

# Restaurant and Bar Proposed at Dunsinane Industrial Estate

## KEY INFORMATION

**Ward** Lochee

### Address

Erection of a restaurant/bar with 3 associated staff flats, parking landscaping and access road

### Applicant

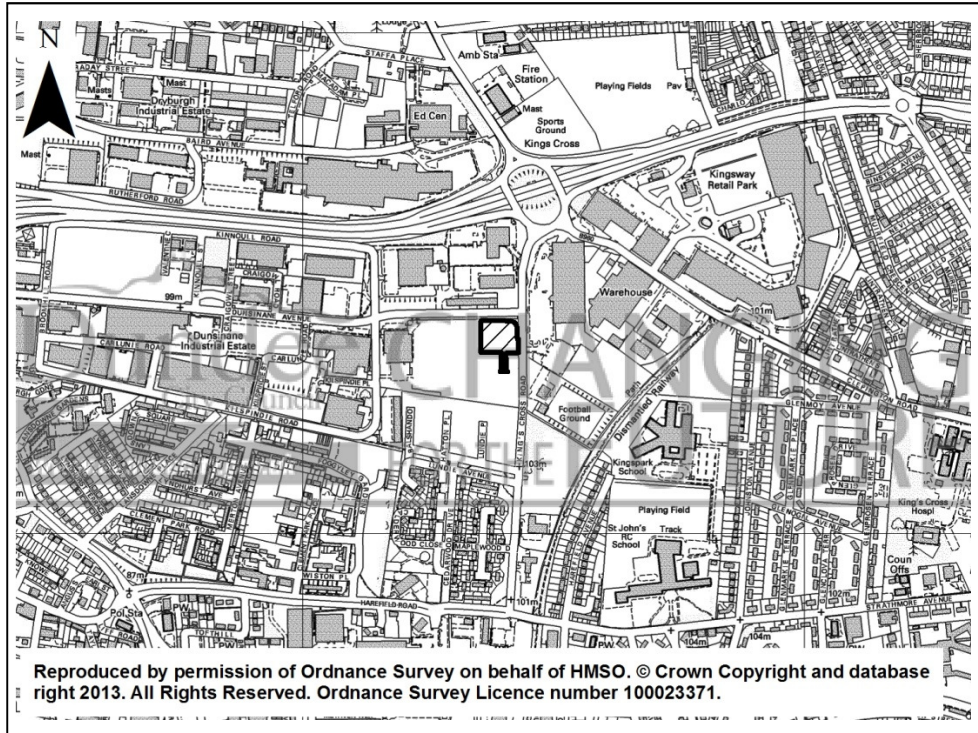
Cloverleaf Restaurants  
c/o Agent

### Agent

Turley Associates  
FAO Katherine Pollock  
115 George Street  
Edinburgh EH2 4JN

**Registered** 10 Oct 2013

**Case Officer** Paul Macari



## SUMMARY OF REPORT

- This application seeks permission for the erection of a restaurant/bar with 3 staff apartments, parking, landscaping and access road.
- No letters of objection have been received.
- The proposed development is contrary to National Policy and the Development Plan.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/>.

## RECOMMENDATION

The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, this application is recommended for REFUSAL.

## 1 DESCRIPTION OF PROPOSAL

- 1.1 This application seeks permission for the erection of a restaurant/bar with 3 staff apartments, parking, landscaping and access road.
- 1.2 The building is positioned in the north western corner of the site and is surrounded by customer car parking to the east and south. Access to the site is taken from Kings Cross Road and enters the application site midway along the southern boundary. The access road leads to the customer car parking areas and terminates in a turning head and service yard in the south western corner of the site.



Figure 1 – Proposed Site Layout

- 1.3 The site will be enclosed by timber fencing with areas of landscaping separating the areas of development from the site boundaries.
- 1.4 The restaurant is of a traditional pitched roof design and is split into single storey and 2 storey elements. The building will be finished in buttermilk smooth render and facing brick with the roof finished in clay roof tiles. The ground floor of the building comprises of customer welcome area, customer seating (372 Covers), kitchen, servery, toilet facilities and storage facilities. The upper floor of the building comprises of 3 staff apartments, offices, staff welfare facilities and a storage area.
- 1.5 One of the staff apartments will have 3 bedrooms, an open plan living, dining and kitchen area as well as a bathroom. The remaining two staff apartments will each have 1 bedroom, an open plan living, dining and kitchen area as well as a bathroom.
- 1.6 The proposed restaurant/bar will be served by a 94 space customer car park.
- 1.7 The restaurant/bar will be operational between 07.00 and 23.00 hours.
- 1.8 The application is accompanied by a detailed transport statement, ground investigations report, economic impact assessment, sequential assessment and planning and design statement.
- 1.9 In accordance with the Council's Scheme of Delegation this application is being reported to the Development Management Committee at the request of Members.

