

KEY INFORMATION

Ward Tay Bridges

Proposal

Change of use from coffee shop to form extension to proposed amusement centre

Address

Esquires
78 High Street
Dundee

Applicant

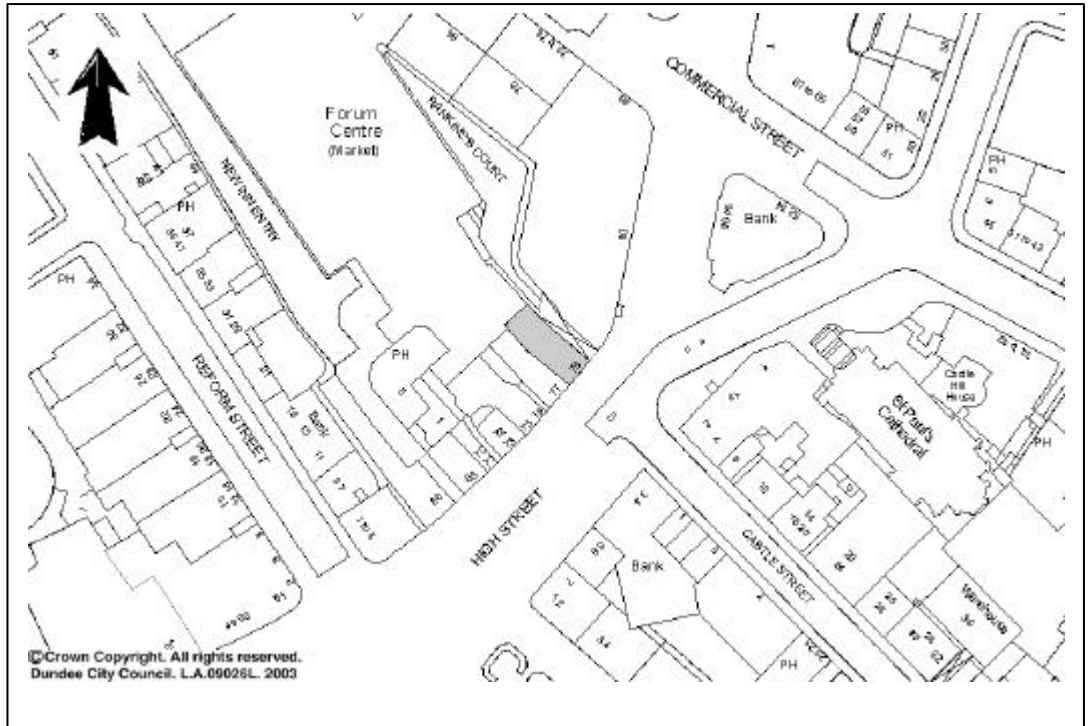
The Noble Organisation
1A Dukesway Court
Team Valley
Gateshead
Tyne & Wear NE11 0PJ

Agent

Mr Michael Fox
The Noble Organisation
1A Dukesway Court
Team Valley
Gateshead
Tyne & Wear NE11 0PJ

Registered 29 Nov 2005

Case Officer: C Walker



Extension Proposed for High Street Amusement Centre

The Change of use from coffee shop to form extension to proposed amusement centre is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation

RECOMMENDATION

The proposed development contravenes Policy 54 of the adopted Dundee Local Plan Review 2005 because it would provide an amusement centre within the retail core frontage of the city centre and would serve to dilute the vitality of the core area. There are no material considerations to justify the approval of the development contrary to the Plan.

SUMMARY OF REPORT

- Planning permission is sought to change the use of the premises from a cafe to an amusement centre, merging it with the proposed amusement centre at the adjoining premises to the west at 77 High Street (planning permission was granted on appeal for that development in April 2003).
- Policy 54 of the Local Plan states that within the City Centre amusement centres will not be permitted within the retail core area. NPPG8 Town Centres and Retailing states that amusement centres are unlikely to be acceptable in primary shopping areas.
- 35 letters of objection were received stating concerns about the adverse impact on the retail core area, contravention of policy and amenity issues.
- The application site occupies a very prominent location within the retail core area and the proposed development will serve to dilute the vitality of the core area. The proposal contravenes Policy 54 of the adopted Local Plan and the applicant's points in favour of the development are not sufficient to overcome these concerns and to justify approving the development contrary to the Plan.

