

KEY INFORMATION**Ward** The Ferry**Proposal**

Change of use from 2 ground floor offices to licensed restaurant

Address

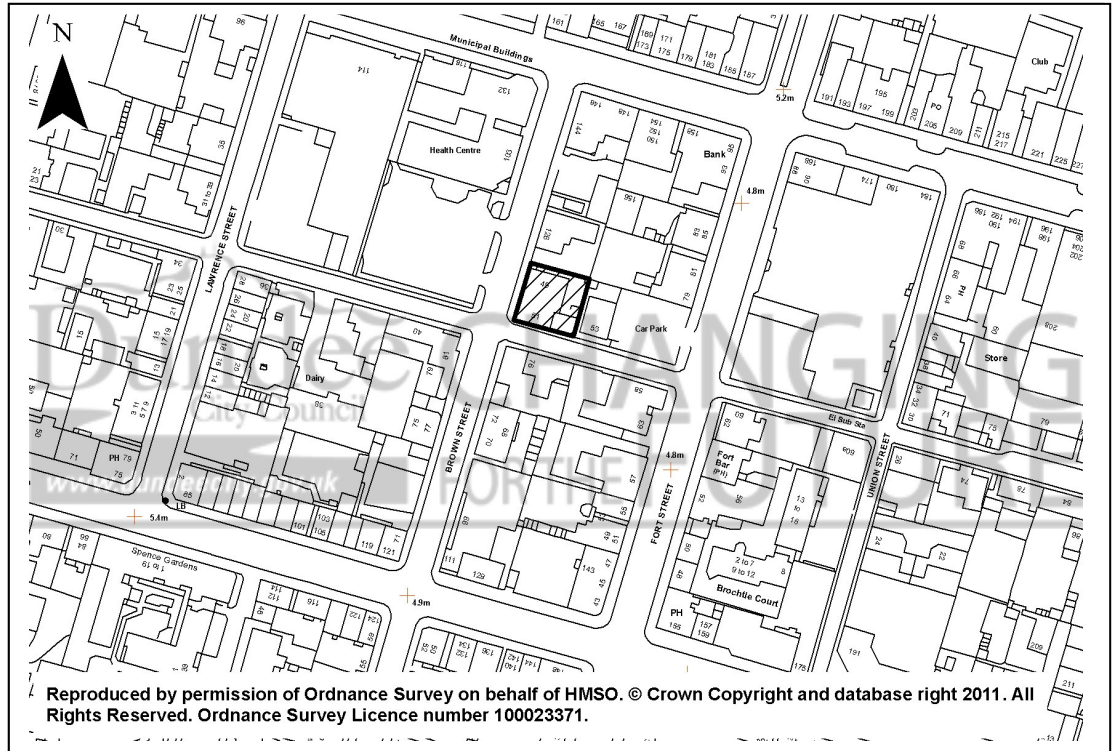
122-124 Brown Street
Broughty Ferry
Dundee

Applicant

Mr S Collinson &
Mr W O'Emilie
131 Brook Street
Broughty Ferry
Dundee
DD5 1DJ

Agent

Karen Clark
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Kirriemuir
DD8 4DE

Registered 30 Sep 2011**Case Officer** P Frickleton

Proposed Restaurant at Brown Street, Broughty Ferry

The change of use from 2 ground floor offices to a licensed restaurant is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The proposed development is considered to contravene Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Development Plan. However, sufficient weight can be accorded to the material considerations to justify the approval of the development contrary to the provisions of the plan. The application is therefore recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- This application seeks planning permission for a change of use from commercial units to a class 3 licensed restaurant.
- The proposal falls to be considered under 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.
- 2 letters of objection have been received on the grounds of, amongst other things, residential amenity; Local Plan policy and car parking.
- 3 letters of support have been received along with a 69 signature petition in support of the restaurant. Each page of the petition has been clearly labelled with the signatories indicating if they are for or against the proposal.

DESCRIPTION OF PROPOSAL

Planning permission is sought for a change of use from commercial units to a class 3 licensed restaurant. The proposed restaurant will operate 6 days a week providing a lunch and dinner service. The proposed hours of operation will be 11.00am - 2.00pm and 6.00pm - 11.00pm. A restaurant licence is sought which limits the sale of alcohol to 11.00pm. There will be no hot food takeaway facilities.

