

WEST DUNBARTONSHIRE COUNCIL**Report by Strategic Lead - Regulatory****Planning Committee: 11 November 2020**

DC20/135: Part change of use of indoor sports facility and associated external hardstanding area to street food market including the siting of five containers and formation of 12 parking spaces at Unit 1, Gavinburn Business Park, 223 Dumbarton Road, Old Kilpatrick by Mr J Steel.

1. REASON FOR REPORT

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

2. RECOMMENDATION

- 2.1** **Grant temporary** planning permission for a period of two years subject to the conditions set out in Section 9.

3. DEVELOPMENT DETAILS

- 3.1** The application site forms part of a unit within a large warehouse-type building that was originally used as a bus depot. Following the bus depot's closure the building was subdivided into a number of individual units. The unit that is the subject of the current application is located on the north eastern side of the building, and the entrance and hardstanding area to the front faces out towards Dumbarton Road, residential properties and Gavinburn Primary School beyond. To the south there is a wooded area and a row of detached garages separating the site from the Forth and Clyde Canal. To the east there is a disused building that once formed part of the bus depot, and some residential properties. To the west of the site lies the other units within the building. The site lies within the boundary of the Roman Fort associated with the Antonine Wall. In 2008, the unit subject to this application was granted planning permission for an indoor sports facility with a multi-purpose sports pitch. This consent was implemented, however, the sports pitch is no longer in use. The rest of the building, which is also owned by the applicant, is used for storage and distribution purposes.
- 3.2** The current application relates only to the front part of the unit which is around 500 square metres and part of the parking/hardstanding area located to the front/ north of the unit, adjacent to Dumbarton Road. The area inside the unit will be used to site 3 converted shipping containers, each measuring approximately 6 metres by 2.4 metres. The converted shipping containers will

operate as 'pop up' fast food service units with food being cooked and sold from each unit. Each vendor operating from a container will specialise in different 'street food' such as pizza and pakora. The local food bank currently operates from the application site to store and prepare food parcels and they have shown an interest in potentially operating a hot food service from one of the containers. An informal seating area with picnic tables for customers will be formed inside the unit, although the applicant has stated that these could also be positioned outside on the hardstanding area. A further two food container units will be located on the hardstanding area, one measuring 2.4 metres by 12 metres and positioned slightly to the east of the unit, and a second measuring 2.4 metres by 6 metres and positioned adjacent to the front boundary fence, near the entrance to the site. These units would be occupied by vendors selling less/non-odorous food and drinks such as coffees, sandwiches and desserts. All of the food units will be connected to the existing electricity supply and some will have small gas grills.

- 3.3** A total of 12 parking spaces will be provided on the hardstanding area immediately in front of the unit and will accommodate customers eating on the premises and ordering food to take away. Entry into the development will be via the existing vehicular access on Dumbarton Road. The proposed hours of operation are 8am to 8pm 7 days per week. It is anticipated that there will be 3 staff members for each converted container unit (a total of 15) and an additional 2 'floating' members of staff covering the general area inside and outside. Ventilation will be in the form of an extract fan system from each converted container, ducted through a 14 inch fan in the roof apex of the unit/building. The external containers will not require ventilation due to the type of food being prepared. The existing sliding doors on the front of the unit will be kept open during hours of operation to provide ventilation to the general area.
- 3.4** The converted containers are already on site and had begun trading in May this year without planning permission. This was brought to the Council's attention and the vendors were contacted and advised to stop trading by the Council's Compliance Officer, which they did. The owner of the site subsequently submitted the current planning application for consideration. It is understood that the units have not traded since they were advised of the need for planning permission.

4. CONSULTATIONS

- 4.1** West Dunbartonshire Council Roads Service has no objections subject to the provision of two of the twelve parking spaces for disabled badge holders.
- 4.2** West Dunbartonshire Council Environmental Health Service has no objections subject to conditions relating to ventilation, noise and grease traps.
- 4.3** West of Scotland Archaeology Service has no objections as no ground disturbance would be required to facilitate the development.

