

KEY INFORMATION**Ward** The Ferry**Proposal**

Extension and Refurbishment of Existing Restaurant and Ground Floor. Erection of 2 New Storeys of Residential Accommodation above, Consisting of 4 Holiday Let Apartments at First Floor and 2 Holidays Let Apartments at Second Floor Level

Address

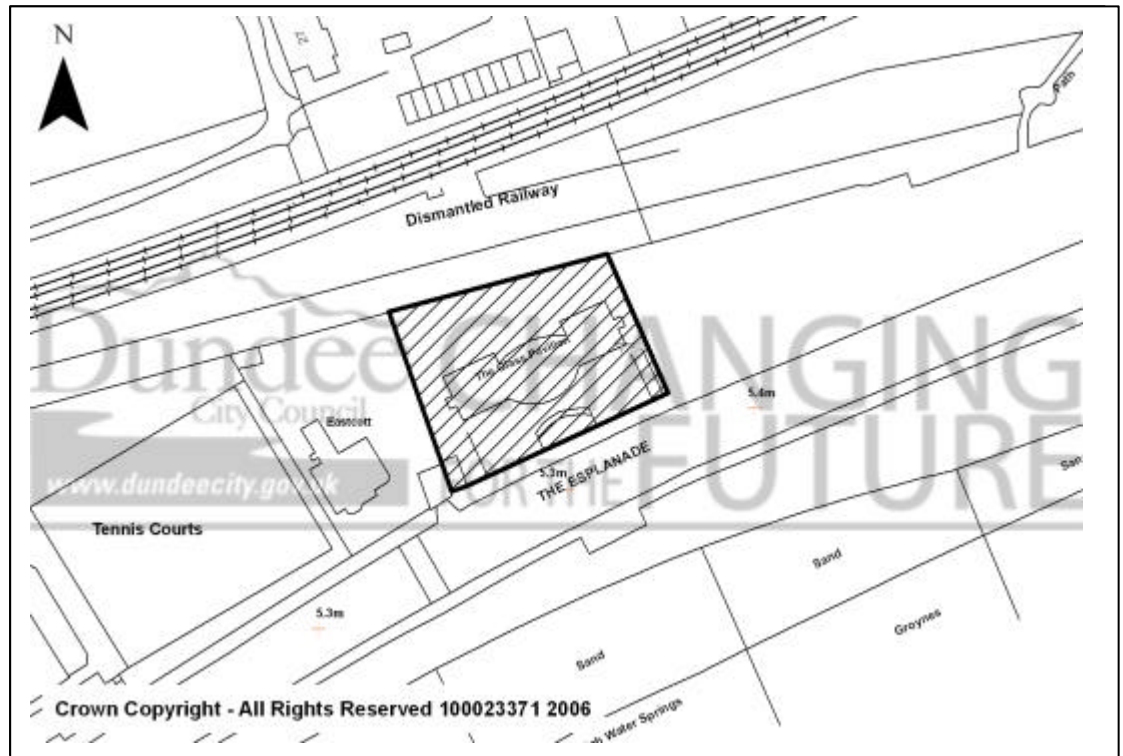
The Glass Pavilion
The Esplanade
Broughty Ferry

Applicant

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Registered 8 Dec 2008**Case Officer** C Walker

Proposed Extension to Glass Pavilion in the Esplanade

The extension and refurbishment of an existing restaurant is **RECOMMENDED FOR APPROVAL subject to conditions**. Report by Director of Planning and Transportation

SUMMARY OF REPORT

- Planning permission is sought to substantially extend the single storey Glass Pavilion Restaurant building by adding some 212m² of floor space to the rear and by constructing 2 upper floors containing 6 holiday let apartments.
- The building is Category C listed and occupies a prominent site on the Esplanade. There is a subdivided villa to the west and a proposed residential development to the east.
- Policies 1, 30, 53, 55 and 60 of the Local Plan are relevant to the determination of this application. Due to the size of the proposed restaurant, the development contravenes Policy 53.
- Objections were received from the occupier of a flat to the west and from the developer of the proposed apartments to the east. Concerns about the design of the development, the impact on the listed building, lack of parking, overlooking, noise and disturbance were raised.
- The proposed development is well designed, will preserve the character of the listed building and will not have an adverse impact on residential amenity. There are material considerations that justify the approval of the development contrary to Policy 53 of the Local Plan. A Section 75 Agreement is proposed to ensure that the proposed apartments will be let as holiday apartments only.

