

KEY INFORMATION

Ward Law

Proposal

Demolition of existing restaurant and erection of new restaurant with 7 storey flatted development above.

Address

13 Hawkhill
Dundee
DD1 5DL

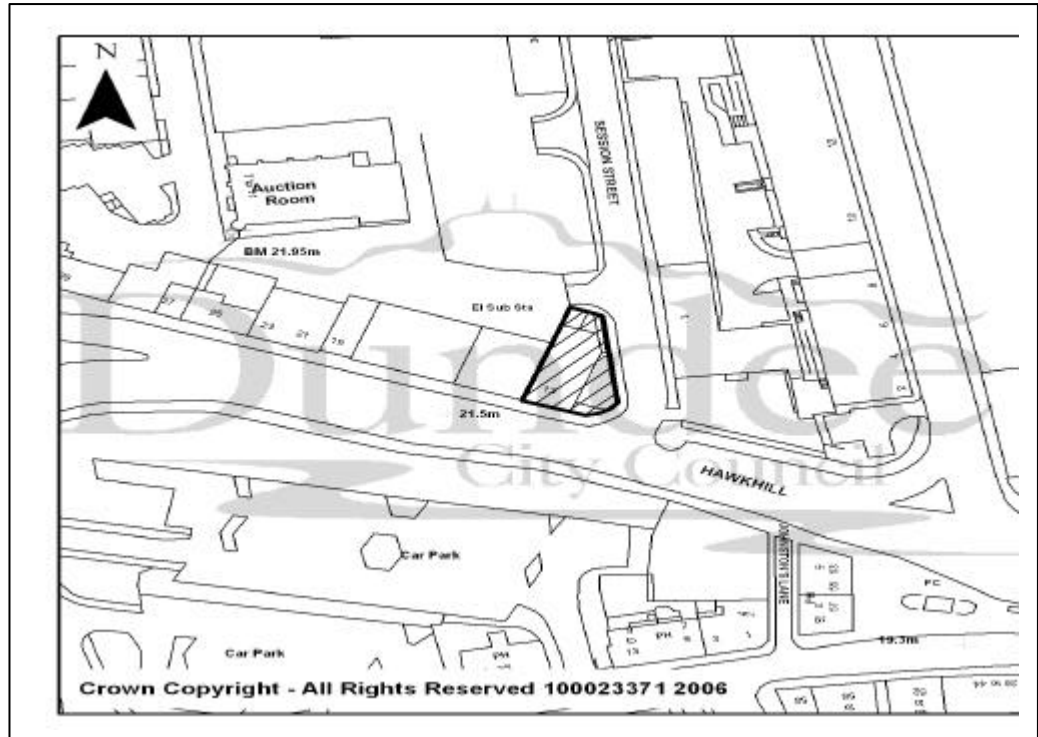
Applicant

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Agent

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Media
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Registered <insert date>



Proposed Demolition of Existing Restaurant in Hawkhill

The demolition of existing restaurant and erection of new restaurant with 7 storey flatted development above is **RECOMMENDED FOR APPROVAL SUBJECT TO CONDITIONS**. Report by Director of Planning and Transportation

RECOMMENDATION

The proposal is considered as a positive contribution to the redevelopment of this former industrial site and one that will compliment and enhance the setting of the surrounding conservation area and other development proposals already approved and under construction for the University of Dundee in this local area. The application is recommended for **APPROVAL** with conditions subject to the successful signing of a Legal Agreement relating to occupancy.

SUMMARY OF REPORT

- Planning permission is sought for the demolition of an existing restaurant facility, its re-instatement on the site, with a carry out facility, and the provision of 7 floors of residential accommodation above (total of 21, two bedroom flats).
- The Council has previously been minded to grant planning permission for the erection of student accommodation on this site subject to the signing of a Section 75 Legal Agreement on the occupancy of the building. This Legal Agreement, to date, remains unsigned by the relevant parties.
- The building will be 9 storeys in height and will play an important role in the streetscape of this section of Hawkhill.
- The proposal was advertised in the local press as a 'bad neighbour' development as the structure will in part exceed 20 metres in height. Two objections to the proposals have been received and both of these relate only to the lack of off street car parking to be provided for the new flats and the adverse impact that this will have on the surrounding road network.
- The proposal does not fully comply with the relevant policy guidelines for the erection of new housing within the city, particularly with regard to off street car parking and garden ground provision. However, there are considered to be material considerations that are of sufficient weight to offer support of the application contrary to these policies.