DESCRIPTION OF PROPOSAL

Planning permission is sought to change the use of the premises from a cafe to an amusement centre, merging it with the proposed amusement centre at the adjoining premises to the west at 77 High Street (planning permission was granted on appeal for that development but the proposal has not been implemented).

An illustrative internal layout has been submitted indicating the entire ground floor area site being utilised as an amusement with prizes area with the party wall between 77 and 78 High Street removed at 4 sections to provide access between the 2 units. The combined unit would have a retail frontage of some 14 metres, almost double the size of the approved unit at 77 High Street.

The unit also has a basement and an upper floor area (it was once a Masonic hall) but these parts of the building do not form part of the application and do not feature in the illustrative plans.

Although no proposed changes to the elevation of the unit have been submitted, the internal layout suggests that no access will be available at 78 High Street, with the sole means of access taken from no 77.

The illustrative plans for the approved amusement centre at 77 High Street indicate the amusement centre to the front of the building with an ancillary snack bar to the rear of the building at a slightly raised level and a beauty salon on the upper floor level.

In support of their application the applicants state that the combined unit will provide a better layout and facility and that the retail, restaurant and beauty salon elements will all operate from the combined facility. They state a willingness to accept a planning condition requiring a priced window display.

They respond to points raised by objectors to state that there is no evidence that amusement centres (which are restricted to over 18's) result in crowds congregating or amenity issues, that retailing will not be diluted because the existing use is a cafe and that the proposal will not lead to a concentration of amusement centres.

They note that NPPG8 does not contain an embargo on amusement centres in primary shopping areas and state that Policy 54 of the Local Plan must be interpreted in a similar light. They state that their proposal will not have the negative impacts set out in the preamble to that policy and therefore should not be excluded in the absence of any adverse effect.



They criticise the policy for failing to distinguish between amusement centre and amusement arcades, state that there is evidence that amusement centres attract people to a town centre, that their use is a complementary use in a shopping frontage, that this is the only way they can increase the size of the amusement centre approved at 77 High Street, that there will be no loss in retail frontage or floorspace and that their proposed use with its widow display will be more overtly retail in character than the current Class 3 use.

SITE DESCRIPTION

The site comprises a cafe premises at 78 High Street. It includes the ground floor of a 4 storey stone building and the pavement area in front of the unit is used as an external seating area for customers. The unit is long and narrow with an approximate length of 32 metres and a width which varies from 3.5 to 5.5 metres, and its entire frontage measures some 6.5 metres. The unit has a central access door on High Street and a fire escape doorway at the rear onto the pend under the former Arnotts building. The unit also has a basement and an upper floor area (it was once a Masonic hall) to the rear.

The group of buildings at 77-80 High Street, including this building, the adjoining shop unit to the west and the former Arnotts store, are Category A

listed. They were built in the 1870's although the shopfronts have been remodelled at various stages. The former Arnotts store has been redeveloped as a facade retention scheme although the part of the building above 77 and 78 High Street has been retained in its entirety.

No 77 High Street, to the west, is a shop unit but has planning permission to be converted into an amusement arcade. Immediately to the east is a pend under the former Arnotts building leading to Rankines Court and then a number of retail units along the High Street. The upper level of the former Arnotts building (above the application premises) is also in retail use. To the north is the Forum Centre which can be accessed from the pend to the east of the application premises.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no Structure Plan policies of relevance to the determination of this planning application.

Dundee Local Plan Review 2005

In the adopted Local Plan Policy 54 deals specifically with amusement centres and amusement arcades. The preamble to this policy sets out concerns about the siting of these facilities in the City Centre Retail Core area. The policy goes on to set out criteria for the siting of amusement arcades and amusement centres, many of which relate to amenity issues, but specifically states that "within the City Centre amusement centres and arcades will not be permitted within the retail core area".

The application site is located within the City Centre Retail Core as defined in the map on page 69 of the Plan. Policy 34 sets out the appropriate uses in the retail core area which are limited to retail, a limited range of Class 2 uses geared towards shoppers and complementary Class 3 uses.

Although there are policies in the adopted Local Plan relating to listed buildings and conservation areas, as no operational development is proposed in this application, those policies are not of relevance.

As the proposed development contravenes Policy 54, it has been advertised as contravening the Local Plan.