RECOMMENDATION

The proposed development is well designed, will preserve the character of the listed building and will not have an adverse impact on residential amenity. There are material considerations that justify the approval of the development contrary to Policy 53 of the Local Plan. Therefore, the application is recommended for **APPROVAL** subject to conditions.

DESCRIPTION OF PROPOSAL

Planning permission is sought to substantially extend the single storey Glass Pavilion Restaurant building by adding some 212m² of floor space to the rear and by constructing 2 upper floors containing 6 holiday let apartments.

The additional ground floor accommodation would provide an extended restaurant, virtually doubling the existing floor area to provide a gross floor area of 460m².

The first floor accommodation would provide 4 apartments with a gross floor area of some 315m². This level is set back some 4.5 metres from the front elevation of the building with outdoor external decks provided in this area.

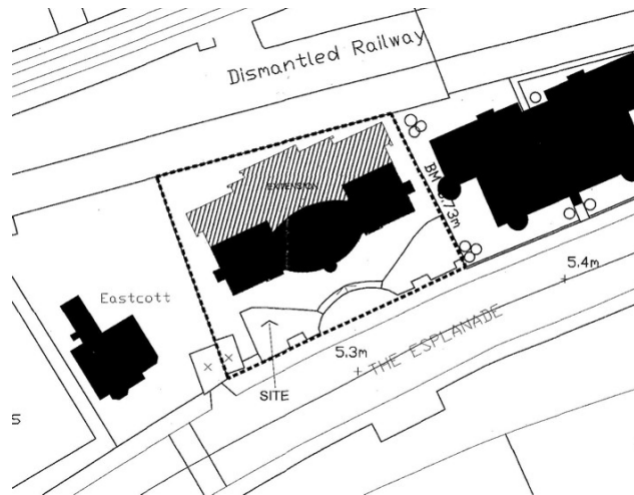
The second floor accommodation would provide 2 apartments with a gross floor area of some 200m². This level is set back almost 8 metres from the front of the building and the apartments are also provided with external decking.

The extensions to the building are designed to harmonise as much as possible with the existing art deco listed building. The front elevation will present an almost totally glazed appearance to the Esplanade and the first and second storey levels are set back in an attempt to diminish their impact. The side and rear elevations are solid in appearance with self coloured render finishing material. Windows on these elevations occupy narrow vertical or horizontal slots to give a sculptural appearance to the building.

The extended building would occupy almost all of the rear of the site, with pedestrian access being provided to the holiday let apartments. No changes to the front of the site are proposed or to the access arrangements for the site. It is proposed to service the extended restaurant at the western end of the site and the holiday apartments to the east (where there are existing ramped accesses). No off street parking is proposed for this development.

The applicants have indicated that they envisage average letting periods for the holiday apartments of 2 weeks, with a minimum of 1 week and a maximum

of 12 weeks. They have indicated that they would be willing to enter into a Section 75 Agreement to ensure that the use of the apartments was restricted to holiday use only. They have also produced images comparing their proposed development with previously approved plans for an extended restaurant building on 2 levels in an



attempt to demonstrate that their development, even although involving an additional storey, will not be as visually intrusive.

SITE DESCRIPTION

The site is an extended former beach shelter now known as the Glass Pavilion restaurant. The original building is a Category C listed structure built in 1934 in art deco style with brick walls, a flat concrete roof and decorative wrought iron grilles.



