

Café Development

KEY INFORMATION

Ward The Ferry

Address

327A Brook Street
Broughty Ferry
Dundee

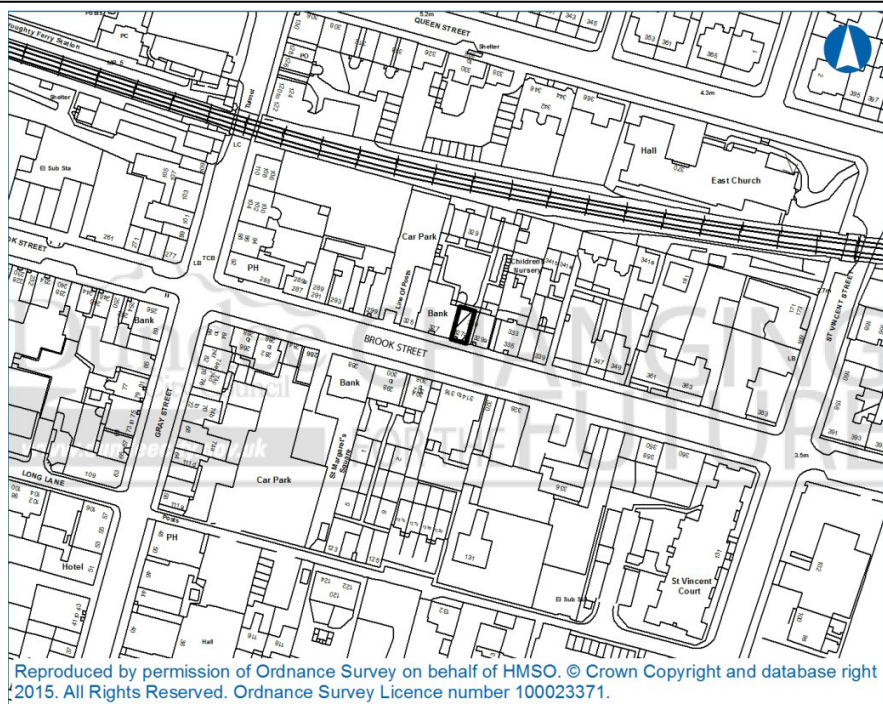
Applicant

Mr Benjamin Chambrier
327A Brook Street
Broughty Ferry
Dundee
DD5 2DS

Agent

Registered 1 Sep 2015

Case Officer S Dorward



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SUMMARY OF REPORT

- The application seeks planning permission for a change of use from Class 1, Retail, to Class, 3 Food and Drink; the applicant is currently selling prepared crepes for consumption off the premises, the business has expanded and the applicant now wishes to retain tables and chairs installed to allow food and drink to be consumed within the premises.
- Policies 28, 47 and 50 of the Adopted Dundee Local Development Plan (2014) are relevant to the determination of the application.
- The statutory neighbour notification procedure was undertaken, objections have been received from seven neighbours to the application site, raising issues with regard to noise, odour, access, compliance with the Development Plan, effect on conservation area, and road safety in relation to a pavement cafe, which is now removed from the submitted plans.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Development Management Committee because more than six valid written objections have been received within the specified timescale.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=NQ2WXRCHGB00>.

RECOMMENDATION

The application complies with Policies 47 and 50 of the Dundee Local Development Plan, PAN 1, national planning guidance for development within a conservation area, and is acceptable in terms of Policy 28 of the Adopted Local Plan. The proposal also satisfies the statutory requirements of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. There are no material considerations that would warrant refusal of planning permission. Therefore, the application is recommended for APPROVAL subject to conditions.

