

WEST DUNBARTONSHIRE COUNCIL**Report by Strategic Lead - Regulatory****Planning Committee: 12th February 2020**

DC19/235: Change of use from beauty parlour to café (retrospective) at 129 Main Street, Renton by Mr Duncan Wrethman.

1. REASON FOR REPORT

- 1.1** The application is subject to representations and raises issues of local significance. Under the terms of the approved Scheme of Delegation, it therefore requires to be determined by the Planning Committee.

2. RECOMMENDATION

- 2.1** **Grant** planning permission for the reasons set out in Section 9.

3. DEVELOPMENT DETAILS

- 3.1** The application site is a ground floor commercial premises located within a traditional 2 ½ storey terraced building located on the west side of Main Street in Renton. It is one of four commercial premises in a row accessed from Main Street including a public house, hairdressers and retail unit. There is a pend opening at the north end of the building that provides access from Main Street to the rear of the building where there are gardens and a staircase that leads to the residential properties above the commercial premises.
- 3.2** This is a retrospective application that seeks permission for a café. The last recorded use of the premises was as a Beauty Parlour granted planning permission in 1996. The current owner/tenant has been operating a café from the premises since May 2018. It is understood that the premises previously was used as a café/ snack shop under separate ownership although there is no planning record of this use. The café is currently opened 7 days a week from 07:00am to 14:00pm Monday – Saturday and 08:00 am to 1:00pm on a Sunday and offers a variety of fried foods including full breakfasts, chicken nuggets, chips, as well as other hot food items such as curry. The café also provides an external catering service. It has 3 tables and one bench and seating for 13 people. There is a service and display counter, food preparation area and staff toilet facilities.
- 3.3** An application for planning permission (DC19/030) for the same use was refused in November 2019 due to the absence of details of an adequate ventilation and extraction system to address odours associated with the use. Following the refusal of the application an Enforcement Notice was served and this has been appealed to the Department of Planning and Environmental Appeals (DPEA) by the applicant. This revised application has

now submitted separately to the enforcement process and seeks retrospective consent for the same use but with an amended ventilation system and details provided.

4. CONSULTATIONS

- 4.1** West Dunbartonshire Council Roads Service has no objection to the proposed use.
- 4.2** West Dunbartonshire Council Environmental Health Service has no objection to the amended ventilation details and have recommended a number of conditions.

5. REPRESENTATIONS

- 5.1** Two representations have been received from neighbouring residential properties located above the café. Their reasons for objection predominantly focuses upon the adverse cooking odours and health and safety concerns regarding the use and activity associated with the premises. The following matters have been raised as part of the representations received:

- Inability to confirm that the new ventilation equipment will satisfactorily address ongoing odour issue.
- Doubt regarding the validity of the ventilation equipment and the assessment undertaken.
- Concern as to when the ventilation will be installed and when it will become operational noting the ongoing odour and amenity issues.
- Concern regarding how the proposed ventilation will operate, when it will operate and how it will be maintained/cleaned.
- Lack of cooperation from applicant to reduce/change menu offering.
- Issues with vehicular and pedestrian safety due to traffic generation and inappropriate parking associated with the use and premises.

6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN

West Dunbartonshire Local Plan 2010

- 6.1** The application site is located within a Local Centre and Policy RET7 seeks to protect and enhance vitality and viability of commercial units and supports the establishment of new uses where appropriate. Applications for any change of use from retail to another use will be supported where it can be satisfactorily demonstrated that such a change would enhance the centre and would not have a detrimental impact on adjacent properties by way of noise, disturbance and odour, and would not adversely affect the general character and amenity of the area. Policy GD1 relates to all new development and sets an expectation that they respect the character and amenity of the area in which it is located. The principle of the use of the premises as a café is supported at this location as it enhances the commercial offering and adds vitality and activity to this location. The proposal is also compliant with Policy RET7 and

GD1 as the proposed ventilation and extraction system is now considered adequate to control odours associated with the type of cooking at the café. This is discussed in detail in Section 7.

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

West Dunbartonshire Local Development Plan (LDP1) Proposed Plan (2016)

- 7.1** On 27 April 2016, the Planning Committee took a final decision not to accept the Local Development Plan Examination Report as it recommended modification in respect of including the Duntiglennan Fields site in Clydebank as a housing development opportunity. Therefore, as a result of the Scottish Ministers' Direction, the Local Development Plan has remained unadopted but continues to be a material consideration in the determination of planning applications.

