

**KEY INFORMATION**

Ward The Ferry

**Proposal**

Demolition of existing shelter and erection of two storey restaurant, function suite, kiosk and lifeguard station.

**Address**

Bathing Shelter  
The Esplanade  
Broughty Ferry

**Applicant**

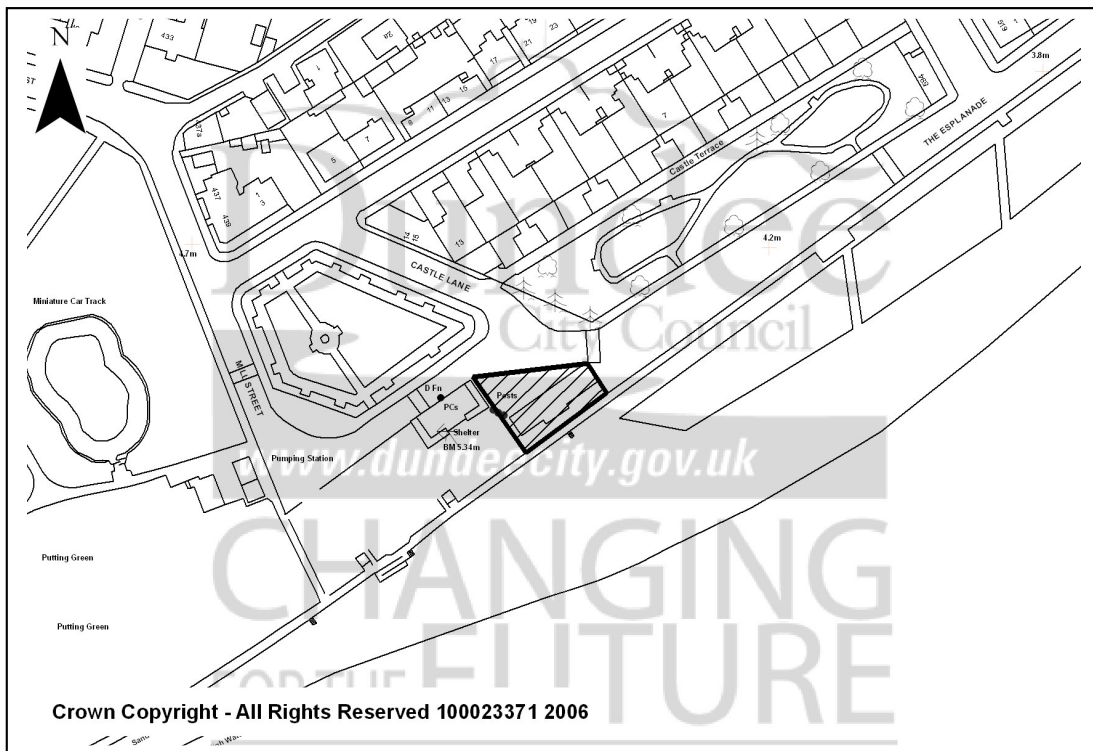
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**Registered**

Case Officer C Walker



## Proposed Restaurant and Function Suite in the Esplanade

The demolition of an existing shelter and erection of a two storey restaurant, function suite, kiosk and lifeguard station is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation.

**SUMMARY OF REPORT**

- Planning permission is sought to erect a two storey restaurant building on this prominent site in the Broughty Ferry Conservation Area. The area of the building is over 800 metres<sup>2</sup> and includes a restaurant, cafe, shop/kiosk and a lifeguard facility and upper floor function area.
- The design of the building is modern with an almost entirely glazed southern elevation facing the river. The side and rear elevations are less well developed.
- Policies 1, 53, 55, 61, 81 and 82 of the adopted Dundee Local Plan Review 2005 are relevant to the determination of this application.
- A substantial amount of objections were received in the form of 214 letters and a petition containing 354 signatures. The principal concerns relate to overdevelopment of the site, the design and finishing materials, the impact on the Broughty Ferry Conservation Area and Broughty Castle, inadequate provision of parking, adverse impact on residential amenity (particularly with the operation of the function suite), adverse impact on beach and green Circular cycle path and contravention of Local Plan policy. 184 postcards distributed by the applicant were returned along with an individual letter supporting the application, principally on grounds that it would remove an eyesore and provide a much needed facility to enhance the beach.
- The proposal does not comply with Policies 1, 53, 55, 61, 81 and 82 of the adopted Local Plan in terms of the distance from the nearest houses and the impact on residential amenity in terms of design, layout, parking and noise, the design of the development and the adverse impact on the Broughty Ferry Conservation Area and the adverse impact on the Green Circular cycle and pedestrian route as it passes in front of the site.