DESCRIPTION OF PROPOSAL

The proposal under consideration involves the demolition of an existing restaurant (Byzantium), re-instatement of a new 2storey restaurant (with a take-away facility) and a 7-storey flatted development above consisting of 3 x 2 bedroom flats on each level (total of 21 flats).

Lower Ground Floor Level:-

At this level it is proposed to provide the storage and the preparation areas for the restaurant in addition to the toilets, lift, access stairs and refuse facilities. A small associated take-away facility is located on the Session Street frontage. One associated off street parking space is proposed at the north end of the site.

Ground Floor Level:-

It is intended to provide the main restaurant facility at this level. This includes a small bar, a seating area of 97 sq m. and associated kitchen. The main public entrance to the restaurant is taken from Hawkhill. Access to the upper floor flats is also located on this south elevation.

Upper Floors:-

It is proposed to provide 7 storeys of residential accommodation above the new restaurant with each new floor containing 3 flats. These flatted units will provide 2 x bedrooms, kitchen / lounge and bathrooms. Each flat will also accommodate external balconies.

The proposed finishing materials are zinc cladding, timber cladding, glazed white block for the walls and a standing seam zinc roof.

SITE DESCRIPTION

The site is located at the junction of Hawkhill and Session Street. The site currently accommodates a single storey (with basement) restaurant that is flat roofed in design. The property is bounded on the north and west sides by 6 - 7 storey new student accommodation that is currently under construction and nearing completion.

The wider surrounding area displays a considerable range of uses with restaurant, residential and industrial uses to the east, industrial and religious uses to the north, business and

industrial to the west and commercial and education to the south.

The site is contained within the Blackness Conservation Area.



POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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



Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 3: Housing Investment Focus Areas

The City Council will encourage investment in housing and related

social and physical infrastructure in the Housing Investment Focus Areas identified on the Proposals Map, working in partnership with Communities Scotland and the private sector. More detailed development frameworks, masterplans and action plans for each of the focus areas will be brought forward as appropriate by the Council and will form supplementary guidance to this Local Plan.

Policy 4: Design of New Housing

The design and layout of all new housing in Dundee should be of a high quality. As a basis for achieving this, new development will be required to conform to the Design Standards contained in Appendix 1 of this Local Plan unless:

- a the City Council, through either site allocation in the Local Plan or site planning briefs, considers it appropriate to vary the standards to reflect the constraints or opportunities offered by the development of a particular site; or
- b the proposal is within an established low density residential area, in which case the density of the new development should reflect this and more generous external space standards will be required.

New housing development should also have regard to the principles of the City Council's Urban Design Guide.

In addition, new housing development should meet "Secured by Design" standards. New residential streets should be designed to promote low vehicle speeds of 20 mph or less. New housing should have regard to opportunities to maximise energy efficiency and promote sustainable waste management.

Where conversion of a listed building or other building worthy of retention is proposed, there may be limited flexibility in applying parking and garden ground requirements where compliance is impractical. The development of flats through conversions of buildings of merit may also be acceptable where conversion to flats is the only appropriate action.

Policy 9: Student Housing

Sites identified on the Proposals Map are considered appropriate for the development of student housing. In addition, student housing proposals on sites within fifteen minutes walking distance of the Universities will be supported where this is in accordance with other Local Plan policies. A Section 75 Agreement will be required to restrict occupancy to students unless a higher education institution was a partner in the proposed development, in which case planning conditions would be appropriate. Given the prominent location of many sites close to the City's Universities, it is important that development proposals are of a very high quality design. Adequate car parking should be provided based on a parking and accessibility assessment that takes account of factors identified in the Addendum to National Planning Policy Guideline 17 - Transport and Planning Maximum Parking Standards, including the need to avoid overspill parking on surrounding streets. Secure bike storage facilities should be included in all proposals.

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

In general, outwith the District Centres no licensed premises other than off licences or hotels with a restricted license and no premises selling hot food is acceptable:

- a within 30 metres of existing and proposed housing if the outlet does not exceed 150 square metres gross floorspace (excluding cellar space) and;
- b within 45 metres if the 150 square metre figure is exceeded.

In the District Centres some relaxation of the above controls on distance from residential property may be appropriate. However, proposals for hot food takeaways other than those outlined below, will not be permitted in premises directly adjoining (i.e. directly above or to either side) residential property which is not within the control of the takeaway proprietor/operator.

Where hot food carryout premises and snack bars/cafes/tea rooms are proposed which would not meet the above requirements these may be permitted subject to:

- a the hours of operation being limited to between 7.00 am and 7.00 pm, and,
- b the hot food not requiring to be prepared on the premises and only requiring heating by means of a microwave oven or other method which would not cause a nuisance to surrounding residential property by virtue of smell.