- 7.2** The application site is located within an area identified as an Existing Neighbourhood. Policy BC4 states development that would significantly harm the residential amenity, character or appearance of existing neighbourhoods will not be permitted. Policy DS1 states that all development should avoid unacceptable impacts from adjoining uses including noise, smell, vibration, dust, air quality, invasion of privacy, and overshadowing. The development is considered to be compliant with the applicable policies and its compatibility is discussed in detail further in Section 7.

West Dunbartonshire Local Development Plan (LDP2) Proposed Plan (2018)

- 7.3** On 19th September 2018, Planning Committee approved Local Development Plan 2: Proposed Plan for consultation. It is therefore the Council's most up to date policy position and it is a material consideration in the assessment of planning applications. The Plan is currently at Examination stage, which commenced on 20th August 2019.
- 7.4** The application site is within an area defined as an existing residential area where Policy H4 applies. Similar to GD1 and RT7 of the adopted plan and DS1 and BC4 of the Proposed Plan (2016), Policy H4 states that there will be general presumption against non-residential uses, which potentially have detrimental effects on local amenity. The ventilation and extraction system proposed is considered to be appropriately, allowing the development to be compliant with the policies which protect amenity.

Background

- 7.5** The current use of the premises as a café was brought to the attention of the Planning Authority following complaints of cooking odours received from the residential properties located above. The premises was subsequently visited and the use investigated by the Planning Compliance Officer. The food offering/menu and associated cooking equipment, including deep fat fryers were noted and advice sought from the Council's Environmental Health Service. The owner/tenant was subsequently advised that a retrospective application for planning permission should be submitted to regularise the change of use and should be accompanied by proposals for a ventilation system that can control cooking odours and address concerns about smell

and odour. Although permission was granted for a beauty parlour in 1996, sometime later the premises was used as a café/snack shop. When the premises was taken over by the applicant in May 2018, larger fryers were installed and the menu was extended and intensified. Regular complaints followed from the residents living above the premises with the use of the premises now requiring planning permission.

- 7.6** Following the above discussions, a retrospective planning application (DC19/030) was subsequently submitted by the applicant in February 2019. This application was refused at Planning Committee in September 2019 due to inadequate ventilation details to address odour issues. Following refusal, the Council required to undertake enforcement action as a means to try to regularise the breach of planning control (unauthorised use of premises as a café) whilst at the same time safeguard amenity. An enforcement notice was issued and this matter remains ongoing at this time separate from the new planning application submitted.

Principle of Use

- 7.7** The premises is within a designated local centre in the Adopted Plan and within the Proposed Plans as an existing neighbourhood/residential designation. The principle of the use as a café is supported by both the Adopted and Proposed Plans provided there will be no detrimental impact on neighbouring residential amenity as a result of the use. The Council's Environmental Health Service have maintained from the outset of their involvement that the lack of ventilation within the premises is unacceptable for the type of cooking/menu offering at the café and on this basis have continually requested details of a suitable ventilation and extraction system as part of this process. To date, the absence of any such appropriate ventilation system which demonstrates an ability to address the odours generated has prevented this particular use from being considered acceptable at this location.
- 7.8** This revised planning application has included a report from the applicant's ventilation consultant which details the proposals for a new ventilation and extraction system to be installed within the premises. The report sets out and specifies all of the equipment proposed and details how it will be cleaned and maintained once installed and operational. It also provides an assessment as to how the system will combat odour generated from the cooking activities associated as part of the use whilst at the same time demonstrates how it will be able to function in a manner which does not create noise/vibration issues from within the premises. This has all been reviewed and assessed in detail and it is now considered that the proposals provided do demonstrate that the intended system can safeguard neighbouring residents from experiencing adverse odours associated with the type of cooking used. Subject to conditions, the acceptability of the ventilation system now allows the use to be supported and the proposal is now considered to comply with the policies of both the Adopted and Proposed Plans.

