

KEY INFORMATION

Ward Maryfield

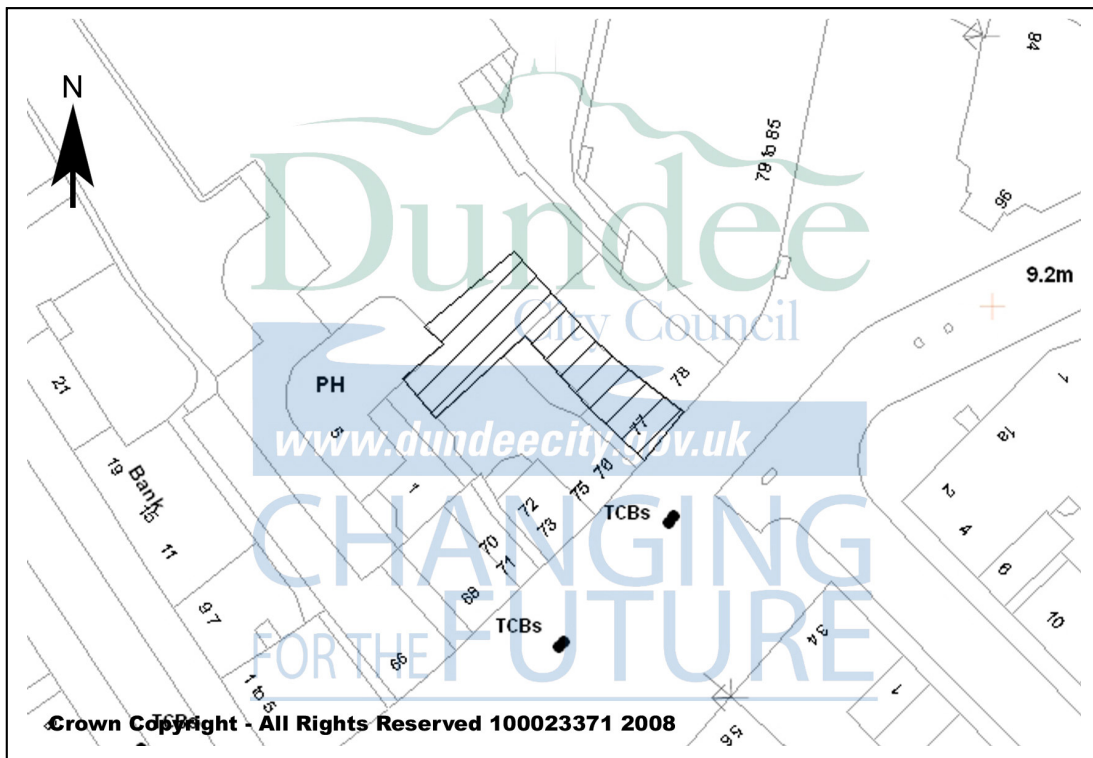
Proposal

Erection of external smoking shelter

Address77 High Street
Dundee
DD1 1SD**Applicant**The Noble Organisation
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Gateshead
NE11 0RJ**Agent**Robertson AC Ltd
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Registered 12 Sept 2008

Case Officer C Walker



Proposal for a Shelter to Rear of Amusement Arcade in High Street

The erection of an external smoking shelter is **RECOMMENDED FOR APPROVAL** subject to **conditions**. Report by Director of Planning and Transportation.

RECOMMENDATION

The design of the proposed structure is satisfactory and will preserve the setting of the adjoining listed buildings and will not impact on the Central Area Conservation Area. The application is recommended for **APPROVAL** with conditions.

SUMMARY OF REPORT

- Planning permission is sought to erect an external smoking shelter on the site. The proposal is for a simple slated structure and it is no longer proposed to site amusement machines within the structure.
- The site is in a close surrounded by Category A listed buildings in the Central Area Conservation Area. Enforcement action has commenced against an existing unauthorised smoking shelter on the site.
- Policies 55 and 61 of the Local Plan are relevant to the determination of this application. A letter of objection was received from the operators of a shop to the west who are primarily concerned about access and fire escape issues. A letter of support was received from the developers of nearby flats.
- The Head of Environmental Health and Trading Standards does not consider that there will be an unacceptable noise problem. Informal consultations with Historic Scotland have established that they do not object to the structure.

