

KEY INFORMATION

Ward Tay Bridges

Proposal

Erection of smoking gazebo

Address

40 Nethergate
Dundee
DD1 4ET

Applicant

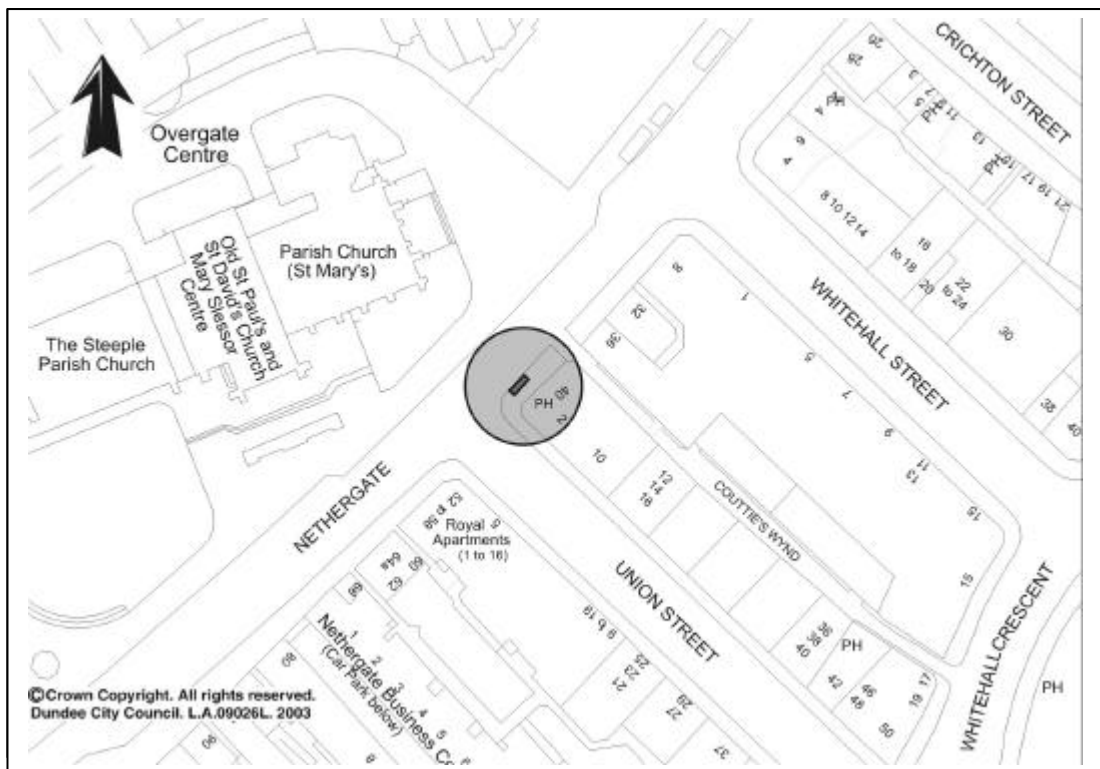
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Dundee
DD1 4ET

Agent

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Dundee
DD1 1LP

Registered 5 May 2006

Case Officer Eve Jones



Proposal for a Smoking Gazebo for Public House in Nethergate

The erection of a smoking gazebo is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

RECOMMENDATION

The proposal fails to comply with Policies 1 and 61 of the Dundee Local Plan Review 2005 in respect of design and appearance, traffic and pedestrian safety issues and noise. One objection is supported. The application is recommended for **REFUSAL**.

SUMMARY OF REPORT

- Planning permission is sought for the erection of a cast iron gazebo on the footway, to the north of an existing public house, to provide a smoking shelter for patrons. The three sided gazebo will be 4 metres long by 1 metre deep and is constructed of decorative cast iron with a copper roof and mahogany handrails.
- The application site is adjacent to a former bank converted to a public house on the south side of Nethergate at its corner with Union Street and Coutties Wynd. It is a prominent B-listed building with its entrance at the street corner. The nearest flatted properties are above the site.
- The proposal fails to comply with Policy 1 and Policy 61 of the Dundee Local Plan Review 2005. One objection has been received on grounds of noise and appearance.
- The narrowing of the footway which would result from this proposed development would have an impact on the passage of pedestrians on the footway with the potential for pedestrians to walk on to the road.

DESCRIPTION OF PROPOSAL

Planning permission is sought for the erection of a cast iron gazebo on the footway, to the north of an existing public house, to provide a smoking shelter for patrons. The three sided gazebo will be 4 metres long by 1 metre deep and is constructed of decorative cast iron with a copper roof and mahogany handrails. The applicant's agent has indicated that the proposed smoking area will not be licensed. There is no indication of heating or lighting on the plans.

The proposal is designed to provide an area for those patrons of the public house who wish to smoke, in light of the new Legislation which bans smoking in public houses and other enclosed public places.

SITE DESCRIPTION

The application site is a former bank converted to a public house occupying the ground floor of a 4 storey, stone built tenement on the south side of Nethergate at its corner with Union Street and Coutties Wynd. It is a prominent B-listed building with decorative elevations to both Nethergate and Union Street with its entrance at the street corner. The polished granite frontages have a decorated cornice and new stained glass windows have been installed as part of the conversion to the public house. The proposed gazebo is to be located between one of the City Centre direction posts and an existing lighting column. Both are located approximately 0.8 metres from the edge of the footway and are 5.4 metres apart. The footway is 3.7 metres at its widest point where the gazebo is to be located.

