

**KEY INFORMATION**

**Ward** Lochee West

**Proposal**

Use of ground as beer garden

**Address**

24 High Street  
Lochee  
Dundee  
DD2 3TX

**Applicant**

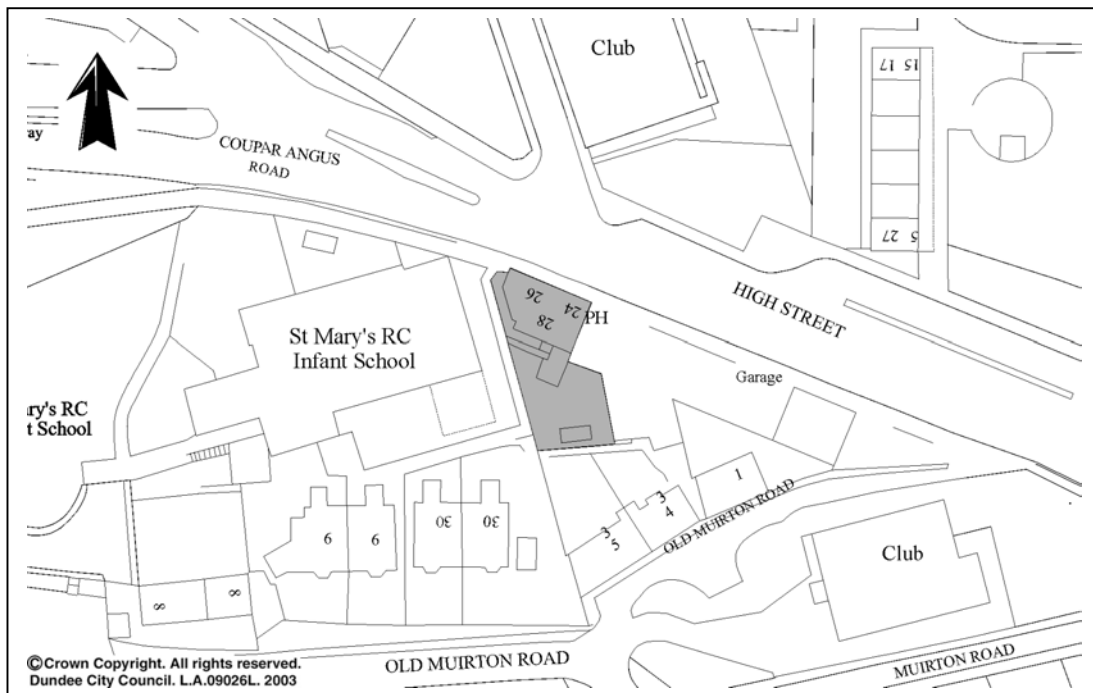
Pub Estates Co Ltd  
Blenheim House  
Ackhurst Park  
Foxhole Road  
Chorley  
Lancs  
P7 1NY

**Agent**

David Fall  
Pub Estates Co Ltd  
Blenheim House  
Ackhurst Park  
Foxhole Road  
Chorley  
Lancs  
P7 1NY

**Registered** 30 Sep 2003

**Case Officer** R Anderson



The use of ground as beer garden is **RECOMMENDED FOR APPROVAL SUBJECT TO CONDITIONS.**  
Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed beer garden although contrary to local plan policy is unlikely to present a major source of noise nuisance and in this case there are material reasons for overturning policy. Accordingly approval is recommended.

**SUMMARY OF REPORT**

- It is proposed to utilise a 50m<sup>2</sup> yard area to the rear of the above public house premises as a beer garden. The yard is bounded by high walls and has mature landscaping to its southern boundary.
- The site was used a beer garden for a temporary period in 2000 without incident or complaint.
- Three letters so complaint has been received. The main issues arising are the impact of noise on neighbouring premises, the lack of parking spaces and the proximity of the garden to a primary school.
- Although strictly speaking the proposal is contrary to local plan policy there are material considerations related to size, level of use, boundary treatments and other surrounding land uses which justify setting aside policy in this case. Accordingly approval is recommended.

## DESCRIPTION OF PROPOSAL

It is proposed to utilise a back yard area to the rear of the above property as a beer garden in association with the public house. The area of ground amounts to some 50m<sup>2</sup> and will contain wooden benches and tables. Entrance to the garden is from the public house to the north. A previous temporary consent for the use of the beer garden expired in April 2000.

## SITE DESCRIPTION

The site in question is located on the south side of Lochee High Street, opposite its junction with Gray's Lane. The yard area is located to the south of the public house and is surrounded by residential uses to the north, a vacant garage site, now used as a car park, to the east, a primary school to the west and the pub to north. It is currently finished in a combination of paving slabs and grass and is bounded on three sides by 2m high stone and brick walls. Mature landscaping exists to the south of the site.

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

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

### Dundee Local Plan 1998

The following policies are of relevance:

H1 - Existing Residential Areas

LT8 - Licensed and Hot Food Premises

### Dundee Urban Nature Conservation Subject Local Plan 1995

There are no policies relevant to the determination of this application

### Finalised Dundee Local Plan 2003

The following policies are of relevance:

Policy 53: Licensed and Hot Food Premises outwith the City Centre

## Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application

## Non Statutory Statements of Council Policy

There are no non-statutory Council policies relevant to the determination of this application

## LOCAL AGENDA 21

Key Theme 12 Opportunities for culture, leisure and recreation are readily available to all.