DESCRIPTION OF PROPOSAL

Planning permission is sought to erect an external smoking canopy on the site. There is an existing structure on the site with three amusement with prizes machines but planning permission and listed building consent for this structure was refused and an appeal was subsequently dismissed. Enforcement action to secure the removal of this structure has commenced.

It is now proposed to replace the existing structure with a smoking shelter of a more traditional design. The new structure will measure some 3.65 by 1.8 metres and is set into the corner formed by a single storey stone building to the north east and a two storey brick building to the north west. The proposed roof is a pitched slated structure supported by galvanised steel columns. The south east and south west sides of the structure are to be galvanised steel handrail and balusters of a height of approximately 1 metre.

Initially it had been proposed to site two amusement with prizes machines set against the stone wall to the north east of the structure. However following correspondence from the Planning and Transportation Department expressing concerns about the impact of these structures on the setting of the adjoining listed buildings, the applicants have subsequently written to state that they no longer wish to site these machines within the structure.

The shelter is accessed from a door on the south eastern elevation of the two storey brick building.

SITE DESCRIPTION

The site comprises the northern part of Campbell's Close, a narrow close between 76 and 77 High Street. It varies in width from some 1.2 metres at the entrance to some 3.4 metres at its widest point. The ground floor of 77 High Street as well as a single storey link building and a two storey brick building to the rear are occupied by the applicants as an amusement centre. This amusement centre has a fire door and access to Campbell's Close at its north western side.

The upper levels of 77 High Street are accessed from Campbell's Close, just inside the entrance pend. Four flats have recently been formed in the upper floors of that building.

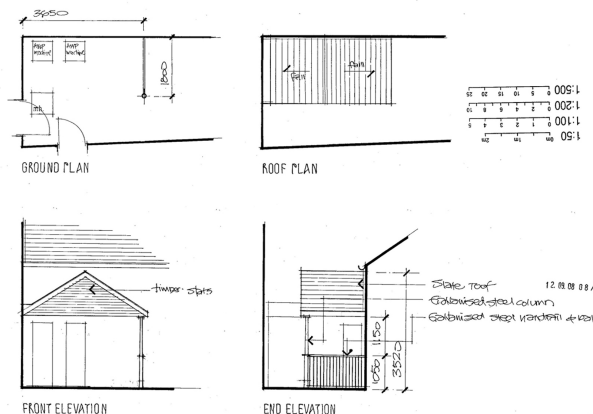
On the south western side of the close the building at 75-76 High Street is a three storey and attic building occupied by a shoe shop at ground floor level and hostel accommodation above. The shoe shop has a fire escape onto Campbell's Close.

There is a decorative iron gateway at the entrance to Campbell's Close



which, when shut, forms an effective screen.

The buildings on either side of the close are Category A listed buildings and the site lies within the Central Area Conservation Area which has been designated as "Outstanding" by Historic Scotland.



POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 2005

The following policies are of relevance:

Policy 55: Urban Design - for all new developments the emphasis will be on design quality and the City Council will seek the creation of new public places and points of interest which incorporate architectural and landscape features and reflect and enhance historic street layouts, significant views and vistas. All development should respect the setting of listed buildings.

The City Council require the use of Design Statements for planning applications or listed building applications for new buildings or extensions to existing buildings on significant sites.

All development will, in its design and layout, be expected to contribute to an environment which is safe and accessible to all.

Policy 61: Development in Conservation Areas - within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

Scottish Planning Policies, Planning Advice Notes and Circulars

NPPG 18 Planning and the Historic Environment sets out the framework for dealing with planning applications affecting listed buildings and conservation areas.

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

Planning permission was granted on appeal for the change of use of a shop unit at 77 High Street to an amusement centre in April 2003 - application 02/00453/COU refers.