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 policy is of relevance:

Policy 1: Vibrant and Sustainable Communities seeks to minimise any effect on the environmental quality enjoyed by local residents by virtue of

design, layout, parking and traffic movement issues, noise or smell.

Policy 61: Development in Conservation Areas will be expected to preserve or enhance the character of the surrounding area.

Scottish Planning Policies, Planning Advice Notes and Circulars

The Memorandum of Guidance on Listed Building and Conservation Areas issued by Historic Scotland is of relevance to 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

The proposal does not comply with Key Theme 8: "Health is protected by creating safe, clean, pleasant environments" or Key Theme 15: "Diversity and Local distinctiveness are valued and protected".

SITE HISTORY

05/01048/FUL Planning application for the formation of an external licensed seating area with canopy and side screens. Refused 22/02/2006.

05/01031/LBC Listed building application for the installation of a canopy and security cameras. The application has yet to be determined.

06/00416/FUL Formation of external licensed seating area. Application withdrawn 03/05/2006.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and 1 letter of objection

was received on the grounds of loss of amenity due to noise and the appearance of the structure. Copies of the objection letter are available for inspection in the Members' Lounges.

The issues raised will be discussed in further detail in the "Observations" section of this report.

CONSULTATIONS

The Head of Environmental Health and Trading Standards advises that the premises are situated across from residential accommodation and the premises have a regular extension to their license permitting liquor to be served until 0000hrs. As this is not an application for a licensed area which would normally be closed by 2100 hours, this facility would undergo sustained use by groups of individuals congregating to smoke during opening hours. It is considered that the noise from raucous patrons would be audible within the nearby residential accommodation.

OBSERVATIONS

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

- whether the proposals are consistent with the provisions of the development plan; and if not
- 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.

In terms of Policy 1 of the Dundee Local Plan Review 2005, the application raises issues in terms of design and layout, traffic movement issues and noise.

The proposed smoking area is located close to the Nethergate elevation of the building. The size, style and position of the gazebo will have a detrimental impact on the appearance of this fine traditional building. It is ornate and over elaborate and will detract from the setting of the building.

The nearest flatted properties are above the site. This development has the potential to affect residents by reason of noise as the site will be used consistently and for long periods. The stewards who control entry at the door will be unlikely to be able to effectively control the behaviour of patrons who are outside the licensed premises. Indeed users of the facility may not even be patrons of this public house as the gazebo is situated on the public footway. The Head of Environmental Health and Trading Standards supports this view.

The site lies within the busy City Centre at a point where there are high levels of vehicular and pedestrian traffic throughout the day and into the early hours. The narrowing of the footway which would result from this proposed development and the open nature of the structure, which would encourage significant numbers of patrons to gather in the vicinity, would have an impact on the passage of pedestrians on the footway with the potential for pedestrians to walk on to the road to avoid such large groups. It is considered for the above reasons that the proposed development does not comply with Policy 1.

Policy 61 states that all development proposals will be expected to preserve or enhance the character of the surrounding area. As noted above, it is considered that the proposed structure will be detrimental to the setting of the Listed Building and will therefore not preserve or enhance the character of the Conservation Area. It is considered that the proposed development does not comply with Policy 61.

From the foregoing it is concluded that the proposal does not comply with the provisions of Policies 1 and 61 of the Dundee Local Plan Review 2005.

Other Material Considerations

The Memorandum of Guidance on Listed Building and Conservation Areas provides guidance on the acceptability of proposed developments. Paragraph 2.21 notes that it is not merely the building itself which is important but also its contribution to the street in which it stands. This building is in a prominent central location and makes a significant contribution to the character of Nethergate.

It is also concluded from the foregoing that the statutory duty set out in

Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 would not be satisfied by the approval of this proposal.

Objection

The objection is on the grounds of noise and appearance. These issues are discharged in the policy section above. The objection is supported.

It is concluded from the foregoing that insufficient weight can be accorded to any material considerations such as to justify an exceptional grant of planning permission in the face of the proposal's contravention of the development plan.

Design

The issues of design have been addressed in the foregoing observations.

CONCLUSION

It is concluded that the proposed development does not comply with the provisions of Policies 1 and 61 of the Dundee Local Plan 2005 or the Memorandum of Guidance on Listed Buildings and Conservation Areas. The objection is supported in these circumstances. It is recommended that planning permission be REFUSED.

RECOMMENDATION

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

Reasons

- 1 The proposal is contrary to Policy 1 "Vibrant and Sustainable Communities" of the Dundee Local Plan Review 2005 as the development would have a detrimental impact on the amenities of local residents by reason of design and layout, traffic and pedestrian movement issues and noise. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy.
- 2 The proposal is contrary to Policy 61 "Development in Conservation Areas" of the Dundee Local Plan Review 2005 as the development would have a detrimental impact on the appearance of the adjacent listed

building and would fail to preserve or enhance the character of the surrounding Conservation Area. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to the policy.