PROPOSED CONTEXT ELEVATIONS

To the west is a subdivided stone villa known as "Eastcott" and to the east is the site of the former Jacques Night Club. The night club has been demolished and the foundations for a new 3 storey flatted development have been laid last year (in accordance with a recent planning permission) but work on that site has since stopped. To the north is land formerly occupied by a railway track (Dundee to Forfar line) and further to the north is the Dundee to Aberdeen railway track. Further to the north again, on the other side of the railway, is housing at Yewbank Avenue. To the south of the

site, across the Esplanade, is open grassland and the beach.

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 1 is of relevance and states that in existing residential areas the Council will promote vibrant communities, encouraging 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 4 sets out standards for new residential development with requirements for garden ground and car parking but is not considered to be of relevance to the current application as it is proposed to provide holiday let apartments and not standard residential accommodation.

Policy 30 encourages the provision of visitor accommodation particularly in the city centre and central Broughty Ferry.

Policy 53 contains a presumption against licensed premises or premises selling hot food of this size and at this location where they are within 45 metres of existing and proposed housing.

Policy 55 encourages good design.

Policy 60 states that the alteration of a listed building will only be acceptable where the proposals have regard to the preservation or enhancement of its architectural or historic character. Alterations will not be permitted where the works would diminish the architectural integrity of the building or its historic interest.

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 and this was approved by the Councils Planning and Transportation Committee in December 2000.

In April 2007 a document "Imagine Broughty Ferry - Towards a Collective Vision" was produced and subsequently endorsed by the Councils Policy and Resources Committee in April 2008. This document was produced in consultation with the Local Community, and seeks to develop a "brand" which would benefit Broughty Ferry as a visitor, retail and tourist destination. It contains no specific proposals for the application site but generally sees the Esplanade as an area of valuable and valued amenity open space.

SUSTAINABILITY ISSUES

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

SITE HISTORY

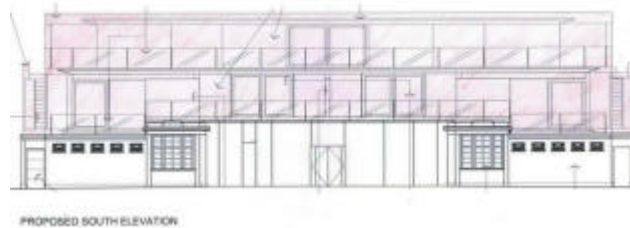
Planning permission and listed building consent were granted in 2004 to convert and extend the beach shelter to form a shop and café - applications 04/00462/COU and 04/00478/LBC refer.

In 2005 planning permission was granted to amend conditions on the original planning permission to permit, amongst other matters, extended hours of operation and a wider range of cooking operations - application 05/00456/FUL refers. The restaurant has since been operating on this extended basis.

In January 2007 planning permission and listed building consent were granted for substantial extensions to this building to provide an extended

restaurant - applications 06/00925/FUL and 06/00924/LBC refer. Those extensions were not dissimilar in footprint and scale to the current proposals although only 2 levels of accommodation were proposed.

There is a current application for listed building consent for this development, the Report on which appears elsewhere in this Agenda - application 08/00864/LBC refers.



PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposed development was advertised as a bad neighbour development. Two letters of objection were received, 1 from the occupier of 1 of the flats in the subdivided villa known as Eastcott to the west of the site and 1 from the developer of the proposed apartments to the east of the application site.



The resident to the west considers that the proposed development will materially detract from the original appearance of the listed structure and that the building would no longer bear any resemblance to its original appearance.

The developers of the proposed flats to the east of the site are concerned about the absence of car parking provision, the possibility of overlooking of neighbouring properties, noise and nuisance behaviour from the development and the design of the development and the impact on the listed building.

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 has commented that it is important to ensure that noise from mechanical and electrical plant is controlled and proposes that a planning condition should be attached to cover this matter.