The unauthorised smoking shelter currently on the site was the subject of four applications (two planning and two listed building consents) which were refused by the Council in June 2007. A conjoined appeal relating to that structure was dismissed by the Scottish Government in June 2008. The Reporter concluded that the design of the structure was discordant with the character of the listed building and would adversely affect the setting of the adjacent building.

There is an accompanying application for listed building consent for the current proposed development, the Report on which is contained elsewhere on this Agenda - application 08/00622/LBC refers.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and two letters were received from the owners/operators of neighbouring properties. The owners of the adjoining shoe shop dispute the fact that the applicants have a legal right to place this structure in the close, state that it obstructs fire escape both from their premises and the amusement centre and object to the use of the close as a gaming area.

The other letter is from the developers of the upstairs flats above 77 High Street (who appear to be linked to the applicants, sharing a similar address) who write in support of the development stating that they have no concerns about the impact of the development on the enjoyment or use of the flats.

Members will already have had access to these letters and the points raised are considered in the Observations Section of this Report.

CONSULTATIONS

The Head of Environmental Health and Trading Standards stated that the development will encourage people to congregate in a specific area resulting in an elevated noise burden on nearby residential properties.

The applicants submitted a Noise Report for the previous application for a smoking shelter at this location. The Report concluded that when measured from the (then) proposed flats at 77 High Street, vocal noise from users of the smoking shelter is occasionally audible but at a level that is unlikely to be considered a nuisance. The Report also noted that the refurbishment of the flats is likely to improve acoustic attenuation.

The Head of Environmental Health and Trading Standards has considered this Report and noted that although its conclusion that there will not be a problem is reasonable, this is based on background noise levels which are affected by noise from air conditioning units which have recently been erected by the applicants without planning permission.

The Council's Archaeologist has stated that so long as there are no extensive foundations for the structure then there should be no issue with regards to archaeology at this site.

Historic Scotland were consulted informally on the development and responded stating that the revised design and materials of the shelter are more in keeping with the character of the listed buildings although a lean to roof would have been preferable because it would continue the existing roof plane of the adjoining building. They recommended that if the structure was to be approved then conditions could be attached to ensure that the timber slats were either left untreated or painted in an appropriate traditional colour and that the steel elements were also painted in an appropriate traditional colour. Finally, they commented that the amusement machines would introduce an alien feature into the traditional close.

OBSERVATIONS

Statutory Requirements

In accordance with Section 25 of the Town and Country Planning (Scotland)

Act 1997 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.

In accordance with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the 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.

Policies 55 and 61 seek to protect the setting of listed buildings and to preserve or enhance the character of conservation areas.

Campbell's Close is an attractive close between two Category A listed buildings. The listed buildings to the west form part of the Gardynes Land complex, comprising some of the most important listed buildings in the city.

Despite the fact that the visual amenity of Campbell's Close is partly compromised by unauthorised air conditioning units erected by the applicants, it is still well maintained and secured by a decorative iron gateway at its entrance. It is considered that the revised design for the proposed smoking shelter, coupled with the deletion of the amusement prizes machines and planning conditions covering the colour and appearance of the structure will result in a development that would preserve the setting of the close and both the category A listed buildings on either side of it.

It is concluded that the shelter, by preserving the setting of these listed buildings, also complies with Policy 55 of the adopted Local Plan.

In terms of Policy 61 and the impact of the development on the Central Area Conservation Area, when the decorative gateway to Campbell's Close is closed the development is barely visible. At present the gate is virtually permanently closed and it is considered reasonable to assume that this will remain the case for security reasons and in these circumstances it is considered that there will not be an adverse impact on the character of the Central Area Conservation Area.

It is concluded from the foregoing that the proposal complies with Policies 55 and 61 of the adopted Local Plan.

The Statutory Requirements under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

- a Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications that affect a listed building, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

This matter has already been considered in the assessment of the proposed development under Policy 55 of the adopted Local Plan and it was considered that the development would preserve the setting of the two Category A listed buildings which enclose Campbell's Close.