**RECOMMENDATION**

The proposed development contravenes Policies 1, 53, 55, 61, 81 and 82 of the adopted Local Plan in terms of the distance from the nearest houses and the impact on residential amenity in terms of design, layout, parking and noise, the design of the development and the adverse impact on the Broughty Ferry Conservation Area and the adverse impact on the Green Circular cycle and pedestrian route as it passes in front of the site. The application is recommended for **REFUSAL**.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to erect a two storey restaurant building occupying virtually the entire site. The plans submitted indicate a ground floor area of some 420 metres<sup>2</sup> (external dimensions) comprising a restaurant with 62 covers, a cafe at the front with retractable windows providing 32 covers, a shop/kiosk area, a lifeguard facility and toilets, kitchen and staff facilities. The upper floor plan area is some 405 metres<sup>2</sup> comprising a function area, toilets and the upper level of the lifeguard facility. The gross floor area of the restaurant, function suite and ancillary accommodation (but excluding the shop/kiosk and lifeguard facility) amounts to some 750 metres<sup>2</sup>.

As the building occupies almost the entire site, no provision is made for car parking or servicing associated with the proposed development.

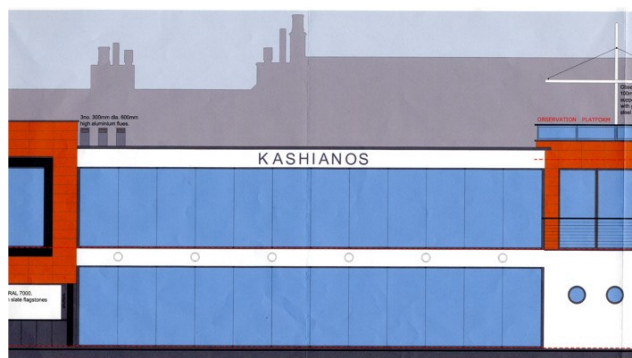
The design of the building is modern with an almost entirely glazed southern elevation facing the river. The walls on the side and rear elevations are finished in a mixture of terracotta rainscreen cladding and white and sand coloured renders. The roof is flat with a sarnafil finish. The design of the building adopts a nautical theme with upper floor balconies on the front elevation, port hole windows and a mast style feature on the roof.

The applicants have submitted a statement in which they indicate that the existing building is unsightly and in need of substantial refurbishment. The statement refers to the previous permission for a restaurant and kiosk on the site. It states that the facility will provide a number of services including a kiosk to provide snacks to beach users and passing pedestrians, a cafe on the terrace, a restaurant and upper floor function area and a lifeguard station and first aid room all of which would serve the blue flag status beach. It states that car parking is available in the car park adjacent to the site and that the design is modern with high quality finishing materials appropriate in this setting. The applicants have confirmed that the upper floor area is to cater for wedding parties and similar functions and that the premises would be open from 8am to midnight, 7 days a week.

## SITE DESCRIPTION

The site comprises a disused former bathing shelter, last operated as an ice cream kiosk, which sits directly on the beach front at the Esplanade. It is owned by the Council and has been vacant for some time. It has a gross internal floor area of some 150 metres<sup>2</sup> and a fairly functional appearance with white rendered walls and a flat roof. Apart from a glazed area at the southern beach entrance, the other windows on the building are at a high level associated with its former use as a bathing shelter. There is a higher "tower" element at its eastern end.

