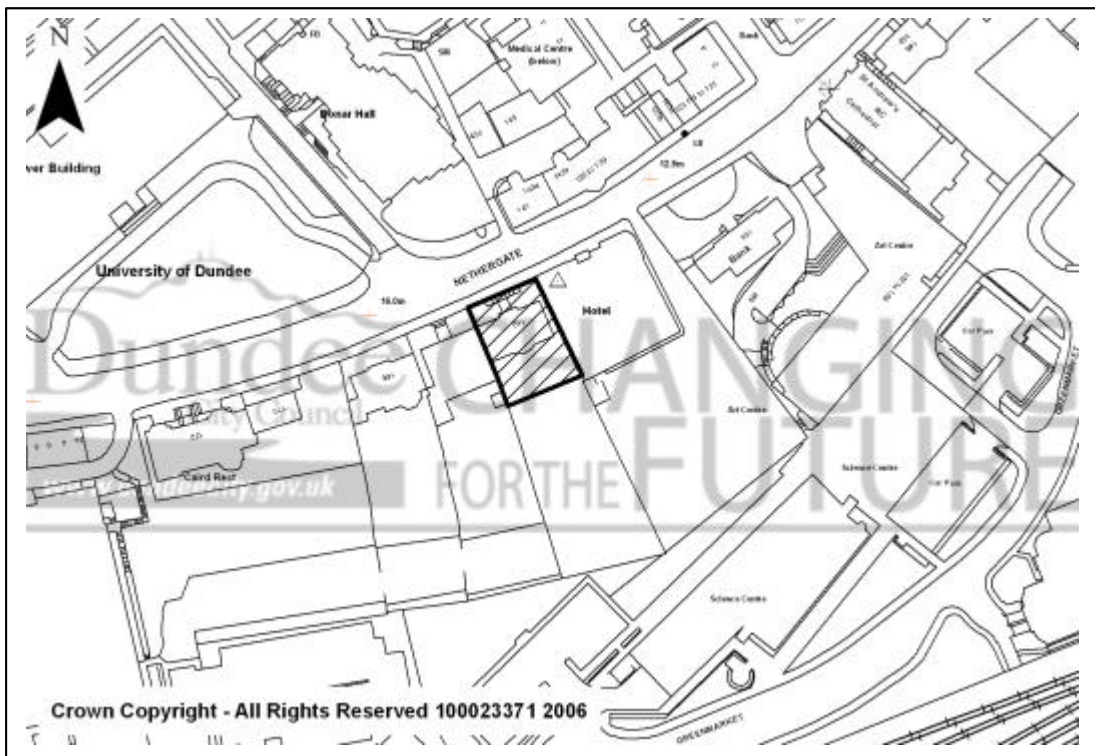


**KEY INFORMATION****Ward** West End**Proposal**Change of use to form  
bar/restaurant**Address**162 Nethergate  
Dundee  
DD1 4HN**Applicant**Nethergate Ltd  
102-104 Bonnygate  
Cupar  
KY15 4LF**Agent**Building Design Services  
5 Campbell Crescent  
Arbroath  
DD11 4JP**Registered** 24 Feb 2009**Case Officer** B Knox

# Proposal for New Restaurant in Nethergate

A change of use to form a bar/restaurant is **RECOMMENDED FOR APPROVAL** subject to conditions.  
Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed scheme will result in the re-use of a listed building that forms an important role in the setting and appearance of the surrounding conservation area. The proposal is considered to be contrary to the development plan. However, safeguarding the future of the property is considered to be an overriding priority. The application is recommended for **APPROVAL** subject to conditions.

**SUMMARY OF REPORT**

- The application proposes the change of use of a former university building to a restaurant with bar.
- The applicant undertook the statutory neighbour notification procedure and in total 1 letter of objection was received.
- Policies 53, 59, 60 and 61 of the Dundee Local Plan Review 2005 are relevant to the determination of the application.
- The proposal fails to fully comply with Policy 53 of the Dundee Local Plan but there are material considerations that would merit a decision contrary to this. The application is therefore recommended for **APPROVAL**.

## DESCRIPTION OF PROPOSAL

The application proposes the change of use of a former university building to a restaurant with bar. The ground floor would form the main restaurant area providing the majority of the seating area. There will be a kitchen to the west side of the property which will open out onto the bar. The main stair case will lead down into the lower ground floor which will provide some additional seating and a further bar area. There will also be a kitchen at this level below the one on the ground floor. The first floor shall be used for storage and office space and a staff room for the proposed restaurant.

There will be limited changes to the exterior of the property. An existing window shall be removed and replaced with a door on both the east elevation and the south elevation. The remaining existing windows shall be retained in order to maintain the character of the property. Internally, some modern partitions shall be removed to facilitate the change of use.

## SITE DESCRIPTION

The application site is located on the south most side of the Nethergate. The property is a former building associated with the University of Dundee for which the main campus is situated immediately opposite the site on the north side of the Nethergate. The property is a large detached building of a significant scale which is finished in natural stone with a natural slate roof. It is situated within the University Conservation area and is a Category B Listed building.

