

KEY INFORMATION

Ward East Port

Proposal

External seating area on footpath adjacent to public house

Address

The Cask
1-5 Albert Street
Dundee

Applicant

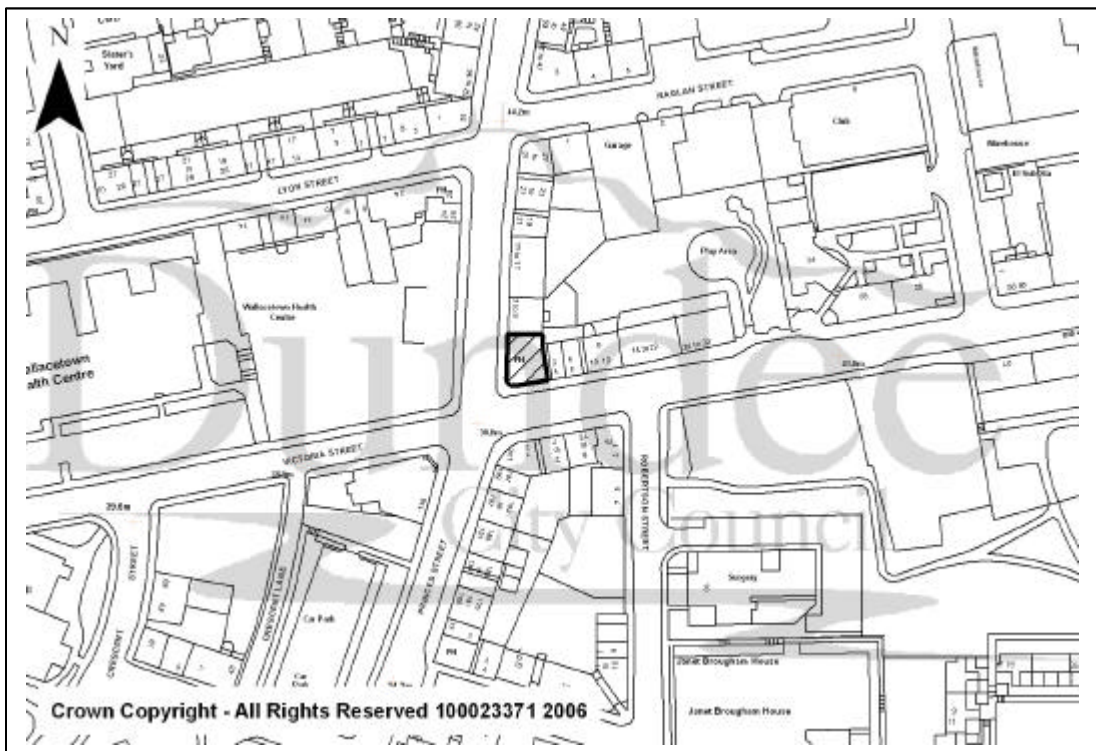
Rosemount Taverns Ltd
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Agent

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Dundyvan Road
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Registered 13 Mar 2007

Case Officer S Johnson



External Seating Proposed at Pub in Albert Street

External seating area on a footpath adjacent to a public house is **RECOMMENDED FOR REFUSAL**.
Report by Director of Planning and Transportation

RECOMMENDATION

The proposal is contrary to Policies 1 and 53 of the Dundee Local Plan Review 2005 due to the proximity of a licensed premise to residential properties. The external seating area will encourage patrons to gather outside the premises and the resulting increase in noise will have an adverse effect on the amenities of neighbours. It is considered that the objections submitted support the recommendation of refusal. Therefore the application is recommended for REFUSAL.

SUMMARY OF REPORT

- Planning permission is sought for the change of use from a public footpath to a seated area adjacent to 1-5 Albert Street, Dundee.
- Two identical letters of objection were received from surrounding neighbours on the grounds of the pavement is too narrow and wheelchairs, pedestrians, and pushchairs will have difficulty passing and this is a busy junction with pedestrian traffic controls.
- Policies 1 and 53 of the Dundee Local Plan Review 2005 are relevant to the determination of the application as these policies seek to protect the amenity of neighbouring residents.
- It is considered that the proposal does not comply with Policies 1 and 53 of the Dundee Local Plan Review 2005. It is considered that the views of the objectors are supported and there are no material considerations that would justify the granting of planning permission contrary to local plan policy.

DESCRIPTION OF PROPOSAL

Planning permission is sought for an external seating area on the footpath adjacent to the public house at 1-5 Albert Road, Dundee. The seating area will be located to the south east of the public house. It will measure approximately 2.46sqm and will provide seating for four covers. There are no plans to alter the existing building either internally or externally.

SITE DESCRIPTION

The proposed site is currently part of the public footpath. The application site is a corner unit located on the east side of Albert Street and the north side of Arbroath Road. It is on the ground floor of a four storey tenement block. The first floor of the tenement block is a dental surgery and the upper floors are flatted properties. Immediately to the east of the site is another public house. This is a mixed use area where the majority of properties are tenement blocks with commercial units on the ground floor and flatted properties on the upper floors. There are double yellow lines within the immediate vicinity of the site. The footway is relatively narrow along Arbroath Road. Arbroath Road is one of the main east/west routes.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

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

Dundee Local Plan 2005

The following policies are of relevance:

Policy 1: Vibrant And Sustainable Communities. The City Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design,

layout, parking and traffic movement issues, noise or smell.