Policy 55: Urban Design

For all new developments the emphasis will be on design quality and the City Council will seek the creation of new public places and points of interest which incorporate architectural and landscape features and reflect and enhance historic street layouts, significant views and vistas. All development should respect the setting of listed buildings.

The City Council require the use of Design Statements for planning applications or listed building applications for new buildings or extensions to existing buildings on significant sites.

All development will, in its design and layout, be expected to contribute to an environment which is safe and accessible to all.

Policy 61: Development in Conservation Areas

Within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

Policy 79: Contaminated Land

When considering development proposals involving sites where the presence of contamination is suspected, the City Council will require applicants 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.

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

Alternatives to the uses permitted by the Local Plan may be supported on contaminated sites in instances where evidence can be presented to establish that the severity of contamination is such that the site cannot be economically developed for its allocated use. In such instances the City Council will require to be satisfied that:

- clear evidence has been provided to establish the nature and extent of the contamination present;
- an economic appraisal has been provided which demonstrates that development based on the Local Plan allocation is not economically feasible due to the remediation requirement;
- justification for the proposed alternative to the Local Plan allocation is supported by economic and market appraisals which include the assessment of other potential options; and
- the proposed alternative use can be justified in relation to other policies of the Local Plan.

Policy 80: Waste Management Facilities

The City Council supports the policy of self-sufficiency for waste management within the Tayside Waste Plan Area. Development proposals for waste management facilities in Dundee will only be supported where they:

- a are in accordance with the Development Strategy and BPEO as set out by the Tayside Area Waste Plan;
- b accord with the proximity principle;
- c avoid air, noise, land, surface water and groundwater pollution;
- d avoid areas of flood risk and potential sea level rise;

- e minimise impact on the natural, historic and built environment;
- f safeguard the amenity of surrounding areas; and
- g minimise effects of traffic on the road network. Where appropriate and as prescribed in the appropriate Regulations, development proposals will require to be accompanied by an Environmental Statement and Transport Assessment.

Proposals for waste management facilities which satisfy the above criteria will be acceptable within General Economic Development Areas provided they also meet the Policy 26 criteria relating to other uses of a wider industrial nature.

Key existing waste management sites will be safeguarded for future waste management use and, where appropriate, for expansion, in keeping with the requirements of the Tayside Area Waste Plan.

Proposals for new housing and commercial developments will be required to make appropriate on-site provision to accommodate recycling facilities. This will include provision for the separate collection of recyclates within the curtilages of individual houses.

Scottish Planning Policies, Planning Advice Notes and Circulars

The following are of relevance:

National Planning Policy Guideline 18 - Planning and the Historic Environment.

Planning Advice Note 67 - Housing Quality

Designing Places - A Policy Statement for Scotland

Memorandum of Guidance on Listed Buildings and Conservation Areas (Historic Scotland 1998)

Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Dundee - The Urban Design Guide.

SUSTAINABILITY ISSUES

The proposal involves the redevelopment of an inner city brownfield site with a structure of a contemporary design resulting in a continued improvement and enhancement of this visually important site. The application raises no concerns in relation to the Council's Sustainability policies, including waste management issues that are currently being discussed between this Council and the applicants.

SITE HISTORY

02/00739/FUL - Extension to Restaurant - Approved 2002

05/00305/FUL - Erection of 113 Student Flats - Council minded to approve following the signing by all relevant parties of a Section 75 Legal Agreement relating to the future occupancy of the units.

05/00291/CON - Demolition of an unlisted building in a conservation area - Approved 15.08.2005.

05/00677/FUL - Erection of 122 Student Flats - Council minded to approve following the signing by all relevant parties of a Section 75 Legal Agreement relating to the future occupancy of the units.

PUBLIC PARTICIPATION

The statutory neighbour notification procedure has been completed by the applicants. In addition, the proposal has been advertised in the local press, under Section 34 of the Act, as a bad neighbour development by virtue of the new restaurant and the height of the new structure (over 20 metres).

Two objections to the proposed development have been received. The relevant issue raised by the objectors relates to:

- 1 The proposals, due to a lack of associated off street car parking, will lead to an increase in traffic and access problems in the local area.

It is intended to comment on this matter in the 'Observations' Section of this Report below. Copies of this objection can be viewed in the Members Lounges.

CONSULTATIONS

There have been no adverse comments received from any of the statutory consultees.

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

Also, in accordance with the provisions 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 buildings and their setting or any features of special architectural or historic interest that they may possess. The Council is also required to have regard to preserving and enhancing the character or appearance of the conservation area.