Scottish Planning Policies, Planning Advice Notes and Circulars

NPPG8 Town Centres and Retailing sets out Government Policy which seeks to sustain and enhance the vitality and viability of town centres as the most appropriate location for retailing. It states that amusement centres are unlikely to be acceptable in primary shopping areas or where they are likely to affect amenity adversely, especially in conservation areas or other places of special architectural or historic character.

Non Statutory Statements of Council Policy

There are no non Statutory Council Policies of relevance to the determination of this application.

LOCAL AGENDA 21

The proposed reuse of the premises does not have any implications for the Councils Agenda 21 Policies.

SITE HISTORY

Planning permission was granted in February 2003 to change the use of these premises from a shop to a coffee shop - application 02/00779/COU refers. This use was implemented and the unit has functioned as a coffee shop since then.

Listed building consent was granted for internal alterations to effectively merge 77 and 78 High Street in October 2005 - application 05/00556/LBC refers. That proposal was a precursor to the current application at 78 High Street.

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

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the development was advertised both as a bad neighbour development and as contravening

Policy 54 of the Local Plan. 35 letters of objection were received (copies available for inspection in the Members Lounges).

31 of the letters, including 29 of a standard format, are from residents of and visitors to the city, and the remaining 4 are from retailers/owners of adjoining units.

These letters suggest that a proposed amusement centre will detract from the prime retail area, will dilute recent investment in the city centre, including the adjoining Arnotts Building, will cause amenity problems with people congregating at the premises, will dilute the retail frontage between Arnotts and Reform Street, will contravene Local Plan and Government Policy and finally, will lead to an excess of amusement centres within a relatively small area.

These matters will be considered by the Observations section of this report.

CONSULTATIONS

The Director of Environmental and Consumer Protection has asked that sound insulation measures be provided.

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

It is clear that the provision of an amusement centre within the retail core frontage of the city centre contravenes Policy 54 of the adopted Dundee Local Plan Review 2005 which contains a specific and unqualified prohibition against the siting of amusement centres in this area.

To understand why this prohibition operates, it is necessary to look to the preamble of that policy. The preamble makes reference firstly to amenity considerations which are not of particular relevance in this case but then goes on to explain why

amusement centres are not supported in the retail core area. It states that "while amusement centres and arcades can contribute to the overall attraction of city centres, they are not, for most people, the main purpose of trips to the city centre. As such, their contribution to city centre vitality and viability is not as strong as that of shops and other related uses which are a more typical focus for trips to the city centre. There is therefore a need to ensure that amusement centres and arcades do not displace such uses from the City Centre Retail Core and dilute its ability to attract visitors. The City Centre Speciality Shopping and Non Core Area offers a more appropriate location for amusement centres and arcades".

For many years now the Council has consistently and successfully operated a policy encouraging amusement centres to locate in secondary retailing areas.

It is concluded from the foregoing that the proposal contravenes Policy 54 of the adopted Local Plan.

Other Material Considerations

1 NPPG 8

The protection of the retail core area of the city and the exclusion of amusement centres is backed up by Government Policy set out in NPPG8. It states that amusement centres are most appropriately sited in secondary shopping areas or in areas of mixed commercial development. It adds that they are unlikely to be acceptable in primary shopping areas or where they are likely to affect amenity adversely, especially in conservation areas or other places of special architectural or historic character.

In their letter justifying their proposals, the applicants note that NPPG8 does not contain an embargo on amusement centres in primary shopping areas and state that as their proposal will not have the negative impacts set out in the document it therefore should not be excluded in the absence of any adverse effect. This point will be considered in the section headed Applicants Letter Justifying Proposals below.

2 Applicants Letter Justifying Proposals

In order to justify their proposed development, which does not comply with Policy 54 of the adopted Local Plan, the applicants state that the

Policy 54 embargo is not consistent with NPPG8, that their proposal will not have the negative impacts set out in the preamble to Policy 54 and therefore should not be excluded in the absence of any adverse effect and they criticise the policy for failing to distinguish between amusement centres and amusement arcades.

NPPG 8 clearly states that amusement centres should be located in secondary shopping areas and are unlikely to be acceptable in primary shopping areas. It also states that the local plan should give appropriate locational guidance for this type of use.