Supporting information lodged with the application includes a Planning Design and Access Statement; Noise Impact Assessment; letters of support from the joint applicant and residents of the upstairs property and a 69 signature petition from independent shopkeepers and businesses in support of the restaurant.

In accordance with the Council's Scheme of Delegation this application is being reported to the Development Management Committee at the request of the Director of City Development.

SITE DESCRIPTION

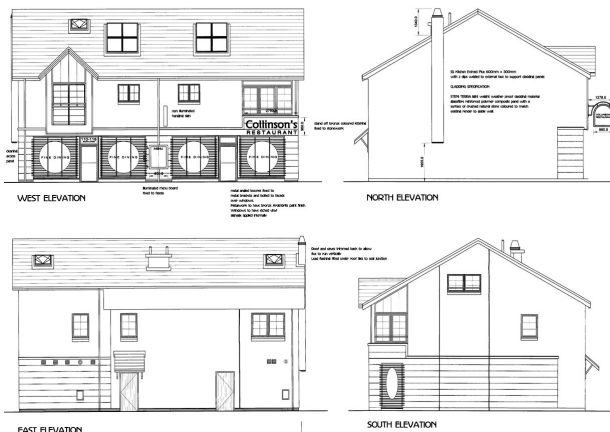
The application site is located on the north eastern side of Brown Street on the northern corner of the junction between Brown Street and Long Lane.

The site comprises of a newly built 2 storey building of a traditional design. The existing ground floor office units have a contemporary glazed frontage on to Brown Street and Long Lane. The existing floor areas of the offices are 67.9m² and 66.3m², both benefit from a WC and kitchen. Neither of the offices has been occupied since construction.

The upper floors consist of 2 duplex flats which extend into the roof space. Access to the flats is taken from an internal communal stair located at the rear of the building.

The application site is bounded to the north by a one and a half storey cottage which is currently used for commercial purposes. To the east the application site is bound by a single storey cottage. On the southern side of Long Lane opposing the application site is a stone/roughcast finished dwellinghouse with high level north facing windows. On the western side of Brown Street opposite the application site there is a car park

which serves a modern 2 storey brick built health centre. On the south western corner of the junction between Brown Street and Long Lane there is a modern three and a half storey flatted development with a ground floor commercial unit.



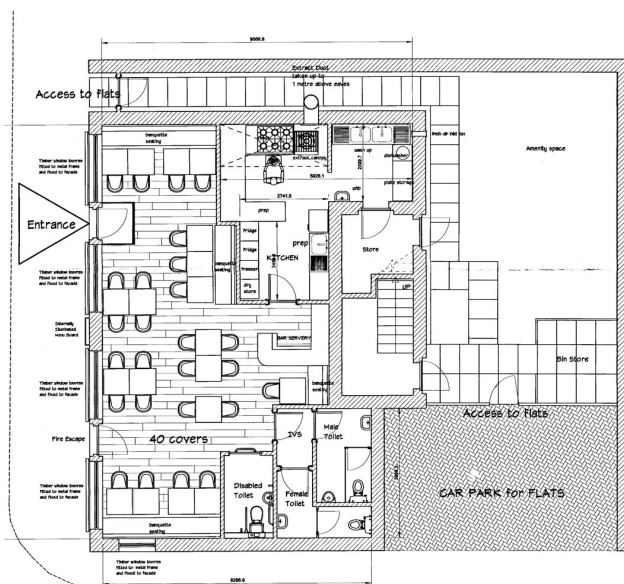
POLICY BACKGROUND

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 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:

- within 30 metres of existing and proposed housing if the outlet does not exceed 150m² gross floorspace (excluding cellar space) and;
- 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 (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 7.00am and 7.00pm; 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.

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

Planning application ref: 09/00145/FUL sought planning permission for a residential and office development on this site. The application was withdrawn due to concerns that the proposed building was too high and would impact on the neighbouring properties. The proposals were revised and re-submitted in 2009 for the erection of 2 offices and 2 flats (09/00487/FULL). The application was approved by Committee on 16 November 2009.

An application for a change of use from ground floor offices to licensed restaurant was lodged on 22 March 2011 (11/00100/FULL). The application was refused as the proposed development failed to comply with Policies 1 (Vibrant and Sustainable communities) and 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Dundee Local Plan Review 2005.