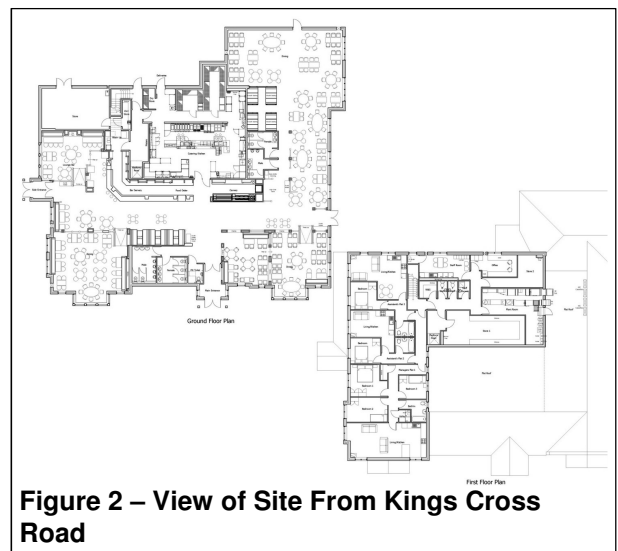


Figure 2 – View of Site From Kings Cross Road

## 2 SITE DESCRIPTION

- 2.1 The application site is located on the southern side of the junction between Dunsinane Avenue and Kings Cross Road. The site is bound to the south by a new development of

5 industrial units with trade counter facilities. To the west the site is bound by a recently remediated vacant building plot. To the north there are a variety of industrial units, car showrooms and a small takeaway facility. Access to the site is taken from Kings Cross Road and is shared with the recently completed industrial units to the south.

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### 3 POLICY BACKGROUND

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3.1 The following plans and policies are considered to be of direct relevance:

**TAYPLAN STRATEGIC DEVELOPMENT PLAN 2012-2032**

Policy 3: Protecting Tayplans Assets

**DUNDEE LOCAL DEVELOPMENT PLAN**

Policy 1: Principal Economic Development Areas

Policy 4: Ancillary Services in Economic Development Areas

Policy 9: Design of New Housing

Policy 28: Pubs, Hot Food Outwith City Centre

Policy 29: Low and Zero Carbon Technology in New Development

Policy 42: Sustainable Drainage Systems

Policy 45: Land Contamination

Policy 47: Environmental Protection

Policy 53: Active Travel

Policy 54: Accessibility of New Developments

**SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS**

Scottish Planning Policy 2010

Draft Scottish Planning Policy

**NON STATUTORY STATEMENTS OF COUNCIL POLICY**

Lochee Physical Regeneration Framework

3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

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### 4 SITE HISTORY

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4.1 Planning application ref: 13/00267/FULL sought planning permission for the erection of a restaurant/bar with 3 associated staff flats, parking, landscaping and access road. This application was refused under delegated powers because the proposal was contrary to the requirements of Policies 24, 27 and 46 of the adopted Local Plan and Policies 1, 4 and 9 of the Proposed Dundee Local Development Plan.

4.2 The main difference between the current proposal and the development proposed by planning application ref: 13/00267/FULL is the omission of the children's play area and its replacement with 76 covers.

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### 5 PUBLIC PARTICIPATION

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5.1 The Council has followed the statutory neighbour notification procedure outlined by the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

This application has also been advertised in the Dundee Evening Telegraph as a Development Plan Departure.

5.2 No objections have been received.

## 6 CONSULTATIONS

6.1 **The Head of Environmental Protection** – has requested that concerns relating to noise and site contamination are addressed by conditions should the Committee be minded to grant planning permission.

## 7 DETERMINING ISSUES

7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

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

### TAYPLAN STRATEGIC DEVELOPMENT PLAN

7.2 **Policy 3 - Protecting Tayplans Assets** requires participating authorities to identify and safeguard at least 5 years supply of employment land within principal settlements to support the growth of the economy and a diverse range of industrial requirements.