The building to the east of the application property forms part of the Queens Hotel with a variety of shops to the ground floor. There are no windows on the west elevation of this property facing onto the application property. The property to the west of the application site is also a former university building which is no longer in use for this purpose.

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

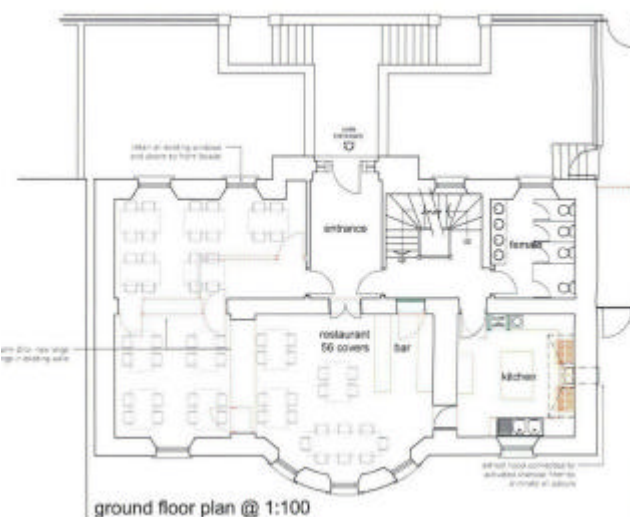
There are no policies relevant to the determination of this application.



### Dundee Local Plan 2005

The following policies are of relevance:

Policy 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:



- within 30 metres of existing and proposed housing if the outlet does not exceed 150m<sup>2</sup> gross floorspace (excluding cellar space); and
- within 45 metres if the 150m<sup>2</sup> 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 (ie 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:

- the hours of operation being limited to between 7.00 am and 7.00 pm, and,
- 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 59: Alternative Uses For Listed Buildings - suitable alternative uses will be considered for listed buildings where this is necessary to secure their future. Any adaptation of the fabric must be undertaken carefully and sensitively and have minimum impact on the architectural and historic interest, character and setting of the building. Reference should be made to other policies in the Plan.

Policy 60: Alterations To Listed Buildings - the alteration of a listed building will only be acceptable where the proposals have regard to the preservation or enhancement of its architectural or historic character. Alterations will not be permitted where the works would diminish the architectural integrity of the building or its historic interest.

The City Council will provide specific supplementary guidance on the following: window and door alterations, advertisements, shopfronts, roller shutters, treatments to masonry and painting and use of materials.

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.

## Scottish Planning Policies, Planning Advice Notes and Circulars

The Scottish Historic Environment Policy (SHEP) document by Historic Scotland provides advice on the treatment of Listed Buildings.

## 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

There is no relevant planning history for the site.

## PUBLIC PARTICIPATION

The applicant undertook the statutory neighbour notification procedure and in addition, the proposal was advertised in the local press, under Section 34 of the Act, as a bad neighbour development (preparation and sale of hot food) and in total 1 letter of objection was received.

The following valid planning issues have been raised:

- 1 Noise levels for guests in the nearby hotel rooms
- 2 There is no rear access to allow for servicing of the unit which may mean the blocking of a pedestrian crossing.
- 3 The extract ventilation from the kitchen may cause strong odours

to permeate throughout hotel rooms.

- 4 No parking facilities culminating in patrons using Queens Hotel car park to the detriment of the guests
- 5 The possibility of developing land at the rear to open a beer garden resulting in more noise levels and potential rubbish looking unsightly.

Members will already have had access to copies of the objection letter and the issues are discussed in the "Observations" section below.



## CONSULTATIONS

The Head of Environmental Health and Trading Standards has advised that the ventilation system is acceptable in this location given that there are no windows on the facing elevation of the nearby property.

## OBSERVATIONS

### Statutory Requirements

In accordance with Section 25 of the Town and Country Planning (Scotland) Act 1997 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.

With regard to the proposed restaurant use, it is generally recognised that licensed premises, particularly Class 3 uses such as restaurants, can make a positive contribution to the diversity and vitality of the city making them attractive for visitors and residents alike. The primary consideration for this type of use in this location is Policy 53 Licensed and hot food premises outwith the city centre which states that 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 within 45 metres if the floor space exceeds 150m<sup>2</sup>. The property is in excess of 150m<sup>2</sup>, so this criteria applies. The distance from the application property to the nearest residential property is approximately 22 metres.

However, the site is located immediately to the west of the boundary of the city centre and within the Cultural Quarter as defined in the Local Plan where there are a variety of uses that are typical of an edge of city centre location. In fact, over the years there have been positive

efforts to encourage this type of development to add to the attraction of Dundee City Centre and in particular the Cultural Quarter. It is therefore considered that although this does not technically comply with the terms of the policy, if the ventilation is of an appropriate standard to protect residents from smell and noise, there will be no adverse impact on their amenity by virtue of the nature of the proposed use and the detached characteristics of the building in question. From the detail of the proposal outlined above it is considered that there are material considerations to allow the requirements of Policy 53 to be set aside. If Members are minded to grant consent a condition will be applied requiring details of the method of ventilation together with noise mitigation measures to be submitted to the Council for approval.

