Fife Planning Review Body

FPRB Reference: 23/392

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| **Review Decision Notice** |

Decision by Fife Planning Review Body (the FPRB)

* Site Address: 12 Link Road, Oakley, Dunfermline, Fife
* Application for review by Mr Muhammad Shafiq against the decision by an appointed officer of Fife Council
* Application 23/01575/FULL for Full Planning Permission for Change of use from shop (Class 1A) to hot food takeaway (Sui Generis)
* Application Drawings:

01 - Location Plan/Block Plan, 02 - Various existing and proposed, 03 - Brochure,
04 - Brochure, 05 - Noise Report, 06 - Report

* No Site Inspection took place.

Date of Decision Notice: 6 March 2024

**Decision**

The Fife Planning Review Body (FPRB) upholds the determination reviewed by them and refuses Planning Permission for the reason(s) outlined below in section 4.0.

**1.0** **Preliminary**

1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

1.2 The above application for Planning Permission was considered by the FPRB at its meeting on 26 February 2024.  The Review Body was attended by Councillors David Barratt (Convener), Jane Ann Liston, Altany Craik and Alycia Hayes.

1.3 The FPRB considered the request for new information to be relied upon by the appellant, including an updated Odour Assessment with details of attenuation specifications. They resolved not to accept this new information, particularly as there had not been a suitable opportunity for scrutiny of this document by the Council’s Public Protection team.

**2.0** **Proposal**

2.1 This application relates to a single storey vacant retail unit with mono-pitch roof and render finish located within the settlement boundary of Oakley. The surrounding land uses comprises largely of residential properties, with a hot food take-away and convenience store located to the north, followed by a public house, as well as open space to the west and south-east. On-street parking is available to the front of the units.

2.2 This application is for a change of use from shop (Class 1A) to hot food takeaway (sui generis). The proposed opening hours would be Monday - Sunday, 16:00 to 23:00.

**3.0** **Reasoning**

3.1 Firstly, the FPRB considered residential amenity impacts of the proposal on the surrounding area, cognisant of NPF4 Policy 23 (Health and Safety) which seek to protect the amenity of the local area from unacceptable amenity impacts and Policies 1 (Development Principles) and 10 (Amenity) of FIFEPlan which includes criteria requiring development proposals to demonstrate that there would be no significant detrimental impacts on residential amenity. They also considered PAN 1/2011 to consider the principle of how noise issues should be taken into consideration. The LRB noted the Fife Council Customer Guidelines on Businesses Selling Food and Drink to consider requirements to minimise potential impacts on neighbouring properties including odour and air quality. They found that:

* Given its proximity to the closest residential property (14 Link Road) and the proposed opening hours, the proposal had the potential to result offsite amenity impacts to this property.
* With respect to noise, they agreed with the Appointed Officer that the Noise Impact Assessment concluded that noise levels would be above Fife Council guidelines and that the impact of the relocated extract grill to the rear had not been re-assessed as part of the original application submission. As such, they contended that there was insufficient information to determine the level of adverse noise impacts to the adjacent residential property and the detail of any potential mitigation required to attenuate such impacts.
* In relation to odour and air quality, they agreed that very high level of abatement would be required to reduce odour impacts, based on the original assessment. However, they noted that there was insufficient information to determine whether these impacts could be mitigated and whether the odour impact from fumes and cooking on nearby properties would be acceptable.
* The FPRB therefore concluded that the insufficient information had been provided to justify that the proposal could mitigate noise and attenuate extract cooking fumes without giving unacceptable noise, odours and nuisance. They agreed that this would result in an unacceptable level of residential amenity failing to comply with NPF4 Policies 23 and Policies 1 and 10 of the Adopted FIFEplan, PAN1/2011 and Fife Council Customer Guidelines on Businesses Selling Food and Drink with respect to this matter.

3.2 The FPRB also agreed with the Appointed Officer’s position in relation to the other planning considerations not forming part of the original reasons for refusal. They contended that these matters did not have any material impact that would change their position on this application and concluded that they should not be included as additional reasons for refusal in this instance.

3.3 Overall, the FPRB concluded that the proposal would result in unacceptable residential amenity impacts on the surrounding area, failing to comply with NPF4 Policy 23 and Policies 1 and 10 of the Adopted FIFEPlan (2017), PAN 1/2011 and Fife Council Customer Guidelines on Businesses Selling Food and Drink. The FPRB did not consider there to be any other matters for consideration or any material considerations which would outweigh the Development Plan position. The FPRB therefore decided that planning permission should be refused, upholding the Appointed Officer’s decision.

**4.0 Decision**

4.1 The FPRB upholds the determination reviewed by them and refuses Planning Permission for the following reason(s):

**REFUSE FOR THE FOLLOWING REASON(S):**

 In the interests of safeguarding residential amenity; insufficient information has been submitted by the applicant to demonstrate that the proposed use and the extract ventilation system would effectively extract and disperse the cooking fumes generated by the use without giving rise to unacceptable noise, odours and nuisance; all contrary to National Planning Framework 4 (2023) Policy 23 (Health and Safety); PAN 1/2011 Planning and Noise (2011); Policies 1 (Development Principles) and 10 (Amenity) of the Adopted FIFEplan Fife Local Development Plan (2017) and Fife Council's Planning Customer Guidelines on Businesses Selling Food and Drink (2016).

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Proper Officer

**NOTICE TO ACCOMPANY REFUSAL ETC.**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on refusal of planning permission or*

*on the grant of permission subject to conditions*

**NOTICE TO ACCOMPANY REFUSAL ETC.**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8).*

1. If the applicant is aggrieved by the decision of the planning authority -

 (a) to refuse permission for the proposed development;

(b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or

(c) to grant permission or approval, consent or agreement subject to conditions,

the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land’s interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.