

FPRB Reference: 22/382

## Review Decision Notice

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Decision by Fife Planning Review Body (the FPRB)

- Site Address: 22 Duncan Crescent, Dunfermline, Fife, KY11 4BT
- Application for review by Mr M Arslan against the decision by an appointed officer of Fife Council
- Application 22/01054/FULL for Full Planning Permission for Alterations to and change of use from storage building (Class 6) to shisha bar (Sui Generis) (Retrospective)
- Application Drawings:  
01 - Various existing and proposed, 02 - Proposed Site Plan, 03 - Supporting Statement

Date of Decision Notice: 29th August, 2023.

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### Decision

The 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 12th June, 2023. The Review Body was attended by Councillors David Barratt (Convener), Fiona Corps, Alycia Hayes, Lynn Mowatt and Andrew Verrecchia.

#### 2.0 Proposal

- 2.1 The appeal site relates to a small area of land located within the settlement boundary of Dunfermline. More specifically, the site is located within the area of Abbeyview, to the rear of a small shopping precinct. The site is located within the Abbeyview Local Shopping Centre as defined by FIFEplan (2017). The site measures 150sqm and contains a small garage/storage type building, with the site also including a small area of open space to the rear of the building. Whilst the wider surrounding area can be classed as mixed use with both commercial and residential uses present, the immediate area around the application site is predominantly used for the servicing of the neighbouring commercial units. Neighbouring buildings largely include commercial uses on the ground floor level, which face away from the application site

and onto the adjacent streets, with residential flatted properties located above. The flatted properties face out to Allan Crescent and Duncan Crescent, as well as into the backland area containing the application site. The residential properties of Allan Crescent feature rear large balcony/external spaces at first floor level (facing into the backland area).

- 2.2 The commercial properties of Duncan Crescent and Allan Crescent comprise of a mix of retail (Class 1A) and hot food takeaways (Sui Generis). The opening hours for the businesses vary, with the retail units generally opening in the morning until mid-afternoon, whereas the hot food takeaways tend to open from mid-afternoon until 22:00 and 23:00, with hot food takeaway on Allan Crescent open until 00:00 Friday-Sunday. None of the commercial properties appear to have their own dedicated off-street parking spaces/car park, with customers tending to park on the road (in case of Duncan Crescent) or in the on-street bay parking spaces along the shop frontages of Allan Crescent.
- 2.3 A large area of the Abbeyview Local Shopping Centre is identified in FIFEplan for wholesale redevelopment, with any proposed development required to replace or refurbish existing housing and retail units.
- 2.4 There is no relevant recorded planning history for the appeal site.
- 2.5 The appeal proposal seeks planning permission for alterations to and change of use from storage building (Class 6) to shisha bar (Sui Generis). The application was made retrospectively with the existing garage building already being renovated and its use being changed into a shisha bar/lounge (Sui Generis). Works to bring a small area of open space into the building's curtilage has also been undertaken with this area being used by customers of the shisha bar. The building has been painted dark grey, one opening has been blocked up and new openings have been created on the south, east and north elevations. Works have been undertaken to the rear of the building to enclose an area of open space with a 1.8m high fence.
- 2.6 The opening times of the shisha bar are stated to be 12:00-23:00 7 days a week, with the outdoor seating area used between 12:00-20:00. The supporting statement advises that the business does not operate on a walk-in basis, with all customers required to pre-book a 1hr timeslot, with the premises restricted to 15 customers at a time. It is advised by the appellant that no loud music is played within the premises, however, there is a television which plays background music. The appellant claims that there is car parking provision in the area for 16 cars, however, this area is not within the appellant's ownership; there are no marked/formalised parking bays within the service yard area.

### **3.0 Reasoning**

- 3.1 The determining issues in this review were the principle of development, design and visual impact, residential amenity and transportation and road safety.
- 3.2 The FPRB considered the terms of the Development Plan which comprises the Adopted National Planning Framework 4 (2023) ("NPF4") and the Adopted FIFEplan Local Development Plan (2017) ("FIFEplan") and its associated Making Fife's Places Supplementary Guidance (2018). The FPRB also considered the provisions of Planning Advice Note 1/2011: Planning and Noise and Fife Council's guidance note on Development and Noise (2021).

