof terrace garden which serves the flat and its visual impact from within and outside the flat; the potential hazard to children; and the potential impact from vibration. Comment - *The flat is located above a vacant shop and hot food shop and within the main commercial street in the village and the general standard of amenity would reflect this mixed use character. The Service agreed that the original proposed ventilation design and location would have had an unacceptable impact on the residential and visual amenity of the occupier of the flat from visual, noise and odour impacts due to; the route up through the flat roof which forms part of the roof terrace garden of the flat; the proximity to the garden area, entrance door and window opening of the flat; and the suitability of the termination point to disperse odours. However, the applicant has submitted an amended design and location for the flue as described in paragraph 3.3 above. Based on this amended design and subject to the proposed planning obligation to prevent an increase in the number of takeaways in close proximity and to the condition requiring the approval of a specification for the amended flue design, it is considered that the above concerns could be satisfactorily addressed or would not result in a significant adverse impact on the existing standard of amenity enjoyed by the residents in the flat. The design and location of the flue would have to be capable of being integrated with the layout and design of any re-development of the property at No 59 and adjacent buildings to help achieve the objectives of Proposal H27 in the Local Development Plan as discussed in paragraph 3.18.*

(5) the odour from the existing 2 hot food shops can impact on neighbouring houses and the development would exacerbate this impact. Comment - *the development as proposed would not exacerbate odour impact as the terms of the planning obligation would mean that the planning authority could ensure that there was not more than 2 hot food shops operating at any one time.*

(6) no information about where waste would be stored. Comment - *the applicant has stated that waste would be stored within the building before being collected. The details of the arrangements could be effectively regulated by a planning condition.*

(7) the drawings do not accurately show the rear elevation of the first floor flat. Comment - *the applicant has since submitted amended drawings which have addressed this point.*

(8) the installation of the flue up through the terrace and onto the building would need the agreement of other owners of the building. Comment - *this would be a legal issue which would have to be resolved between any interested parties. However, the amended proposals would not involve installing the flue through the floor of the roof terrace.*

(9) the drains which serve the building already have problems with flooding and the development would exacerbate this issue. Comment - *the proposal is for a change of use of an existing shop unit and this issue would not provided grounds to withhold permission.*

(10) the Council should be acting to address the vacant and unsightly shop unit to the west of the site rather than allowing this proposal. Comment - *the application has to be determined on its individual planning merits. However, the Council is also actively trying to secure the redevelopment of the vacant buildings to the west and north of the site and incorporate the existing hot food shop premises at No 59 and the vacant unit at No 57 within any scheme*

to maximise the wider benefits to the area. The proposed development would, subject to the proposed planning obligation, therefore contribute to addressing the point raised and help secure the re development of the vacant and unsightly buildings.

3.15 **Planning Assessment**

3.16 The application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The site is located within the town centre area of Clackmannan as defined by the Clackmannanshire LDP. The site is within part of the Clackmannan Conservation Area.

3.17 The most relevant policies in the LDP are considered to be;

- EP15 (Promoting Town Centre Regeneration) - the policy provides support for development which could contribute to town centre regeneration including by; supporting a variety of commercial uses which would enhance the vitality of the town centre; seeking to ensure that new developments contribute to the implementation of town centre strategies and Proposal Sites identified by the LDP. Comment - *as discussed in paragraph 3.18 below, and subject to the proposed obligation, the development would enable the opportunity to sustain an existing town centre business and help secure the land assembly to re development of the vacant and derelict buildings adjacent to the site which would help regenerate the town centre. The policy is considered to lend support to the development.*
- EP18 (Food and Drink) - the policy states that proposals for hot food shops will normally be directed to town centre locations and, in all cases, the applicant must demonstrate that development would satisfy the 3 criteria in the policy. These require that there would be no significant impacts on; residential amenity; road or pedestrian safety; or levels of environmental pollution. Applicants are expected to submit a report in relation to noise or odour impacts, to demonstrate that there would be no adverse environmental impacts on neighbours. Comment - *the premises are in a town centre location. Subject to the conclusion of the proposed planning obligation, which would ensure there would be no net increase in the number of hot food shops in the vicinity of neighbouring residential properties, and the proposed conditions, it is concluded that the amended development would satisfy the requirements of the Policy. The proposed flue would replace the existing flue which is attached to the west gable of the property at No 61/61A. Based on these circumstances, it is concluded that the development would not result an unacceptable impact on the standard of amenity currently enjoyed by neighbours.*
- EA11 (Environmental Quality) – the policy states that where development could negatively impact on the environment it will only be acceptable where the developer has demonstrated that all reasonable measures have been taken to minimise the impacts and any unavoidable impacts can be mitigated. Comment – *having regard to the advice from Environmental Health, the nature of the amended proposals, and evidence from the operation of the existing flue, it is*