7.3 The aspirations of Policy 3 are satisfied by Policy 1 (Principal Economic Development Areas) of the Dundee Local Development Plan which safeguards land allocated for principal economic development for uses falling within Classes 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 only. While the assessment of the proposed development against Policy 1 of the adopted Local Development Plan below concludes that this policy is contravened, the scale of development proposed will not adversely impact on the supply of employment land within Dundee. This is because at present there is an adequate supply of employment land within the City. The proposed development therefore does not conflict with the requirements of Policy 3.



Figure 3 – Proposed Elevations

### DUNDEE LOCAL DEVELOPMENT PLAN

7.4 **Policy 28 - Public Houses, Restaurants and Hot Food Takeaways Outwith the City Centre** restricts the proximity of licensed and hot food premises to houses outwith the City Centre. The proposal satisfies this policy given the size of the unit and its location relative to

neighbouring residential properties. While there is staff accommodation on the upper floor of the restaurant/bar these units are wholly ancillary to the main use of the premises and are within the control of the applicant.

7.5 **The proposal satisfies Policy 28.**

7.6 **Policy 9 - Design of New Housing** is supportive of proposals that involve the creation of high quality housing. All housing developments are expected to adhere to the guidance contained within Appendix 3 of the Local Development Plan.

7.7 Appendix 3 stipulates that flats will only be acceptable outwith the City Centre and Inner City through conversions of buildings of merit where conversion to houses is not suitable or achievable or where the application site is the subject of a planning brief. The proposals involve the formation of 3 staff apartments on the upper floor of the proposed restaurant/bar building. The proposed development does not involve the conversion of an existing building and the site is not the subject of a planning brief. In addition there is no indication of whether the proposed flats will benefit from communal amenity space or curtilage parking as also required by Appendix 3.

7.8 **The proposal contravenes Policy 9.**

7.9 **Policy 1 - Principal Economic Development Areas** is supportive of development proposals within Principal Economic Development Areas involving uses falling within Classes 4, 5 or 6 of the Town and Country Planning (Use Classes)(Scotland) Order 1997. Uses outwith Classes 4 (Business), 5 (General Industry) and 6 (Storage and Distribution) will be resisted.

7.10 The proposed development falls within Class 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Policy 24 does not permit Class 3 uses within Principal Economic Development Areas.

7.11 **The proposal contravenes Policy 1.**

7.12 **Policy 4 - Ancillary Services within Economic Development Areas** is supportive of appropriate small scale ancillary services within Economic Development Areas which can be demonstrated to meet the needs of employees and complement existing businesses.

7.13 The proposed development is not considered to be a facility that is ancillary to the Dunsinane Principal Economic Development Area. This is because the proposed restaurant/bar is of a scale (372 covers) and intensity (operating hours of 07.00 until 23.00hours) that is clearly aimed towards visiting members of the public rather than employees working within Dunsinane Economic Development Area.

7.14 In addition the application site is accessed from Kings Cross Road from outwith the Economic Development Area. The principal elevation of the building faces onto Kings Cross Road rather than on to Dunsinane Avenue to maximise its public visibility. The proposed restaurant/bar is also serviced by a significant level of car parking which is indicative that the majority of customers will drive to the premises rather than walk from nearby business premises located within Dunsinane Economic Development Area.

7.15 Planning permission (12/00367/PPPM) was granted by Members on 23 October 2012 for a mixed use development comprising Class 4 Business Use, wholesale cash and carry use, trade counter use, car showroom use, autocare (motor vehicle maintenance) use, public house, restaurant and hotel use on the site of the former Valentines Works within Dunsinane Principal Economic Development Area. Therefore, in addition to the takeaway facility

located on the northern side of Dunsinane Avenue adjacent to the application site, there is already provision within Dunsinane Principal Economic Development Area for both a sizeable public house and restaurant. The approval of a second restaurant/bar could lead to catering facilities serving visiting members of the public becoming a significant use within the Principal Economic Development Area to the detriment of the existing high quality business/industrial environment.

7.16 **The proposal contravenes Policy 4.**

7.17 **Policy 29 - Low and Zero Carbon Technology in New Development** requires that, for specified developments, carbon emissions will be reduced by defined percentages through the installation and operation of zero-carbon generating technologies. This matter will be controlled by condition should the Committee be minded to grant planning permission.