The Development Plan

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

The proposal under consideration involves the demolition of an existing restaurant and the re-instatement on the site of a 2 storey restaurant (with carry out facility) and seven floors of flatted accommodation above. Each of the upper floors will accommodate 3 no. flats combining to a total of 21 units.

The members will recall that a planning application to erect 113 student flats to the north and west of this current application site, was approved by this Council subject to a Section 75 Agreement on occupancy (05/00305/FUL refers). This proposal did not include the redevelopment of the restaurant site and was viewed as a missed opportunity to provide a prominent and appropriate visual statement on this high profile corner. A further application for the erection of 122 student flats on a site that included the existing restaurant was also supported by the Council subject

to the successful recording of a Section 75 on occupancy (05/00677/FUL refers). This application has not been pursued by the developers and it is the construction of the 113 student flats that is currently on-going on the north and west boundaries of this current application site. These on-going works have highlighted the necessity, in townscape terms, to successfully complete the corner site that is now under consideration.

The site is located in an identified Housing Investment Focus Area within the city where the Council will encourage investment in housing. In this respect, the principle of the development of the site for residential purposes does not contravene the philosophy of Policy 3 of the Local Plan Review.

The site is identified as being appropriate for student housing purposes in the Local Plan Review. Confirmation of this has been achieved through the support of the Council for planning applications for new student residences on this site as has been previously outlined above. However, this student use allocation does not specifically preclude consideration of other forms residential development. Consequently the proposal for a new mainstream flatted development is not considered to be in conflict with the land use allocation for the site.

With regard to Policy 4 (Design of New Housing), the Council requires that the design and layout of all new housing should be of a high quality. The guidelines for new housing developments within the city are identified in Appendix 1 (Design of New Housing) of the Local Plan Review. These guidelines advise, amongst other things, that:

- flats will only be permitted if identified in a site planning brief or that site specific circumstances demand a flatted solution. In this instance the development of the site for flats has already been established by previous grants of permission. It is also considered that the characteristics of the site demands, in design terms, a flatted solution.
- flats should have a minimum gross internal floor area of 60 square metres. The proposals comply with this requirement.

- generally, private flats should have 130% parking provision. The proposed development, due to the restrictive nature of the site, cannot achieve this provision with only one off street space being proposed on the Session Street frontage. The proposed development site is located adjacent to the city centre where the requirement for off street car parking associated with new developments is considerably reduced. It is the case that off street car parking spaces are currently located on a site to the south of Hawkhill. It is considered that this provision, along with other car parks in the local area, would be able to compensate for the lack of off-street curtilage parking associated with this flatted proposal.
- Useable private communal garden areas of 100 square metres or 10 square metres per flats should be provided. This provision may be reduced if balconies that are useable and attractive in terms of size and outlook are provided. The restrictive nature of site does not allow for the provision of associated garden ground/drying areas. The applicants have advised that useable balconies are to be provided for each flat in order to compensate for the absence of garden provision. These balconies will allow, particularly on the upper floors, for good views across the city. This balcony provision is considered to be acceptable in this instance.

In light of the above, it is evident that the proposals fail to comply with the design guidelines of the Local Plan.

With regard to Policy 53 (Licensed and Hot Food Premises Outwith the City Centre), the proposal involves the reinstatement of an existing restaurant facility and the provision of an associated carry out facility. This take-away is to operate in conjunction with the restaurant and will operate only during the opening hours of the restaurant. Discussions between the applicants' and the Council are currently on-going on regarding the proposed ventilation details for the facility. It is considered that the proposals will not further impact on

the environmental qualities enjoyed by the surrounding occupiers and consequently the use of the ground floor for the improved restaurant facility is considered acceptable.

With regard to Policy 55 (Urban Design) and Policy 61 (Development with Conservation Areas), the applicants agents have submitted a Design Statement in support of their application. This Statement sets out the design rationale for the development as required by Policy 55. It is considered that the agents have fully demonstrated, through the terms of this Statement, the appropriateness of the new structure in this location with regard to its design, form, scale appearance, materials and relationship to the new build located immediately to the north and west. In this respect, the proposals are considered to be in accordance with Policy 55. In addition, it is further considered that the proposals are also in accordance with Policy 61 as the quality of the design of the new block will not adversely impact on the setting or character of the surrounding conservation area.

With regard to Policy 79 (Contaminated Land), it is intended to attach a condition to any permission granted requiring that remedial measures are taken with regard to any contamination on the site prior to first occupation of the building.

Policy 80 requires that waste management facilities should be provide within new housing and commercial developments. The agents are currently in discussions with this Council on this matter. It is intended to attach a condition to any permission granted requiring such facilities to be put in place prior to the first occupation of the building.

