

Reference Number: 09/00333/COU  
Applicants Name: Gantock Rock Ltd  
Application Type: Change of Use  
Application Description: Change of use of shop (Class 1) to hot food takeaway (Sui Generis) and installation of external flue.  
Location: 43 Argyll Street, Dunoon, Argyll

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**(A) THE APPLICATION**

**(i) Development Requiring Express Planning Permission**

- Change of use of shop (Class 1) to hot food takeaway (Sui Generis).
- Installation of external flue.

**(ii) Other specified operations.**

- N/A.
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**(B) RECOMMENDATION**

Having due regard to development plan policy and other material considerations, it is recommended that planning permission **be granted** as a '*minor departure*' to the Development Plan and subject to the attached conditions and reasons along with the informative detailed overleaf.

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**(C) SUMMARY OF DETERMINING ISSUES AND MATERIAL CONSIDERATIONS**

**(i) Development Plan Context:**

Under the provisions of the adopted Cowal Local Plan the premises is located within Dunoon's Retail Core area. Policy POL COM 2 seeks to resist any change of use from retailing of ground floor premises within this core area of Argyll Street.

Under the provisions of the emerging local plan, the premises is located within Dunoon's Main Town Centre but importantly outwith the defined Core Shopping Area where policy LP RET 2 resists changes of use from retail to non-retailing uses.

Importantly, the boundaries of this core shopping/retail area in the adopted and emerging local plans are significantly different and the subject premises is now located outwith this restrictive zoning. The proposal is not in conflict with any land use policies contained within the emerging local plan so this proposal is consistent, in principle, with this emerging local plan.

**(ii) Representations:**

None.

**(iii) Consideration of the Need for Non-Statutory or PAN 41 Hearing:**

No.

**(iv) Reasoned Justification for a Departure from the Provisions of the Development Plan.**

Policy POL COM 2 of the adopted Cowal Local Plan 1995 seeks to protect Dunoon's retail core by restricting non-retail changes of use from Class 1 in the part of *Argyll Street* that contains the subject premises (*43 Argyll Street*).

The Cowal Local Plan adopted fourteen years ago is aged and is being replaced by the *Argyll & Bute Local Plan Post Inquiry Modifications 2008*. The proposed change of use would not conflict with Policy LP RET 2 in so far as the premise is located outwith the defined core Shopping Area of Main Town Centres, as defined by the emerging local plan. Such a proposed new use does not conflict with any land use policies within this local plan.

**(v) Is the Proposal a Schedule 1 or 2 EIA development:**

No.

**(vi) Does the Council have an interest in the site:**

No.

**(vii) Need and Reason for Notification to Scottish Ministers.**

No.

**(viii) Has a sustainability Checklist Been Submitted:**

No.

**Angus J Gilmour**  
**Head of Planning**  
9 June 2009

**Author:** John Irving, Tel: 01369708621  
**Reviewing Officer:** David Eaglesham, Tel: 01369708608

**Date:** 20 May 2009  
**Date:** 9 June 2009

**NOTE: Committee Members, the applicant, agent and any other interested party should note that the consultation responses and letters of representation referred to in Appendix A, have been summarised and that the full consultation response or letter of representations are available on request. It should also be noted that the associated drawings, application forms, consultations, other correspondence and all letters of representations are available for viewing on the Council web site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk).**

## **CONDITIONS AND REASONS RELATIVE TO APPLICATION: 09/00333/COU**

1. The premises shall not be used for the preparation and/or sale of hot food until a suitable extraction system and flue have been installed. Prior to its installation, full details and specification of the proposed extraction system and flue shall be submitted to and approved in writing by the Planning Authority, in consultation with the Area Environmental Health Manager.

**Reason:** *In the interest of safeguarding established levels of amenity afforded to the surrounding area and to prevent nearby residents being exposed to odour and particulates likely to be discharged from the premises.*

2. The premises shall not be used for the preparation and/or sale of hot food until a noise assessment, carried out by a competent person, has been submitted to and approved in writing by the Planning Authority, in consultation with the Area Environmental Health Manager. Such an assessment shall demonstrate that there will be no noise or vibration impact in neighbouring properties that will exceed noise rating curve 30, unless the written consent for variation is obtained in writing from the Planning Authority.