To the south of the building is a pedestrian walkway and steps leading down to the beach. To the north west



is a Victorian style toilet block with a pitched slated roof. To the west of the building is a car park with space for approximately 36 cars. To the north and north east are houses at Castle Terrace. There is a garden area in front of these houses and the closest houses to the application site are some 35 metres distant.

The site lies within the Broughty Ferry Conservation Area and the houses at 1-13 Castle Terrace to the north are Category C listed buildings. Broughty Castle, a Scheduled Monument and Category A listed building, lies just over 200 metres to the south west of the application site.

## 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 site is in an existing housing area and Policy 1 Vibrant and Sustainable

Communities encourages the development of services and facilities within residential areas subject to amenity considerations.

Policy 53 states that in a location such as this no premises selling hot food is acceptable within 45 metres of existing housing where the floor space exceeds 150 metres<sup>2</sup> (as is the case with this proposal).

Policy 55 encourages good design.

The site is within the Broughty Ferry Conservation Area and Policy 61 requires all development proposals to preserve or enhance the character of the surrounding area.

Policies 81 and 82 encourage ease and safety of pedestrian access and promote the provision of both on and off road facilities for cyclists. Specific reference is made to the enhancement of the Green Circular route.

## Scottish Planning Policies, Planning Advice Notes and Circulars

The Memorandum of Guidance on Listed Buildings and Conservation Areas sets out Government advice on, amongst other matters, how to assess new development in conservation areas.

## Non Statutory Statements of Council Policy

In 1999 the Council produced the Broughty Ferry Study with the aim of maximising the tourist potential of the area. On 4 December 2000 the Council's Planning and Transportation Committee approved the Broughty Ferry Study which, amongst other matters, proposed the closure of the road to the south and west of the Windmill Gardens to incorporate this area into Castle Green.

More recently in consultation with the Local Community, the Council is seeking to develop a "brand" which would benefit Broughty Ferry as a visitor, retail and tourist destination. Buildings such as that on the application site are identified as constraints which need to be tackled to benefit the tourist potential of the area.

## SUSTAINABILITY ISSUES

The proposed development is sustainable insofar as it is close to services and facilities.

## SITE HISTORY

Planning permission was granted in April 1986 to change the use of the bathing shelter to a centre for watersports including the sale and takeaway of hot food - application D11513 refers. This consent was for a temporary period, restricted the types of hot food that could be sold and restricted the hours of operation from 8.30am to 8.30pm. This time limited consent was renewed indefinitely in March 1987 - application D12149 refers.

In 1987 permission was granted to extend the hours of operation until 10.30pm from April to October - application D12451 refers. This consent was for a 2 year period. A further 2 year period was granted in 1990 - application D14983 refers, and a further 3 year period was granted in 1992 - application D17117 refers.

The premises have operated as a kiosk selling sweets and ice creams but have been disused for a number of years. More recently in April 2005 planning permission was granted to convert the premises to a restaurant incorporating a lifeguard facility - application 04/01050/COU refers. That consent was not implemented although it is still valid. It includes conditions restricting the hours of operation of the restaurant from 0900 hours to 2300 hours.

There is a separate application for Conservation Area Consent to demolish this unlisted building the report on which appears elsewhere in this Agenda - application 07/00971/CON refers.

## PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposed development was advertised as a bad neighbour development, as contravening Policy 53 and potentially contravening Policy 61 of the adopted Local Plan and as affecting the setting of the Broughty Ferry Conservation Area.

At the time of writing this report (almost 3 weeks after the expiry period for representations), a substantial

amount of objections were received in the form of 214 letters (many of which are in a standard format) and a petition containing 354 signatures. These are mainly from local residents but also include submissions from Dundee Civic Trust, Keep Scotland Beautiful and the Tayside Foundation for the Conservation of Resources.

