

**KEY INFORMATION**

**Ward** East End

**Proposal**

Erection of 2 Storey  
Restaurant and Car Park

**Address**

137A Broughty Ferry Road  
Dundee  
DD4 7NL

**Applicant**

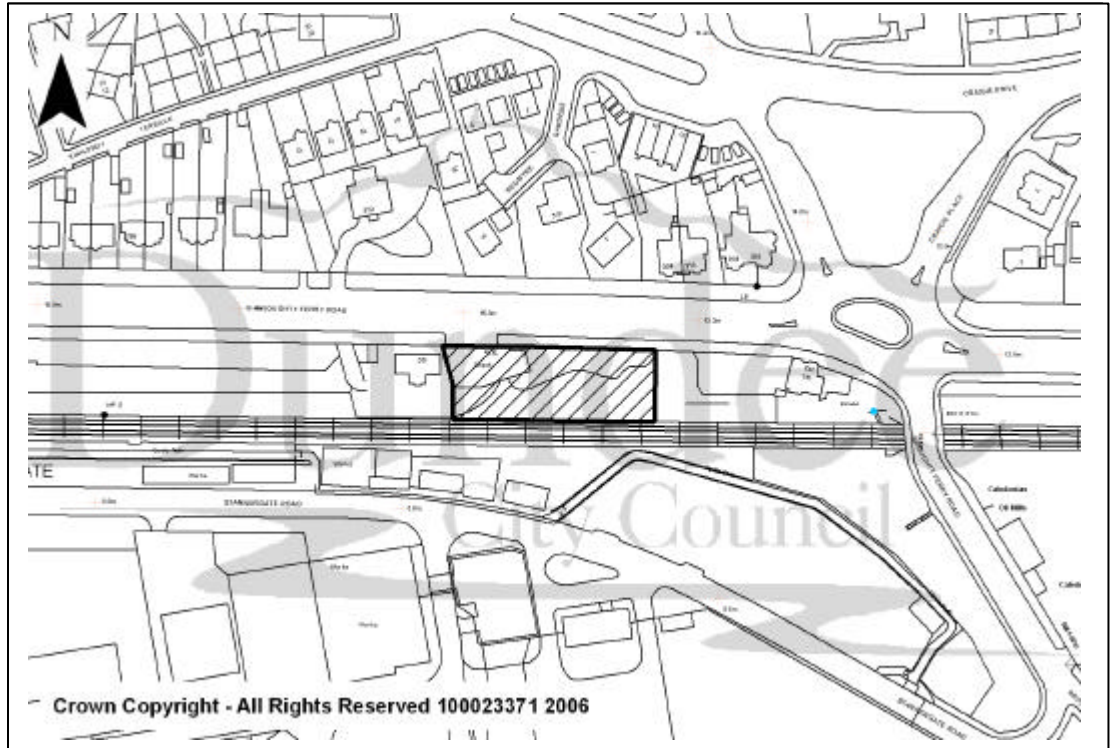
Mr Michael Chan  
c/o Rama Thai Restaurant  
32-34 Dock Street  
Dundee  
DD1 3DR

**Agent**

ARCHid  
8 Claypotts Road  
Broughty Ferry  
Dundee  
DD5 1BX

**Registered** 28 Feb 2007

**Case Officer** C Walker



## Proposed New Licensed Restaurant in Broughty Ferry Road

The erection of a 2 storey restaurant and car park is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed development contravenes Policies 1 and 53 of the Local Plan due to its proximity to nearby houses and the adverse impact of vehicle turning movements at this location and noise and disturbance from the development. The application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought to erect a new restaurant building on the south side of Broughty Ferry Road, west of its junction with Stannergate roundabout.
- Policies 1 and 53 of the Dundee Local Plan Review 2005 are relevant to the determination of this application.
- 6 letters of objection were received from neighbours who are principally concerned about traffic safety and residential amenity issues.
- The proposed development contravenes Policies 1 and 53 of the Local Plan due to its proximity to nearby houses and the adverse impact of vehicle turning movements at this location and noise and disturbance from the development.

**DESCRIPTION OF PROPOSAL**

Planning permission is sought to erect a new restaurant building on the site. The proposed building has a floor area of some 400m<sup>2</sup> and it is proposed to position it at the eastern end of the site and to provide a parking area of 26 spaces at the western end of the site.

The proposed building is a 2 storey structure of attractive modern design with walls of smooth white render and a wave like roof of dark grey membrane. It is cantilevered over the downward sloping ground to the south. The plans indicate a noodle bar and function room at ground floor and the main restaurant above, both enjoying views to the south over the docks and the Tay estuary.