7.18 **The proposal satisfies Policy 29.**

7.19 **Policy 42 Sustainable Drainage Systems** requires new development proposals to be accompanied by a Sustainable Drainage scheme at the time of submitting a planning application. This must be supplemented by a Drainage Impact Assessment that shows the impact of a 1 in 200-year rainstorm event. SUDS schemes should be designed accordingly so that if this event occurs, flooding will not be higher than 300mm below floor level.

7.20 A detailed sustainable drainage system has been designed to support the proposed development. The proposed drainage system satisfies the requirements of the Council as Flood Authority. However, should the Committee be minded to approve this application, conditions relating to the implementation of the proposed drainage system and the finish of the proposed access road and parking area shall be incorporated into the grant of planning permission to ensure that surface water from the development does not drain onto the public road or generate instances of localised flooding.

7.21 **The proposal satisfies Policy 42.**

7.22 **Policy 45 Contaminated Land** requires applicants in considering possible contamination of application sites to:

- a submit the results of site investigations which assess the nature and extent of any contamination which may be present; and
- b where contamination is found to be present, notify the authority of the remediation measures proposed to render the site fit for its intended use including all receptors.

7.23 Appropriate conditions and/or legal agreements may be applied to ensure that such measures are implemented to the satisfaction of the Council.

7.24 The applicant has submitted a detailed contaminated land risk assessment to the satisfaction of the Head of Environmental Protection. To ensure that the proposed remediation strategy is implemented and is successful in dealing with contamination, the Head of Environmental Protection has recommended conditions be incorporated into the grant of planning permission should the Committee be minded to approve this application.

7.25 **The proposal satisfies Policy 45.**

7.26 **Policy 47 - Environmental Protection** relates to environmental protection and requires proposals to respect the level of environmental quality afforded to neighbouring properties in relation to noise disturbance. The Head of Environmental Protection has requested that

noise restrictive conditions form part of the grant of planning permission should the Council be minded to approve this application.

7.27 **The proposal satisfies Policy 47.**

7.28 **Policy 54 - Active Travel and Policy 55 Accessibility of New Developments** require all developments to consider ease and safety of pedestrian access and access to public transport over all other modes of transport.

7.29 The information extracted from the detailed transport statement submitted in support of the proposed development demonstrates that the application site is accessible by foot, cycle and public transport. However, it is expected that access to the proposed restaurant/bar will be predominantly by private car. This is evidenced by the large customer car park that will serve the proposed restaurant/bar. However, it should be noted that the proposed restaurant/bar would be significantly more accessible in a City Centre or District Centre location.

7.30 **The proposal satisfies Policies 54 and 55.**

7.31 **It is concluded from the foregoing that the proposal does not comply with the provisions of the Development Plan.**

## **OTHER MATERIAL CONSIDERATIONS**

### **THE SCOTTISH PLANNING POLICY 2010 AND THE DRAFT SCOTTISH PLANNING POLICY**

7.32 The SPP highlights that the overarching aim of achieving sustainable economic growth through the planning system is to achieve the right development in the right place (paragraph 34). The SPP also states that achieving sustainable economic growth requires a planning system that enables the development of growth enhancing activities across Scotland and protects and enhances the quality of the natural and built environment as an asset for that growth. It is within this context that Member's should note that the application site is located within a designated Principal Economic Development Area safeguarded by the adopted Dundee Local Development Plan for uses falling within Classes 4, 5 or 6 of the Town and Country Planning (Use Classes)(Scotland) Order 1997. The approval of this application could potentially prevent the future redevelopment of the vacant site to the west of the application site for business/industrial uses given the requirement to restrict noise and operating hours so as not to adversely impact on the amenity of the proposed restaurant/bar and upper floor flats. In addition the erection of a restaurant/bar on the application site will prevent the development of this prominent site for permissible uses within Classes 4, 5 or 6.

7.33 The SPP and Draft SPP stipulate that the sequential approach should be used when selecting locations for all retail and commercial leisure uses unless the development plan identifies an exception. The SPP and Draft SPP also emphasise that the sequential approach requires flexibility and realism from planning authorities, developers, owners and occupiers to ensure that different types of retail and commercial uses are developed in the most appropriate location. Where development proposals in edge of town centre, commercial centre or out-of centre locations are not consistent with the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing centres is acceptable.

