

CLACKMANNANSHIRE COUNCIL

Report to Regulatory Committee of 24th July 2008

Subject: Planning Application - Change Of Use Of Vacant Shop to Cafe And Hot Food Takeaway - Renewal Of Temporary Planning Permission Ref 06/00172/FULL At 133 West Stirling Street, Alva (Ref 08/00173/FULL)

Applicant: Jaspreet Kaur, 52 Queen Street, Alva

Agent: Commercial Connexions, 717 Pollockshaws Road, Glasgow, G41 2AA

Prepared by: Keith Johnstone, Principal Planner

Ward: 2 Clackmannanshire North

1.0 SUMMARY

- 1.1 The report considers an application to renew the temporary planning permission to change the use of a vacant shop to a hot food takeaway and cafe which was granted in August 2006 (Ref 06/00172/FULL) and is due to expire in August this year.
- 1.2 Having regard to the relevant policy guidance in the Development Plan and advice from consultees, and representations from Alva Community Council and other objectors, it is concluded that the planning permission should be renewed on a permanent basis. Since the date of the temporary permission, the applicant has taken ownership of the property above the premises and planning permission has been granted to install a ventilation system.

2.0 RECOMMENDATION

- 2.1. It is recommended that the application is **APPROVED** subject to the following conditions:
1. Before development begins, details of an assessment of the prevention of transmission of noise from the premises to conterminous residential properties shall have been submitted to and approved in writing by the Council. The assessment shall include:

- (a) The potential for transmission of airborne and impact noise through walls, ceilings and floors, where applicable to adjacent properties.
- (b) A specification for the application of acoustic treatment to the rooms to sufficiently attenuate the noise sources where necessary.

Thereafter the approved measures to attenuate noise shall be completed in full prior to the cafe and takeaway being brought into use.

- 2. The cafe and hot food takeaway uses hereby permitted shall only be open for customers between the hours of 0700 - 2300 hours Monday to Sunday unless otherwise approved in advance in writing by the Council, as planning authority.
- 3. Before development begins, details of a litter bin to be installed in close proximity to the premises shall have been submitted to and approved in writing by the Council as planning authority. The litter bin shall be installed in accordance with the approved details prior to the use commencing on site.
- 4. Before development begins, details of the arrangements for storing refuse at the site shall have been submitted to and approved in writing by the Council as planning authority. Thereafter, the site shall be operated in accordance with the approved details.
- 5. The development hereby approved shall proceed in accordance with the details and conditions approved under planning permission granted on 10th January 2008 (Reference 07/00364/FULL).

Reasons

- 1. To minimise the risk of noise nuisance to neighbouring residential properties.
- 2. To ensure the amenity of neighbouring residents is adequately protected.
- 3. In the interests of the amenity of the area.
- 4. To consider these details yet to be submitted.
- 5. In the interests of the residential amenity of neighbours and the visual amenity of the area and to retain effective control over the development.

3.0 BACKGROUND TO THE PROPOSALS

- 3.1. The site comprises a ground floor shop unit on the corner of West Stirling Street and Queen Street, Alva (see attached location plan). The shop has been vacant for over 8 years.
- 3.2. Planning permission was granted in August 2006 (Ref 06/00172/FULL) for a change of use of the shop to a hot food takeaway and cafe. The change of use was granted for a temporary period of 2 years (Condition 1) and is due to expire on 3rd August 2008. The reason for Condition 1 was given as:

"To monitor the effect of these uses on the amenity of adjoining properties and the area as a whole".
- 3.3. The applicant is seeking consent to renew the permission so that the premises can be used as a hot food takeaway and cafe after the 3rd August 2008. The previous permission has not been implemented and the change of use to a hot food takeaway and cafe has not taken place to date.
- 3.4. Since the decision to grant permission in August 2006, the applicant has also received planning permission to delete Condition 4 of the temporary permission which had restricted the cooking or heating of food at the premises by microwave ovens only. This permission was granted on 10th January 2008 (Ref 07/00364/FULL) and it also approved the installation of an external ventilation flue on the rear elevation. The applicant has also taken ownership of the flat above the shop unit which had been in separate ownership from the shop when the application was first approved in August 2006.
- 3.5. There have been a number of other applications relating to the site and its use as a takeaway and/or cafe and these have been listed in Appendix 1 of the Report for information.