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 150m² gross floorspace (excluding cellar space) and;



- b within 45 metres if the 150m² 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 a the hours of operation being limited to between 7.00am and 7.00pm, and,

- b 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.

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.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

Two previous applications (Planning Reference: 02/00353/COU and 02/00812/FUL) were approved in 2002 relating to the change of use of a vacant shop unit to allow for the extension of the public house lounge bar.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the application was advertised as being potentially contrary to Policy 53 of the Dundee Local Plan Review 2005. Two identical letters of objection were received from adjoining residents. Their concerns are:

The pavement is too narrow and wheelchairs, pedestrians, and pushchairs will have difficulty passing.

This is a busy junction with pedestrian traffic controls.

Copies of the objections are available in the Member's Lounge and the issues are discussed in the "Observations" section below.

CONSULTATIONS

The Head of Environmental Health and Trading Standards has highlighted concerns about noise problems from the proposal. The proposed development is designed to accommodate those patrons of the premises who wish to smoke. Accordingly this will encourage people to congregate in a specific area which will result in an increased noise burden to the surrounding flats. If Members are minded to approve the application, a condition will be required to restrict noise levels within the application site. However, it is debatable whether the application of a condition can safeguard the amenity of adjacent residents and protect them from the potential effects of an increased noise climate around their property.

The Police Liaison Officer has advised that there may be some public safety issues given the narrowness of the footway at that point and the proximity to a very busy junction which is in effect a blind corner for traffic turning from Albert Street.

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.

Policy 1 of the Dundee Local Plan Review 2005 seeks to protect the environmental quality enjoyed by local residents. It is considered that the proposal, which is to form an external seating area, will result in an unacceptable level of noise for nearby residents. Patrons will congregate in a currently unused area during the opening hours of the public house and this will subsequently result in noise disturbance for adjacent residents. The site is surrounded by residential properties. There are flatted properties

located directly above the public house and immediately to the north and east of the site. There are also new build flatted properties located approximately 10metres to the west of the application site. It is considered that noise disturbance will be a potential problem for these residents. The Head of Environmental Health and Trading Standards supports this view. It is considered the proposal does not comply with Policy 1.

Policy 53 of the Dundee Local Plan Review 2005 also seeks to protect the amenity of neighbouring residents and the amenity of the area. This policy does not allow the development of licensed premises within 30metres of existing and proposed housing if the outlet does not exceed 150m gross floorspace and within 45 metres if the 150sqm figure is exceeded. It is proposed to provide a seating area of 2.46sqm. Although the public house currently exists with close proximity to residential properties, it is considered that this proposed external seating area will have more of a detrimental impact on the residential amenity as it will encourage people to congregate in an area which is currently not used. It is the intention of the applicant that this area will be licensed so that customers can consume alcohol within this area. Consequently, it is considered this proposal is contrary to Policy 53.

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:

Objections

Two identical letters of objection were received in respect of this application. The main issues relating to this application have been discussed in the development plan section above. The other issues raised by the objectors' are:

Narrowness of footway and Proximity to a busy junction

The objectors are concerned that the pavement is too narrow and that wheelchair users, pedestrians and pushchairs will find it impossible to pass on the pavement. Also this is a busy junction with traffic controls. Any proposal for an external seating area should have barriers around the

open sides and there must be a clear footway width of 2metres from the edge of the barrier. The proposal fails to meet this minimum criterion of 2metres as no provision has been made for a barrier. Consequently, there will be less than 2metres of clear footway which would force pedestrians onto the busy road. It is considered that this is an inappropriate location for an external seating area as Arbroath Road is a classified road and is one of the main east/west routes. The proposal is also extremely close to the traffic lights and very near queuing traffic. Therefore these objections are supported.

It is concluded from the foregoing that the material considerations weigh against the grant of planning permission. It is therefore recommended that planning permission be refused.

Design

As there are no plans to alter the external appearance of the building, it is considered that the plans are acceptable in terms of the overall design.

CONCLUSION

This proposal will encourage patrons to congregate which will result in increased noise to local residents. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to development plan policy. The proposal is contrary to both Policy 1 and Policy 53 of the Dundee Local Plan Review 2005 due to the potential adverse impact on neighbouring residents on the grounds of noise disturbance and public safety. The views of the objectors are supported in these circumstances. It is recommended that planning permission be REFUSED.

RECOMMENDATION

It is recommended that consent be REFUSED for the following reasons:

Reasons

- 1 The proposed change of use from a public footpath to an outdoor seated area is considered to be contrary to Policy 1 "Vibrant and Sustainable Communities" and Policy 53 "Licensed and Hot Food Premises outwith the City

Centre" of the Dundee Local Plan Review 2005 due to the proximity of a licensed premise to residential properties. The area will encourage patrons to gather and the resulting increase in noise will be detrimental to the environmental quality enjoyed by local residents. Also in terms of public safety, the proposal fails to meet the minimum criteria required for the safe passage of pedestrians and wheelchair users on a public footway. There are no material considerations of sufficient strength to justify the granting of planning permission contrary to local plan policy.