



Decision by Stephen Hall, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2189
- Site address: 67 Tomnahurich Street, Inverness, IV3 5DT
- Appeal by Mrs Catherine Brown against the decision by The Highland Council
- Application for planning permission 17/03503/FUL dated 21 July 2017 refused by notice dated 22 December 2017
- The development proposed: Change of use of shop to Class 3(5) Chinese hot food takeaway
- Application drawings: 2017/SY/02, 2017/SY/03
- Date of site visit by Reporter: 2 May 2018

Date of appeal decision: 11 June 2018

Decision

I allow the appeal and grant planning permission subject to the 6 conditions listed at the end of the decision notice. Attention is drawn to the 3 advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Because the appeal site is located in the Inverness (Riverside) Conservation Area, I am also required have special regard to the preservation or enhancement of the conservation area.
2. Having regard to the provisions of the development plan the main issues in this appeal are the amenity of neighbouring uses, and parking and road safety.
3. The development plan for the appeal site consists of the Highland-wide Local Development Plan 2012 and the Inner Moray Firth Local Development Plan 2015. Policy 1 of the Inner Moray Firth plan states that developers of proposals that generate visits by the general public should consider suitable sites (in terms of the scale and type of development) within the city centre. The appeal site is identified as falling within Inverness city centre, and the proposed use would be of a type and scale that is broadly suitable for city centre locations. I therefore consider the principle of the proposed use to be broadly consistent with the development plan.



4. In terms of particular impacts, Policy 28 of the Highland-wide plan (Sustainable Design) identifies a series of criteria that proposed developments are to be assessed against, including impact on individual and community residential amenity. Policy 56 (Travel) requires travel-generating proposals to include sufficient information to enable the consideration of transport implications, and satisfy a number of criteria including being designed for the safety and convenience of users, and incorporating an appropriate level of parking provision.

5. Regarding amenity concerns, I recognise that the area is of a mixed residential and commercial character, and am particularly mindful of the use of the upper floor of the building by the Samaritans. However, given that the site is within the designated city centre and on a main road, I consider that the level of activity that would be associated with the proposed use would not be out of place in this location. I also note the council's senior environmental health officer is satisfied with the proposals as regards odour, noise and bin storage, subject to the imposition of relevant conditions. In particular he notes that the proposed odour control system meets the recommendations in the guidance issued by the Department of Environment, Food & Rural Affairs. This is the most authoritative evidence available to me on these matters. On this basis I conclude on balance that the proposal complies with Policy 28.

6. Tomnahurich Street forms part of the A82 trunk road and is clearly a busy and occasionally congested route into the city centre. There are no pedestrian crossings or traffic islands close to the appeal site. However, given this is a semi-commercial area within the designated city centre, I do not consider that the site's location on a busy road should necessarily prevent the use of premises as hot food takeaways. Several other premises which may be expected to be frequently visited by the public exist on Tomnahurich Street, including the bakery opposite the appeal site, and a convenience store, cafes and other shops to the east. The proposed takeaway will conform to this established character, and replace an existing commercial use that will itself have given rise to a level of traffic. Due to its evening opening hours, the proposed takeaway would be likely to mainly generate trips at a different time of day from other commercial premises on the street, and this would limit the impact on overall congestion levels.

7. Regarding parking, the nature of the proposed use, and the site's location on a main road means that it would be likely to attract a good proportion of car-borne custom, alongside walk-in custom from nearby residential areas. The council's Transport Planning Team have referred to a parking standard of one space per five square metres public floor area plus one space per three staff, equating to eight spaces in total. However, in this case, on-site parking provision is not possible, and in my experience it is normal for small scale commercial proposals in city centre locations to rely on public and on-street parking rather than being required to make specific dedicated provision. But the availability of such public and on-street parking may nevertheless be a valid consideration.

8. I noted on my site inspection that the small car park to east of the appeal site appears to be for the private use of Birchwood Highland. It may be that some evening visitors to the hot food takeaway would in reality use this car park, but as such use would be unauthorised I do not consider the spaces provided by this car park can be relied upon. I doubt that it would be permissible to use the single designated loading space on the corner of Ardross Place and Tomnahurich Street for collecting even pre-ordered takeaway

food. Other on-street parking in the area is restricted to permit-holders until 5pm (Tomnahurich Street and Ardross Street) or 6pm (Montague Row).

9. In their letter of 23 April 2018, the appellant has stated that it is no longer the intention to open the takeaway at lunchtime. It would be possible for me to impose a planning condition that restricted the opening hours to evenings only. At this time on-street car parking in the permit-holders spaces (on Tomnahurich Street and elsewhere) is available for general use. On this basis I conclude that parking spaces suitable for the use of patrons of the proposed takeaway would be available in the local area. It is reasonable for me to assume that parking restrictions (such as on double yellow lines) will be enforced, and that therefore if no spaces are available immediately outside the premises, customers will park in the nearest available space.

10. Particular concern has been expressed by a number of parties about the safety of schoolchildren from Inverness High School who might wish to cross Tomnahurich Street to visit the proposed takeaway in their lunch break. However, given that it is no longer the intention to open the takeaway at lunchtime, I do not consider that these particular safety considerations will arise.

11. The operation of a delivery service from the premises could potentially cause increased disturbance and pressure on parking. I note that it is not the appellant's current intention to operate such a service, but in any event their ability to do so without the prior approval of the council could be controlled by condition.

12. For the reasons set out above I therefore conclude that, subject to conditions limiting opening hours and restricting the ability to operate a delivery service, the proposal would comply with Policy 56, and with the development plan overall.

13. As regards other material considerations, the issue of means of escape in the event of a fire is one for the building standards system to address.

14. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Stephen Hall
Reporter

Conditions

1. Prior to the premises being brought into use for the purpose hereby granted, the kitchen extract system as detailed in Specification document "Proposals for New Extract System for Chinese Takeaway at 67 Tomnahurich Street" dated 14 August 2017, shall be installed in full and thereafter retained and maintained at all times.

Reason: In the interest of the amenity of nearby residential and business property.

2. The kitchen extract system (as detailed in condition 1 above) shall be effectively operated and maintained in order that cooking odours are not detectable, as far as reasonably practicable, at any neighbouring premises.

Reason: In the interest of the amenity of nearby residential and business property.

3. All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that either of the following standards are met: -

- any associated operating noise must not exceed NR 20 when measured or calculated within the bedroom of any noise-sensitive premises with windows open for ventilation purposes.

OR

- the operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty. Terms and measurements to be in accordance with BS 4142: 2014 Methods for Rating Industrial & Commercial Sound.

(For the purposes of this condition, “noise-sensitive premises” includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.)

Reason: In the interest of the amenity of nearby residential and business property.

4. For the avoidance of any doubt, a suitable and sufficient off street storage area shall be maintained at all times for refuse containers associated with this development. All refuse and recyclable materials associated with the development shall be stored within the approved area detailed on the layout plan. No refuse or recycling material shall be stored or placed for collection on the public highway or pavement, except on day of collection.

Reason: In the interest of the amenity of nearby residential and business property.

5. The premises shall not be open to the public outside the hours of 5pm to 11pm on any day, unless with the specific written prior agreement of the planning authority.

Reason: In the interests of ensuring that on-street car parking is likely to be available for the use of customers and in the interest of the amenity of nearby residential and business property.

6. No delivery service shall be operated from the premises without the specific written prior agreement of the planning authority.

Reason: To ensure that the traffic and parking implications of any proposal to operate such a service can be assessed.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).