4.0 CONSULTATIONS

- 4.1. Environmental Health have no objection to the application. *Comment: Environmental Health is satisfied that the premises could be operated without being likely to create nuisance to adjoining residential properties subject to the applicant complying with the details of the ventilation system approved as part of previous permissions (06/00172/FULL and 07/00364/FULL).*
- 4.2. Roads & Transportation have reiterated that they have no objection to the proposal and are satisfied that it would not create a significant adverse impact on road safety or parking demand in the vicinity. They consider that the main hours of operation of the use will not coincide with the peak period of parking demand in the area.
- 4.3. Alva Community Council object to the application on the following grounds:

- (i) The proposed use is incompatible with the surrounding uses which are predominantly residential. The proposal would result in 3 takeaways in close proximity to each other and would result in noise and litter which would adversely affect the amenity of neighbours. The Officers in the Service had recommended refusal of a previous application in 2002 (Ref 02/00159/FULL) for the change of use to the shop to a hot food takeaway and it is considered there have been no significant changes to justify departing from this conclusion. *Comment: While there are residential properties adjoining the site, there are also several commercial properties nearby including on the other three corners of the junction of Queen Street and West Stirling Street. The site is located within the town centre of Alva defined on the Proposals Map in the Clackmannanshire Local Plan. There is a mix of uses in the area, including other hot food shops, and the principle of the development would be supported by Local Plan Policy JOB4 where the amenity of neighbouring properties would not be adversely affected. The applications that have been approved on the site have included information or been regulated in a manner that satisfactorily demonstrated that the proposal could operate without being likely to cause nuisance to neighbours. These have been significantly different to the previous applications that had been recommended for refusal by the Service.*
- (ii) The proposed use is likely to result in parking problems and parking will occur close to the junction of Queen Street and West Stirling Street. *Comment: Roads and Transportation conclude that the parking demand generated by the use should be accommodated by the existing on-street parking facilities nearby and they do not object to the application. They also consider that the main hours of operation will not coincide with the peak period of parking demand in the area. There are also parking restrictions at the junction.*
- (iii) Details of the arrangements for the storage of refuse/waste food at the premises should be clarified since storage in the premises may not meet the relevant hygiene standards. *Comment: A planning condition was attached to the original permission requiring these details to be submitted and approved by the Council before the development could begin so that the arrangements could be regulated by the planning authority. The applicant has not provided details at the time of compiling this report. This issue would also be regulated by Environmental Health and they have advised that waste could be stored within the premises if adequate arrangements are put in place.*
- (iv) The application is being considered by default since the application approved in January 2008 (Ref 07/00364/FULL) should be deemed invalid due to discrepancies with the neighbour notification procedure for this application. These were raised by the Community Council but the Service did not properly address the matter. *Comment: The previous circumstances do not affect the validity of the current application. The applicant has completed and submitted the Certificate*

of Neighbour Notification in accordance with the regulatory requirements. The applicant has also provided "Proof of Posting" details with this application to demonstrate that they have served Notices on the neighbours. The Service did investigate the concerns raised by the Community Council in relation to application Ref 07/00364/FULL and the Community Council was advised that the application had been approved following full consideration of planning issues including the concerns raised by neighbours to earlier applications to change the use of the premises. Notwithstanding their concerns, the Community Council was advised that planning permission could not be invalidated or reconsidered by the Council due to any alleged or actual failure to properly undertake the neighbour notification procedure. The Service also received correspondence from three residents about the same issue and the Service also responded to these.

