

Change Of Use From Offices to Licensed Restaurant

KEY INFORMATION

Ward Maryfield

Address

5 Bank Street
Dundee
DD1 1RL

Applicant

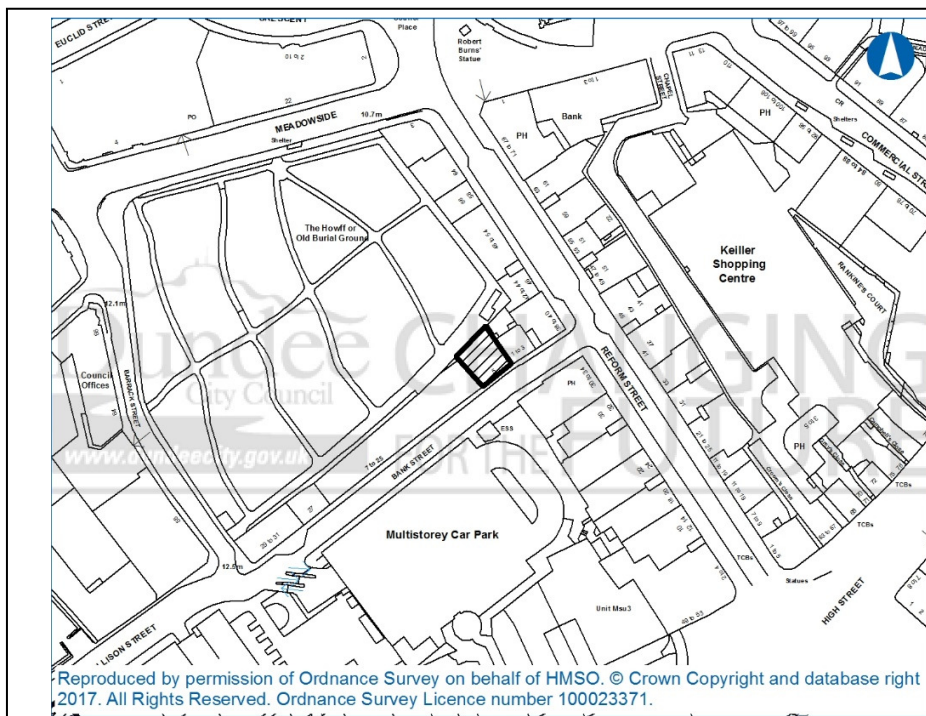
Mr L Chadwick
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Dundee DD1 5DS

Agent

Jackie Stephen
95 Dundee Street
Carnoustie DD7 7EW

Registered 21 Feb 2017

Case Officer Claire Myles



SUMMARY OF REPORT

- The application proposes a change of use on the ground floor and basement of a four storey B-Listed building from offices to a licensed restaurant and associated alterations. The alterations include a single storey rear extension which is proposed to be suspended above ground within the A-listed Howff located to the rear of the application site.
- The application site is a four storey and basement B-Listed building located in the Central Conservation Area. The property currently comprises vacant commercial use on the ground floor and basement and residential use on the upper floors.
- The application was the subject of neighbour notification and six letters of objection have been received which raise issues in relation to the impact on the architectural and historic character of the B-Listed building, adverse effect on the conservation area, noise nuisance and the insensitive encroachment on the A-Listed burial ground within The Howff.
- The application is being referred to the Development Management Committee at the request of an Elected Member.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>.

RECOMMENDATION

The application fails to comply with Policies 7, 47, 48, 50 and 51 of the Adopted Dundee Local Development Plan 2014. The proposed development fails to comply with national planning guidance with regard to development affecting a conservation area or the setting of a listed building. The statutory duty set out in Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 would be discharged through the refusal of planning permission. There are no material considerations that would justify approval of the application. The application is therefore recommended for REFUSAL.