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

It is also concluded from the foregoing that the statutory set out in Sections 14 and 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is discharged in this instance.

Other Material Considerations

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

Objections

The proposed development has attracted 2 objections. Both of these objections relate to the lack of off street car parking for the flatted element of the application only and the resultant impact of this on the surrounding road network. It has been indicated above that the very restrictive nature of the development site does not allow for the provision of associated off street car parking for the flats. However, the site is located adjacent to the city centre where the requirement of associated off street car parking is reduced. Off-street car parking is located nearby on the south side of Hawkhill. It is considered that this would provide a parking option, along with other public car parks in the local area, for the new residents of the flats. It is accepted that the surrounding network is heavily trafficked during the daytime hours although the night time volume is significantly reduced allowing for additional on street parking in the surrounding streets. While the terms of the objections are relevant to the proposed development, it is considered that they do not have sufficient weight to be upheld and refuse the application.

With regard to the matter of the potential of the new houses to be used for Houses in Multiple Occupation purposes, the applicants are fully aware of the concerns that have previously been expressed by the Committee about the conversion of residential units in the city centre and the west end of the city to HMO's with resulting adverse impacts on residential amenity. In November 2006, the Planning and Transportation Committee approved supplementary planning policy guidance for controlling HMO's within the city. This states that within a specific area of the city, the occupation of dwellings in new residential developments by 3 or more unrelated persons will be prevented through the use of Section 75 Agreements.

It is therefore considered that, due to the location of the proposed development, it would be appropriate in this instance to restrict the use of the new units. Such a restriction by means of a legal agreement has been discussed with the applicants and their acceptance of this has been obtained.

It is concluded from the foregoing that sufficient weight can be accorded to

the material considerations 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

The proposed development compliments the appearance and design of the new student residences that are currently being constructed on the northern and western boundaries of the application site. It is considered that the successful development of this prominent corner site is critically important in townscape terms. It is considered that the proposal will successfully contribute to the continuing repair of the urban edge along this section of the Hawkhill with qualitative architecture of an appropriate scale, mass and design. The scheme will also provide the opportunity to complete the urban block on adjacent street frontages.

CONCLUSION

The principle of the demolition of the existing restaurant, its re-instatement and the erection of a flatted development above has been established by the previous support of the Council for such a proposal (application 05/00677/FUL refers). This application differs by virtue of a change in the design and appearance of the block and that the provision will be for mainstream and not student flats. It is considered that the principle of a development of this nature is supported through the land use policies of the Dundee Local Plan Review 2005. The proposal is considered to make a positive contribution to the environmental quality of the surrounding conservation area and one that will complement the series of development proposals already being progressed by the University and other parties in this local area.

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 the parties with appropriate interests in the land has been recorded. This agreement will relate to the prohibition of any of

the approved residential units becoming a house in multiple occupation.

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 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
- 3 Development shall not begin until a scheme to deal with any contamination on the site has been submitted and approved in writing by the planning authority. The scheme shall include details of proposals to deal with any contamination to include:
 - i the nature, extent and type(s) of contamination on the site
 - ii measures to treat/remove any contamination to ensure that the site is fit for the use proposed
 - iii measures to deal with any contamination during construction works
 - iv condition of the site on completion of decontamination measures.

Before the site is occupied, the measures to decontaminate the site shall be fully implemented as approved by the planning authority

- 4 That all amplified music and vocals from the restaurant facility hereby granted permission shall be so controlled as to be inaudible within the adjacent or nearest residential accommodation.
- 4 That details of all ventilation flues to be provided in association with the building hereby granted permission shall be submitted to and approved in writing by the planning authority prior to the commencement of works.
- 5 Details of refuse storage and recycling measures to be provided shall be submitted to

and approved in writing prior to the commencement of development and if approved the development shall be carried out only in full accordance with such approved details.

- 6 Before the use of any of the units hereby granted permission commences, the building and mechanical services shall be so insulated to achieve sound attenuation in accordance with the content of New Acoustic's Report, dated 2006, entitled '13 Hawkhill Noise Assessment for Proposed Housing' submitted to and approved by this Council and thereafter implemented only in full accordance with content of said report.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the area.
- 3 In order to ensure that the site is fit for the use proposed.
- 4 In order to protect residents from any noise generated by the new restaurant facility.
- 5 In order to protect local residents from nuisance resulting due to the disposal of cooking odours.
- 6 In the interests of sustainable development.
- 7 In order to protect the future occupants of the building from any noise from traffic and mechanical services.