1 DESCRIPTION OF PROPOSAL

1.1 Planning permission is sought for a change of use from Class 1, Retail, to Class 3, Food and Drink; the applicant proposes to prepare crepes which would be cooked on crepe plates for consumption on the premises as well as for sale to take away, it is also proposed to serve alcoholic drinks and provide an element of live music. Opening hours are proposed as 8.30am until 6.00pm on weekdays and 9.30am until 6.00pm at weekends. The proposals are now retrospective, as the business has grown beyond expectations. The proposals for a pavement cafe have now been removed from the planning application. Physical alterations to the premises include the provision of a new sign to the fascia and to remove existing tiling to the front elevation and finish with a painted render, colour not specified.

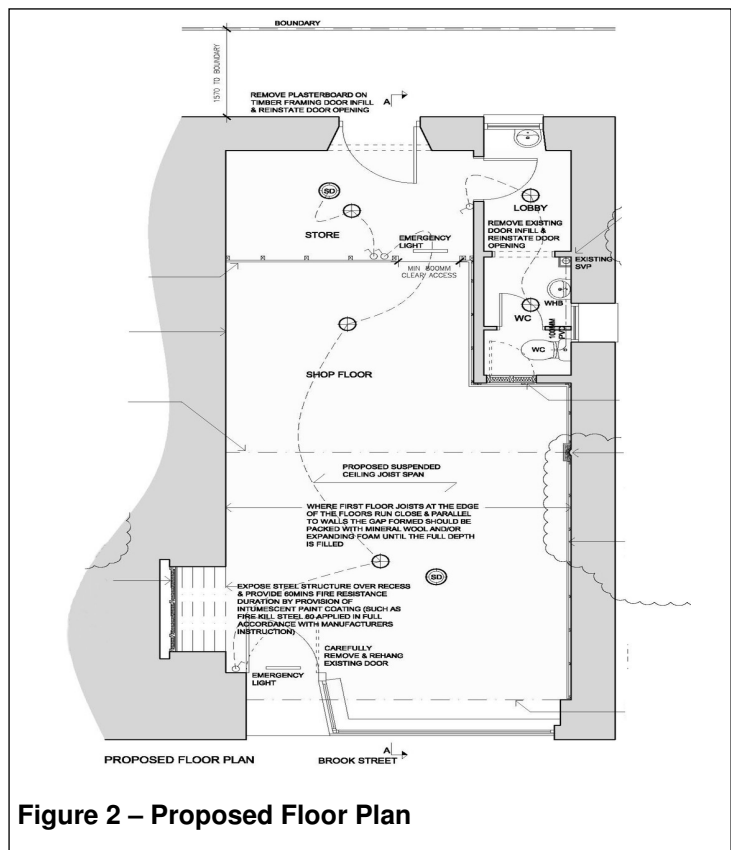


Figure 2 – Proposed Floor Plan

1.2 In accordance with the Council's Scheme of Delegation this application is being reported to the Development Management Committee as 7 valid letters of objection have been received.

2 SITE DESCRIPTION



Figure 2 – Location Plan



Figure 3 – Proposed Elevation

2.1 The application site relates to the property at 327a Brook Street, Broughty Ferry, which is located within Broughty Ferry District Centre and Broughty Ferry Conservation Area, as per the Adopted Dundee Local Development Plan (2014). The property is a former Class 1 Retail premises, adjacent land uses are commercial with residential properties above.

3 POLICY BACKGROUND

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

DUNDEE LOCAL DEVELOPMENT PLAN

Policy 28: Public Houses, Restaurants and Hot Food Takeaways Outwith the City Centre

Policy 47: Environmental Protection

Policy 50: Development in Conservation Areas

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS

Scottish Planning Policy (2014)

Scottish Historic Environment Policy (2011)

PAN 1: Planning and Noise (2011)

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

4 SITE HISTORY

4.1 There is no relevant site history.

5 PUBLIC PARTICIPATION

5.1 The statutory neighbour notification procedure has been undertaken and the planning application was advertised in the Dundee Evening Telegraph. Seven letters of objection have been received from neighbours to the application site, raising issues with regard to noise, odour, access, compliance with the Development Plan, compliance with planning procedure, effect on the conservation area, and road safety in relation to a proposed pavement cafe, which has now been removed from the submitted plans.