5.0 REPRESENTATIONS

- 5.1. A total of 17 neighbouring proprietors were notified of the application by the applicant and the application was advertised in the local press as a "bad neighbour" application.
- 5.2. As a result of this publicity, three letters of objection have been received from:
 - (i) Lynne Smith, 134 West Stirling Street, Alva
 - (ii) Mrs M Allan, 135 West Stirling Street, Alva
 - (iii) Mr J Blair, 23 Glenwinell Road, Alva
- 5.3. The concerns can be summarised as follows:
 - (a) The use would result in increased parking problems at this location. Comment: *The advice from Roads and Transportation concludes that there is on-street parking in the vicinity of the site which would meet the parking demand generated by the proposed use.*
 - (b) The proposed use would result in nuisance from noise, litter, odour and late night opening close to residential properties. Comment: *On the basis of the information provided by the applicant and the advice from Environmental Health, we are satisfied that the development would not result in an unacceptable environmental impact from noise or odour. The renewal of the permission would not vary the late opening hours which are restricted to 11pm by Condition 3 of the permission. In weighing up the neighbours concerns, we have also had regard to the location of the site which is within the town centre area on the main street frontage where the level of amenity would be expected to be different to a wholly residential area.*

- (c) Alva is already well served by hot food takeaways. *Comment: The application is for the renewal of a previous permission rather than the creation of an additional hot food shop.*

6.0 PLANNING CONSIDERATIONS

6.1. The application is for the renewal of a temporary planning permission which is due to expire on 3rd August but has not been implemented. Consequently, the key issues to be considered in the determination of the application are as follows:

- (a) Whether there had been any material change in planning circumstances since the original permission was granted that would justify refusing the application to renew the permission.
- (b) Whether the objections received to the application would justify refusing permission.

6.2. In terms of (a) above, there have been two material changes in planning circumstances since the permission was granted but these would actually support the approval of the current application rather than justify refusing the application. The changes are:

- (i) The current applicant now owns the flat above the site. This flat was not owned by the applicant when the temporary permission was granted but this change has provided the applicant with greater control to enable the premises to be operated without creating nuisance to neighbours.
- (ii) The current applicant obtained planning permission in January 2008 (Ref: 07/00364/FULL) to install an external ventilation flue and delete the Condition on the temporary permission which restricted cooking to microwave ovens only. This decision was taken by the Regulatory Committee in January 2008 following consideration of an objection by the Alva Community Council. The application was recommended for approval following the submission by the applicant of detailed information which demonstrated that cooking could be undertaken without being likely to create nuisance to neighbours due from odour, noise or vibration or visual impact.

6.3. Since the original permission, the applicant has taken sufficient steps to address and mitigate the potential adverse environmental impacts that had resulted in previous applications being refused. This had taken time and the permission has not been implemented before the expiry date. Furthermore, given the nature and scale of the changes in circumstances highlighted in paragraph 6.2 (i) and (ii) above these have enabled the Service to now conclude that the proposed uses could be operated without adversely affecting residential amenity in accordance with the policy guidance in Local

Plan Policy JOB 4 and therefore the permission should be renewed on a permanent basis rather than for a further 2 year period.

- 6.4. In terms of (b) above, the objections have been carefully examined and discussed in paragraphs 4.3 and Section 5.0 above. While it is recognised that there are concerns in particular about the impact of the proposed use on adjacent residential properties, we consider that the proposed use would not have an unacceptable impact on the existing level of residential amenity or road safety subject to the controls imposed by the conditions that would remain in force.

7.0 SUSTAINABILITY IMPLICATIONS

- 7.1. None.