5. REPRESENTATIONS

5.1 A total of twelve representations have been received in response to this application, comprising eleven objections from local residents and one letter of support from Old Kilpatrick Community Council. A summary of the points raised in the representations are as follows:

Points of Objection:

- Increased traffic and noise disturbance will affect local residents;
- Customers arriving on foot rather than in cars, leading to an increased footfall in a residential area with potentially undesirable people and also an increased risk from COVID-19;
- Concerns over increased litter and how food waste will be disposed of, and how this could attract rats and sea gulls. Sea gulls already a problem for several months a year;
- Odours from food affecting amenity e.g. unable to sit in garden, hang washing out etc;
- Taking business away from existing cafes, restaurants and take-away premises;
- Premises have not been maintained affecting appearance of local area, broken fencing, overgrown vegetation, fly-tipping, premises not secure, previous fires, building is falling apart;
- Increased risk of fire from food outlets;
- Parking and containers will affect visual amenity;
- Site is accessed from a very busy main road, how would emergency vehicles access the site;
- Mains services such as gas, electricity, water should be up to current safety standards;and
- Drawings are inaccurate and show office buildings that have been knocked down.

Points of Support:

A representation has been received from Old Kilpatrick Community Council in favour of the application. The community Council supports the proposal for the following reasons:

- The development will enable the site to be commercially viable;
- It will enable the village to become a destination point;
- Noise and smells from cooking can be monitored by the relevant Council departments;

- Food safety and hygiene can be addressed by adhering to Environmental Health requirements;and
- Applicant already supports the local community by providing a storage container on the site for the Old Kilpatrick Food Parcels sub-group, and the group hopes to develop their base within the building in the future.

5.2 The concerns raised in the representations are addressed in section 7 below.

6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN

West Dunbartonshire Local Plan 2010

6.1 Policy GD1 seeks to ensure that all new development is of a high quality design, of an appropriate and compatible land use and that it respects the character and amenity of the surrounding area. The site is identified as a Redevelopment Opportunity under Policy GD2, which encourages the redevelopment of underused, vacant and/or derelict land and buildings for appropriate uses, which for this particular site are identified as heritage, residential and public services. Proposals for alternative uses will be considered on their merits, having regard to adjoining uses, site planning, land supply considerations and compliance with other Local Plan policies.

6.2 Policy H5 relates to development within existing residential areas and aims to protect and where possible enhance the character and amenity. Policy LE7 specifically addresses business development in mixed use or residential areas. This policy sets a requirement that any such commercial or business uses can only be supported where the Council is satisfied that residential amenity or surrounding uses are not adversely affected. Policy BE6A states that there will be a presumption against development which would have an adverse impact on the Frontiers of the Roman Empire (Antonine Wall) World Heritage Site.

6.3 The proposal would involve the re-use of a currently vacant unit, and it is considered that it would not have a detrimental impact on other uses within the building or on the amenity of the surrounding residential area. The development would not have an adverse impact on the Antonine Wall, and over all it is considered to comply with Policies GD1, GD2, H5, LE7 and BE6A. This is covered in more detail in Section 7 of this report.

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

West Dunbartonshire Local Development Plan (LDP1) Proposed Plan

7.1 On 27 April 2016, the Planning Committee took a final decision not to accept the Local Development Plan Examination Report recommended modification in respect of including the Duntiglenan Fields site in Clydebank as a housing development opportunity, and 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 identified as Existing industry and business. Policy GE2 states that development of Use Classes 4,5 and 6 uses will be supported and proposals for alternative uses will be assessed against a number of criteria including the impact on the operations of existing uses in the area; impact on the availability of land and buildings for business, industry or storage and distribution uses; the availability of other locations for the proposed use; and the positive contribution the proposed use can make to the area.
- 7.3** Policy DS1 states that all development should avoid unacceptable impacts on adjoining uses including those of noise, vibration, invasion of privacy and traffic implications. Policy BH1 relates to the Antonine Wall World Heritage Site, which the application site sits within. It states that development that would have an adverse impact on the Antonine Wall or its setting will not be permitted.
- 7.4** The proposal is considered to comply with the aforementioned policies and this is discussed further in Section 7.9 below.

West Dunbartonshire Local Development Plan (LDP2) Proposed Plan

- 7.5** The modified Plan and associated documents was approved by the Council on 19 August 2020. The Council has now advised the Scottish Ministers of its intention to adopt the Plan. Local Development Plan 2 is therefore the Council's most up to date policy position and is afforded significant weight in the assessment and determination of planning applications.
- 7.6** The site is identified as Existing industry and business. Policy E2 relates to alternative uses of land or premises which are currently, or have previously been used, for business, industrial or commercial uses. It states that such uses will be supported where it can be demonstrated that they meet a number of criteria including: no adverse impact on the operation of existing uses or the potential for future business, industrial or employment use within the area; the proposal protects and enhances the attractiveness of the area as an industrial and business location; the proposal is ancillary to the industrial and business uses; there is no unacceptable detrimental impact on the availability of employment land; and the economic benefit that the proposal can bring to the area is demonstrated.
- 7.7** Policy ENV8 seeks to ensure that developments do not have a significant impact on surrounding uses and properties by way of air, noise and light pollution. Where required proposals that have the potential to impact these will require to demonstrate that their impact is not significant and provide adequate mitigation where necessary. Policy AW1 seeks to protect the Antonine Wall and states that development that would have an adverse impact on the Antonine Wall or its setting will not be permitted.