## THE LOCHEE PHYSICAL REGENERATION FRAMEWORK

- 7.34 The framework highlights that the historic mismanagement of Dunsinane industrial estate has until now prevented major manufacturers and business from locating within this designated Principal Economic Development Area. However, given the prominence of the industrial estate there is a growing demand to locate in Dunsinane Industrial Estate. The adopted Local Plan and Proposed Dundee Local Development Plan recognise this and the policy approach taken supports the location of higher value uses within Dunsinane Industrial Estate on the provision that there is substantial reinvestment in the remainder of the estate to significantly enhance the attraction of this location for economic development purposes. This is demonstrated by the recent office development at Valentine Court and the 5 industrial units with trade counters that have recently been built to the south of the application site. The approval of planning application ref: 13/00367/PPPM by the Development Management Committee made provision for the introduction of high quality business/industrial development within Dunsinane Principal Economic Development Area. Although the proposal also involves the erection of a public house, hotel and restaurant the purpose of these elements of the proposal is to cross subsidise the Class 4, 5 and 6 elements of the proposal leading to the revitalisation of Dunsinane Industrial Estate. The current proposal that is the subject of this report is a standalone restaurant/bar that will not contribute to the revitalisation of Dunsinane Industrial Estate for business/industrial purposes.
- 7.35 The Stack has undergone major regeneration works in the last 12 months which has resulted in almost all of the remaining units being occupied apart from the former nightclub and cinema. The former Tesco superstore and bowling alley are now occupied by the Range, Aldi's and Home Bargains. The level of development at the Stack has greatly enhanced the level of vibrancy and vitality of Lochee creating employment opportunities, occupying vacant commercial units. The link between Lochee District Centre and the Stack has been greatly strengthened through environmental improvements and the introduction of complementary retail uses. The provision of a restaurant/bar within the Stack would complement the existing retail facilities available within the former leisure park and Lochee District Centre while also contributing to the vitality and vibrancy of Lochee through the creation of additional employment opportunities but also by attracting more visitors to this part of the city.

## SUPPORTING INFORMATION

- 7.36 A planning and design statement, sequential assessment, economic impact assessment, transport statement, ground investigations report and drainage statement accompany this application. The contents of the transport statement, ground investigations reports and drainage statement have been assessed against the requirements of the Development Plan in the observations section above. The contents of these reports are considered to be satisfactory.
- 7.37 The Planning and Design Statement suggests that Cloverleaf Restaurants have a proven track record in assisting to attract new businesses to business/industrial areas but does not provide any evidence to back this up.
- 7.38 It states that the proposed building will not adversely impact on the visual amenity of the Kings Cross Road and Dunsinane Avenue streetscapes by virtue of site layout, boundary treatments, landscaping and design of the restaurant building.
- 7.39 In addition to assessing the impact of the proposed restaurant/bar on the visual amenity of Dunsinane Avenue and Kings Cross Road the Planning and Design Statement gives a detailed assessment of the proposals against the requirements of the former local plan as well as discussing the reasons for refusal of planning application ref: 13/00267/FULL.