8.0 FINANCIAL IMPLICATIONS

- 8.1. None

8.2. Declarations

- (1) The recommendations contained within this report support or implement Corporate Priorities, Council Policies and/or the Community Plan:

- **Corporate Priorities (Key Themes)** (Please tick)

- | | |
|---------------------------------------|-------------------------------------|
| Achieving Potential | <input type="checkbox"/> |
| Maximising Quality of Life | <input type="checkbox"/> |
| Securing Prosperity | <input checked="" type="checkbox"/> |
| Enhancing the Environment | <input type="checkbox"/> |
| Maintaining an Effective Organisation | <input type="checkbox"/> |

- **Council Policies** (Please detail)

- **Community Plan (Themes)** (Please tick)

- | | |
|--------------------------------|-------------------------------------|
| Community Safety | <input type="checkbox"/> |
| Economic Development | <input checked="" type="checkbox"/> |
| Environment and Sustainability | <input type="checkbox"/> |
| Health Improvement | <input type="checkbox"/> |

- (2) In adopting the recommendations contained in this report, the Council is acting within its legal powers. (Please tick)

- (3) The full financial implications of the recommendations contained in this report are set out in the report. This includes a reference to full life cycle costs where appropriate. (Please tick)



Head of Development Services

Report to Regulatory Committee

To accompany all Reports to Regulatory Committee

To: Head of Administration And Legal Services

Author: Keith Johnstone, Principal Planner

Date: 10 July 2008

Service: Development Services

Date of Meeting: 24th July 2008

Title of Report: Planning Application - Change Of Use Of Vacant Shop
to Cafe And Hot Food Takeaway - Renewal Of
Temporary Planning Permission (Condition 1 of Ref
06/00172/FULL) At 133 West Stirling Street, Alva (Ref
08/00173/FULL)

Recommendation that the attached report be:

1. Given unrestricted circulation

✓

(tick appropriate box)

2. Taken in private

By virtue of paragraph ____ of schedule 7A, Local Government (Scotland) Act 1973.

Appendices attached to this report (if none, state "none")

1. Summary of Planning Applications At 133 West Stirling Street, Alva
- 2.
- 3.

List of Background Papers (if none, state "none")

1. Clackmannanshire Local Plan
2. Consultation responses
3. Letters of objection

Note: All documents specified must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered.

APPENDIX 1

Summary Of Planning Applications Relating To Use As A Hot Food Takeaway At 133 West Stirling Street, Alva

1. 02/00159/FULL - Alterations and Change Of Use Of Vacant Shop to Hot Food Takeaway (Applicant Mr Mehmood)
Refused Permission on 25th September 2002

