

KEY INFORMATION

Ward Broughty Ferry

Proposal

Change of use from watersports centre and restricted cafe to restaurant and lifeguard facility, including alterations to building and formation of new reception area.

Address

The Bathing Shelter
The Esplanade
Broughty Ferry
Dundee DD5 2EG

Applicant

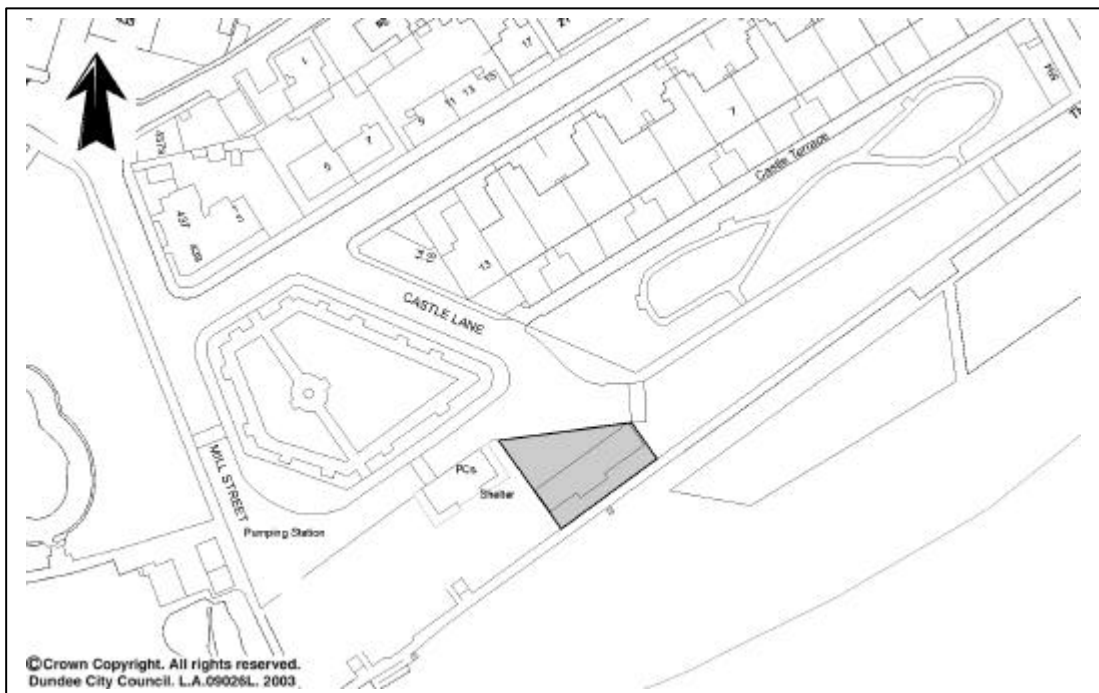
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Registered 16 Dec 2004

Case Officer C Walker



Proposal for a Restaurant in former Broughty Ferry Bathing Shelter

A change of use from a watersports centre and restricted cafe to a restaurant and lifeguard facility is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of Planning and Transportation

SUMMARY OF REPORT

- Planning permission is sought to change the use of these premises to a licensed restaurant and a lifeguard facility. The building is a disused former bathing shelter, last operated as an ice cream kiosk, and which once had planning permission for a limited hot food takeaway. The site lies within the Broughty Ferry Conservation Area.
- 14 neighbours and the Community Council have objected to the proposal. The primary concerns about the development relate to noise and disturbance, increased traffic and parking difficulties, the design of the development, cooking odours, that there is an excess of similar facilities nearby and that it may become a pub.
- The proposed development complies with Policy LT8 of the adopted Local Plan since the building is over 40 metres from the nearest houses. It is considered that this distance coupled with planning conditions restricting the hours of operation, the possibility of an evening takeaway facility and controlling noise and cooking odours from the premises should ensure that any adverse impacts would not be significant.
- The establishment of a restaurant at this site complies with the policies of the Development Plan. The proposed changes to the design of the building will enhance its appearance and the appearance of the conservation area.
- If Members are minded to approve the planning application it will be necessary to refer it to the Scottish Ministers due to the Council having a financial interest in the site and that a significant level of objection has been raised to the proposed development.

RECOMMENDATION

The establishment of a restaurant at this site complies with the policies of the Development Plan. It is of a size and a distance from the nearest houses that any adverse impacts should not be significant and planning conditions can be imposed to minimise any potential disturbance. It is recommended for **APPROVAL** subject to a referral to the Scottish Ministers.