An in-out arrangement is proposed for the parking area with the layout designed to deter right turning out of the car park. It is proposed to landscape the steeply sloping ground to the south of the site adjacent to the railway.

The applicants have submitted a statement in support of their application. In it they state that the proposed restaurant will be an authentic Malaysian restaurant operating from 12 noon to 11pm seven days a week with last orders at 10.30 pm. No takeaway facility will be provided.

They state that there is insufficient width at Broughty Ferry Road to create a central barrier to prevent right turning but that the car park has been designed to discourage right turning and that the situation will represent an improvement on the arrangements for the garage/tyre fitting centre. They state that adequate provision has been made for car and cycle parking. Deliveries will be arranged before 11.30am to avoid busy periods in the car park and service vehicles will not stop on Broughty Ferry Road.

In terms of residential amenity and Policy 53 of the Plan they state that they have enlarged their site by arranging to purchase land from the Council to locate the building as far as possible from the flats at 137 Broughty Ferry Road and the buildings at 141-

143 Broughty Ferry Road. The building is now 45 metres from both properties. It is just less than 30 metres from houses on the north side of Broughty Ferry Road but these properties are separated by a busy road and the building has been designed with a southern orientation to protect privacy and minimise noise disturbance. Finally they state that the design of the building will provide a pleasing aspect for local residents and



a significant improvement on the current garage building.

The applicants have also submitted a Design Statement which states that the design is intended to represent contemporary Scottish architecture whilst reflecting elements of traditional Malay buildings. The building is intended as a landmark building at this location and contains references to the traditional Malay Longhouse without copying it. The public areas are located on the south side of the building and services to the north to create a barrier to Broughty Ferry Road.



**SITE DESCRIPTION**

The site comprises a vacant tyre fitting and repair garage and a landscaped roadside verge on the south side of Broughty Ferry Road some 50 metres

west of the Stannergate Roundabout. Adjacent to Broughty Ferry Road the site is level but it then slopes steeply down to the railway line to the south. The sloping embankment is heavily wooded with self seeded deciduous trees.

The vacant garage building has stone walls to the front, brick to the rear and a metal sheeted roof. It sits directly on the edge of the road.

The site is surrounded by houses to the west, north and east. Immediately to the west is a 2 storey villa subdivided into 2 flats. This building sits well below the level of the road so that only its roof and upper level are visible from the north. To the east, adjacent to Stannergate roundabout, is a 2 storey subdivided villa. To the north, on the opposite side of Broughty Ferry Road, are a number of dwellings (both of traditional construction and modern) behind a high stone wall.

To the south of the site is the Dundee to Aberdeen railway and then the operational port area.

**POLICY BACKGROUND**

**Dundee and Angus Structure Plan 2001-2016**

There are no policies relevant to the determination of this application.

**Dundee Local Plan Review 2005**

The following policies are of relevance:

Policy 1: Vibrant And Sustainable Communities - the Gty Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

Policy 53: Licensed And Hot Food Premises Outwith The City Centre - in general, outwith the District Centres no licensed premises other than off

licences or hotels with a restricted license and no premises selling hot food is acceptable:

- a within 30 metres of existing and proposed housing if the outlet does not exceed 150m<sup>2</sup> gross floorspace (excluding cellar space) and;
- b within 45 metres if the 150m<sup>2</sup> figure is exceeded.

In the District Centres some relaxation of the above controls on distance from residential property may be appropriate. However, proposals for hot food takeaways other than those outlined below, will not be permitted in premises directly adjoining (ie directly above or to either side) residential property which is not within the control of the takeaway proprietor/operator.

### Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

### Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

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## SUSTAINABILITY ISSUES

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There are no specific sustainability policy implications arising from this application.

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## SITE HISTORY

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There is no relevant history of planning applications on this site.

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## PUBLIC PARTICIPATION

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Statutory neighbour notification was carried out and the proposal was advertised as a bad neighbour development and as contravening Policy 53 (Licensed and Hot Food Premises) of the adopted Local Plan.

6 letters of objection were received from neighbours to the north and west of the site who are concerned about:

- 1 Traffic and Parking Matters: The access on a busy road close to the Stannergate roundabout is unsafe.