## SITE HISTORY

D23862 - Elevational Alterations and formation of Beer garden - Temporary Approval - April 1999

## PUBLIC PARTICIPATION

The application was advertised under section 34 of the Act (Bad Neighbour Development). Three letters of objection have been received regarding the application. The main issues arising are:

Noise impact on residential amenity

Unsuitable parking spaces available for patrons to park

Inappropriate location adjacent to a primary school.

## CONSULTATIONS

The director of Environmental and Consumer Protection has indicated that conditions regarding time and noise limits should be attached to any consent in the interests of residential amenity.

No other adverse comments have been received.

## OBSERVATIONS

In accordance with the provisions of Section 25 of the Act the Committee is required to consider

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations

### The Development Plan

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

H1 - Existing Residential Areas - Although there are residential properties to the south of the site they are some 10 -12m away. The boundary between them is a 2m high brick wall with a significant amount of mature landscaping between them. Both of these features act as an effective screen from the development. It is also the case that the beer garden is very sheltered and will not get much, if any direct sunlight. It is unlikely that it will be used to any great degree outwith warmer weather conditions. Invariably this will be in the summer months, when it is lighter and there is more activity later into the evenings. Consequently it is likely it will only be used for a limited period of any calendar year. The location of the garden adjacent to the busy high street and junction with Loons Road means there is likely to be a fair degree of ambient noise emanating from this source. Given all of these factors and the fact that during the temporary consent period no complaints were received regarding the use of the beer garden it is considered that the proposed use will not present a significant noise source to the detriment of residential amenity. If it is

the case that in future the patrons of the garden make excessive noise then there is alternative legislation for the police and environmental health to deal with any problems at that time. In this respect the proposal conforms to H1 of the local plan.

LT8 - Licensed and Hot Food Premises - This policy indicates that no licensed premises will be allowed within 30m of residential premises. Clearly the proposed beer garden is within this distance and under a literal interpretation of this policy is therefore contrary. This policy has now been superseded by the policies of the Finalised Local Plan Review. This will be discussed below.

It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

#### Other Material Considerations

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

#### Finalised Local Plan Review

Policy 53: Licensed and Hot Food Premises Outwith the City Centre

Generally this policy indicates what LT8 of the local plan does in terms of distances to residential premises. However the policy is primarily aimed at new premises and their impact on residences where previously no licensed premises existed. In this case the yard area associated with the pub has always been there and in the past has had consent for use as a beer garden, which was used without incident and detriment to residential properties. It is considered that the current circumstances i.e. previous history and the fact that it is a relatively minor extension of existing licensed premises, present a strong case to suggest that the proposal is outwith the general intention of policy 53, which is to limit the impact of significant new licensed premises on nearby residences. Given the issues outlined in the considerations for policy H1 above and the ability to condition the application it is considered that there are material considerations, which would justify setting aside policy in this case.

#### Points raised by the Objectors

Noise impact on residential amenity - It is considered that, although the distance of the beer garden will be

some 10 -12 m away from residential properties (closer to the curtilages), it is of limited size and will be used infrequently (due primarily to climatic factors). It is unlikely to be the source of a major noise nuisance. Taking into account the high boundary walls, mature landscaping and the ambient noise levels emanating from Lochee High Street it is considered that the beer garden will not have an adverse impact on neighbouring properties. In the unlikely event this is not the case, other legislation exists to deal with this matter.

Unsuitable parking spaces available for patrons to park - There is no requirement for additional parking in this case given the minor nature of the proposal and its proposed level of use. In addition to this it is to be used in connection with an existing facility where a car park already exists adjacent to the premises. It is considered that lack of parking space for patrons is not an issue in this case.

Inappropriate location adjacent to a primary school - The proximity of the beer garden next to a primary school is again not a significant land use factor given the robust boundary between the uses and the likely times the garden will be in operation i.e. late afternoons, early evenings and weekends. The proposal will have no adverse impact on the use of the neighbouring property as a primary school. It is likely to be the case that the primary school playground will be a far bigger noised generator than the patrons of the beer garden.

It is concluded from the foregoing that sufficient weight can be accorded to the material considerations stated such as to justify the grant of planning permission contrary to the provisions of the development plan. It is therefore recommended that planning permission be granted with conditions.

#### Design

There are no design issues to consider in this proposal

#### CONCLUSION

It is considered that the beer garden given its size, the likely level of usage, boundary treatments and landscaping and its proximity to a major road will present a major source of noise pollution to the detriment of

surrounding residential amenity. Although it is strictly speaking contrary to policy LT8 of the local plan there are material considerations which justify setting aside policy in this case. Accordingly approval of the application is recommended.

#### RECOMMENDATION

It is recommended that planning permission 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 That the use of the beer garden for any active purpose shall cease at 2130hrs on any day.
- 3 That no music or vocals shall be permitted within the beer garden.

#### Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997
- 2 In the interests of residential amenity