1 DESCRIPTION OF PROPOSAL

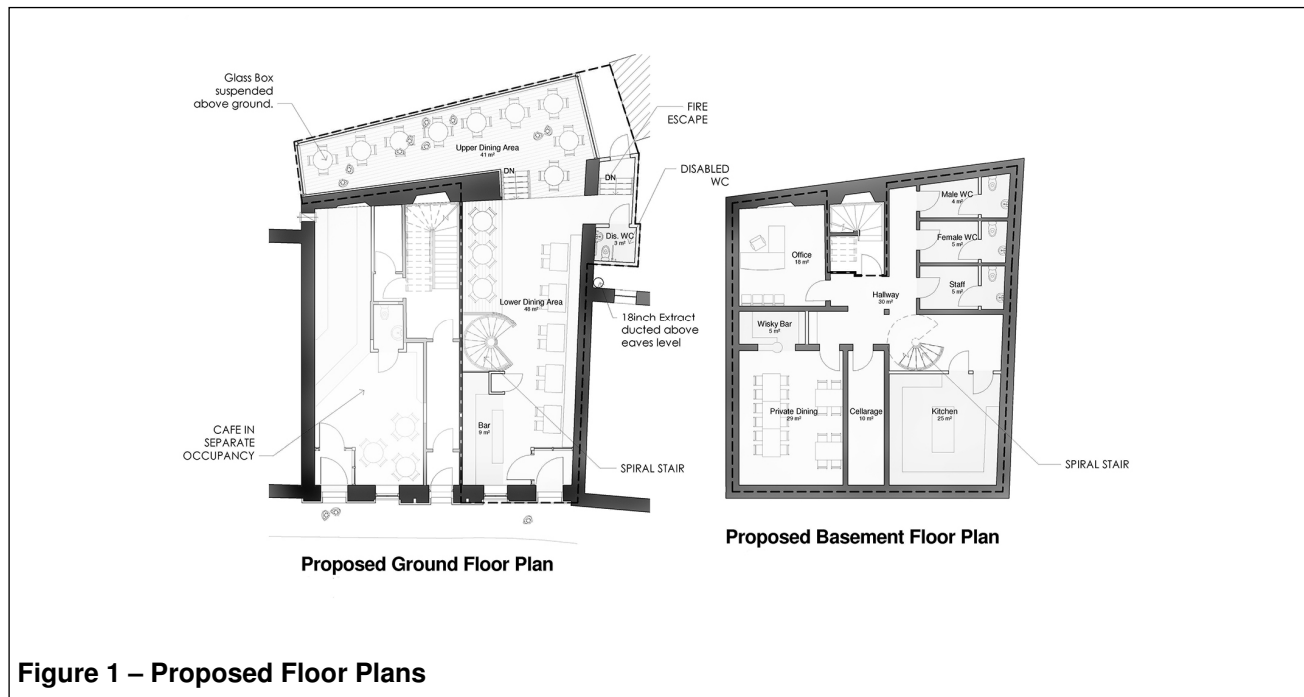


Figure 1 – Proposed Floor Plans

- 1.1 The application proposes a change of use on the ground floor and basement of a four storey B-Listed building from commercial offices to a licensed restaurant for 60 covers and associated internal and external alterations.
- 1.2 The alterations proposed on the ground floor include a rear extension of a contemporary glass box design which will be suspended above ground level to provide an upper dining area overlooking The Howff which is located to the rear of the building. Alterations also include removing an existing timber sash and case window on the front elevation of the B-Listed building to create a new larger opening for a separate entrance door to the restaurant.
- 1.3 At basement level a Whisky Bar is proposed together with a private dining area, cellar, kitchen, office and toilets.
- 1.4 The proposed hours of operation of the restaurant are 11.00am – 3.00pm and 5.00pm to midnight Tuesday - Sunday. The proposed menu is modern Scottish cuisine.
- 1.5 There is a related application for listed building consent reference 17/00086/LBC.

2 SITE DESCRIPTION

- 2.1 The application site is a four storey and basement building located on the north side of Bank Street in the City Centre. The B-Listed property is a classically-detailed commercial building and was formerly the offices of the solicitors Shiell and Small, and forms a stylistically similar continuous frontage with 7-25 Bank Street which is also B-Listed.
- 2.2 The rear elevation of the building faces The Howff which is A-Listed.

- 2.3 The building was converted two years ago to form ground floor and basement commercial office space with residential above. The commercial office space is currently vacant. The whole building is in the ownership of the applicant.



Figure 2 – Existing Front Elevation



Figure 3 – Existing Rear Elevation

3 POLICY BACKGROUND

- 3.1 The following plans and policies are considered to be of direct relevance:

DUNDEE LOCAL DEVELOPMENT PLAN

Policy 7: High Quality Design

Policy 47: Environmental Protection

Policy 48: Listed Buildings

Policy 50: Development in Conservation Areas

Policy 51: Scheduled Ancient Monuments and Archaeological Sites

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

4 SITE HISTORY

- 4.1 Planning application 14/00159/FULL was approved with conditions in May 2014 for a change of use to the upper 3 floors from offices to 3 flats and 2 HMOs with alterations and the installation of roof lights. The accompanying listed building consent, reference 14/00300/LBC was permitted for the associated internal alterations and installation of roof lights in July 2014.
- 4.2 Listed building consent 16/00105/LBC was approved on 18 March 2016 for alterations associated with a change of use from Class 2 offices to form 1 residential flat and 3 HMOs within the upper three floors of a property.