As NPPG8 gives general guidance for the whole country (and hence a range of town centres), it is entirely appropriate that its guidance should be on a more general basis with more detailed policies being incorporated in local plans. Policy 54 of the Local Plan was drafted on this basis. It follows the advice in NPPG8 by encouraging this type of use in secondary retail areas and effects the presumption against such uses in prime retail areas by setting out a prohibition against such uses in a small part of the city centre defined as the retail core area.

One of the main thrusts of the applicants justification is that their proposal will not have the negative impacts set out in the preamble to Policy 54 and therefore should not be excluded in the absence of any adverse effect. They refer to the fact that the retail, restaurant and beauty salon elements will all operate from the combined facility and that they are willing to accept a planning condition requiring a priced window display. They state that there is evidence that amusement centres attract people to a town centre, that their use is a complementary use in a shopping frontage, that there will be no loss in retail frontage or floorspace and that their proposed use with its widow display will be more overtly retail in character than the current Class 3 use.

It is not disputed that amusement centres are appropriately sited in town centres and the adopted Local Plan makes ample provision for such uses. The only restriction is in the area defined as the City Centre Retail Core. In this area uses are limited by Policy 34 to retail, a limited range of Class 2 uses geared towards shoppers and complementary Class 3 uses. Together

Policies 34 and 54 state that amusement centre uses, whilst they may be a reason for people visiting the city centre, in general tend to feed off retail uses. The policies are concerned to ensure that the vitality and visual appearance of the core area is not diluted by an over representation of other uses lacking the visitor attraction potential of its shops. Amusement centres are considered to be a type of use that would dilute the vitality of the core area. The policy framework accepts that complementary Class 3 uses (ie shoppers cafes) also feed off retail uses but consider these to be acceptable in the core area. This reflects the view that most shoppers expect to visit a cafe or restaurant as part of the shopping experience in the core area but that although some may also wish to combine a shopping trip with a visit to an amusement centre, the numbers involved are not so significant and for this reason such uses are restricted to secondary shopping areas. It is considered that the provision of a range and choice of good quality shoppers cafes and restaurants in the core area attracts people to the centre whereas most shoppers would not choose to visit the core area on the basis that it provided amusement centre facilities.

The proposed amusement centre occupies a key location in the within the heart (as opposed to the periphery) of the retail core area. The recent redevelopment of the former Arnotts store for retail use, the significant Council investment in environmental improvements in the High Street and the redevelopment of the Overgate Centre further to the west have all combined to make this a very prominent site. The proposed development seeks to double the frontage of the unit (compared with the approved development at 77 High Street). The impact of this non conforming use in the core area is therefore substantial.

The applicants seek to enhance their proposals by stating that the retail, restaurant and beauty salon elements will all operate from the combined facility and that they will operate a priced window display (which they consider will be more overtly retail in character than the current Class 3 use). Whilst these factors will help to enhance the proposals, the retail, restaurant and beauty salon elements relate to the permitted amusement

centre at 77 High St (the illustrative plans indicate only an amusements with prizes area at 78 High Street) and in any event these uses are entirely ancillary, occupying the rear and upper floor of the premises at 77 High Street. The applicants suggest that the provision of a priced window display will be more overtly retail in character than the current Class 3 use. This ignores the fact that the current Class 3 use is very open in character by providing an outdoor seating area on the High Street. It is considered that this facility provides considerable interest and adds to the vitality of the core area to a much greater extent than any priced window display artificially maintained to try to create a retailing image. It is therefore not accepted that the proposed amusement centre use will contribute more positively to the core retail area than the current shoppers cafe use.

The applicants criticise Policy 54 for failing to distinguish between amusement centres and amusement arcades. The policy covers both types of facility and clearly the concerns about amenity are more likely to be a significant factor with amusement arcades. However the Council is perfectly capable of considering the current proposals for an amusement centre in the light of Policy 54 and to distinguish between amusement centres and arcades in the assessment of proposals and the application of Policy 54.

It is noteworthy that the Dundee Local Plan Review 2005 was adopted as recently as August 2005. The applicants did not make any objection or representations or participate in any way in the Local Plan process despite being aware of it (consideration of the emerging Local Plan was a significant issue in the appeal relating to 77 High Street).