- 3.3 The FPRB firstly considered the principle of development, assessing the appeal proposal against Policies 1, 2, 9 and 27 of NPF4 and Policies 1 and 6 of FIFEplan. The FPRB concurred with the Appointed Officer's assessment that the nature of the proposed shisha bar use would be compatible in principle in the site's Local Shopping Centre location, potentially attracting more people to the area and thereby improving the viability and vitality of the area and benefitting the local economy. The FPRB therefore concluded that the appeal proposal would be acceptable, in principle, complying with the relevant Development Plan policies.
- 3.4 Secondly, the FPRB considered the design and visual impact of the appeal proposal, giving regard to Policies 9, 14 and 27 of NPF4 and Policies 1, 6, 10 and 14 of FIFEplan and Making Fife's Places Supplementary Guidance. Noting that the appeal site is located in a backland area behind Duncan Crescent and Allan Crescent, the FPRB shared in the Appointed Officer's assessment and considered that the works undertaken by the Appellant were of high quality and had modernised and visually improved the appearance of the building and its backland setting. The FPRB concluded that the appeal proposal would be acceptable, not giving rise to any visual amenity concerns and would comply with Policies 9, 14 and 27 of NPF4 and Policies 1, 6, 10 and 14.
- 3.5 The FPRB considered the residential amenity impacts of the appeal proposal. The appeal proposal was assessed against Policies 14 and 23 of NPF4, Policies 1, 6 and 10 of FIFEplan, Making Fife's Places Supplementary Guidance, Planning Advice Note 1/2011 and Fife Council's guidance note on Development and Noise. The FPRB gave consideration to the Appellant's proposed hours of operation and customer booking system. Consideration was also given to the public comments which had been received and the consultation response provided by the Council's Environmental Health (Public Protection) Officer. With the shisha bar proposed to operate until 23:00, the FPRB raised concerns that the appeal proposal would lead to a large number of customers and vehicular movements in the backland area until late at night; particularly during the changeover period associated with the Appellant's proposed booking system; to the detriment of residents of the neighbouring flatted dwellings. Notwithstanding the Local Shopping Centre designation of the surrounding area, the context and expected noise environment of the backland area of the appeal site was considered to differ from the principal streets of Allan Crescent and Duncan Crescent, concurring with the Appointed Officer's determination. The FPRB considered the use of a planning condition to restrict the hours of operation of the shisha bar use, however, concluded that, in the absence of a detailed noise impact assessment, they would be unable to determine what would be an appropriate restriction as there was no evidence to confirm that any restriction to the hours of operation would sufficiently protect the amenity of the neighbouring residential properties. The FPRB did not raise any concerns regarding the operational noise and odours associated with the shisha bar use within the building, concurring with the Appointed Officer's assessment on these matters. In conclusion, the FPRB determined that the appeal proposal would give rise to significantly adverse noise impacts, to the detriment of residents of the neighbouring flatted dwellings, contrary to Policies 14 and 23 of NPF4 and Policies 1, 6 and 10 of FIFEplan, upholding the assessment of the Appointed Officer.

- 3.6 The FPRB considered the road safety and sustainable transport implications of the appeal proposal against Policy 13 of NPF4, Policies 1, 3 and 10 of FIFEplan and Making Fife's Places Supplementary Guidance. The FPRB gave regard to the Appellant's argument that the backland area in which the appeal site is located has space to accommodate off-street parking for 16 vehicles, however, as there are no formalised/marked off-street parking spaces within the backland area, the FPRB were concerned that there was no guarantee that vehicles would be parked in a such a way as to fully realise the 16 off-street parking spaces identified by the Appellant, resulting in potential conflicts between customers, pedestrians and vehicles servicing the neighbouring commercial units. The FPRB additionally noted that as the backland area is not within the Appellant's control, the Appellant would be unable to undertake necessary works to formalise the car parking spaces identified; it was also acknowledged by the FPRB that the Appellant had recently been unsuccessful in purchasing the land from Fife Council. Giving consideration to the Appellant's proposed customer booking system, the FPRB raised concerns that during the changeover period of customers, the potential would exist for 30 vehicles trying to enter and exit and backland area/identified car park. The FPRB ultimately determined that the appeal proposal, due to its expected number of vehicular movements, could compound an existing parking problem within the surrounding streets which currently experience a high demand for on and off-street parking. The FPRB therefore upheld the determination of the Appointed Officer with regard to road safety and sustainable transport impacts, concluding that the appeal proposal would be contrary to Policy 13 of NPF4, Policies 1, 3 and 10 of FIFEplan, and Making Fife's Places Supplementary Guidance.
- 3.7 Lastly, the FPRB considered whether there were any material considerations which would outweigh the Development Plan position. Whilst acknowledging the works undertaken by the Appellant to improve the appearance of the building and to bring the building back into use, the FPRB concluded that this would not outweigh the development plan position and therefore the application should be refused.
- 3.8 Overall, the FPRB concluded that the appeal proposal would have a significantly adverse impact on the amenity of neighbouring residential properties given the noise impacts associated with the proposed use, with the appeal proposal also considered to give rise to significantly adverse road safety and sustainable transport impacts. Thus, the FPRB considered that the proposed development would be contrary to Policies 13, 14 and 23 of NPF4, and Policies 1, 3, 6 and 10 of FIFEplan, Making Fife's Places Supplementary Guidance. 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 the application should be refused and upheld the Appointed Officer's assessment, subject to the addition of relevant NPF4 Policies to the reasons for refusal.

#### **4.0 Decision**

- 4.1 The FPRB upholds the decision of the Appointed Officer and refuses planning permission for the following reason(s):

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

1. The application proposal would result in unacceptable significantly detrimental residential amenity impact on neighbouring residential properties by virtue of increased levels of activity (vehicular/pedestrian) in a quiet backland area. The application proposal is therefore contrary to National Planning Framework 4 (NPF4) Policies 13, 14 and 23, FIFEplan (2017) Policies 1, 6, 10 and Making Fife's Places Supplementary Planning Guidance (2018).
  
2. The application proposal would result in unacceptable significantly detrimental road safety impacts on the surrounding area by virtue of generating an increased parking demand, in an area which is used for servicing neighbouring commercial units, resulting in unsafe environment for both vehicles and pedestrians. The application proposal is therefore contrary to National Planning Framework 4 (NPF4) Policy 13, FIFEplan (2017) Policies 1, 3, 10 and Making Fife's Places Supplementary Planning Guidance (2018).

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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.