PUBLIC PARTICIPATION

Neighbour notification was carried out and the application was advertised and as a result two letters of objection have been received from a neighbouring resident and business. The residential objector is concerned that the premises are situated in a side street and would have an adverse affect on residential amenity, that the proposal is contrary to the Development Plan and that the justification for the development is based on commercial and personal rather than planning considerations. Concerns were also raised by Broughty Ferry Health Centre over the proposed restaurant clientele using the privately owned car park opposite having a detrimental impact on the customers of

and services provided by the health centre.

Three letters of support have been lodged with the application along with a 69 signature petition. Two of the letters are from residents of the flatted properties directly above the application site who are fully in support of the opening of a restaurant below their premises. They perceive the noise levels associated with the type of restaurant proposed to be minimal. In addition they believe the area will benefit from "much needed competition"; improved tourism and the creation of employment opportunities. The third letter of support is from the owner of the premises and flatted properties above who believes that there will be no conflict between the proposed restaurant and residential properties on the upper floors. He considers the surrounding area to be of mixed use where residential and commercial uses can operate together.



The 69 signature petition is from independent shopkeepers and businesses located within Broughty Ferry who are in support of the proposed opening of a new restaurant.

Members will already have had access to the objection letters and letters/petition in support and the issues raised are considered in the Observations Section of this Report.

CONSULTATIONS

The Council's Head of Environmental Protection has requested that should the Committee be minded to grant planning permission, conditions should be imposed to ensure that the recommendations set out in the Noise Impact Assessment (NIA) are implemented. In addition to the

matters detailed within the NIA, in order to safeguard the residents from potential noise from ventilation/mechanical plant and noise breakout, a condition should be imposed to ensure noise from the mechanical and electrical plant shall not exceed NR45 during day time and NR35 during night time, as measured 1 metre external to the facade of adjacent residential accommodation. A high level discharge has also been requested in order that nearby residents are not exposed to nuisance from odour.

OBSERVATIONS

Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the Development Plan unless other material considerations indicate otherwise.

The Development Plan

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

It is the aim of Policy 1 (Vibrant and Sustainable Communities) to support development which aims to enhance the range of services and facilities close to and within housing areas. While the provision of such facilities can be considered positive development only proposals that seek to minimise any effect on the environmental quality enjoyed by local residents by virtue of design,

layout, parking and traffic movement issues, noise or smell will be supported.

The proposed development seeks to change the use of 2 office units to a licensed restaurant. In terms of design the external changes to the appearance of the building are minimal. Metal angled louvers are to be fixed to metal brackets and bolted to the facade over the windows. The proposed metal work will have a bronze ardenbrite paint finish. The windows will have etched vinyl signage applied internally. The proposed use will require the installation of an extractor system on the northern elevation of the property. The flue will measure 600mm x 300mm and will have Z clips welded to the external face to support cladding panels. The cladding will be a glass

fibre reinforced polymer composite panel with a surface of crushed natural stone coloured to match the existing render on the gable wall. The bottom of the flue will sit 1.955 metres above ground level.

Within the district centre and surrounding area there is available on-street car parking as well as Council owned public car parks in close proximity to the application site.

In terms of noise, a Noise Impact Assessment has been carried out by The Charlton Smith Partnership. The report concluded that subject to the implementation of recommendations related to the extractor system the worst case breakout noise levels from the restaurant should be less than sleep, rest and relaxation criteria and plant noise less than NR30 to the exterior of dwellings adjacent to the proposed development.

The issue of smell has been overcome through the use of a suitably designed extract and ventilation system.

The proposed restaurant shall maintain the existing level of environmental quality afforded to neighbouring residential properties. The proposals therefore adhere to the requirements of Policy 1 of the Adopted Local Plan.

It is generally recognised that the sale of alcohol for consumption on the premises and the sale of hot food raises amenity issues within areas. The primary consideration for this type of use is Policy 53 (Licensed and Hot Food Premises Outwith the City Centre).

This Policy states that no licensed premises and premises selling hot food outwith the District Centre is acceptable within 30 metres of existing or proposed housing if the outlet does not exceed 150m² gross floorspace and within 45 metres if the 150m² figure is exceeded. The proposed use is to be provided at ground floor level and measures less than 150m². Consequently the 30 metres consideration distance is applicable in this instance.

Whilst the site lies within a mixed use area there are a large number of residential properties surrounding the site. The upper floors of the building directly above the application site are residential properties. In addition there are residential properties directly to the east, south and south west of the site

all within the 30 metres consideration distance.

It is concluded from the foregoing that the proposals contravene Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the development plan.