**Reason:** *In the interest of safeguarding established levels of amenity afforded to the surrounding area and nearby residents.*

## **INFORMATIVES RELATIVE TO APPLICATION: 09/00333/COU**

The conversion of this shop unit to a hot food take away will require a Building Warrant.

The Area Environmental Health Manager has advised that it should be noted that the existing construction of the premises may be such that odours can seep up and into the properties directly above, affecting those using the property, particularly through any gaps or holes in the ceiling or the space between the outer and inner skin of the rear wall, and/or original flues. While this is primarily a matter for Building Standards, in complying with condition 1 and 2 above, it is open to you to demonstrate that the structure of this premise will/does prevent odours from entering the property above.

## APPENDIX A – RELATIVE TO APPLICATION NUMBER: 09/00333/COU

### MATERIAL CONSIDERATIONS AND ADVICE

#### (i) POLICY OVERVIEW AND MATERIAL ADVICE

##### **Cowal Local Plan 1993**

Policy POL COM 2 '*Protection of Dunoon's Retail Core*' seeks to resist changes of use from retailing in ground floor premises in Argyll Street between Queens Hall and John Street.

Policy POL COM 5 '*Bad Neighbour Development*' seeks to oppose potential bad neighbour developments when it is considered that they are likely to adversely affect the amenity of neighbouring properties and land.

##### **Argyll & Bute Local Plan Post Inquiry Modifications 2008**

Policy LP RET 2 '*Changes of Use To and From Use Class 1 (Shops) In the Core Shopping Areas of the Main town Centres*' seeks to resist non-retailing uses within the core shopping area of Dunoon.

Under the provisions of this emerging local plan the premises is located within the defined Main Town Centre but outwith the defined Core Shopping Area.

Policy LP BAD 1 '*Bad Neighbour Development*' seeks to resist proposals in all development control zone classed as 'Bad Neighbour Developments'

Policy LP ENV 19 '*Development Setting, Layout & Design*' seeks to achieve a high standard of layout, setting and design where new developments are proposed.

Policy TRAN 6 '*Vehicle Parking Provision*' set out parking standards for all development types and uses.

**Note (i): The applicable elements of the above Policies have not been objected too or have no unresolved material planning issues and are therefore material planning considerations.**

**Note (ii): The Full Policies are available to view on the Council's Web Site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)**

#### (ii) SITE HISTORY

There is an associated advertisement consent application 09/00411/DET for the erection of illuminated signage at this premise. This application is currently pending consideration.

**(iii) CONSULTATIONS**

**Area Roads Manager** (memo dated 11<sup>th</sup> May 2009): No objection.

**Area Environmental Health Manager** (memo dated 20<sup>th</sup> May 2009): No objection subject to conditions.

*'The premises to which the planning application relates is located in the commercial centre of Dunoon and is situated on the ground floor of a tenement block. There are residential properties nearby but not immediately adjacent, however, neighbouring office accommodation could be sensitive receptors to nuisance from odours and particulates. The applicant had not provided detail on the type of hot food takeaway nor any corresponding odour control measures to be installed such as ventilation extraction. It is not possible to assess whether odours or smoke will be adequately controlled from the information given. If cooking fumes and odours cannot easily be ducted away from the premises via a flue that discharges above eaves level then an alternative arrangement incorporating filters and scrubbing units will need to be considered.*

*In addition the operation of the extraction system (e.g. fan) may cause noise and/or vibration disturbance to the occupants of adjoining properties.*

*I have no objection of an environmental health nature to lodge provided safeguarding conditions are included to control cooking odours and fume.'*

**(iv) PUBLICITY AND REPRESENTATIONS**

Under Article 9 neighbour notification procedures, *potential departure* advertisement (published 1<sup>st</sup> May 2009 expired 22<sup>nd</sup> May 2009) and *Section 34 'Bad Neighbour'* advertisement (published 1<sup>st</sup> May 2009, expired 15<sup>th</sup> May 2009) no letters of representation have been received.