considered that the environmental impacts of the development would not exceed that associated with the operation of the existing 2 hot food shops next to the site. The development would not be contrary to this policy.

- EA23 (Conservation Areas) - the policy states that development should contribute to the preservation or enhancement of the Conservation Area. Comment - *the development would bring a vacant premises into use. The external flue would replace one on the building which is already visible from Main Street. The flue may be less prominent if the adjacent property at No 59 is redeveloped. The development is not contrary to the policy.*
- SC12 (Access and Transportation Requirements) – the policy states that development should be safely and conveniently access by a range of travel modes. Comment – *Roads and Transportation have no objections to the proposal. The development would be safely and conveniently accessed. It is considered that the development would not result in any unacceptable increase in risk to road safety and would accord with this policy.*

3.18 The site is adjacent to Proposal Site H27 contained in the LDP which includes the derelict former printworks. H27 is allocated for residential re-development. The Council has been in discussion with the owners of the printworks as well as the owners of the premises at 57 and 59 Main Street in connection with a land assembly scheme to deliver a suitable re development of all of these properties. The applicant owns the shop at No 59. The proposed development would help facilitate the redevelopment of the LDP site and Main Street premises.

3.19 On balance, the proposal is not considered to be contrary to the relevant policy guidance in the LDP.

3.20 **Other Material Considerations**

3.21 There has been an objection from the Community Council as well as 10 objections to the application and a petition containing 320 signatures. The concerns have been discussed in paragraph 3.14 above. However, it is concluded that, subject to the proposed obligation and conditions, these concerns and the weight of opinion expressed in the petition would not provide sufficient grounds to outweigh the Development Plan position and justify withholding permission. The fact that the proposal would not result in an increase in the number of hot food shops currently operating at this location and the scope to satisfactorily mitigate any environmental impacts on neighbours has informed this conclusion.

3.22 The advice from Roads and Environmental Health has been considered in paras 3.9 and 3.10 above. The proposals would accord with their advice.

3.23 The development would bring a vacant commercial town centre property back into use thereby improving the vitality of the town centre. By enabling the existing hot food shop business to vacate their premises to allow its redevelopment as part of a scheme including adjacent buildings, it would also complement the objectives of Proposal H27 of the LDP to redevelop

derelict and underused buildings and land which have a negative impact on the village centre and Clackmannan Conservation Area

- 3.24 The proposed development would not have a negative impact on the existing character or appearance of this part of Clackmannan Conservation Area.
- 3.25 In conclusion, on balance, it is concluded that there would not be other material considerations which would outweigh the Development Plan position and justify withholding permission.

4.0 Sustainability Implications

- 4.1. Subject to the proposed obligation, the development would have a positive impact on the regeneration of the town centre and the enhancement of the character of this part of the Clackmannan Conservation Area.

5.0 Resource Implications

5.1. *Financial Details*

- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

- 5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

5.4. *Staffing*

6.0 Exempt Reports

- 6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box)

- The area has a positive image and attracts people and businesses
- Our communities are more cohesive and inclusive
- People are better skilled, trained and ready for learning and employment
- Our communities are safer
- Vulnerable people and families are supported
- Substance misuse and its effects are reduced
- Health is improving and health inequalities are reducing
- The environment is protected and enhanced for all

