

KEY INFORMATION

Ward Balgay

Proposal

Change of Use of front Patio area to beer garden

Address

83 Charleston Drive
Dundee
DD2 2HB

Applicant

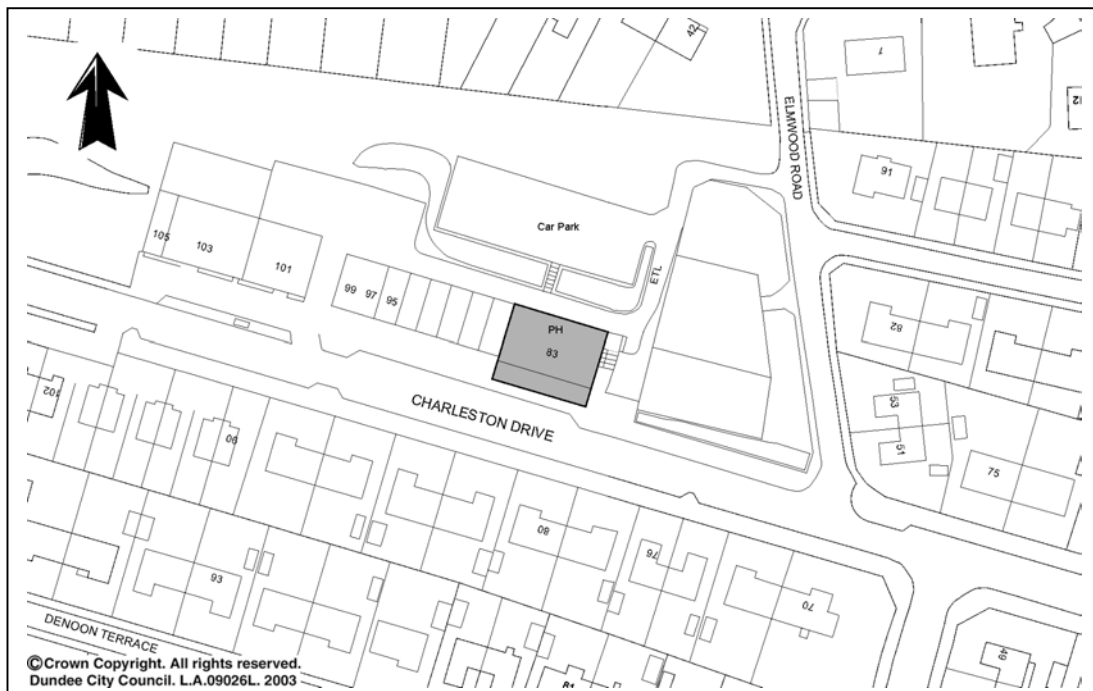
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Registered 17 June 2004

Case Officer Eve Jones



Proposal for a Beer Garden in Charleston Drive

The Change of use of front patio area to beer garden is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

RECOMMENDATION

The application is for the formation of a beer garden to the front of an established public house. The proposal does not comply with the relevant policies regarding location of licensed premises. The material considerations, including the objections, support **REFUSAL** of the application.

SUMMARY OF REPORT

- The application is for the creation of a beer garden on the raised terrace to the south of the public house on the north side of Charleston Drive.
- Temporary planning permission was granted for a beer garden in this location in January 2001 and March 2002. Both consents were for 1 year and had conditions on hours of operation, provision of seating and landscaping and control of music. Enforcement officers advised the operator in August 2003 that it was operating without planning permission. The Head of Environmental Health does not support the application as the operator has previously failed to comply with conditions on previous consents.
- The relevant policies in both the Dundee Local Plan and the Finalised Dundee Local Plan seek to protect residential amenity and in particular restrict licensed premises within 30 metres of existing housing. The proposal does not comply with this distance restriction.
- Ten objections have been received from neighbours to the south on grounds of loss of amenity, traffic congestion, proximity to shops used by children and failure to comply with previous permissions.
- The applicant has failed to comply with previous temporary consents which provided an opportunity to demonstrate that a beer garden could be an acceptable addition to the public house.