- 7.40 The planning and design statement concentrates on the applicable policies of the former Local Plan rather than the newly adopted Dundee Local Development Plan. However, the statement suggests that the proposal complies in full with the requirements of the Development Plan and where there are clear departures from Development Plan policy the statement argues that these policies are not relevant. This is exemplified by the statement's assessment of the reasons for refusal of application ref: 13/00267/FULL. The Statement argues that Policy 46 of the former adopted Local Plan is not relevant as the proposed restaurant/bar is an ancillary facility to Dunsinane Industrial Estate and therefore does not constitute a standalone commercial development. The statement goes on to suggest that because the proposed restaurant/bar is ancillary it must comply with the requirements of Policies 24 and 27 of the former adopted Local Plan. For these reasons the statement also suggests the proposal satisfies Policies 1 and 4 of the Dundee Local Development Plan. The statement also suggests that the proposal complies with Policy 27 of the former adopted Local Plan and Policy 4 of the Dundee Local Development Plan as the orientation of the building, site layout, means of access to the application site and level of customer car parking are not indications that the proposal is not an ancillary facility. The statement fails to mention that the scale of the proposed restaurant/bar was and still is considered to be a clear indication that what is being proposed is not an ancillary facility.
- 7.41 A Sequential Assessment of site selection has been submitted in support of the proposed development. The sequential assessment examines ten possible sites for the proposed development. However, the reasons for discounting many of these sites relates to the rigidity of the Cloverleaf Business Model. The main reason for discounting sites with existing buildings on them is because it would not be possible to provide staff accommodation or in their existing configuration the possible sites couldn't accommodate the preferred Cloverleaf restaurant/bar layout.
- 7.42 Other reasons for discounting possible sites relate to the restaurant/pub being contrary to the development plan. Members are reminded that the proposed development that is the subject of this application is also contrary to the Development Plan as detailed in the Observations section of this report.
- 7.43 In addition the sites chosen for sequential assessment all have buildings erected on them and are located within existing commercial centres. The applicants have not explored the possibility of locating within one of the City's Leisure Parks (Camperdown or Douglasfield) where there is land available for development that is currently being marketed. The reasoning for discounting the Stack relates to the timescales involved in regenerating the former leisure park. However, the redevelopment of the Stack is well underway with refurbished units being operated by Home Bargains, Aldi and the Range. Only the former nightclub and cinema units remain vacant. There are also cleared sites available for development within the Stack previously occupied by a public house (Buzz bar) and Restaurant (Busters). These sites would be suitable for the development being proposed.
- 7.44 The sequential assessment fails to demonstrate that the proposed restaurant/bar will be developed in the most appropriate location and therefore cannot be considered as sustainable economic development. In this instance the proposals fails to adhere to the guidance contained within the SPP and Draft SPP outlined above.
- 7.45 The economic impact assessment sets out the case for the proposed development. It highlights that 70 direct jobs will be created, of which 47 will be full time. The assessment also highlights that jobs will also be created through the construction of the new building. The assessment sets out the financial benefits to the economy through the construction of the new building and the potential turnover of the proposal when trading.

- 7.46 It is accepted that there would be direct and indirect economic spin offs from the proposed development. However, it is considered that these would be gained regardless of the location of the proposed development. In addition, it is considered that if the proposed development was located within an existing centre rather than in an out of centre location there would be greater potential for generating additional expenditure for other uses eg leisure or retail through combined trips.
- 7.47 It is considered that the economic impact assessment does not provide any clear evidence or justification as to why an out of centre site would have any greater economic benefits over a location within an existing centre. Therefore, while the economic impact assessment suggests that the proposal adheres to a national and local “pro-growth agenda” it fails to demonstrate that this is the case.

### **PROVISION OF RESIDENTIAL ACCOMMODATION**

- 7.48 The provision of on site staff accommodation within a restaurant/bar development of the scale proposed is not uncommon especially given the remote location of the application site from nearby houses and services. Although the proposed flats would not adhere to the Council's standards for residential development detailed within the adopted Local Plan and Proposed Dundee Local Development Plan the provision of such accommodation could be considered integral to the operation of the proposed restaurant/bar. Therefore, had the principle of development been acceptable it is likely that the occupancy of the proposed flats would have been restricted by condition to employees only.
- 7.49 **It is concluded from the foregoing that the material considerations are not of sufficient weight to support the approval of planning permission.**

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## **8 CONCLUSION**

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- 8.1 The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be refused.

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## **9 RECOMMENDATION**

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- 9.1 It is recommended that consent be REFUSED:
- 1 The use of the site for purposes out with Classes 4, 5 and 6 of the Use Classes Order 1997 in this identified Principal Economic Development Area would be contrary to the requirements of Policy 1 (Principal Economic Development Areas) of the Dundee Local Development Plan. There are no material considerations that would justify laying aside the provision of the Development Plan to grant planning permission.
  - 2 The sequential assessment of site location fails to demonstrate that there are no other suitable locations for the proposed development within and on the edge of the City Centre, District Centres, leisure parks and existing commercial centres. The supporting information fails to demonstrate how the location of the application site will not adversely impact on the vitality and viability of the City Centre, district centres and the Dunsinane Principal Economic Development Area. The proposals are therefore contrary to the Scottish Planning Policy 2010. There are no material considerations that would justify approval of planning permission in this instance.

- 3 By virtue of access arrangements, level of car parking, operational floor area and number of covers the proposed restaurant/bar is clearly aimed towards visiting members of the public rather than employees working within Dunsinane Principal Economic Development Area. Therefore the proposed development is not an ancillary facility to Dunsinane Economic Development area. The proposed development is contrary to the requirements of Policy 4 of the Dundee Local Development Plan. There are no material considerations that would justify laying aside the provisions of the Development Plan to grant planning permission.