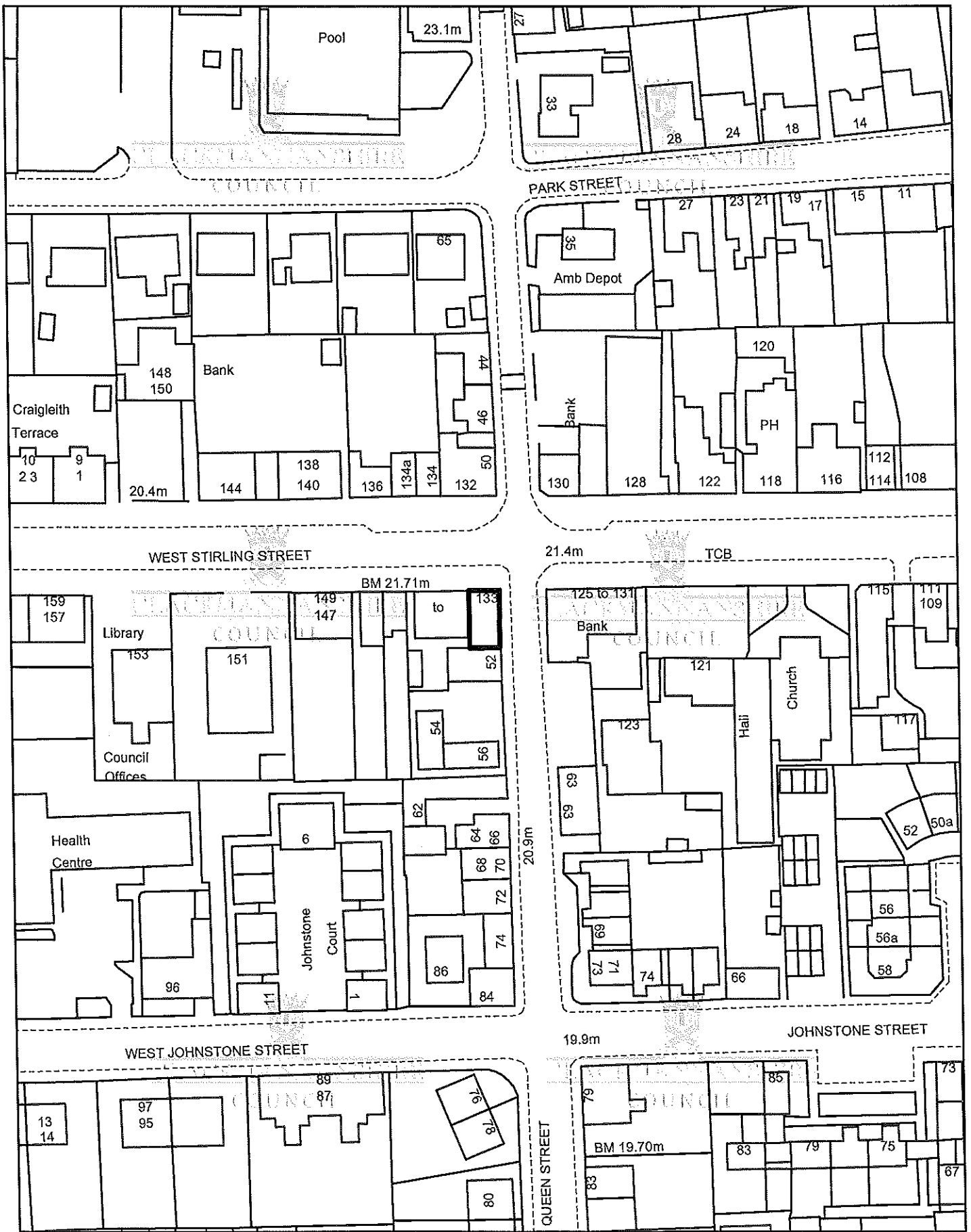
2. 05/00109/FULL - Alterations And Change Of Use Of Shop to Hot Food Takeaway (Applicant Mr Akthar)
Refused Permission on 19th May 2005

3. 06/00172/FULL - Change Of Use Of Vacant Shop to Cafe And Hot Food Takeaway (Applicant Kartar Barhaya)
Approved Permission on 3rd August 2006

4. 06/00300/FULL - Form External Flue And Reconsider Condition 4 of Planning Permission 06/00172/FULL Restricting the Preparation, Cooking and Reheating Of Food By Microwave Ovens Only (Applicant - Kartar Barhaya)
Refused Permission on 26th October 2006

5. 07/00195/FULL - Form External Flue And Reconsider Condition 4 of Planning Permission 06/00172/FULL Restricting the Preparation, Cooking and Reheating Of Food By Microwave Ovens Only (Applicant Jaspreet Kaur)
Refused Permission on 17th September 2007

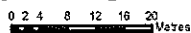
6. 07/00364/FULL - Form External Flue and Reconsider Condition 4 of Planning Permission 06/00172/FULL Restricting the Preparation, Cooking and Reheating of Food By Microwave Ovens Only (Applicant Jaspreet Kaur)
Approved Permission on 10th January 2008





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08/00173/FULL - 133 West Stirling Street, Alva, FK12 5EL
Change Of Use Of Vacant Shop To Cafe And Hot Food Takeaway - Renewal
Of Temporary Planning Permission (Condition No. 1 Of Ref O6/00172/FULL)



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