5.2 Members will already have access to the letters of objection and the issues raised are considered in the Observations section below.

6 CONSULTATIONS

6.1 **The Head of Environmental Protection** – recommends that conditions are applied to any planning permission granted to restrict noise levels and ensure that any music is inaudible, limit opening hours and also limit the range of food and cooking equipment in order to protect the amenity of adjoining residential properties.

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.

DUNDEE LOCAL DEVELOPMENT PLAN

- 7.2 **Policy 28: Public Houses, Restaurants and Hot Food Takeaways Outwith the City Centre** – states that in District Centres hot food takeaways, public houses and restaurants other than sandwich shops/coffee shops/tea rooms are not supported in premises directly adjoining (ie directly above or to either side) residential property which is not within the control of the proprietor/operator. Hot food takeaways and sandwich shops/coffee shops/tea rooms which would not meet the above requirements may be permitted, however, subject to the hours of operation being limited to between 7.00am and 7.00pm, and the method of cooking being limited to a microwave or other method which would not cause a nuisance to surrounding residential properties by virtue of smell.
- 7.3 In this case, there are adjoining residential properties to the application site, however hours of operation for the premises are proposed as 8.30 to 6.00pm Monday to Friday and 9.30am to 6.00pm at weekends. Cooking has been detailed as only crepes which are prepared on a crepe plate; there would be no grilling or frying. It is recommended that planning conditions are added to any permission granted to restrict the opening times to between 07.00 hours and 19.00 hours and to ensure that no cooking shall be carried out on the premises with the exception of crepe plates. With the imposition of these conditions it is considered that the terms of Policy 28 would be satisfied.
- 7.4 **With the addition of conditions, the proposal would satisfy the terms of Policy 28.**
- 7.5 **Policy 47: Environmental Protection** - asks that all new development that would generate noise, vibration or light pollution is required to demonstrate that it can be accommodated without an unsatisfactory level of disturbance to the surrounding area. New development in close proximity to existing sources of noise, vibration or light pollution will need to demonstrate that it can achieve a satisfactory level of amenity without impacting on the viability of existing businesses or uses.
- 7.6 In this case, it is recommended by the Head of Environmental Protection that conditions are appended to any planning permission granted to mitigate against any potential noise issues. Conditions are proposed to require restrictions upon opening hours and to prohibit amplified music or vocals. It is also proposed to restrict the level of cooking by condition, in order to protect residential amenity as there is no high level ventilation at the premises.
- 7.7 **With the addition of conditions, the proposal would satisfy the terms of Policy 47.**
- 7.8 **Policy 50: Development in Conservation Areas** - expects that all development proposals will preserve or enhance the character of the surrounding area, retaining all features that contribute to the character and appearance of the conservation area.
- 7.9 Limited alterations are proposed to the building, however, and it is considered that the character and appearance of the conservation area would be preserved. A planning condition is proposed to require the prior approval of the colour of any external finishes.
- 7.10 **The proposal satisfies Policy 50 with the addition of a planning condition.**
- 7.11 **It is concluded from the foregoing that the proposal complies with the provisions of the development plan.**

STATUTORY DUTY

- 7.12 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.13 It is considered, for the reasons set out above that the proposed works comply with national planning guidance with regard to development affecting a conservation area, the proposals would preserve the Conservation Area and the statutory duty set out in Section 64 of the Act would therefore be satisfied.