Broughty Ferry Community Council have written to state that they are not objecting to the proposed development and consider the existing restaurant to be an asset to the Esplanade. However they have raised concerns about the potential of future conversion of the holiday let apartments into permanent dwellings and are concerned that the vast enlargement of the original listed building could endanger its listed status. They suggest that Historic Scotland should be consulted on this point. Finally they make reference to the document "Imagine Broughty Ferry" and state that there should be an overall planning strategy for the Esplanade based on a brief on which residents are consulted.

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

OBSERVATIONS

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.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

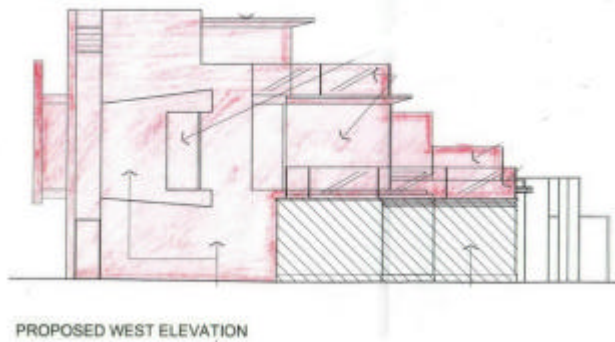
Policy 1 encourages the introduction of commercial facilities within residential areas provided they do not have an unacceptable impact on amenity. The position here is slightly unusual in that the predominant land use in the vicinity of the site is amenity open space and not residential. However there is a subdivided building containing 2 flats at "Eastcott" immediately to the west of the site (the buildings are some 15 metres apart at the nearest point) and the proposed block of apartments to the east of the site is closer still, there being only some 3 metres between the buildings.

Policy 1 makes specific reference to protecting amenity in terms of design, layout, parking and traffic movement issues, noise or smell.

Matters of design are considered in the assessment of the proposed development under Policies 55 and 60 below. In terms of its layout, the proposed development will not have a significant impact on the amenities of the dwellings on either side of the site. The building is set back on the site and the stepping back of the upper floors will ensure that there will be no unacceptable overshadowing of neighbours. Windows on the side elevations will have etched glazing so there will be no unacceptable overlooking of neighbours.

The proposed development will attract an increased level of traffic and parking demand. The current layout of the site does not provide any off street parking and due to the confined nature of the site and the use of the front of the site as an outdoor cafe area, it is not possible to provide any significant level of off street parking. The staff and patrons using the current restaurant park on the Esplanade and when permission was granted for a

significant extension to the premises including a large upper floor (06/00925/FUL) it was accepted that parking for the extended facility would take place on street. It is considered that the level of traffic and parking generated by the development currently proposed would be less than that generated by the previously approved development. Ideally developments should provide



sufficient off street parking to cater for their needs. However in this case the lack of suitable space within the application site coupled with the ample off street parking available on this section of the Esplanade (close to a car park and almost 200 metres from the nearest continuous area of development on the west side of Rugby Terrace) will mean that the development will not lead to excessive parking demands to the detriment of nearby residents.



Issues of noise and smell relate primarily to the proposed extended restaurant. The proposed holiday let apartments are unlikely to give rise to any concerns in this regard. Current hours of operation of the restaurant are from 10.00am to 10.00pm although the applicant would like to extend these

hours in the future. The previous consent for an extended restaurant permitted hours of operation from 8.00am to 11.30pm on Monday to Saturday and 900am to 10.30pm on Sundays. In addition a planning condition also controlled noise from mechanical and electrical plant. It is considered that should Members be minded to approve this application, then conditions could be imposed which would protect existing and future adjoining residents from noise and odour problems.

Policy 30 encourages the provision of visitor accommodation particularly in the city centre and central Broughty Ferry. Although this site is not within central Broughty Ferry, the existing restaurant functions as part of Broughty Ferry and it is considered that the extended restaurant and visitor accommodation will function in a similar manner. Policy 30 does not contain a presumption against visitor accommodation at this location.