DESCRIPTION OF PROPOSAL

Planning permission is sought to change the use of these vacant premises to a licensed restaurant and a lifeguard facility. The proposed restaurant, at some 147 sq. metres gross floor area, occupies almost all of the building. The plans submitted indicate seating for some 58 customers with a small kitchen area. On further questioning about the size of the kitchen the applicants submitted a revised internal layout with a larger kitchen and store and seating for 52 customers.

The applicants state that the premises will operate from mid morning to 10:30/11:00 in the evening catering for snacks and lunches during the day with a servery for ice creams etc on the beach side, moving to a greater emphasis on restaurant standard service in the evening. No takeaway facility is proposed. Elevational alterations are proposed to provide canopies on the north and south elevations of the building and ramps at entrance points as well as a small reception area extension on the northern elevation.

The proposed lifeguard facility is a small ground floor room and store area and an upper floor viewing area to be operated by the Council.

SITE DESCRIPTION

The site comprises a disused former bathing shelter, last operated as an ice cream kiosk, which sits directly on the beach front at the Esplanade. It is owned by the Council and is currently leased by the applicants. It has a gross internal floor area of some 150 sq. metres and a fairly functional appearance with white rendered walls and a flat roof. Apart from a glazed area at the southern beach entrance, the other windows on the building are at a high level associated with its former use as a bathing shelter. There is a higher "tower" element at its eastern end.

To the south of the building is a pedestrian walkway and steps leading down to the beach. To the north west is a Victorian style toilet block with a pitched slated roof. To the west of the building is a car park with space for approximately 38 cars. To the north and north east are houses at Castle Terrace. There is a garden area in

front of these houses and the closest house to the application premises is just over 40 metres.

The site lies within the Broughty Ferry Conservation Area and the houses at 1-13 Castle Terrace to the north are Category C listed buildings.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 1998

Policy LT8 Licensed and Hot Food Premises: No premises selling hot food is acceptable within 30 metres of existing housing if the gross floor



space does not exceed 150 square metres (in this case the gross floor space is some 147 sq. metres).

The site falls within an existing residential area where Policy H1 seeks to protect amenity but does not rule out the sensitive introduction of services which are desirable within residential areas.

Policy BE11 states that within conservation areas all development proposals will be expected to complement and enhance the character of the surrounding area.

Dundee Urban Nature Conservation Subject Local Plan 1995

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

Finalised Dundee Local Plan Review

Policy 53 states that in a location such as this no premises selling hot food is acceptable within 30 metres of existing housing if floor space does not exceed 150 square metres.

Policy 1 Vibrant and Sustainable Communities encourages the development of services and facilities within residential areas subject to amenity considerations.

Policy 61 requires all development proposals to preserve or enhance the character of the surrounding area.

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

In 1999 the Council produced the Broughty Ferry Study with the aim of maximising the tourist potential of the area. On 4/12/00 the Councils Planning and Transportation Committee approved the Broughty Ferry Study which, amongst other matters, proposed the closure of the road to the south and west of the Windmill Gardens to incorporate this area into Castle Green.

LOCAL AGENDA 21

The reuse of these premises in an accessible location is considered to be sustainable and in conformity with the Council's Agenda 21 policies.

SITE HISTORY

Planning permission was granted in April 1986 to change the use of the premises from a bathing shelter to a centre for watersports including the sale and takeaway of hot food - application D11513 refers. This consent was for a temporary period, restricted the types of hot food that could be sold and restricted the hours of operation from 8.30 am to 8.30 pm. This time limited consent was renewed

indefinitely in March 1987 - application ref no D12149 refers.

In 1987 permission was granted to extend the hours of operation until 10.30 pm from April to October - application D12451 refers. This consent was for a 2 year period. A further 2 year period was granted in 1990 - application D14983 refers, and a further 3 year period was granted in 1992 - application D17117 refers.

In recent times the premises have operated as a kiosk selling sweets and ice creams but have been disused for a number of years.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the application was advertised as a bad neighbour development and as affecting the Broughty Ferry Conservation Area.