Drivers will be tempted to undertake unsafe U turns on this busy road and customers travelling east will be tempted to turn right out of the site as it is some considerable distance to the west before there is a safe method of turning back in an easterly direction. The proposal will encourage drink driving as there are no nearby taxi ranks and the bus service is infrequent at night time. Inadequate parking is provided for the development and the Councils parking standards are not met by the development. Pedestrians will be at risk due to the lack of a proper crossing.

- 2 Noise and disturbance: There are fears of noise and disturbance from the proposed restaurant, particularly from car movements and doors slamming if there is a substantial takeaway element. There will be noise from ventilation equipment and music played on the premises. They state that traffic levels on Broughty Ferry Road are low at night time and would not mask noise from the development.
- 3 Local Plan Policy: The proposal contravenes Policy 53 the Local Plan.
- 4 Smell: There are fears of problems with cooking odours, with prevailing windows taking smells over the houses on the north side of Broughty Ferry Road.
- 5 Design: The building is too large and too high for the site and is of an inappropriate modern design.
- 6 Loss of Landscaping: The attractive landscaped verge will be removed and the natural environment at this location destroyed.
- 7 Overlooking: Neighbouring houses will be overlooked.

Copies of these letters are available for inspection in the Members Lounges and the points raised are considered in the Observations Section of this Report.

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## CONSULTATIONS

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The Head of Environmental Health and Trading Standards has commented that noise from mechanical ventilation is unlikely to be a problem taking into

account the distances to the nearest houses and the fact that the site is close to a busy road. He proposes that a planning condition should be attached to cover this matter.

He has also pointed out that there may be contamination on this site and that investigation needs to be carried out to ascertain the extent of contamination.

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## OBSERVATIONS

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In accordance with the provisions of Section 25 of the Act the Committee is required to consider:

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations.

### The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Although Policy 1 contains a general protection of residential amenity, the more relevant policy in this case is Policy 53 which specifically deals with uses such as restaurants. However whilst Policy 53 focuses on noise, disturbance and smell issues, Policy 1 has a wider scope also dealing with design, layout, parking and traffic movement issues.

In terms of design, it is considered that the proposed building would be an attractive landmark building at this location. The existing garage building on the site is unsightly and its removal and replacement with the building currently proposed would significantly enhance the visual amenity of the area. Even with the loss of some of the open space at the roadside verge it is considered that the net outcome would be an enhancement of the visual amenity of the area.

In terms of layout it is considered that the siting of the building would not result in any unacceptable overlooking or overshadowing of adjoining properties. The proposed building is sufficiently distant from all residential neighbours to avoid unacceptable overlooking and overshadowing and the principal public elevation of the building looks south over the port and the Firth of Tay.

In terms of parking and traffic movement issues it is considered that sufficient parking is provided at the premises. The Councils maximum parking requirement for a development of this scale is 34 spaces but this can be reduced where a justification is put forward. In this case 26 parking spaces are provided, the site is directly adjacent to a bus route and cycle parking will also be provided. In these circumstances it is considered that appropriate provision for parking is made.

In terms of traffic movement, access arrangements for the site are not ideal. Traffic turning right into or out of the site is likely to create problems on Broughty Ferry Road which experiences high volumes of traffic, particularly during commuter rush hour periods. Although the development has been designed to prevent right turning out of the site this would be difficult to enforce, particularly since there are no easy opportunities to turn back in an easterly direction once traffic leaves the site. Traffic turning right into the site could also create problems. This movement is not restricted and there is insufficient space either to create a central reservation to restrict such movements or to create a right turning lane. It is also likely that problems with traffic movement associated with the previous use as a garage must have arisen (and possibly contributed to its closure), but the scale of that development was much less than that of the current proposals. It is concluded that the development would give rise to unacceptable traffic movement issues.

In terms of Policy 53, there is a presumption against the proposed development because the building is within 45 metres of the houses on the north side of Broughty Ferry Road.

In this case the subdivided villa to the west at 137 Broughty Ferry Road is directly adjacent to the application site (even though it is over 45 metres from the proposed building) and 7 houses on the north side of Broughty Ferry Road are within the 45 metres of the site. The subdivided villa to the east is outwith the 45 metres distance.

It is concluded from the foregoing that the proposal does not comply with Policy 1 and Policy 53 of the adopted Local Plan.

## Other Material Considerations

The other material considerations to be taken into account are as follows:

### A - The Applicants Supporting Statement

In their supporting statement the applicants have addressed traffic movement issues and contravention of Policy 53 of the Local Plan.

