

KEY INFORMATION

Ward Broughty Ferry

Proposal

Change of use from yard to beer garden with restricted hours and use

Address

54-62 Fort Street
Broughty Ferry
DUNDEE

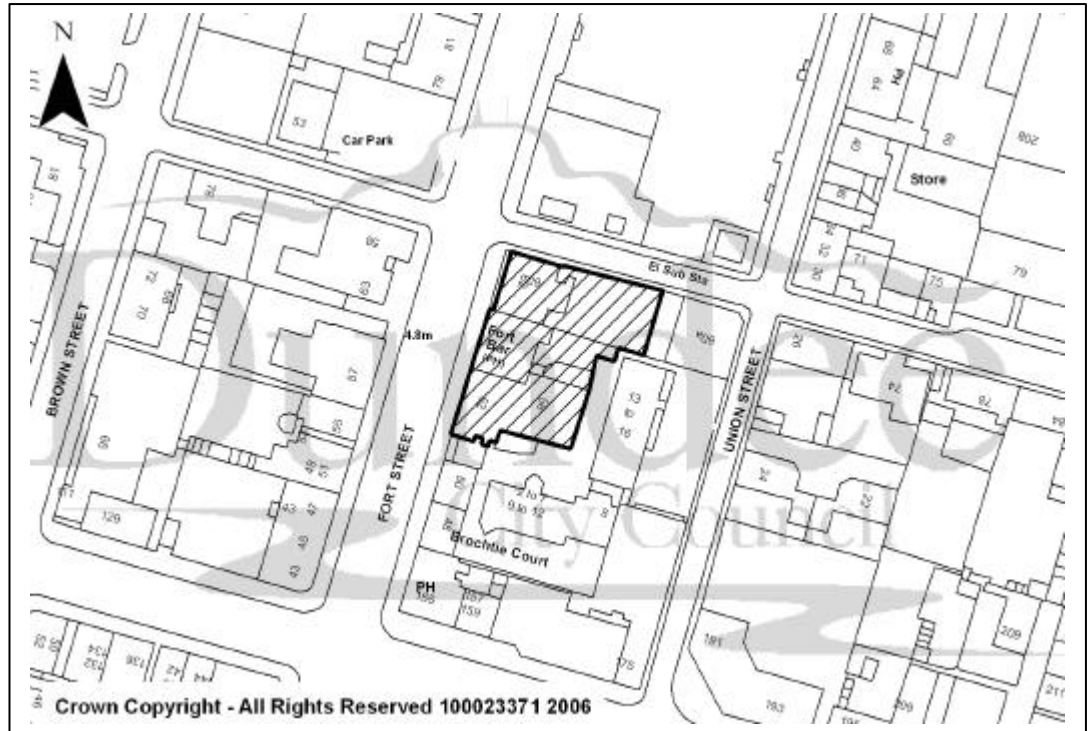
Applicant

Mr J Black
The Fort Hotel
54-62 Fort Street
DUNDEE
DD5 2AB

Agent

Registered 2 Nov 2006

Case Officer J Young



Beer Garden Proposed in Fort Street

A change of use from yard to beer garden is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

RECOMMENDATION

The proposed development is contrary to Policy 1 of the Dundee Local Plan Review 2005 and the objections are supported in these circumstances. Accordingly, the application is recommended for **REFUSAL**.

SUMMARY OF REPORT

- Planning permission is sought for change of use from courtyard to form a beer garden to the rear of a public house at 54-62 Fort Street, Broughty Ferry, Dundee.
- The application was advertised as contrary to Policy 53 of the Dundee Local Plan Review 2005 and also as a bad neighbour development.
- Four letters of objection were received from adjacent neighbours who have concerns about potential noise problems, litter problems, safety, adverse impact on character of area, vandalism and parking problems.
- It is considered that the proposed beer garden will have an adverse impact on the amenity of adjacent residents due to potential noise problems.

DESCRIPTION OF PROPOSAL

Planning permission is sought for change of use from courtyard to beer garden to the rear of a public house at 54-62 Fort Street, Broughty Ferry. The applicant indicates that the proposal includes the installation of 3no. four seater tables and the use of the beer garden will be restricted to 12 people at any one time. The opening hours proposed for the beer garden are until 9pm.

SITE DESCRIPTION

The application site is located to the rear of a public house at 54-62 Fort Street, Broughty Ferry. At present it is an external courtyard area, where bins are stored. There are three timber sheds within the courtyard area. Two fire exits are located to the west of the application site. The courtyard can be accessed by a gate from Long Lane to the north. There is a stone and blockwork wall approximately 1.5m high along the north boundary. There are private car parking spaces immediately to the north of the site. A three storey flatted development overlooks the application site from an easterly direction. There are flatted developments to the north west, north east and south of the site.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

