

**KEY INFORMATION**

Ward Stobswell

**Proposal**

Delete Condition 5 of D24889 to permit amplified music to be played on the premises

**Address**

Troll Inn  
17 Arklay Street  
Dundee

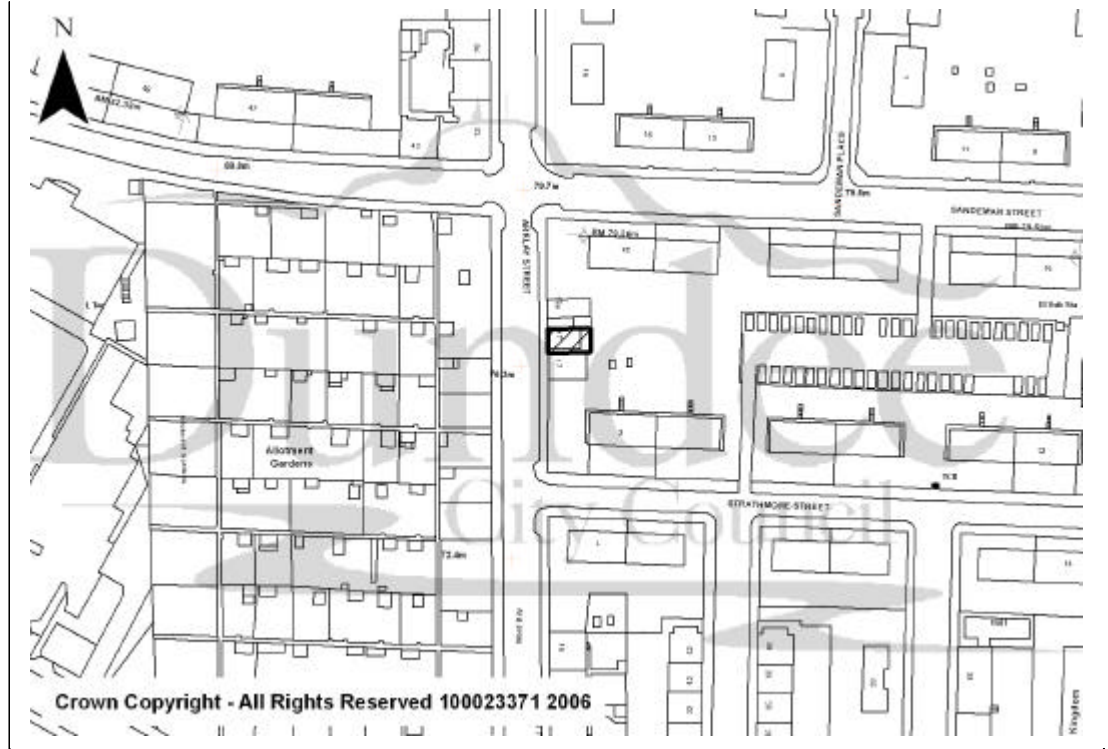
**Applicant**

Christopher Airlie  
15 Arklay Street  
Dundee  
DD3 7NJ

**Agent**

Registered 17 Jan 2007

Case Officer C Walker



## Proposal to Allow Amplified Music at Pub in Arklay Street

The deletion of a condition to permit music to be played on the premises is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed deletion of this condition to permit amplified music at the premises would extend the nature of the public house use and result in noise breakout to the detriment of the amenities enjoyed by nearby residents and contrary to Policy 1 of the Dundee Local Plan Review 2005. The application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought to delete condition 5 of planning permission ref no D24889 to permit the playing of amplified music within the premises. Planning permission for the public house and an extension to it were granted on appeal contrary to the provisions of the Local Plan and subject to restrictive conditions including the ban on amplified music.
- Policy 1 of the Local Plan seeks to protect residential amenity. To the north east and south east of the site are 3 storey tenement flats. A letter of objection was received to the proposal on behalf of the occupier of a nearby dwelling raising concerns about noise and anti social behaviour.
- The Head of Environmental Health and Trading Standards has advised should the relevant condition be deleted, the premises would still be required to comply with any conditions set by the licensing board and if music breakout be deemed a problem then this could be dealt with via the licensing board.
- It is considered that the provision of amplified music on the premises would extend the scale and nature of the business and would lead to noise and disturbance to the detriment of residential amenity and contrary to Policy 1 of the Local Plan.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to delete condition 5 of planning permission ref no D24889 which restricts the playing of amplified music within the premises at any time. No alterations to the building are proposed.

The applicant has stated that there will be no live bands and that only background music will be provided for special occasions.

## SITE DESCRIPTION

The application site is the Troll Inn located on the east side of Arklay Street. It forms the centre unit of a small row of 3 units with a hot food takeaway to the north and a shop to the south. Above the public house and the shop is a flat occupied by the applicants. Opposite the site there are allotment gardens on the west side of Arklay Street. To the north east and south east are 3 storey tenement flats situated some 18 metres from the public house at the nearest point.

There are no openings on the rear of the public house premises other than 3 vents on the east elevation for the toilets and 1 vent on the northern elevation serving the lounge/bar 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 site is in an existing housing area and Policy 1 Vibrant and Sustainable Communities 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 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. This Policy states that in general, outwith District Centres no licensed premises are acceptable within 30

metres of existing or proposed housing.