The concerns of objectors relate to overdevelopment of the site (both in terms of footprint and 2 storey height), the design and finishing materials of the development and its impact on the Broughty Ferry Conservation Area and Broughty Castle, inadequate provision of parking, adverse impact on residential amenity (particularly with the operation of the function suite) due to noise, cooking smells, late night use, overlooking and litter, adverse impact on beach and green Circular cycle path including blocking of access, loss of recycling facility and cycle parking, potential flooding, no reference to sustainability in the construction of the building and contravention of Policies 1, 53, 55, 61, 62, 64, 66, 75 and 82 of the Local Plan.

Many of the objectors stated that they supported the removal of the existing building but that if it must be replaced then it should be with a much smaller better designed single storey building complementing the area. Objectors were particularly concerned that the function suite might operate as a form of night club.

In addition the applicant distributed pre printed postcards to various addresses in Dundee seeking support for the proposed development. The points in favour of the development listed on the postcard suggest that it would provide a good public amenity (cafe/kiosk/first aid and lifeguard facility) in a well designed building complementing the Blue Flag status beach, remove an existing eyesore, provide jobs and promote tourism.

184 postcards were returned supporting the application. In addition a letter supporting the development was received setting out points similar to those set out above.

Copies of all these submissions are available for inspection in the Members Lounges and the points raised are considered in the Observations Section of this Report.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards has stated that he does not consider that there will be a problem with cooking odours given the distance from the nearest houses but has asked that a planning condition controlling noise from plant should be imposed if planning permission is granted for the proposal.

A letter of objection was received from Broughty Ferry Community Council. The concerns of the Community Council relate to the contravention of Policy 53 of the Local Plan, loss of amenity, inadequate parking provision, poor design and excessive scale of new building which the Community Council considers would have a detrimental impact on the conservation area.

Tayside Police have written to state that they do not object to the proposed development but would wish to draw the Council's attention to the lack of associated parking which may cause difficulties particularly during the summer months when parking provision can be stretched.

## OBSERVATIONS

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

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

Furthermore in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) Act 1997 special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Broughty Ferry 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 most directly relevant policy is Policy 53 which states that in a location such as this no premises selling hot food is acceptable within 45 metres of existing housing where the

floor space exceeds 150 metres<sup>2</sup>. In this case the gross floor space is some 750 metres<sup>2</sup> and there are 8 dwellings within 45 metres of the site, the nearest being some 35 metres distant. The proposal is therefore contrary to Policy 53.

In terms of Policy 1, it is a requirement that development should be in accordance with other policies of the Plan and should minimise any affect on the environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

As the proposal already contravenes Policy 53 it must therefore also contravene Policy 1. In addition it is considered that the proposed development raises issues in terms of design (discussed below in the context of Policies 55 and 61), layout, parking and traffic movement issues and noise.

In terms of layout the proposed building occupies almost the entire site. This means that no parking is provided for the development and that no room is available for off street servicing. Although there is a 36 space car park immediately to the west of the site and on street parking available on the Esplanade to the east, at certain times during the summer this parking is fully utilised and the addition of a development of the scale proposed would generate a level of traffic and a parking requirement that could not be easily accommodated in the neighbourhood. It is considered that this in turn would have a detrimental impact on residential amenity contrary to Policy 1. In terms of noise, it is considered that although plant and ventilation equipment associated with the development could be designed to avoid a negative impact, there is a problem associated with patrons using the facility later at night time. The applicant has indicated hours of operation up till midnight. Taking into account the scale of the facility and that functions are likely to be held on a frequent basis, it is considered that noise from patrons leaving the premises and getting in to cars and taxis would result in a level of noise disturbance that would be detrimental to amenity and contrary to Policy 1. In coming to this conclusion account has been taken of the scale of the proposed facility and the absence of any significant commercial uses in the vicinity of the site. Finally in terms of cooking smells it is considered that this

could be adequately mitigated by appropriate equipment.

Policy 55 places an emphasis on design quality and states that developments on significant sites should be accompanied by design statements. Policy 61 requires all development proposals to complement and enhance the character of conservation areas.

This is a very significant seafront site in the Broughty Ferry Conservation Area. The nearby dwellings at Castle Terrace are listed buildings. The only substantial building close to the water is the scheduled monument and Category A listed Broughty Castle further to the south west.