## **APPENDIX B – RELATIVE TO APPLICATION NUMBER: 09/00333/COU**

### **PLANNING LAND USE AND POLICY ASSESSMENT**

#### **A. Settlement Strategy**

This application seeks to change the use of an existing vacant retail unit to a hot food takeaway business. Under the provisions of the adopted Cowal Local Plan the premises is located within Dunoon's Retail Core area. Policy POL COM 2 seeks to resist any change of use from retailing within ground floor premises in this core area of Argyll Street, Dunoon.

**The proposal is therefore contrary to policy POL COM 2 of the adopted local plan.**

Under the provisions of the emerging local plan, the premise is located within Dunoon's Main Town Centre, but importantly outwith the defined Core Shopping Area. Within this core shopping area policy LP RET 2 applies, and is similar to policy POL COM 2 of the adopted local plan, seeking to resist changes of use from retail to non-retailing uses in the defined Core Shopping Area.

Importantly, the boundaries of this core shopping/retail area in the adopted and emerging local plans are significantly different and the subject premises is now located outwith this restrictive zoning. The proposal is not in conflict with any land use policies contained within the emerging local plan and to this end, the proposal is consistent, in principle, with this emerging local plan.

Both the adopted and emerging local plans boast specific policies which seek to resist 'bad neighbour' type developments that would have an adverse impact on the amenity afforded to neighbouring residents.

The subject premise is located within Dunoon town centre and is contained within a two storey building. There is an existing hot food takeaway to the immediate north and a vacant shop unit to the immediate south. There is also a pub and hotel within the vicinity of the premises. Importantly, the upper floor above the premises is a non-residential training centre and there are no residential properties within the vicinity of this premises that could be affected by the impact of this development. Importantly, the Area Environmental Health Manager has raised no objection to this application subject to appropriate conditions. These conditions will ensure that the hot food takeaway business does not become operational until all potential odour extraction and noise issues have been fully resolved. To this end, there is not considered to be any adverse 'bad neighbour' type issues associated with this development.

**This proposal is therefore considered to be consistent with policy POL COM 5 of the adopted Cowal Local Plan and policies LP BAD 1 and LP RET 2 of the emerging Argyll & Bute Local Plan Post Inquiry Modifications 2008.**

## **B. Location, Nature and Design of Proposed Development**

The proposed change of use incorporates internal alterations to the layout of the premises, which do not require planning permission. The frontage of the shop boasts an existing roller security shutter and fascia, which are to be retained. The proposed illuminated advertisement signboard is the subject of a separate application for advertisement consent.

It is proposed to erect a free standing 300mm diameter steel flue to the rear of the premises. The steel flue will be fixed to the ground upon a concrete slab and will not require any fixings onto the buildings rear wall. The flue will be 9.5 metres in height and will project beyond the rear eaves level of the building by approximately 2 metres. The structure is essential to help ensure odour nuisance to the upper floor occupants is effectively controlled. The flue will not project beyond the roof ridge of the building and is well concealed it is rear. Its wider visual impact is therefore considered to be limited.

**The proposal is therefore considered to be consistent with policy LP ENV 19 of the emerging Argyll & Bute Local Plan Post Inquiry Modifications 2008.**

## **C. Road Network, Parking and Associated Transport Matters**

The application does not include any provision for customer car parking. Policy TRAN 6 of the emerging local plan does not require any off street car parking provision in identified town centres, such as Dunoon, for hot food take away businesses. Furthermore, The Area Roads Manager has raised no objection to this application.

**The proposal is therefore considered to be consistent with policy LP TRAN 6 of the emerging Argyll & Bute Local Plan Post Inquiry Modifications 2008.**

## **CONCLUSION**

While contrary to policy POL COM 2 of the adopted local plan, the development does not conflict with any land use policies contained with the emerging local plan, which is the most recent expression of Council policy in this regard. Furthermore, it is considered that any potential bad neighbour issues associated with this new use can be resolved through compliance with the attached conditions. Given all of the above, this proposal is considered to be acceptable.