Other Material Considerations

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

Supporting Information

In their letter of support the agent acknowledges that Policy 53 includes a presumption against a restaurant development within 30 metres of residential development. However, they argue that there are only a limited number of residential properties within 30 metres of the proposed restaurant and have considered each in detail as follows:

- First Floor level at 81 Brown Street

These properties are approximately 25 metres from the entrance to the proposed restaurant and located at first floor level.

- 76 Brown Street

This property is located to the south of the proposed restaurant. The property is orientated to the south with all habitable rooms facing this direction. The north elevation accommodates the kitchen window and 3 high level windows with obscured glass. The proposed restaurant does not include any openings in this elevation. The restaurant is orientated to the west and therefore it is considered that there will be little or no impact on this property.

- 53 Long Lane

Located to the east of the proposed restaurant block, this property includes 2 small windows in their west elevation overlooking the application site, one of which is a bathroom window. The proposed restaurant does not include any openings in the east elevation effectively the property has its back to this property. Consequently it is submitted that

the restaurant will have little or no impact on this property.

- 49-51 Long Lane

The 2 flats on the upper floor directly above the proposed restaurant are wholly in the ownership of the joint applicant Mr Emslie. The current tenants have indicated their support for the proposal; letters of support are included with the application.

Within their justification, the agent argues that the immediate surrounding area, while not within a designated district centre, is clearly mixed use with a variety of uses in close proximity including car parks, clinics, existing restaurants and offices. Currently the immediate area is characterised by the mixed uses and consequently the amenity of the area is less than expected within a wholly residential area. The application site itself has always been commercial in nature, the last known use was as a car yard, and therefore the surrounding residents would have experienced the associated noise impact of car doors, car engines, car deliveries and car movements. As a result historically the impact on the immediate area from this site would have been less than ideal. The agent therefore considers that this small scale restaurant operating on restricted hours with no hot food takeaway facilities is an appropriate use within this mixed use area.

The applicant has been looking for suitable premises for some 6 years. In the applicants opinion there have been limited opportunities in Broughty Ferry for a restaurant with available sites being secured by the national operators who can pay much higher rents than small local businesses. The following sites have been looked at and discounted by the applicant:

- Strachans, Gray Street, Broughty Ferry - a suitable fire escape could not be achieved due to neighbour issues.
- Invermark Hotel, Monifieth Road, Broughty Ferry - the property was considered to be too

expensive and therefore not viable.

- Former Brooks Hairdressing Salon, Gray Street, Broughty Ferry - not suitable as the kitchen would have been located in the basement.
- Mali Thai, Gray Street, Broughty Ferry - premises were considered too small and again kitchen located in the basement.
- Brambles, Brook Street, Broughty Ferry - the property was too expensive and required considerable improvements to provide a quality restaurant.
- Former Dandillys, Perth Road - property was too small to be a viable business and the kitchen was too small.
- Broughty Ferry Station - applicant was keen to secure these premises and undertook a considerable expense preparing plans/designs/surveys etc. However, in spite of the best efforts of the applicant Network Rail/Spacia could not/would not progress the matter.

It is acknowledged by the Council that the application site lies within a mixed use area, with an Osteopathic Clinic to the north; a health centre and associated car park to the west and office unit to the south west. However, the proposed restaurant is also within the vicinity of a number of residential properties. As detailed above the sale of alcohol for consumption on the premises and the sale of hot food raises amenity issues, it is the aim of policy 53 of the development plan to protect the amenity of these residents. However, although the application does not comply with Policy 53 of the development plan, the applicant has successfully demonstrated that the proposed restaurant shall maintain the existing level of environmental quality afforded to neighbouring residential properties. Sufficient justification has been provided which demonstrates that there will be no detrimental impact in terms of potential noise disturbances; smells; design; layout; parking and traffic movement.

It is therefore considered that whilst the proposed restaurant will be located within 30 metres of residential properties any potential amenity issues

associated with the proposal can be controlled through the use of appropriate planning conditions. Should the Committee be minded to approve the planning application conditions will be applied to the consent restricting hours of operation and prohibiting any hot food take away function.

Despite the development not complying with Policy 53 of the Development Plan the above material considerations provide sufficient justification for the approval of this application.