The proposal is located within the cultural quarter and it is considered that the proposals do not conflict with the aspirations and requirements of Policy 17 (Cultural Quarter) of the Dundee Local Plan Review 2005.

With regard to Policy 59 (Alternative Uses for Listed Buildings), the re-use



of the vacant building for the purposes proposed is considered to be compliant with the requirements of the policy.

Policy 60 (Alterations to Listed Building) states that alterations to a listed building will only be acceptable where the proposals have regard to the preservation or enhancement of its architectural or historic character. The proposed alterations to the building are relatively minor in nature and respect the character and features of the Listed Building. The proposal is therefore considered to comply with this particular policy.

Policy 61 (Development in Conservation Areas) requires that all development proposals within conservation areas will be expected to preserve or enhance the character of the surrounding area. It is considered that the proposed re-use of the building together with the minor alterations proposed to the external appearance of the building will have a positive impact on the appearance and the setting of the local area.

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

## Other Material Considerations

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

## Views of the Objectors

- 1 Noise levels for guests in the nearby hotel rooms

The edge of city centre location on a busy street which serves as a bus route means that the background noise levels in this location are higher than might be expected in other areas. The likely noise generated from the proposed use is not considered to present an unacceptable level of noise for the occupiers of the surrounding properties. The proposed use is therefore considered to be acceptable in this respect.

- 2 There is no rear access to allow for servicing of the unit which may mean the blocking of a pedestrian crossing.

Ideally, there would be a specific space for the servicing of the unit. However, in city centre and built up locations this is not

always possible. Separate legislation exists to deal with any arising traffic offences.

- 3 The extract ventilation from the kitchen may cause strong odours to permeate throughout hotel rooms.

As discussed above, the ventilation system proposed is considered to be acceptable and this has been confirmed by the Head of Environmental Health and Trading Standards.

- 4 No parking facilities culminating in patrons using Queens Hotel car park to the detriment of the guests

Due to site constraints, it is not possible to provide on site parking. However, the property is close to the city centre, on a main bus route and within 5 minutes walking distance of a new multi storey car park. In this respect the application is considered to be acceptable.

- 5 The possibility of developing land at the rear to open a beer garden resulting in more noise levels and potential rubbish looking unsightly.

The application must be decided on the basis of the information submitted. Any future proposals of this nature may require further permissions depending on the nature of any proposals.

## Statutory Requirements

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires planning authorities, in considering applications that affect listed buildings, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which they possess. Section 64 of the Act requires that the Council have special regard to any buildings or other land in a conservation area and special attention shall be paid to the desirability of preserving and enhancing the character and appearance of the area.

This matter has already been considered in the assessment of the proposed development under Policies 60 and 61 of the Dundee Local Plan Review 2005 and it was concluded that the proposal would not detract from

the appearance of the listed building or adversely impact on the setting of the conservation area. Consequently, it is considered that statutory duty set out in these Sections of the Act is discharged.

The SHEP document is of relevance and supports alternative uses for listed buildings to ensure their protection. As noted above, the partner Listed Building application elsewhere on this agenda will be referred to Historic Scotland for ratification should the application be approved.

The building the subject of this application has lain empty for some time. Its prominent location in the local area only highlights this situation. It is accepted that the proposal does not fully comply with the requirements of the local plan with regard to parking and required distances from residential properties. However, this is considered to be a significantly important building in the area and its future requires to be secured. While its use as a licensed restaurant may not be ideal in development plan terms, the proposal will provide potential longevity of the property. Consequently it is considered that the above material considerations, the terms of which are confirmed by Policies 59, 60 & 61 of the Plan, are given significant weight in the determination of this application.

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 treatment of the listed building is handled sensitively and any interventions are restricted to that necessary to provide a quality facility without prejudice to the character and integrity of the property.

## CONCLUSION

The use of the building for a facility that will secure its future is to be welcomed albeit that the proposal does not fully adhere to the requirements of the development plan. However, this is a fine example of a Category B listed building that retains some historic features. In order to preserve this important local building it is

recommended that support of the application should be offered in this instance.

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## RECOMMENDATION

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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 Total noise from all mechanical and electrical services shall not exceed NR35 as measured 1 metre external to the facade of the nearest residential accommodation.
- 3 A scheme that details the proposed ventilation/extraction system for the uses hereby granted permission shall be submitted to and approved in writing by the planning authority prior to the commencement of works. For the avoidance of doubt the approved scheme shall be made operational prior to the first use of the restaurant.
- 4 Prior to the first use of the hereby approved use, the opening hours shall be agreed in writing with the Planning Authority.

## Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To protect local residents from any noise generated as a result of the uses hereby granted consent
- 3 To protect adjacent occupiers from any smell generated by the use hereby granted permission.
- 4 In order to ensure the amenity of nearby residential occupiers.