- 4.3 Planning application 17/00085/FULL and an associated application for listed building consent 17/00083/LBC are pending consideration for a change of use on the west side of the ground floor of the application site from offices to a café.

5 PUBLIC PARTICIPATION

- 5.1 The application was the subject of neighbour notification and six letters of objection have been received which raise issues in relation to the impact on the architectural and historic character of the B-Listed building, adverse effect on the conservation area, noise nuisance and the insensitive encroachment on the A-Listed burial ground within The Howff.
- 5.2 Members will already have access to the letters of objection and the issues raised are considered in the Observations section below.

6 CONSULTATIONS

- 6.1 Historic Environment Scotland consider the proposed rear extension will have an adverse impact along the southern edge of The Howff and will detract from the appreciation of the burial ground at this more immediate location. It will also impact on the important character of the space. They advise that the Council should be mindful of the sensitivities of approving a scheme that introduces a commercial activity into the burial ground which has a calm and sedate atmosphere.
- 6.2 Community Safety and Protection has advised that the discharge point of the proposed flue is directly in front of attic dormer windows of the adjacent building at 3 Bank Street and that this is insufficient in regards to odour dispersion. They have highlighted that no external plant is proposed however this would normally be conditioned to protect the amenity of residential properties.
- 6.3 Rathmell Archaeology Ltd act under a Service Legal Agreement with the Council for the provision of guidance and advice on archaeological matters. They advise that the suspended extension should cause no direct effect on any archaeological remains however without detailed information on the process of construction there is a residual potential for physical impacts within The Howff that could affect significant archaeological material from this process. As such, they recommend that, should consent be granted, any construction activity should be subject to a programme of archaeological mitigation.

7 DETERMINING ISSUES

- 7.1 **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 material considerations indicate otherwise.**

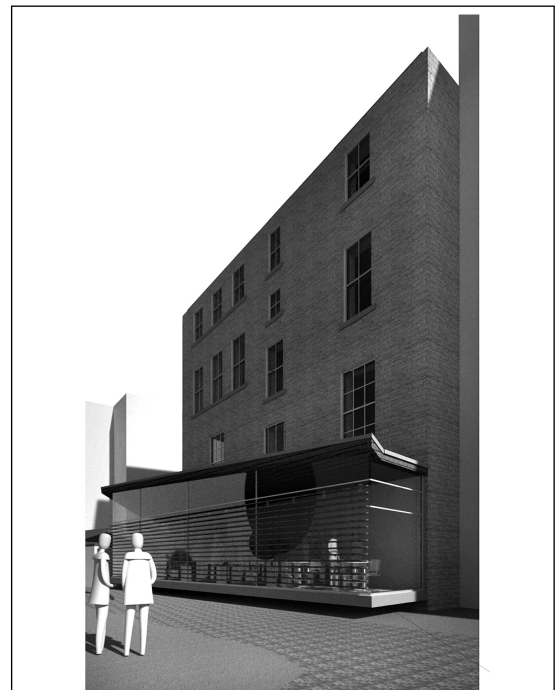
THE DEVELOPMENT PLAN

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

- 7.2 **Policy 7: High Quality Design** - this policy requires all development to contribute positively to the quality of the surrounding built and natural environment and to respect the character and amenity of the place. The policy adopts a design criteria approach which requires development proposals to consider and respect site topography and any supporting

important landmarks, views or skylines; contribute to a sense of identity; complement its surroundings in terms of appearance, height, scale, massing, materials, finishes and colours; existing buildings structures and natural features that contribute to the local townscape should be retained and sensitively integrated into the proposals.