- 7.8** The proposal is considered to comply with the aforementioned policies and this is discussed further in Section 7.9 below.

Principle of Development and Site Selection

- 7.9** The site is identified as a Redevelopment Opportunity under Policy GD2 of the adopted local plan, which encourages the redevelopment of underused, vacant and/or derelict land and buildings for appropriate uses, which for this particular site are identified as heritage, residential and public services. The proposed use as a street food market is not strictly 'redevelopment' in that no demolition or new buildings are proposed, and the proposed food market use does not fall within any of the use categories identified for this site. The proposal is therefore contrary to this part of the policy. However, Policy GD2 also supports alternative uses and the proposal would bring a currently vacant unit back into use. It is considered that the principle of this alternative food market use is appropriate in the context of the site and area and this is discussed further below. Within LDP1 and LDP2, the site is identified as Existing business and industry, however alternative uses will be supported where they meet a number of criteria. In considering this, the proposal will not have an adverse impact on the existing storage and distribution uses operated from the other two units within the building. Vehicles will still be able to access these and the parking area in front of the other units will be unaffected by the development. The application unit and proposed use will involve only a small part of the overall building and can therefore be seen as ancillary to the other primary storage and distribution uses within the building. The proposals will have a negligible impact on the availability of industrial and business units in the Old Kilpatrick and wider area. Further to this, the unit has previously been granted planning permission to operate as an indoor sports facility therefore there is a history of non-industrial/business use on this site. It is understood that the previous tenant of the sports facility vacated after the expiry of their lease (2018) stating that it was not profitable enough. The applicant has stated that it has been difficult to find uses for the building through marketing due to its size, condition and the archaeological status of the land on which it sits. The unit is currently vacant and by bringing it back into use it will have an economic benefit by providing a space for small business-owners to operate.
- 7.10** 'Pop up' food businesses selling a variety of food and drinks from converted containers are becoming more common with successful examples throughout the country. They provide a relatively low-cost, portable retail space for small businesses. Finding a suitable location can be difficult as such businesses need to be visible to attract customers, and a single container unit at the side of a road can look out of place, however, by grouping them together as proposed, the businesses can benefit from becoming a small food market, which is likely to draw more customers than a stand alone unit would and brings these use types together to suitable locations. By siting the units at this former bus depot, which has a strong industrial appearance, the use of former shipping containers can be regarded as 'in keeping' with the site. Overall, the principle of the proposal is considered to be acceptable.

Compatibility of Use and Impact upon Residential Amenity

- 7.11** The unit is currently unused and therefore any new use will bring with it an increase in activity. It is acknowledged that there will be an increase in the number of cars and people visiting the site, however, this in itself does not mean that there will be a detrimental impact on the amenity of nearby residential properties. The nearest residential properties are located to the north and east of the site. The nearest house would be around 22 metres away from the nearest converted container. The proposed operating hours are 8am to 8pm, Monday to Sunday therefore there would not be any late night activity on the site.
- 7.12** Ventilation of the converted containers inside the unit will be provided by a 14 inch fan installed in the roof apex of the unit, which will have conduits leading to each converted container. The unit is part of a large warehouse building and so it has a large internal volume. This along with the ventilation fan and the large front door, which will remain open while vendors are trading, will allow air to circulate within and through the unit and will minimise odours. The applicant proposes to locate the containers that sell more odorous foods such as pizza, pakora, burger etc. inside the unit, and the proposed ventilation will prevent cooking smells from affecting nearby residential properties. A condition can be attached requiring the submission of further ventilation details to ensure that the equipment installed is sufficient at dealing with odours. The two containers located outside the unit will be occupied by vendors selling less odorous food such as sandwiches and hot drinks. The type of food sold from outside can also be controlled by condition. The Council's Environmental Health Service are satisfied with the proposals subject to conditions regarding the ventilation and management of the type of cooking from the containers sited outside the unit on the hardstanding area.
- 7.13** The existing lighting outside the building will remain as it is with only low-level garland bulb style lighting added for decoration. The applicant has stated that the picnic tables to be used for the seating area could be used inside or outside the unit. There is a potential for seating outside to cause more noise and disturbance for neighbouring residential properties than seating inside. A condition can therefore be used requiring the applicant to submit further details of any proposed outdoor seating so that the potential impact of this can be considered and the number of tables outside appropriately limited and managed. The applicant proposes background music for customers to enjoy and the principle of this is acceptable, however the volume must be appropriate to ensure that neighbouring residential properties are not adversely affected and this can be managed by condition through consultation with the Council's Environmental Health Service. Live music is not considered appropriate at this time and this can also be addressed through a condition. The Environmental Health Service is satisfied with this approach and that noise from background music sources can be adequately controlled and mitigated. With regard to the management of waste, the applicant has confirmed that they have a waste licence and 20 wheelie bins on site. This is considered to be appropriate for the proposed use, and it would be the applicant's responsibility to ensure that waste on the site is managed and disposed of appropriately. The two additional 'floating' staff as described in section 3.2 above would be responsible for this. Considering the