DESCRIPTION OF PROPOSAL

The application is for change of use of an existing external elevated terrace on the south elevation of a public house to a beer garden. There are no changes to the building.

SITE DESCRIPTION

The public house is the last property at the eastern end of a block of shops and commercial premises on the north side of Charleston Drive. The site is a terrace of 20 metres by 4 metres elevated above the street by about 1/2 metre and surrounded by railings. The building is single storey to the street but has additional accommodation on the lower floor due to the steeply sloping nature of the site to the rear. These properties have a tarmaced forecourt and footpath. There is a long layby offering on street car parking and an extensive, but rarely used, area for car parking to the rear, accessed from Elmwood Road. There are a range of commercial premises including newsagents, video hire and hot food takeaways. The area is a busy local shopping centre and Charleston Drive is a busy local road. The surrounding area is residential. The houses on the south side of Charleston Drive are elevated above the road level.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 1998

The following policies are of relevance:

Policy H1 - Existing Residential Areas. The policy supports the retention or introduction of service and facilities which are desirable within residential areas provided they do not adversely affect the environmental quality enjoyed by local residents by reason of design, layout, parking and traffic movement issues, noise or smell and they are in accordance with other policies in the plan.

Policy LT8 - Licensed and Hot Food Premises. No licensed premises... is

acceptable within 30 metres of existing and proposed housing if the outlet does not exceed 150 square metres.

Dundee Urban Nature Conservation Subject Local Plan 1995

There are no policies relevant to the determination of this application

Finalised Dundee Local Plan Review

The following policies are of relevance:

Policy 1 - Vibrant and Sustainable Communities. The policy encourages 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 effect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise and smell.

Policy 53 - Licensed and Hot Food Premises outwith the City Centre. The policy states that no licensed premises is acceptable within 30 metres of existing or proposed housing if the outlet does not exceed 150 metres gross floorspace.

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

LOCAL AGENDA 21

Key Theme 7 requires that access to facilities, services, goods and people is not achieved at the expense of the environment.

SITE HISTORY

D24880 change of use of patio to beer garden, approved by the Development Quality Committee for a temporary period on 25 January 2001. The hours of operation were between 1200 and 2100 hours and the temporary consent expired on 31 January 2002. There was also a condition requiring the details of proposed landscaped planters and external furniture to be submitted for approval prior to the use commencing. No details were submitted.

02/00013/COU change of use from paved area to beer garden, approved by the Development Quality Committee for a temporary period on 1 March 2002. The hours of operation were between 1200 and 2100 hours and the temporary consent expired on 31 March 2003. There were also conditions forbidding the provision of amplified music and requiring the details of proposed landscaped planters to be submitted for approval prior to the use commencing. No details were submitted.

03/00089CONBRE Enforcement investigation regarding operation of site following expiry of planning permission, 12.08.2003.

PUBLIC PARTICIPATION

The application was the subject of statutory neighbour notification. Ten standard letters of objection were received from neighbours. The grounds of objection are proximity to houses, location relative to schools, traffic congestion, previous use of the site as a beer garden. Copies are available in Members Lounges. The objections will be considered in the Observations below.

CONSULTATIONS

The Head of Environmental Health and Trading Standards has advised that the site appears to have operated after the temporary consent expired in March 2003 although the operator was advised of the situation by the Enforcement Officer. There is evidence of past complaints to the police with regards to noise and late operation of the beer garden beyond the permitted hours. The application is not supported.

OBSERVATIONS

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

Policy H1 - Existing Residential Areas. The policy supports the retention or introduction of service and facilities which are desirable within residential areas provided they do not adversely affect the environmental quality enjoyed by local residents by reason of design, layout, parking and traffic movement issues, noise or smell and they are in accordance with other policies in the plan.