The existing building on the site is of little visual merit and due to continued vacancy it has a run down appearance. It is considered that its removal would enhance the appearance of the conservation area. However it is a requirement that the replacement building is of a quality appropriate for this visually significant site and that it preserves or enhances the character or appearance of the Broughty Ferry Conservation Area.

In this case a design statement has not been submitted with the application although the applicant has stated that the design is modern with high quality finishing materials appropriate in this setting. The proposal is for a substantial 2 storey building significantly larger than the existing building on the site. It is considered that it would be very difficult to integrate such a large building successfully in to the site even with an exceptional design. The very close proximity to the Victorian style toilet building results in an incongruous relationship. Furthermore the design of the proposed building and the finishing materials utilised suggests that the primary focus has been placed on the seafront elevation with the other 3 elevations having what could best be described as a bland appearance. The prominence of this site means that all 4 elevations are significant and visually prominent and it is not appropriate to treat them as secondary elevations in the manner proposed. Finally the choice of finishing materials and in particular the terracotta rainscreen cladding is not particularly appropriate for this location.

For the reasons set out above it is considered that the development is of

unsatisfactory design and would detract from the character and appearance of the Broughty Ferry Conservation Area contrary to Policies 55 and 61 of the Plan.

Policies 81 and 82 encourage ease and safety of pedestrian access and promote the provision of both on and off road facilities for cyclists. Specific reference is made to the enhancement of the Green Circular route.

The proposed development pays little regard to the requirements of pedestrians and cyclists at this location. At present the Green Circular route runs in front of the existing building in a 5 metre wide corridor. This would be reduced to just 2.5 metres if the development were to proceed with no opportunity to divert the cycle path to the rear of the building. In addition existing cycle parking would be lost with no obvious opportunity for its replacement. The close proximity of the new building to the toilet building would restrict access to the beach at this point. The lack of provision for servicing is also likely to lead to conflicts with pedestrian and cyclists access in this area.

It is concluded from the foregoing that the proposal does not comply with Policies 1, 53, 55, 61, 81 and 82 of the adopted Local Plan.

## Other Material Considerations

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

- a The Statutory duty set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

This requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. As explained above in the context of the assessment of the proposal under Policies 55 and 61 of the adopted Local Plan, the proposed development would not preserve the character or appearance of the Broughty Ferry Conservation Area.

- b The Applicants Letter and the submissions from the Public in Support of the Development.

These submissions point out the benefits of removing the existing building and the fact that there is an existing permission for a restaurant

and kiosk on the site. They state that the facility will provide a number of services including a kiosk to provide snacks to beach users and passing pedestrians, a cafe on the terrace, a restaurant and upper floor function area and a lifeguard station and first aid room all of which would serve the blue flag status beach. They state that car parking is available in the car park adjacent to the site and that the design is modern with high quality finishing materials appropriate in this setting. Finally it is stated that the development would provide jobs and promote tourism.

It is not disputed that the removal of the existing building would be an improvement and that a restaurant, cafe and associated facilities could benefit the blue flag beach. However this could all be achieved by the replacement of the existing building with a much more modest and well designed development which would not result in amenity problems. Such a development could take account of proposals to develop Broughty Ferry as a tourist destination and proposals such as the closure of the road to the south and west of the Windmill Gardens set out in the Broughty Ferry study.

The existing consent on the site was for a modest restaurant development in compliance with Local Plan policy. It is not accepted that adequate parking is available for a facility of this size or that the design and finishing materials proposed are satisfactory.

c The Concerns of the Community Council and the Objectors and the Views of Consultees.

The concerns of the Community Council and the Objectors insofar as they relate to overdevelopment of the site (both in terms of footprint and 2 storey height), the design and finishing materials of the development and its impact on the Broughty Ferry Conservation Area, inadequate provision of parking, adverse impact on residential amenity (particularly with the operation of the function suite) due to noise and late night use, the adverse impact on access to the beach and the Green Circular cycle path and contravention of Policies 1, 53, 55, 61, 81 and 82 of the Local Plan have already been considered in the assessment of the proposed development against the policies of the Local Plan and it was concluded that

policies would be contravened in all these respects. It is particularly notable that both Tayside Police and the Keep Scotland Beautiful Campaign have concerns about the adequacy of parking provision.