above, the proposed use is considered to be acceptable and any potential impacts on residential amenity can be adequately mitigated and safeguarded.

Parking and Traffic Impacts

- 7.14** Vehicles would enter and exit the site through the existing access on Dumbarton Road. A total of 12 parking spaces for customers would be provided immediately in front of the unit, four of which would be reserved for customers waiting on items to take away. The Council's Roads Service has no objections to the proposal but has advised that two of the twelve parking spaces nearest the entrance should be increased in size and reserved for disabled badge holders. There is sufficient space on the site to do this and it can be dealt with by condition.
- 7.15** It is acknowledged that there will, due to the operational nature of the development, be an increase in the number of vehicles entering and leaving the site than is currently the case as the unit is vacant. However, the existing access is wide enough to easily accommodate traffic entering and leaving the site at the same time, as well as emergency vehicles. There is also good visibility in both directions along Dumbarton Road for traffic leaving the site. Within the site the hardstanding area is large enough to accommodate vehicles manoeuvring and there is also space to form additional parking spaces if required in the future. The former use of the site as a bus depot had regular traffic movements and it is not considered that the traffic movements associated with the proposed use would impact adversely on the site or surrounding area. The site is easily accessible within Old Kilpatrick and it is therefore expected that some trade will be generated by people arriving on foot.

Other Matters Raised in Representations

- 7.16** A number of other points have been raised in the representations that are not material planning considerations, however, they are still a concern to local residents and therefore captured below. The existing problem with sea gulls on the roof of the building has been mentioned in many of the representations. The introduction of food outlets within and outside could attract birds and vermin such as rats. However, if litter and waste are managed correctly then the proposed use should not exacerbate any existing problem. The applicant has stated that they have purchased a seagull distress alarm which, for example, can emit the sound of a bird of prey when the seagulls approach which is known to act as a deterrent. As noted above, adequate bin provision and staff to manage waste is proposed and considered to be acceptable by the Council's Environmental Health Service.
- 7.17** Concern has also been raised about the condition of the building and its grounds, with broken fencing, overgrown vegetation and fly-tipping at the rear of the building mentioned in the representations. It has been claimed that the building is not secure and that fires have previously been set. These are not material planning considerations and responsibility for the maintenance and security of the building lies with the owner. The unit is currently empty and

therefore does not generate any income, however the proposed use would provide the applicant with the opportunity to re-invest in the building which the applicant is committed to doing. Other concerns relate to the proposed use taking business away from existing cafes, restaurants and take-aways in the local area. While competition is not a material planning consideration, this proposal is considered to be a bespoke and unique food offering that does not currently exist within Old Kilpatrick or the Council area with exception to similar food markets that come and go from Lomond Shores in Balloch. Increased fire risk from food outlets has been raised as a concern and would be the responsibility of the applicant to ensure the business operates in accordance with fire safety regulations for this type of use. While concerns have been raised regarding the draw of people to the site, it is unlikely given the scale and set-up that the village would be inundated with people and cars. With regards comments referring to Covid-19, the Scottish Government has provided guidance on how businesses must operate and it is the responsibility of the vendors and site owner to ensure that these are followed. Reference has been made to the drawings being inaccurate and showing office buildings that have been demolished. The applicant has confirmed that an office building was demolished around 3 years ago.