14 letters of objection were received from the occupiers of dwellings in Castle Terrace, Castle Street and King Street. They are primarily concerned that the development will result in noise and disturbance, particularly at night time and in a location where there are many elderly residents and in increased traffic and parking difficulties. Some residents point out that the proposal is not in keeping with the adjoining listed buildings in Castle Terrace and the Broughty Ferry Conservation Area, that there is an excess of similar facilities nearby, that Castle Lane floods, that noise will have an adverse impact on wildlife, that the development will make the use of the beach less safe and will result in cooking smells, that it contravenes the Local Plan. Finally some residents fear that the development is a surrogate feeder pub for the nightclub further to the east on the Esplanade.

CONSULTATIONS

The Head of Environmental Health and Trading Standards has stated that he has no objections to the proposed development provided that planning conditions are imposed controlling noise from mechanical and electrical plant and from any amplified music and vocals.

Broughty Ferry Community Council have listed advantages and disadvantages of the proposal and go on to object to the proposal principally because the design improvements to

the building are insufficient to make it less out of place in this conservation area.

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.

Furthermore in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) Act 1997 special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Broughty Ferry Conservation Area.

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 LT8 of the adopted Local Plan states that no premises selling hot food is acceptable within 30 metres of existing housing if the floor space is 150 square metres or less. In this case the premises are just under 150 sq metres and the nearest house on the opposite side of the road at Castle Terrace is over 40 metres from the front of the premises. The proposed development therefore complies with Policy LT8.

Policy H1 seeks to protect amenity but does not rule out the sensitive introduction of services which are desirable within residential areas. The type of use proposed here is directly governed by Policy LT8 of the adopted Local Plan, which largely seeks to regulate this type of use in the interests of residential amenity and since the proposed development complies with that policy, it is considered that there must be a presumption that it also complies with Policy H1. Policy H1 refers specifically to issues of design, layout, parking and traffic movement, noise or smell.

In this case the separation distance of over 40 metres from the nearest houses should ensure that any problems associated with noise or smell from the operation of the premises should be

within acceptable levels. Design and layout matters are considered in more detail in the context of Policy BE11 below but as no significant alterations to the building are proposed there will be no adverse impact in terms of Policy H1. Finally in terms of traffic and parking movement, the scale of the proposed use is not significant, and any traffic generated by customers or deliveries should easily be accommodated within the 38 space car park immediately to the west of the premises. There is also scope for a significant amount of on street car parking to the east of the site along the Esplanade.

Policy BE11 states that within conservation areas all development proposals will be expected to complement and enhance the character of the surrounding area. In this case only very minor alterations to the premises are proposed to form canopies over the front and rear entrances, a small reception area at the front entrance and to open up windows in the tower area to the east of the building. It is considered that all these changes enhance the appearance of the building and the wider conservation area in compliance with Policy BE11.

The proposed use of a small part of the building as a lifeguard facility raises no policy implications.

It is therefore concluded from the foregoing that the proposal complies with the provisions of the development plan.

Other Material Considerations

The other material considerations to be taken into account are the Finalised Dundee Local Plan Review, Section 64 of the Planning (Listed Buildings and Conservation Areas) Act 1997 and the views of objectors and consultees.

Policy 53 relating to this type of use is similar in wording to Policy LT8 of the adopted Local Plan, Policy 1 is similar in wording to Policy H1 of the adopted Local Plan and Policy 61 is similar in wording to Policy BE11 of the adopted Local Plan. It is considered that the proposed development complies with these 3 policies of the Finalised Local plan for the same reasons as it complies with the same policies in the adopted Local Plan. The proposed use of a small part of the building as a lifeguard facility raises no policy implications in terms of the Finalised Local Plan.

Section 64 of the Planning (Listed Buildings and Conservation Areas) Act 1997 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the Broughty Ferry Conservation Area.

This modest building is not particularly attractive but the proposed alterations to it certainly improve its appearance. The 2 entrance points provide interesting features on the building and the increased glazing lightens its appearance. Whilst the improvements could even go further than this, the proposed development will enhance the appearance of the conservation area and the statutory duty has therefore been discharged.

The objectors are primarily concerned that the development will result in noise and disturbance, particularly at night time and in a location where there are many elderly residents and in increased traffic and parking difficulties.

These matters have already been considered in the context of Policy H1 of the adopted Local Plan and it has been concluded that there would be no unacceptable impact. Clearly if the Council is minded to approve this application then planning conditions need to be imposed restricting the hours of operation to no later than 11pm (and limiting the time taken for clearing up the premises after the close of business) and also precluding any takeaway trade after 6pm. Conditions can also be imposed governing issues of noise and cooking odours.