In terms of traffic movement, they state that there is insufficient width at Broughty Ferry Road to create a central barrier to prevent right turning but that the car park has been designed to discourage right turning and that the situation will represent an improvement on the arrangements for the garage/tyre fitting centre. They state that adequate provision has been made for car and cycle parking. Deliveries will be arranged before 11.30 am to avoid busy periods in the car park and service vehicles will not stop on Broughty Ferry Road.

Whilst it is accepted that the applicants have designed their proposal to minimise right turning movements, it is considered that taking into account the high volumes of traffic on Broughty Ferry Road and the proximity of the site to Stannergate roundabout, that the development will lead to unacceptable traffic movement issues with vehicles turning right into the site and attempting to leave the site in an easterly direction.

In terms of residential amenity and Policy 53 of the Plan they state that the restaurant will operate from 12 noon to 11pm seven days a week with last orders at 10.30pm and that no takeaway facility will be provided. They suggest that the building is 45 metres from properties to the east and west and just less than 30 metres from houses on the north side of Broughty Ferry Road but these properties are separated by a busy road and the building has been designed with a southern orientation to protect privacy and minimise noise disturbance.

Although the proposed building will be separated from the dwellings to the east and west by some 45 metres, the proposed car park will be immediately adjacent to the subdivided villa to the west of the site. Even though that villa sits well below the level of Broughty Ferry Road it is considered that noise and disturbance from cars arriving at

and leaving the site will impact on the amenities of those neighbours, particularly at night time when traffic levels on Broughty Ferry Road are lower. It is accepted that the houses on the north side of Broughty Ferry Road are a reasonable distance away from the proposed development and that any adverse impacts will be lessened by this distance and by traffic using Broughty Ferry Road, even taking into account the lower volumes of traffic at night time.

It is considered that a facility such as this, which clearly would be an asset to the city, should be directed to a commercial area preferably in or adjacent to the city centre, and not a predominantly suburban area such as this.

### B - The Letters of Objection

The concerns of objectors are addressed as follows:

- 1 Traffic and Parking Matters: this matter has been considered in the assessment of the development against Policy 1 of the Plan and it was concluded that although the provision of car parking was adequate, the development would lead to unacceptable traffic movement issues. It is not considered that the development would give rise to drink driving and this is a matter that is controlled under separate legislation. Finally it is considered that pedestrian crossing facilities are adequate at this location.
- 2 Noise and disturbance: this matter has been considered in the assessment of the development against Policy 53 of the Plan and it was concluded that the development would have an unacceptable impact on the houses to the west of the site due to noise and disturbance from customers arriving and leaving by car. However it is not considered that noise from ventilation equipment would be problematic.
- 3 Local Plan Policy: It has been concluded that the proposal contravenes Policy 53 the Local Plan.
- 4 Smell: Taking into account the proposed ventilation measures it is considered that the

development will not lead to unacceptable odour problems.

- 5 Design: this matter has been considered in the assessment of the development against Policy 1 of the Plan and it was concluded that the design of the building was satisfactory.
- 6 Loss of Landscaping: this matter has been considered in the assessment of the development against Policy 1 of the Plan and it was concluded that even with the loss of some of the open space at the roadside verge, net outcome of the proposed development would be an enhancement of the visual amenity of the area.
- 7 Overlooking: this matter has been considered in the assessment of the development against Policy 1 of the Plan and it was concluded that there would be no unacceptable overlooking.

It is concluded from the foregoing that insufficient weight can be accorded to material considerations such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be refused.

If Members were minded to approve the planning application then in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997, it would be necessary to refer the application to the Scottish Ministers due to the development contravening Policy 53 of the adopted Local Plan and the fact that the Council has landownership interests in the site.

## Design

It is considered that the proposed building would be an attractive landmark building at this location. The existing garage building on the site is unsightly and its removal and replacement with the building currently proposed would significantly enhance the visual amenity of the area. Even with the loss of some of the open space at the roadside verge it is considered that the net outcome would be an enhancement of the visual amenity of the area.

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## CONCLUSION

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The proposed development contravenes Policies 1 and 53 of the Local Plan due to its proximity to nearby houses and the adverse impact of vehicle turning movements at this location and noise and disturbance from the development.

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## RECOMMENDATION

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It is recommended that consent be REFUSED for the following reason:

### Reason

- 1 The proposed development contravenes Policies 1 and 53 of the adopted Dundee Local Plan Review 2005 due to its proximity to nearby houses and the adverse impact of vehicle turning movements at this location and noise and disturbance from the development. There are no material considerations that would justify approving the application contrary to the provisions of the Development Plan.