- 7.3 The proposal for the change of use of the vacant commercial offices on the ground floor and basement to a restaurant is an acceptable complementary Class 3 (Food and Drink) use given the sites City Centre location. The proposed new entrance door is sensitive in design to the listed building and has been created to provide a separate entrance to the restaurant and avoid any potential conflict with the existing residential uses on the upper three storeys of the property. There are no internal features of architectural or historic interest within the ground floor and basement of the B-Listed building which will be impacted by the proposal.
- 7.4 A justification statement submitted with the application outlines that the design of the proposed rear extension takes cognisance of the fact that there may be human remains in the immediate vicinity of the extension. For this reason the design does not require any traditional foundation work and will 'float' above the surface of The Howff and will be attached by steelwork to the stone surface of the listed building. No further detail of this design has been supplied. This has the potential to adversely impact the fabric of the listed building.
- 7.5 The proposal for a suspended contemporary glass box extension to serve as a dining area overlooking The Howff fails to consider and respect the character and setting of The Howff which is an A-Listed important landmark in the City Centre. Historic Environment Scotland has highlighted that the proposed rear extension introduces commercial activity by virtue of a licensed restaurant into a calm and sedate burial ground.
- 7.6 The proposed rear extension fails to respect the existing north building line of the B-Listed buildings on Bank Street. The north building line is an important historical boundary between the precinct of the medieval Greyfriars Monastery, cleared from the site in 1560 and the burial site which was granted for use in Greyfriars Yards in 1564. At present there is a clear separation from the commercial buildings and The Howff with no projecting outbuildings or extensions. The proposal will interrupt this relationship and fails to respect the historical significance of this existing building line.



Daylight View

Figure 4 – Proposed Extension On Rear Elevation

- 7.7 **The proposal contravenes Policy 7.**
- 7.8 **Policy 47:** Environmental Protection - all new development proposals that would generate noise, vibration or light pollution are required to demonstrate that it can be accommodated without an unsatisfactory level of disturbance on the surrounding area.
- 7.9 The proposed design of a glass box extension to the building to provide a view over The Howff has the capacity to introduce noise and light pollution into a normally sedate and calm environment.

7.10 Community Safety and Protection has advised that the discharge point of the proposed flue is directly in front of attic dormer windows of the residential property in the adjacent building at 3 Bank Street. They advise that this is insufficient in regards to odour dispersion and the proposed flue will have an adverse impact on the amenity of the adjacent residential property.

7.11 **The proposal contravenes Policy 47.**

7.12 **Policy 48: Listed Buildings** - suitable alternative uses will be considered where necessary to secure the future of a listed building. Any adaptation of the fabric must be undertaken carefully and sensitively with minimum impact of the architectural and historic interest, character and setting. A detailed justification statement is required to be submitted to support an application proposing an alternative use.

7.13 Alterations to Listed Buildings will only be acceptable under this policy where the proposals have regard to the preservation or enhancement of a buildings architectural or historic character. Alterations are not acceptable where the works would diminish the architectural integrity of the building or its historic interest.

7.14 As outlined above the proposed use is an acceptable complementary Class 3 (Food and Drink) use given the sites City Centre location. It will bring a vacant ground floor unit back into use and further secure the future of a B-Listed building.

7.15 Alterations to the front elevation of the listed building are in the main sensitive to the listed building. Should members be minded to grant planning permission, it is recommended that a condition is attached to any consent granted to request full details of the design, materials and finish of the proposed new opening to create a separate entrance to the restaurant including a method statement for the works. There are no internal features of architectural or historic interest within the ground floor and basement of the B-Listed building which will be impacted by the proposal.

7.16 As outlined above, the proposed extension on the rear of the listed building fails to respect the historical significance of the existing north building line of the B-Listed buildings on Bank Street. The proposed extension will interrupt the relationship between the buildings on Bank Street and The Howff. The 'floating' design of the proposed extension has the potential to impact the fabric of the listed building. Further, the proposal fails to consider and respect the character and setting of The Howff which is an important A-Listed historical landmark in the city centre.

7.17 Community Safety and Protection has advised that the



Figure 5 – Existing Rear Elevation



New Door - Restaurant

Figure 6 – Proposed New Entrance Door to Restaurant

discharge point of the proposed flue is proposed to be just above eaves level and that this is directly in front of the attic dormer windows of the adjacent building at 3 Bank Street which would be insufficient in regards to odour dispersion. They have requested that the flue be extended up further to be at the height of the pots of the chimney stack. This however would have an impact on the character and setting of the listed building.

7.18 **The proposal contravenes Policy 48.**

7.19 **Policy 50:** 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 that contribute to the character and appearance of the conservation area.

7.20 The proposal site lies within the Central Conservation Area. The Central Conservation Area Appraisal highlights the unique setting of The Howff whereby the adjacent buildings and the boundary wall create an enclosure which provides a restricted and quiet character with limited pedestrian movement. The area is characterised by a variety of trees and shrubs which add to the sheltered, tranquil and pleasant area of open space in the City Centre.