Some residents point out that the proposal is not in keeping with the adjoining listed buildings in Castle Terrace and the Broughty Ferry Conservation Area and the impact on the conservation area is also the Community Council's principal concern. The impact on the conservation area has already been dealt with above and it has been considered that the statutory duty has been discharged. Whilst the Community Council may be correct to state that the improvements could go much further, there can be no grounds to refuse this application on design grounds or impact on the conservation area or listed buildings when the proposed scheme represents an improvement on the existing building.

Other points of objection relate to concerns about an excess of similar

facilities nearby, that Castle Lane floods, that noise will have an adverse impact on wildlife, that the development will make the use of the beach less safe and that it contravenes the Local Plan.

There is a small restaurant at 594 Brook Street, approximately 120 metres to the east of the site with other restaurants in central Broughty Ferry and a new retail facility with a daytime café about to open at the listed beach shelter 0.6 km to the east along the Esplanade. It is not considered in these circumstances that there is an excess of this type of facility in the vicinity of the application site and in any event the proposed development complies with the amenity distances set out in the adopted and Finalised Local Plans.

The proposed change of use will not have any impact on alleged flooding at Castle Lane. The current use of the beach area for recreation and the car park at this location means that there is a certain amount of disturbance at present and it is considered that the proposed development will not have any additional impact on wildlife. It is not clear how the proposed development would make use of the beach less safe since traffic can currently drive along the adjoining streets and use the car park to the west of the site. Consideration of the application in the context of the policies of the adopted and Finalised Local Plans has demonstrated that the proposal is in compliance with the relevant policies.

Finally some residents fear that the development is a surrogate feeder pub for the nightclub further to the east on the Esplanade. If planning permission is granted for this development then the premises can be used as a restaurant only with a table licence. Alcohol cannot be served to customers not having a meal. If the applicants wish to change its use to a public house then a further application for planning permission will be required.

It is concluded from the foregoing that insufficient weight can be accorded to the grounds of objection such as to justify the refusal of planning permission. It is therefore recommended that planning permission be granted in accordance with the Development Plan.

Design

Alterations to the premises are proposed to form canopies over the front and rear entrances, a small reception area at the front entrance and to open up windows in the tower area to the east of the building. It is considered that all these changes enhance the appearance of the building and the wider conservation area.

CONCLUSION

The establishment of a restaurant at this site complies with the policies of the Development Plan. It is of a size and a distance from the nearest houses that any adverse impacts should not be significant and planning conditions can be imposed to minimise any potential disturbance. Finally it will enhance the appearance of the conservation area.

RECOMMENDATIONS

Recommendation 1

In terms of the Town and Country Planning (Notification of applications) (Scotland) Direction 1997, if Members are minded to approve the planning application it will be necessary to refer it to the Scottish Ministers due to the Council having a financial interest in the site and that a significant level of objection has been raised to the proposed development.

Recommendation 2

It is recommended that planning permission be GRANTED subject to the following conditions:

- 1 The development hereby permitted shall be commenced within five years from the date of this permission.
- 2 Noise from all electrical and mechanical plant shall not exceed NR35, as measured 1 metre from the façade of the nearest residential property and all amplified music and vocals shall be so controlled so as to be inaudible at the nearest residential property.
- 3 Details of the ventilation of the premises which shall ensure that nearby residential premises are not adversely affected by food smells shall be submitted to the Council for approval before any development is commenced and

if approved the development shall be carried out only in full accordance with such approved details.

- 4 The Restaurant use hereby approved shall operate only between the hours of 0900 hours until 2300 hours. The Restaurant premises shall not be open to the public at any other time and shall be vacated by staff and be unoccupied no later than 15 minutes after the evening closing time.
- 5 Details of refuse storage facilities for the premises shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full accordance with such approved details.
- 6 A litter bin shall be provided at a location to be agreed with the Council for use by members of the public. Details of the location and type shall be agreed in writing prior to the commencement of the use and shall be available at all times from the commencement of the use.
- 7 No takeaway facility shall be operated from the premises other than the operation of the ancillary kiosk facility on the south elevation of the building and this facility shall only operate between the hours of 0900 and 1900 hours.
- 8 Samples of the finishing materials proposed to be used shall be submitted to the Council for approval and if approved the development shall be carried out only in accordance with such approved samples.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
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- 7 To ensure that the building is not used in a manner prejudicial to or likely to cause nuisance or disturbance to the occupiers of nearby properties.
- 8 To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the area.