The Council is effective, efficient and recognised for excellence

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Location Plan

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

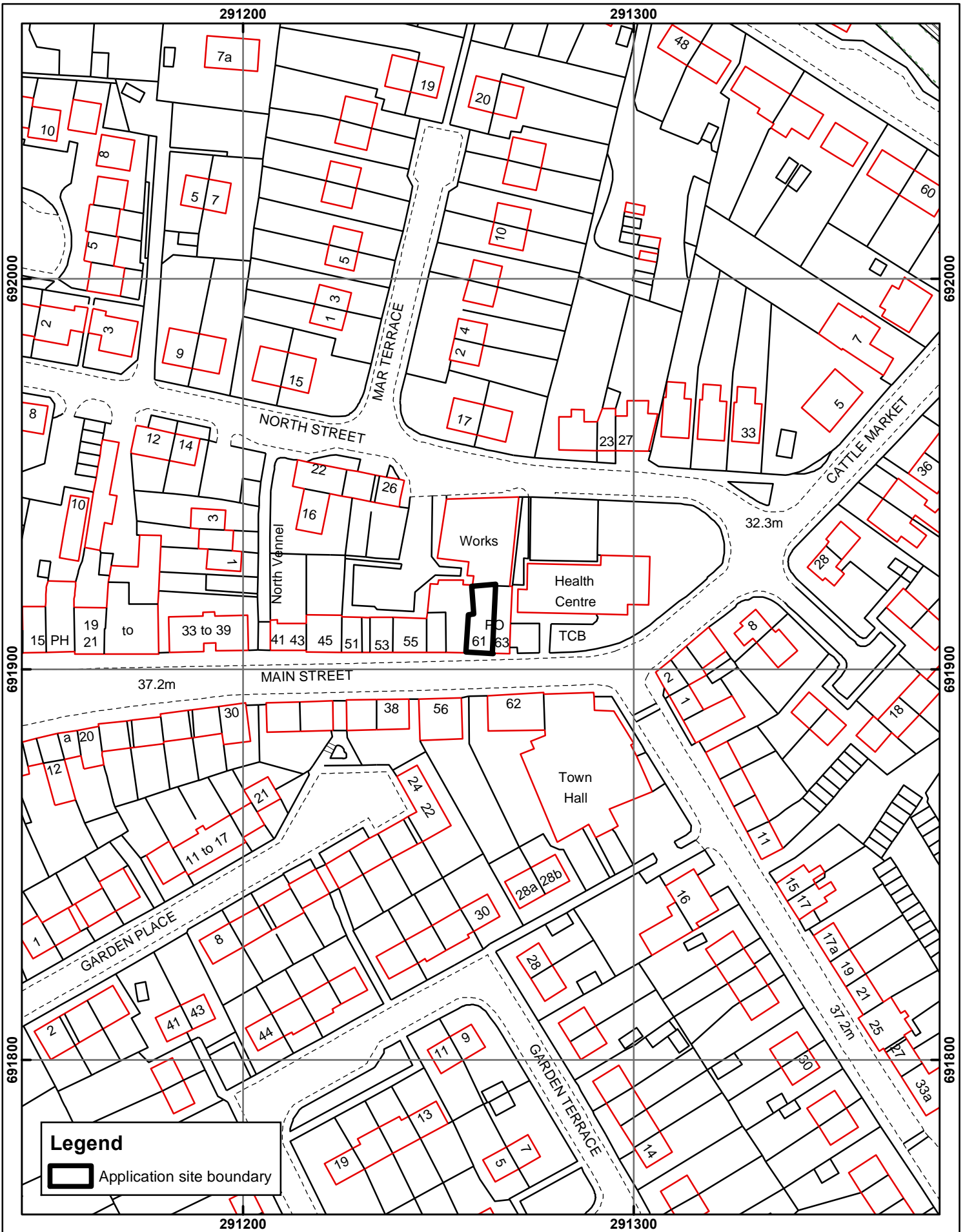
- Clackmannanshire Local Development Plan

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Approved by

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Date:
10-May-2016

15/00212/FULL – Shop, 61 Main Street, Clackmannan
Change of Use of Shop Unit to Hot Food
Takeaway and Installation of Flue to Rear.

Ward: Clackmannanshire East **OS Grid Ref: NS 91 91 NW**

0 10 20 30 40 Meters

Scale: 1:1,250



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