OTHER MATERIAL CONSIDERATIONS

A – VIEWS OF OBJECTORS

- 7.14 Objection letters have been received from 7 individuals, raising issues in terms of planning procedure, compliance with the development plan, noise and odour, preservation of original features and protection of the conservation area, proliferation of existing Class 3 uses within the area, bin storage/land ownership and road safety. Fears in terms of road safety are allayed as the pavement cafe has now been removed from the proposals; concerns in terms of compliance with the development plan, noise and odour, and preservation of the conservation area have all been addressed earlier in this report and are considered to be acceptable. The proliferation of existing Class 3 uses within the area, and concerns over land ownership regarding bin storage are not material considerations, and in terms of planning procedure, the correct approach has been followed, with the application having been submitted following concerns reported to the planning authority.
- 7.15 **The concerns of the objectors are recognised and are not supported.**

B – SCOTTISH PLANNING POLICY (2014) AND SCOTTISH HISTORIC ENVIRONMENT POLICY (2011)

- 7.16 This should be taken into account when determining applications for planning permission for development which may affect the historic environment. The SPP considers that the designation of a conservation area provides the basis for the positive management of an area. A proposed development that would have a neutral effect on the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. Scottish Historic Environment Policy acknowledges that the protection of the historic environment is not about preventing change but seeking to ensure that where change is proposed, it is appropriate, carefully considered and if appropriate, reversible.
- 7.17 In this case, the change of use proposed would have a neutral effect upon the character and appearance of the area and physical alterations are minimal, it is therefore concluded that the proposed works comply with national planning guidance with regard to development within a conservation area.
- 7.18 **The proposal complies with national planning guidance with regard to development within a conservation area.**

C – PAN 1 NOISE AND PLANNING (2011)

- 7.19 This considers that site selection, development design, and conditions attached to a planning permission can play a part in preventing, controlling and mitigating the effects of noise; it is preferable that satisfactory noise levels can be achieved within dwellings with the windows sufficiently open for ventilation. Mitigation measures advocated include limiting operational hours and restricting activities, balancing any implications for the operational capacity of a business. In this case it is considered that the restrictions imposed by the planning conditions proposed would mitigate the effects of noise to achieve a satisfactory level of residential amenity.
- 7.20 **The proposal accords with the requirements of PAN 1.**
- 7.21 **It is concluded from the foregoing that the material considerations support the approval of planning permission.**

8 CONCLUSION

- 8.1 The proposal satisfies the requirements of the Development Plan. There are no material considerations that would justify refusal of planning permission. Therefore, it is recommended that planning permission be granted subject to conditions.

9 RECOMMENDATION

- 9.1 It is recommended that consent be GRANTED subject to the following conditions:
- 1 Details of the specification and colour of the proposed external finishes shall be submitted for approval in writing by this Planning Authority. Thereafter the works approved by this planning condition shall be implemented in full.
 - 2 Music shall be so controlled as to be inaudible within any adjacent residential property.
 - 3 At no time shall amplified music or vocals be provided/performed.
 - 4 The total noise from the mechanical and electrical plant/services shall not exceed NR45, during daytime, and shall not exceed NR35 during night-time, as measured 1 metre external to the facade of adjacent residential property. Furthermore, it shall not exceed NR25 within any adjoining residential property.

For the avoidance of doubt, NR45 is applicable for the period 07:00 to 23:00 hours and NR35 and NR25 are applicable for 23:00 to 07:00 hours.
 - 5 No cooking shall be carried out on the premises with the exception of crepes prepared on a crepe plate.
 - 6 The premises shall be open to the public between 07.00 and 19.00 hours Monday to Sunday.

REASONS

- 1 In the interests of visual amenity; to ensure that the external finishing materials are appropriate to the character of the area.
- 2 In the interests of residential amenity and the quiet enjoyment of the neighbourhood.
- 3 In the interests of residential amenity and the quiet enjoyment of the neighbourhood.
- 4 In the interests of residential amenity and the quiet enjoyment of the neighbourhood.
- 5 In the interests of residential amenity; to ensure that the ventilation system is adequate to deal with odour from the premises in the interests of the amenities of the upper floor residents.
- 6 In the interests of residential amenity; the site directly adjoins residential properties and it is necessary to restrict the hours of operation to those proposed by the applicants in order to prevent noise disturbance to the adjoining residents.