- b Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications in conservation areas to have special regard to the desirability of preserving or enhancing the character or appearance of that area.

This matter has already been considered in the assessment of the proposed development under Policy 61 of the adopted Local Plan and it was

considered that given the screening impact of the decorative iron gateway the development would not have an adverse impact on the character and appearance of the conservation area.

Other Material Considerations

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

a The Views of Consultees

The views of the Head of Environmental Health and Trading Standards on noise issues have been set out in the Consultations section above. In terms of noise, the current application no longer seeks to retain amusement with prizes machines in the smoking shelter. Therefore the only potential noise issue is from customers using the shelter in a location where the adjoining buildings combine to form a canyon effect. However, a noise study submitted by the applicants in connection with previous proposals for a similar shelter at this location suggests that vocal noise from users of the smoking shelter is occasionally audible but at a level that is unlikely to be considered a nuisance. Taking into account the size of the shelter and the fact that the premises must close by 22.00 hours, it is considered that noise from customers will not be so severe as to justify a refusal of planning permission. This position accords with the views of the Head of Environmental Health and Trading Standards.

The concerns of the Council's Archaeologist can be taken into account by a planning condition should Members be minded to approve the development.

The views of the Historic Scotland on the impact of the development on the setting of the Category A listed buildings on either side of Campbell's Close have been taken into account in the assessment of the development against Policy 55 of the Plan and it has been concluded that there would not be an adverse impact on the setting of the listed buildings. Although Historic Scotland had a preference for a lean to structure,

it is considered that the design of the structure currently proposed is also acceptable. The accompanying application for listed building consent will be formally referred to Historic Scotland should members be minded to approve the development. The planning conditions suggested by Historic Scotland are considered to be appropriate and can be attached to any consent for this development should Members be minded to approve this application.

b The Views of Neighbours

The operators of the adjoining shoe shop dispute the fact that the applicants have a legal right to place this structure in the close, state that it obstructs fire escape both from their premises and the amusement centre and object to the use of the close as a gaming area.

The issue of the ownership of the close is not a material planning consideration. The concern about the restriction of fire escape is a serious matter but is controlled through the Building Standards legislation.

The concern about the use of Campbell's Close for gaming appears to be linked to the concerns about the restriction of fire escape and the ownership of the close. In any event it is no longer proposed to site amusement machines within the structure.

The other letter from the developers of the upstairs flats above 77 High Street is in support of the development and states that they have no concerns about the impact of the development on the enjoyment or use of the flats. It has already been concluded that there will not be an adverse impact on residential amenity.

It is concluded from the foregoing that there are no material considerations such as to justify the refusal of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be approved.

Design

The proposed structure incorporates a simple pitched slated roof supported by steel columns. No amusement machines will be located within the structure. The design and finishing materials are considered acceptable in the context of the adjoining listed stone buildings on either side of Campbell's Close.

CONCLUSION

The proposed development will preserve the setting of the Category A listed buildings at 77-78 High Street to the east and 75-76 High Street to the west and will not impact on the Central Area Conservation Area. The development therefore complies with the Development Plan and the statutory requirements in Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to have special regard to the desirability of preserving the setting of listed buildings and the character and appearance of conservation areas.

RECOMMENDATION

It is recommended that consent 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 Details of the finish of the proposed timber slats, which shall either be left untreated or painted in an appropriate traditional colour and details of the finish of the steel columns and balusters which shall not have a galvanised finish but shall be painted in an appropriate traditional colour, 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.
- 3 No amusement machines shall be sited within the proposed shelter.
- 4 Details of any foundations required for the proposed structure 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. If the Council considers the proposed foundations to be substantive then prior to excavating them the applicant shall secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Council.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 In order to safeguard the setting of the statutorily listed building.
- 3 In order to safeguard the setting of the statutorily listed building.
- 4 The site is considered to be of considerable archaeological interest and it is important to ensure that the development does not have an adverse impact on this archaeology.