- 7.18** Old Kilpatrick Community Council have expressed their support for the application. They believe that the use will enable the building that the unit forms a part of to become commercially viable, and they are keen to see the building retained as the applicant currently provides storage for the Old Kilpatrick Food Parcels sub-group. They also hope to create an information base within the building in the future to promote local points of interest such as the Antonine Fort/Wall. It does acknowledge that some local residents are concerned about potential noise and smells from the proposed use but considers that it is possible for such issues to be managed. The Community Council is supportive of the proposal and considers that it will enable the village to become a destination point.

8. CONCLUSION

- 8.1** The proposal would bring an existing vacant unit back into use and would provide a space for local small businesses to operate. While there would be an increase in noise and general activity as a result of the use it is not considered that this would be any greater than if an industrial or other business use were to occupy the premises, and potential issues caused by cooking odours and noise can be addressed through adequate ventilation and mitigated through conditions. It is considered that the proposed development would not have a significant detrimental impact on residential amenity and is a suitable alternative use for this site and will provide a bespoke food offering within the area. It is acknowledged that the proposal is unique and the first of its kind in West Dunbartonshire and it is recommended that a temporary permission is granted for a two year period which allows the applicant adequate time to establish the food market business, build a reputation and customer base but also provides a monitoring and review period for the

development. It would be open to the applicant to re-apply for planning permission when the permission is due to expire.

9. CONDITIONS

- 1. The permission hereby granted is for a temporary period of 2 years only and shall expire on 11th November 2022.**
- 2. Notwithstanding the Town and Country Planning (Use Classes) (Scotland) Order 1997 or any other future enactment, only a street food market use shall be permitted to operate from the application site and no other use shall be permitted without the prior written consent of the Planning Authority.**
- 3. The converted containers shall trade only between the hours of 08.00 and 20.00.**
- 4. Notwithstanding the submitted details, no more than 5 converted containers in the positions shown on drawing number 2020/915/01 shall trade at any one time on the premises. Any change to the location of any of the converted containers must first be approved in writing by the planning authority.**
- 5. Prior to the commencement of the use, an amended parking plan including two parking spaces for disabled badge holders, each measuring 6.5 metres by 3.9 metres, shall be submitted for the further written approval of the planning authority. All of the parking spaces shown on the approved plan shall be delineated on the site before the commencement of the use and retained thereafter.**
- 6. Prior to the commencement of the use, details of an adequate sized grease trap shall be submitted to and approved in writing by the Planning Authority. It shall be installed as approved and maintained thereafter.**
- 7. Prior to the commencement of the use, specific details of the proposed method of ventilation shall be submitted to and approved in writing by the Planning Authority. The proposed development shall not be brought into use until the ventilation systems are operational in accordance with the approved details.**

The ventilation system shall:

- a) Incorporate systems to reduce the emission of odours and pollutants and shall thereafter be maintained as necessary.**
- b) Be constructed by employing best practical means to minimise noise and vibration transmission via plant and the container structure.**

- c) Noise associated with the ventilation shall not give rise to a noise level, assessed with the windows open, within any dwelling or noise sensitive building, in excess of the equivalent to Noise Rating Curve 35, between 07:00 and 20:00 hours, and Noise Rating Curve 25 at all other times.
8. Prior to the commencement of the use, full details of any proposed outdoor customer seating shall be submitted for the further written approval of the planning authority and implemented as approved. Thereafter, any changes proposed to the details as may approved under the terms of this condition shall require the further written consent of the Planning Authority.
9. Prior to the commencement of the use, full details of any previously recorded background music to be played from the unit as part of the development shall be submitted for the further written approval of the planning authority in consultation with the Council's Environmental Health Service. Such details shall include the maximum volume of music and the location of any speakers. Thereafter, the development shall be implemented as approved and the maximum volume of music shall not be exceeded and there shall be no changes to the location of speakers without the prior written consent of the Planning Authority. No music shall be played from outside the unit and no live music shall be played at any time.
10. Prior to the commencement of the use, details of the menu(s)/ those foods to be prepared and sold from outside the unit/ building subject to this application shall be submitted to and agreed in writing by the Planning Authority through consultation with the Council's Environmental Health Service. Thereafter only the menu(s)/ those foods as may be agreed under the terms of this condition shall be prepared and sold from outside the unit/building and there shall be no changes without the prior written consent of the Planning Authority.
11. Prior to the commencement of the use, full details of the number and location of bins within the site and the management of waste shall be submitted for the approval in writing of the Planning Authority and implemented as approved.

Peter Hessett
Strategic Lead - Regulatory
Date: 11 November 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 6 (Clydebank Waterfront)