This is an existing public house which lies at the end of a line of shops and businesses within a predominantly residential area. Some of these facilities do attract traffic and pedestrians often later into the evening, eg to the video rental and hot food take aways. The provision of a beer garden on the south side of the public house is likely to be an additional attraction to patrons in suitable weather conditions but is unlikely to be a primary attraction to the premises throughout the year. In principle, the use of an outside area as a beer garden at an existing public house is often acceptable subject to specific hours of operation and noise restrictions.

Policy LT8 - Licensed and Hot Food Premises. No licensed premises... is acceptable within 30 metres of existing and proposed housing if the outlet does not exceed 150 square metres. The application is in respect of use of an outside patio of 20 metres by 4 metres at an existing public house. Extensions to public houses and beer gardens are required to comply with these distance requirements in the interests of residential amenity. The houses to the south are 27 metres from the boundary of the terrace and therefore the proposal does not comply with this policy.

It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

Other Material Considerations

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

Finalised Dundee Local Plan Review

Policy 1 - Vibrant and Sustainable Communities. The policy encourages 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 effect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise and smell. As detailed above, this is a busy local service area where in principle such a proposal is unlikely to have a significant impact on the residential amenities subject to specific restrictions.

Policy 53 - Licensed and Hot Food Premises outwith the City Centre. The policy states that no licensed premises is acceptable within 30 metres of existing or proposed housing if the outlet does not exceed 150 metres gross floorspace. As detailed above, the proposal does not comply with this requirement.

Previous Planning History

Two temporary planning permissions have been granted in respect of this proposed use as detailed in Site History above. Both permissions were granted for a period of 1 year and were subject to conditions relating to hours of operation, external planting and seating and restrictions on music. No

details of seating or planting were submitted and the Head of Environmental Health and Trading Standards advises that the hours of operation were exceeded. No planning permission has been in effect since March 2003 and the operators were advised by the Enforcement Officer in August 2003, when the use was still being carried out, that permission had lapsed.

Temporary consents are granted for limited periods in order to allow the impact of a change of use to be assessed and monitored. In this case, there were objections from local residents to the previous planning applications but in view of the existing uses in the area which attract patrons in the evening, the policy was set aside and the operators given the opportunity to demonstrate to the residents and the Council that the beer garden would not adversely affect the situation. The second temporary consent was granted because no complaints had been received in the intervening year but there was also no evidence that the consent had been fully implemented in accordance with the permission in respect of seating and landscaping. However there were still objections from neighbours. Accordingly a further 1 year permission was granted. By continuing the use beyond the approved hours, continuing the use when consent had expired and failing to comply with conditions regarding use of acceptable furniture and landscaping, the applicant has failed to demonstrate that the Council can justify the setting aside of its policy in this instance.

Objections. 10 standardised letters of objection have been received from neighbours in houses to the south. The letter refers to

- i A beer garden to the front brings the activities of the public house closer to the house with increased noise and disturbance.
- ii The beer garden is close to shops popular with school children and is not shielded from them.
- iii Traffic congestion will increase if more customers are attracted to the public house and many leave their cars on street for collection later.
- iv Hours of operation, drinking went on much later than the 2100 hours restriction.

- v The management cannot control activities in this area .
- vi No attempt has been made to create a beer garden appearance or atmosphere.

As detailed above, the objections raised by neighbours are supported.

Design

There are no relevant design issues.

CONCLUSION

The applicant has had ample opportunity to create an area which would provide an attractive area for customers without adversely affecting the amenities of neighbours. The opportunities have not been taken.

It is concluded from the foregoing that sufficient weight can be accorded to the material considerations such as to justify the refusal of planning permission in accordance with the provisions of the development plan. It is therefore recommended that planning permission be refused.

RECOMMENDATION

It is recommended that planning permission be REFUSED for the following reasons:

- 1 The proposed beer garden is contrary to Policy LT8 of the Dundee Local Plan 1998 as it lies within 30 metres of existing housing and there are no material considerations of sufficient strength to support the granting of planning permission contrary to the policy.
- 2 The proposed beer garden is contrary to Policy 53 of the Finalised Dundee Local Plan 2003 as it lies within 30 metres of existing housing.