## 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

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



## SITE HISTORY

An application was made in June 1999 to change the use of a vacant shop to a public house - application D24114 refers. This application was refused by the Councils Development Quality Committee in September 1999 because it contravened policies relating to the siting of public houses and would have an adverse impact on residential amenity. This decision was appealed and the appeal was allowed subject to the imposition of a number of conditions including a requirement that no amplified music be played within the premises at any time.

Subsequently an application was made in September 2000 to extend the premises to the rear and again this application was refused by the Council in December 2000 for similar reasons.

Once again an appeal was submitted and allowed with the imposition of conditions including one stating that "no amplified music shall be played within the extended public house premises at any time". A second condition required the applicants to submit a scheme of insulating the extended public house premises against noise breakout prior to the first use of the premises.

The consent was subsequently implemented and the public house has been open for business since then.

## PUBLIC PARTICIPATION

The applicant carried out the statutory notification of neighbours and a letter of objection was received to the proposal on behalf of the occupier of a nearby dwelling.

Concerns about noise and anti social behaviour have been raised and it is pointed out that there are sheltered housing complexes and a large number of elderly people living nearby.

Copies of this letter are available in the Members' Lounges and the issues raised are addressed in the Observations section of this report.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards has advised as follows:

"The condition relating to the scheme of insulating the extended public house premises against noise breakout was discharged in 2001, and it was deemed that this insulation should be sufficient to prevent noise breakout under normal circumstances. Music noise however can be far from normal if not managed and therefore this scheme of insulation may not be sufficient to prevent breakout of all amplified music noise from the premises.

Should any licensed premises wish to provide musical entertainment on site a musical entertainment licence is required to be sought from the Licensing Board. A standard condition of this licence is that music noise is to be inaudible in the nearest residential accommodation, and as such this is a condition that I am obliged to promote for planning applications for which music noise from licensed premises is involved. Therefore should condition 5

be deleted, the premises would still be required to comply with any conditions set by the licensing board and if music breakout be deemed a problem then this could be dealt with via the licensing board.

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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.

The proposal seeks to remove a condition restricting the playing of amplified music on the premises. Policy 1 seeks to protect the environmental quality enjoyed by local residents by virtue of a number of matters including noise.

When the premises only got consent on appeal contrary to the provisions of the Development Plan, it was only on the basis that this was a small local facility that would not have an impact on residential amenity. On both appeal decisions a condition was imposed restricting amplified music, clearly to ensure that the use would not be detrimental to amenity. No noise assessment has been submitted to indicate the impact of noise from amplified music generated on the premises, and the assessment previously submitted was based on there being no amplified music on the premises. Although there are no doors or windows on the rear of the premises, there are vents which could assist noise breakout. Comings and goings at the front entrance are likely to increase, particularly since the introduction of the smoking ban, and this is another source of noise breakout. More significantly, the provision of amplified music extends the nature of the public house beyond that of a small quiet local facility envisaged by the Reporter when granting planning permission. Reference has been made by the applicant to special occasions such as

birthdays and anniversaries and it is considered that catering for this extended range of functions will alter the character of the use.

It is considered that the provision of amplified music on the premises would extend the scale and nature of the business and would lead to noise and disturbance to the detriment of residential amenity and contrary to Policy 1 of the Local Plan.

Policy 53 of the Plan contains a presumption against licensed premises within 30 metres of existing or proposed housing. In this case the premises are well within this distance. Although this policy is not directly relevant in that the premises already exist, it does give a clear indication that the negative impact of such uses are likely to be experienced in a case such as this.

The proposed use is clearly contrary to the provisions of Policy 1 of the Dundee Local Plan Review 2005. The applicants have not provided any supporting evidence that would justify setting aside the provisions of Policy 1.

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:

#### A. The letter of objection.

The concerns of the objector relate to noise and anti social behaviour. The issue of noise has already been considered in the context of Policy 1 of the Local Plan and it has been concluded that there will be an adverse impact. In terms of anti social behaviour, although the deletion of the condition may result in some disturbance, there are no grounds to suspect an increase in anti social behaviour.

#### B. The Views of the Head of Environmental Health and Trading Standards

The view given is that although the proposed deletion of this condition could lead to noise problems, this can be controlled through the licensing system. The existence of separate controls does not prevent the Development Quality Committee from exercising its powers under the Planning Acts to restrict the nature of a development and indeed such control has been exercised on 2 occasions by

the Scottish Executive in connection with this site.

### C. The Planning History of the Premises

On 2 occasions the Scottish Executive has considered it appropriate to impose a planning condition restricting the playing of amplified music within the premises at any time. The most recent occasion was in March 2001. There has been no material change in planning circumstances since that decision that would justify overruling the views of the Executive on this matter.

It is concluded from the foregoing that the material considerations weigh against the grant of planning permission. It is therefore recommended that planning permission be refused.

### Design

The proposal does not include any alterations to the property and there are therefore no design issues for consideration.

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## CONCLUSION

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The proposed deletion of this condition to permit amplified music at the premises would extend the nature of the public house use beyond that of a small local facility and result in noise breakout and disturbance to the detriment of the amenities enjoyed by nearby residents and contrary to Policy 1 of the Dundee Local Plan Review 2005.

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## RECOMMENDATION

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

### Reason

- 1 The proposed deletion of this condition to permit amplified music at the premises would extend the nature of the public house use beyond that of a small local facility and result in noise breakout and disturbance to the detriment of the amenities enjoyed by nearby residents and contrary to Policy 1 of the Dundee Local Plan Review 2005. There are no material considerations that would justify the approval of this application contrary to the provisions of the Development Plan.