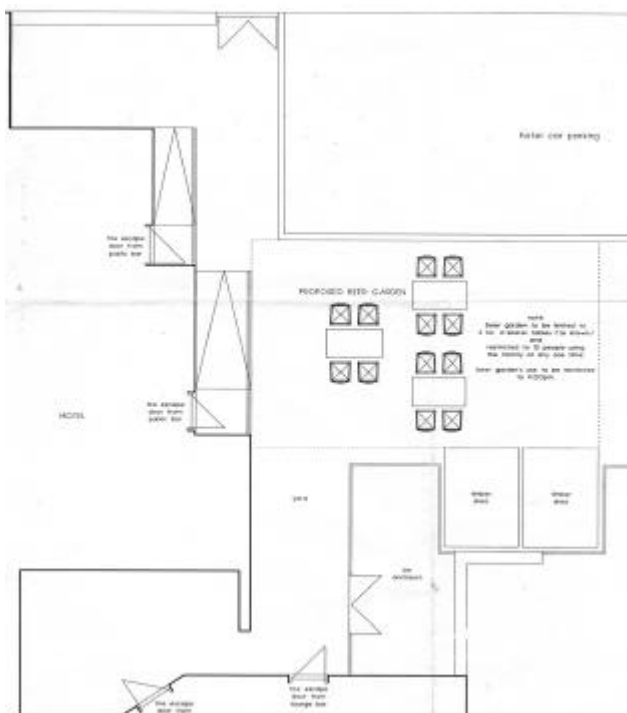
Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities - 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 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 150 square metres gross floorspace (excluding cellar space) and;



b within 45 metres if the 150 square metre 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 (i.e. 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.

SUSTAINABILITY ISSUES

This application raises sustainability policy issues relating to the potential for adverse impacts on surrounding residents due to noise matters. This is discussed in greater detail

below.

SITE HISTORY

Planning permission was previously refused for a beer garden at this location on 24th April 2006. The current application introduces restricted hours of use of the beer garden and a limited number of tables and chairs within the development site.

Other applications were granted in December 2005 for replacement signs and elevational alterations to the frontage of the public house.

PUBLIC PARTICIPATION

The application was advertised as a bad neighbour development and as contrary to Policy 53 of the Dundee Local Plan Review 2005 in the Dundee Courier.

Statutory neighbour notification was carried out and four letters of objection were received on the grounds of the adverse impact on residential amenity due to potential noise disturbance, litter problems, safety, adverse impact on character of area, vandalism and parking problems.

Copies of the objection letters are available for viewing in the Members'

Lounges and will be considered in more detail in the Observations.

CONSULTATIONS

The Head of Environmental Health and Trading Standards advises that the proposed development will cause an increased noise burden on residential properties in close proximity due to noise from entertainment. Therefore, it is suggested that conditions are attached to restrict the hours of use of the beer garden and the provision of entertainment within the site. In addition, the proposal will encourage people to congregate in a specific area which has not previously been used, thereby elevating the existing noise burden on those flats in close proximity. It is considered that there is no condition that will safeguard the amenity of adjacent residents and protect them from the potential effects of an increased noise climate around their property.

If Members are minded to approve the application, conditions should be attached to ensure that no entertainment (music, vocals, amplified or otherwise, including TV) are provided in the development area, the hours of use restricted from 1200hours to 2100hours.

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 1 seeks to protect the environmental quality enjoyed by local residents. It is considered that the proposal which is to form a beer garden will result in an unacceptable level of amenity due to people congregating in one specific area during the opening hours of the public house and will subsequently result in noise disturbance for nearby residents.

There are flats at Brochtie Court (to the east) which directly overlook the courtyard. This area has previously been unused by the public or patrons of the public house and it is considered that noise disturbance will be a problem for these residents. The Head of Environmental Health and Trading Standards recognises that there is a potential noise problem for neighbouring residents and advises that a condition is imposed to restrict the use of the beer garden beyond 9pm. Given that the proposed beer garden can also be used by smokers, it is possible that it could be used outwith the hours of licensing for the beer garden. This has the potential to raise noise issues for residents as doors are opened and noise escapes from the premises. The conditions advised by the Head of Environmental Health and Trading Standards would not be sufficient to address the noise concerns as the planning authority would be required to continually monitor the use of the beer garden and its use. It is concluded that the proposal does not comply with Policy 1.

Policy 53 is of relevance and states that no licensed premises are acceptable within 45m of housing. The proposal is for a beer garden, which will be licensed and the nearest residential properties are only a few metres away and overlook the application site. Therefore the proposal is contrary to 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:

Objections

Four neighbouring residents have raised objections on the grounds of the adverse impact on residential amenity due to potential noise disturbance, litter problems, safety, adverse impact on character of area, vandalism and parking problems. As discussed above, it is agreed that there is potential for the proposal to adversely affect the amenity enjoyed by adjacent residents due to noise disturbance. However it is not considered that the proposal will cause litter problems, contribute to vandalism, affect safety in the area or contribute to parking problems in the area. Therefore the

objections are supported in these circumstances.

It is concluded from the foregoing that insufficient weight can be accorded to any of the material considerations such as to justify the exceptional grant of planning permission, where the proposal contravenes the development plan. It is therefore recommended that planning permission be refused.

Design

There are no design issues as such related to the proposed development as it includes the installation of tables and chairs within an external courtyard area.

CONCLUSION

The proposal is contrary to Policies 1 and 53 of the Dundee Local Plan Review 2005 due to the adverse impact on residential amenity from potential noise disturbance and its close proximity to residential properties. The objections are supported in these circumstances. There are no material considerations that would justify approval of the application contrary to the development plan. Therefore the application is recommended for REFUSAL.

RECOMMENDATION

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

Reasons

- 1 The proposal is contrary to Policy 1 of the Dundee Local Plan Review 2005 due to the adverse impact on the environmental quality enjoyed by local residents due to potential noise disturbance from the application premises. There are no material considerations that would justify approval of the proposal contrary to the development plan
- 2 The proposal is contrary to Policy 53 of the Dundee Local Plan Review 2005 as the nearest residential properties are within 30metres of the proposal site and there is potential for an adverse impact on residential amenity due to noise disturbance. There are no material considerations that would justify approval of the proposal contrary to the development plan.