Concerns were also raised about the impact on the setting of Broughty Castle, a scheduled ancient monument and Category A listed building, protected by statute and Policy 64 of the Local Plan. However although it was concluded that the development would have an adverse impact on the Broughty Ferry Conservation Area, it is not accepted that there would be an adverse impact on the setting of Broughty Castle due to the distance involved and the presence of intervening structures and landforms.

Concerns raised about cooking smells and overlooking of houses are not considered to be justified when account is taken of the separation distance (well in excess of 18 metres) and the availability of appropriate technology to deal with odours and this view is backed by the Head of Environmental Health and Trading Standards. The concern about potential litter is valid but is a matter dealt with under separate legislation.

Concerns about potential flooding could be resolved by a slight increase to the finished floor level of the building and although there is no reference to sustainability in the construction of the building this is not a matter that could lead to the refusal of the application. The loss of the recycling facility with no obvious opportunity for its replacement is a matter of concern.

It is concluded from the foregoing that the material considerations weigh against the proposed development and that there is nothing in the submissions in support of the application that would justify setting aside the terms of the Development Plan. It is therefore recommended that planning permission be refused.

### Design

The proposal is for a substantial 2 storey building significantly larger than the existing building on the site. It is considered that it would be very difficult to integrate such a large building successfully in to the site even with an exceptional design. The very close proximity to the Victorian style toilet building results in an

incongruous relationship. Furthermore the design of the proposed building and the finishing materials utilised suggests that the primary focus has been placed on the seafront elevation with the other 3 elevations having what could best be described as a bland appearance. The prominence of this site means that all 4 elevations are significant and visually prominent and it is not appropriate to treat them as secondary elevations in the manner proposed. Finally the choice of finishing materials and in particular the terracotta rainscreen cladding is not particularly appropriate for this location.

### CONCLUSION

The proposed development contravenes Policies 1, 53, 55, 61, 81 and 82 of the adopted Local Plan in terms of the distance from the nearest houses and the impact on residential amenity in terms of design, layout, parking and noise, the design of the development and the adverse impact on the Broughty Ferry Conservation Area and the adverse impact on the Green Circular cycle and pedestrian route as it passes in front of the site.

### RECOMMENDATION

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

- 1 The proposed development contravenes Policies 1 and 53 of the adopted Dundee Local Plan Review 2005 because of its proximity to houses and the adverse impacts of its design, cramped layout, inadequate parking provision and late night noise and disturbance. There are no material considerations that would justify the approval of this application contrary to the provisions of the Development Plan.
- 2 The design of the proposed development contravenes Policies 1 and 55 of the adopted Dundee Local Plan Review 2005 because of the excessive scale of the building and overdevelopment of the plot, its incongruous relationship with the adjoining Victorian style toilet building, the blandness of the side and rear elevations and the choice of inappropriate finishing materials. There are no material

considerations that would justify the approval of this application contrary to the provisions of the Development Plan.

- 3 The proposed development would have a detrimental impact on the character and appearance of the Broughty Ferry Conservation Area by reason of its poor design, excessive scale of the building and overdevelopment of the plot, its incongruous relationship with the adjoining Victorian style toilet building, the blandness of the side and rear elevations and the choice of inappropriate finishing materials contrary to Policy 61 of the adopted Dundee Local Plan Review 2005 and the Statutory duty set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. There are no material considerations that would justify the approval of the application contrary to the provisions of the Development Plan.
- 4 The proposed development would have a detrimental impact on the Green Circular Cycle and Pedestrian Route as it passes in front of the application site by reason of the inadequate width provided for pedestrians and cyclists and the removal of secure cycle parking facilities contrary to Policies 81 and 82 of the adopted Dundee Local Plan Review 2005. There are no material considerations that would justify the approval of the application contrary to the provisions of the Development Plan.