Residential Amenity

- 7.9** Two representations have been submitted in response to this application, however historically there has been a number of complaints to the Council regarding odours experienced in the residential properties located above the café. Despite the Council's Environmental Health officers having visited these properties, a statutory odour nuisance has not been established and this remains the case. The residents have been advised to contact Environmental Health directly at the time of experiencing odours and this remains the protocol.
- 7.10** The proposals submitted for the ventilation and extraction system have been assessed and are considered sufficient to address residential amenity issues. A specialist and professional ventilation contractor has been employed by the applicant and has confirmed that the proposed system is suitable for the type and method of cooking at the café and the ventilation arrangement can effectively safeguard neighbouring amenity and residents from odour nuisance. Equally, the report confirms that the equipment due to its design and arrangement will not cause secondary noise or vibration issues for adjoining residential properties. It is now considered to be sufficient to allow the equipment to be accepted and deemed fit for purpose to address the cooking activity and prevent it from adversely impacting amenity in this regard.
- 7.11** The applicant has indicated that the café is currently opened 7 days a week from 07:00am to 14:00pm Monday – Saturday and 08:00 am to 1:00pm on a Sunday. However they have indicated that during summer months they would like to extend the opening hours from 07:00am to 16:00 pm Monday-Saturday and 08:00am to 16:00 pm on a Sunday. This is considered to be acceptable in the circumstances as it only involves a small increase in the opening hours but the café will still operate within normal day time hours.

Technical Matters

- 7.12** The Council's Environmental Health Service has confirmed that based on the information provided that they are accepting that the arrangement as shown represents a suitable ventilation and extraction system which does demonstrate a capability to control odours associated with the type of cooking on offer through the existing café menu.
- 7.13** The option proposed is considered to be feasible and relates to the installation of an odour filtration system internally within the café which does not require external treatment including the need for a flue to run up the outside of the building. As previously outlined, a specialist ventilation contractor has been brought in and assessed the cooking/menu at the café and advised on the most suitable ventilation option to eliminate potential odour nuisance. The exact make up of the ventilation equipment is set out in the report provided as part of the application and its installation can be addressed through appropriately worded planning conditions to ensure it is in place in a timely manner noting the retrospective nature of the use and the ongoing amenity concerns. A requirement for it to be cleaned and regulated in accordance with the proposed maintenance programme will also form part of a condition

to ensure that the equipment is managed appropriately and to make sure remains effective in combatting odours generated from the use going forward.

- 7.14** Whilst separate points have been made in the representations in relation to the use and its impact and influence on traffic, parking and vehicular safety, the Council's Road Service have assessed the use and have no objections to the proposals. For clarify, illegal parking (a matter raised in the representation received) is not a material planning consideration or indeed a roads matter. This would be a matter for Police Scotland when these issues arise.

8. CONCLUSION

- 8.1** The principle of the use of the premises as a Class 3 café is acceptable and a suitable ventilation and extraction system has been proposed in order to allow the use to be considered acceptable. The new ventilation system proposed is considered satisfactory to support the type of cooking/menu offer at the café and its installation will allow the use to operate without adversely impacting upon amenity of nearby residential properties. On this basis, the proposal complies with the relevant policies of the Adopted and Proposed Plans.

9. CONDITIONS

1. Within 8 weeks of the date of this permission and further to approved report 'Village Café Commercial Kitchen Design and Installation Ventilation Strategy' (10th January 2020) the ventilation and extraction system and equipment as scheduled on Page 4 of this approved report shall be installed in full in line with manufacturers guidelines within the premises. Once installed, the approved ventilation and extraction system shall thereafter be retained within the premises, functioning and operating to the approved manufacturer's standards and requirements for the lifetime of the use of the premises as approved unless otherwise agreed in writing by the Planning Authority.
2. Further to Condition 1 above, the approved ventilation and extraction system once installed and operational shall be maintained in working order and cleaned in strict accordance with the system maintenance programme as set out in Page 5 of approved report 'Village Café Commercial Kitchen Design and Ventilation Strategy' (10th January 2020) for the lifetime of the use of the premises as approved unless otherwise agreed in writing by the Planning Authority.
3. Within 4 weeks of the date of this permission, details of an adequate size grease trap shall be submitted to and approved by the Planning Authority. Thereafter, the grease trap unit shall be installed concurrently with the ventilation equipment as required under condition 1 and maintained as such for the lifetime of the use of the premises as approved unless otherwise agreed in writing by the Planning Authority

4. The business and use hereby approved shall operate only between the hours of 0700hrs to 1600hrs Monday to Saturday and 0800hrs to 1600hrs on a Sunday unless otherwise agreed in writing by the Planning Authority.

Peter Hessett
Strategic Lead - Regulatory
Date: 12th February 2020

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Appendix: None

Background Papers:

1. Application documents and plans
2. West Dunbartonshire Local Plan 2010
3. West Dunbartonshire LDP - Proposed Plan
4. West Dunbartonshire LDP - Proposed Plan 2
5. Consultation responses
6. Representations

Wards affected: Ward 2 (Leven)