In support of their application the applicants also state that the combined unit (77 and 78 High Street) will provide a better layout and facility and that that this is the only way they can increase the size of the amusement centre approved at 77 High Street. However at 77 High Street there is a significant upper floor area indicated in the illustrative plans as a beauty salon and tanning area. this area could be used as part of an extended amusement centre and would not offend the Council's policies on the protection of the retail core area.

Rather it would seem that the principal attraction of extending into the current application site at 78 High Street is to effectively double the frontage of the premises from 7 to almost 14 metres.

Finally the applicants have responded to the concerns of objectors on amenity and concentration issues and this matter is considered under the heading "Views of Objectors" below.

3 Views of Objectors

Objectors have raised concerns that a proposed amusement centre will detract from the prime retail area, will dilute recent investment in the city centre, including the adjoining Arnotts Building, will cause amenity problems with people congregating at the premises, will dilute the retail frontage between Arnotts and Reform Street, will contravene Local Plan and Government Policy and finally, will lead to an excess of amusement centres within a relatively small area.

The concerns of the objectors about detracting from and diluting the retail core area and contravening Government and Local Plan policy have already been considered in the sections on the Development Plan and the Applicants Letter Justifying Proposals above. It is considered that the concerns of the objectors on these issues are valid. It is of particular significance that 4 of the objectors are the owners or tenants of nearby retail premises who, based on their experience as retailers, are concerned about the detrimental impact of the proposed amusement centre, despite being fully aware that the current use of the premises is a shoppers café.

Other concerns about amenity problems and an excess of amusement centres within a relatively small area are not considered to be valid. The premises do not directly adjoin residential properties and appropriate conditions restricting noise levels could be imposed should permission be granted for this development. It is not considered that the concerns about children loitering at the door of the premises are likely to materialise. An amusement centre is only open to persons over 18 years of age and there appears to be no evidence of loitering around the other amusement premises close to the application site. The applicants make similar points in support of their proposals.

In terms of concentration of amusement centres, as this proposal is for an extension to an approved centre, it is not considered that a concentration of amusement centres issue is relevant in this instance.

4 Appeal Decision at 77 High Street

The decision in April 2003 to permit an amusement centre at 77 High Street needs to be taken into account. However it should be borne in mind that the decision on that application was taken in the context of the previous Dundee Local Plan 1998 and that the redevelopment of the former Arnotts store had not taken place.

In that case the Reporter concluded that the principal policy that the Council relied on to refuse the development (Policy 26) was not applicable because it related to amusement arcades and not amusement centres. He concluded that the proposed amusement centre was a "complementary" use within the retail core area and sought to dilute the impact of Policy S3 of the 1998 Plan by referring to the emerging Local Plan which at that stage was proposing relaxing the restriction in core areas to allow a 20% threshold for non retail uses (that proposal was subsequently abandoned).

It is considered that that appeal decision can be distinguished from the current proposals in that there is now a policy in the adopted Local Plan clearly relating to amusement centres (Policy 54) and the policy protecting the retail core area (Policy 34) does not offer any support to this application. The issue of the proposal being a "complementary" use within the retail core area does not arise because Policy 34 (unlike the previous Policy S3) does not make a general provision for "complementary" uses and in any event it is not considered that an amusement centre is a complementary use within the retail core area.

Not only can the decision at 77 High Street be clearly distinguished from the current proposals but it is also the case that it does not justify an incremental approach of seeking to significantly extend an existing unimplemented proposal (by doubling the frontage of the unit).

It is concluded from the foregoing that insufficient weight can be accorded to any of the material consideration set

out above to justify the approval of planning permission contrary to Policy 54 of the adopted Local Plan. It is therefore recommended that planning permission be refused.

Design

As no alterations to the premises are proposed as part of this application there are no design issues to consider.

CONCLUSION

The proposed development contravenes Policy 54 of the adopted Dundee Local Plan Review 2005 because it would provide an amusement centre within the retail core frontage of the city centre and would serve to dilute the vitality of the core area at that location. There are no material considerations to justify the approval of the development contrary to the Plan.

RECOMMENDATION

It is recommended that planning permission be REFUSED for the following reason:-

Reason

- 1 The proposed amusement centre would contravene Policy 54 of the adopted Dundee Local Plan Review 2005 and would serve to dilute the vitality of the core area. There are no material considerations to justify the approval of the development contrary to the Plan.