In terms of Policy 53, there is a presumption against the proposed development because the building as extended is within 45 metres of the existing house at "Eastcott" and well as being within 45 metres of proposed apartments on the site of the former Jacques Nightclub. It therefore contravenes Policy 53.

In terms of Policies 55 and 60, there is a requirement for the development to be well designed and to have regard to the preservation or enhancement of the architectural or historic character of this Category C listed building.

It is considered that the proposed development satisfies both these requirements. The extensions to the listed building are well designed and the resulting building is one which will enhance this very prominent site. The original art deco bathing shelter is obviously a very low profile pavilion style building and it is accepted that the significant extensions currently proposed will increase its original scale and massing substantially. However the lightness of the upper floor extensions, achieved by the predominantly glazed

appearance of the principal south elevation and the use of light coloured renders on the other elevations means that the original character of the building, marked by the original brick and concrete detailing, will still remain significant. It is concluded that the design of the proposed extensions complements that of the listed building.

However this is a very prominent site and one involving a listed building and should Members be minded to approve the proposed development it is essential that the design proposed is not diluted in any way. It is therefore proposed to attach a note to this effect to any consent issued for this development

It is concluded from the foregoing that the proposal does not comply with Policy 53 of the adopted Local Plan.

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

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 60 of the adopted Local Plan and it was considered that the proposal would preserve the listed building.

Other Material Considerations

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

- 1 Contravention of Policy 53 - Policy 53 contains a presumption against the provision of a restaurant of this size within 45 metres of dwellings. The policy does not specifically address a situation such as this where the existing restaurant use contravenes Policy 53. In addition, the extensions to the restaurant currently proposed are smaller than those approved in January 2007 and which could still be implemented.

To date the restaurant use on the site has operated without

detriment to residential amenity, albeit on a much smaller scale. The significant increase to the size of the building alters the situation and increases the potential for amenity problems. However no objections to the proposed restaurant extension in terms of amenity issues were received and the Head of Environmental Health and Trading Standards does not envisage any problems subject to the imposition of a condition controlling noise from mechanical and electrical plant.

Taking into account the fact that the premises currently operate as a restaurant without amenity problems, that there will be no takeaway facility (this will be restricted by condition) and that hours of operation will be restricted and finally that a much larger extension has recently been approved, it is considered that there is a justification for approving the proposed extensions to the restaurant part of the building contrary to Policy 53 of the Local Plan.

- 2 The Views of Objectors and the Community Council - the resident to the west considers that the proposed development will materially detract from the original appearance of the listed structure and that the building would no longer bear any resemblance to its original appearance. The Community Council also raises this issue and suggests that Historic Scotland should be consulted.

The issue of the relationship of the development to the listed building has been addressed in the assessment of the development against Policy 60 of the Local Plan and Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act and it was considered that the proposal would preserve the listed building. Historic Scotland do not need to be formally consulted for applications relating to Category C listed buildings and they have written to confirm that in this particular case they do not require to be notified.

The developers of the proposed flats to the east of the site are concerned about the absence of car parking provision, the possibility of overlooking of neighbouring properties, noise and nuisance behaviour from the development and the design of the development and the impact on the listed building. All these issues, with the exception of noise and nuisance behaviour from the development have been addressed in the assessment of the development against Policies 1, 55 and 60 of the Local Plan and it was concluded that there would not be an adverse impact on amenity and that the design of the development was satisfactory.

A particular concern of the developers of the housing to the east is that occupiers of the proposed holiday let apartments may cause noise and disturbance particularly if the units are let out for stag or hen parties. The planning system is concerned with the use of land and not the particular behaviour of occupiers of the proposed units. There is nothing to suggest that there would be any exceptional noise or disturbance associated with the proposed holiday let apartments and indeed it could be argued that a larger restaurant development on 2 levels (as previously approved) could generate more significant levels of noise and disturbance.