Representations

Letters of support have been submitted as part of the application from the residents of 49 and 51 Long Lane who fully support the opening of a fine dining restaurant below their premises. They perceive the noise levels associated with this type of fine dining to be minimal as it would attract a different clientele. They believe the opening of this restaurant would bring "much needed competition" to the High Street, much to the benefit of locals and visitors. In addition to improved tourism and reputation to the local area the proposal will create more employment opportunities in very hard economic times.

A 69 signature petition has been submitted from independent shopkeepers and businesses located within Broughty Ferry in support of the proposed opening of a new restaurant.

The application includes a letter of support from the owner of the premises and residential properties above. Mr Emslie is also a joint applicant of this application. In his opinion there will be no conflict between the proposed restaurant and the flats on the upper floor. As a responsible landlord he would not wish to encourage any use which would conflict with his residential tenants or impact his ability to rent. As the developer of the original site he states that he was advised that due to the mixed use nature of the surrounding area flats at ground floor level were not appropriate. Consequently an amended design of 2 flats and 2 ground floor offices was submitted and approved. Advertising of the office premises began at construction stage with no serious interest to date.

Mr Emslie believes that the surrounding area is a mixed use area with residential use and a variety of commercial uses operating together. Mr Collinson, the applicant, has a past record of operating successful restaurant businesses. As a resident and business proprietor of Broughty Ferry he considers that the proposed restaurant would be an asset to the area. Mr Collinson is prepared to make a significant investment in the units and consequently to Broughty Ferry and in the current economic climate this should be encouraged.

The Town and Country Planning (Scotland) Act 1997 requires that decisions on planning applications should be made in accordance with the development plan unless other material considerations indicate otherwise. The calibre of the restaurant or the applicant is not a material consideration in the determination of the application; it is the use class that is considered and not the individual business.

The original proposal for flatted dwellings on the ground floor was not encouraged as the development could not support the level of parking required for 4 flatted properties and was not as a result of the mixed uses within the area.

Two letters of objection have been received from neighbouring resident/business. One of the main concerns of the objectors are that the premises are situated in a side street and would have an adverse affect on residential amenity. Concerns were also raised that the proposed restaurant clientele would use the privately owned car park opposite having a detrimental impact on the customers of and services provided by the health centre.

The affect on residential amenity has been addressed in the assessment of the application under Policy 1 (Vibrant and Sustainable Communities) of the Dundee Local Plan Review 2005. Whilst it is acknowledged that the car park to the west of the application site is private, within the district centre and surrounding area there is adequate on-street parking in close proximity to the site as well as Council owned public car parks.

The concerns of the objectors are not of sufficient weight to justify the refusal of planning permission.

Design

In terms of design the external changes to the appearance of the building are minimal. Metal angled louvers are to be fixed to metal brackets and bolted to the facade over the windows. The proposed metal work will have a bronze ardenbrite paint finish. The windows will have etched vinyl signage applied internally. The proposed use will require the installation of an extractor system on the northern elevation of the property.

CONCLUSION

It is concluded from the foregoing that sufficient weight can be accorded to the material considerations to justify the approval of the development contrary to Policy 53 (Licensed and Hot Food Premises Outwith the City Centre) of the Development Plan. It is therefore recommended that planning permission be granted with conditions.

RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 The premises shall not be used for any purposes within Class 3 of the Schedule to the Town and Country Planning (Uses Classes) (Scotland) Order 1989 other than as a restaurant/cafe. For the avoidance of doubt no hot food or drinks shall be sold for consumption off the premises from the restaurant/cafe hereby permitted.
- 2 The proposed restaurant hereby approved shall operate between the hours of 11.00am and 11.00pm only.
- 3 Prior to the first use of the restaurant hereby approved the recommendations set out in the Noise Impact Assessment (dated 1 September 2011) shall be fully implemented to the satisfaction of the Council.
- 4 The total noise from all M&E services shall not exceed NR 35 during the night and NR 45 during the day as measured 1 metre external to the facade of adjacent residential accommodation. For the avoidance of doubt day time shall

be 7.00am - 11.00pm and night time shall be 11.00am to 7.00pm.

Reasons

- 1 The unrestricted use of the premises for any purpose within class 3 in the schedule to the Town and Country Planning (Use Classes) Order 1989 would prejudice the amenities of the occupiers of nearby properties.
- 2 To ensure that the premises are not used at time which would be likely to cause nuisance or disturbance to nearby residents.
- 3 In the interests of preventing significant instances of noise disturbance from occurring.
- 4 In the interests of preventing significant instances of noise disturbance from occurring.