Broughty Ferry Community Council have raised concerns about the potential of future conversion of the holiday let apartments into permanent dwellings but should Members be minded to approve this application then a Section 75 Agreement can be concluded to ensure that this does not happen. The Community Council also make reference to the document "Imagine Broughty Ferry" and state that there should be an overall planning strategy for the Esplanade based on a brief on which residents are consulted.

"Imagine Broughty Ferry" contains no specific proposals for the application site but generally sees the Esplanade as an area of valuable and valued amenity open space. In this case the

proposed development helps to further efforts to promote tourism in Broughty Ferry. The development also involves extensions to an existing building on previously developed land between an existing 2 storey villa and a proposed 3 storey block of flats, so it has no impact on the open character of the Esplanade. It is considered that the approval of this development would not in any way prejudice any overall planning strategy for the Esplanade.

It is concluded from the foregoing that there are sufficient material considerations such as to justify the grant of planning permission contrary to the provisions of Policy 53 of the Local Plan. It is further concluded that the concerns of objectors are not of sufficient strength such as to justify the refusal of planning permission. It is therefore recommended that planning permission be granted with conditions and subject to the conclusion of a Section 75 Agreement requiring the apartments to be used as holiday let apartments only.

Design

The extensions to the listed building are well designed and the resulting building is one which will enhance this very prominent site. The original art deco bathing shelter is obviously a very low profile pavilion style building and it is accepted that the significant extensions currently proposed will increase its original scale and massing substantially. However the lightness of the upper floor extensions, achieved by the predominantly glazed appearance of the principal south elevation and the use of light coloured renders on the other elevations means that the original character of the building, marked by the original brick and concrete detailing, will still remain significant. It is concluded that the design of the proposed extensions complements that of the listed building and that the resulting development will make a positive visual contribution to this prominent site.

CONCLUSION

The proposed development is well designed, will preserve the character of the listed building and will not have an adverse impact on residential amenity. There are material considerations that

justify the approval of the development contrary to Policy 53 of the Local Plan.

RECOMMENDATION

Recommendation 1

This planning permission shall not be issued unless and until an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 between the Council and parties with appropriate interests in the land has been recorded. This agreement will relate to the requirement for the proposed apartments to be let as holiday apartments only.

Recommendation 2

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 No takeaway facility shall be operated from the premises.
- 3 The premises shall only be open to the public between 0800 hours and 2330 hours on Mondays to Saturdays and 0900 hours to 2230 hours on Sundays.
- 4 Total noise from mechanical and electrical plant shall not exceed NR45 between 0700 and 2300 hours and NR35 between 2301 and 659 hours, as measured 1 meter external to existing and proposed housing to the east and west of the site.
- 5 Details of the ventilation of 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 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.
- 7 Details of the pedestrian access to the holiday let apartments, which shall be no less than 1.5 metres wide at any point, 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.

- 8 The first and second floor east and west facing windows to the proposed holiday let apartments shall only be glazed or reglazed in acid etch obscure glass in accordance with the approved plans.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To ensure that the proposed development does not have an unacceptable impact on the amenities of nearby residents.
- 3 To ensure that the proposed development does not have an unacceptable impact on the amenities of nearby residents.
- 4 To ensure that the proposed development does not have an unacceptable impact on the amenities of nearby residents.
- 5 To ensure that the proposed development does not have an unacceptable impact on the amenities of nearby residents and that any equipment installed does not adversely affect the character or appearance of the listed building.
- 6 To ensure an attractive design of building and in order to safeguard the appearance of the statutorily listed building.
- 7 To provide an attractive and secure access to the apartments in the interests of the amenity of the occupiers of the development.
- 8 To prevent unacceptable overlooking of existing and proposed dwellings to the east and west in the interests of residential amenity.