7.21 The proposed extension to the rear of the property will have a detrimental impact on the tranquil character of The Howff recognised in the conservation area appraisal.

7.22 **The proposal contravenes Policy 50.**

7.23 **Policy 51: Scheduled Ancient Monuments and Archaeological Sites** - where any proposal could affect a site of known archaeological importance or potential, the applicant will be required to provide an assessment of the archaeological value of the site and the likely impact of the proposal on the archaeological resource.

7.24 Rathmell Archaeology Ltd act under a Service Legal Agreement with the Council for the provision of guidance and advice on archaeological matters. They have been consulted on the proposed development and have advised that the suspended extension should cause no direct effect on any archaeological remains however without detailed information on the process of construction there is a residual potential for physical impacts within The Howff that could affect significant archaeological material from this process. They recommend that, should consent be granted, any construction activity should be subject to a programme of archaeological mitigation.

7.25 As such, Rathmell Archaeology Ltd recommend that a condition is attached to any consent granted to undertake an assessment of the archaeological value of the site and the likely impact of the proposal and the ways in which the development proposal can be amended or designed in order to mitigate its impact on the archaeological remains.

7.26 **The proposal contravenes Policy 51.**

7.27 **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:

A - STATUTORY DUTY

- 7.28 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that special regard is given to the desirability of preserving listed buildings or their setting or any features of special architectural interest which they possess when determining applications for planning permission. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.29 For the reasons set out above the proposed development fails to comply with national planning guidance with regard to development affecting a Conservation Area or the setting of a listed building. The statutory duty set out in Sections 59 and 64 of the Act would be discharged through the refusal of planning permission.

B - DUNDEE HOWFF CONSERVATION GROUP – HISTORICAL INFORMATION

- 7.30 In their representation to the planning application, the Dundee Howff Conservation Group outlined that The Howff was formally the lands of the Greyfriars and it is believed that the Monastery is located in the area of the southwest corner of the site. The site was granted to the Burgh of Dundee by Mary Queen of Scots in 1564, to be used as a place of burial and has a long history linked to the Nine Trades of Dundee. In April 1567, Mary Queen of Scots granted all monastic buildings and property into the ownership of the Town Council and all profits from this to go towards the hospital for the poor.
- 7.31 The Conservation Group have reviewed archived records and the Register of Deeds Vol. 6 page 496 to 498 dated 1868, Minutes of Agreement between Messr Leng & Co (proprietors of the land directly south of the Howff on Bank Street) and The Magistrates and Town Council of Dundee and Trustees and patrons of the Hospital Fund of Dundee. The minutes refer to the removal of the Howff wall to allow a tenement to be built upon that land. It further states that the land owners and their successors are in future to have no access to the burial ground and shall renounce and discharge all rights of access to The Howff. It adds that windows in the tenement at the ground floor level will have in, all time coming, substantial Iron Stanchions not exceeding six inches apart.
- 7.32 The Conservation Group state that these documents show that the Town Council at the time made it clear that the owners of the tenements on the south side of The Howff and their successors were not to encroach into The Howff at any time. Also, that the Iron Stanchions must remain in place and are not to be removed.
- 7.33 During the late 19th century The Howff became a hub for large meetings which included illegal gambling and antisocial behaviour. As a response to this The Howff was locked daily and only opened on a Sunday. The Iron Stanchions mentioned above were deemed necessary to prevent individuals or groups breaking into The Howff for illegal purposes from the tenement blocks. It is the view of the group that these Iron Stanchions, even though attached to the B-Listed building have a direct link with the history of The Howff and therefore should be protected from interference, damage or removal at all times.
- 7.34 **The historical significance of the application site and its relationship with The Howff is illustrated in the information provided by Dundee Howff Conservation Group.**

C - VIEWS OF OBJECTORS

- 7.35 Objections to the proposals are in relation to the detrimental impact on the character and setting of the conservation area and listed buildings; the encroachment of the extension into burial ground; the insensitive nature of the proposal in relation to the historical significance and the character and setting of The Howff; the impact on any future archaeological work to be undertaken on the site; noise impact and that the historical integrity of The Howff would be comprised for the profit of private individuals.
- 7.36 **The planning concerns of the objectors are supported for the reasons explained in the report above.**
- 7.37 **It is concluded from the foregoing that there are no material considerations that would justify approval of planning permission.**

8 CONCLUSION

- 8.1 The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be refused.

9 RECOMMENDATION

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

REASON

- 1 The proposed development is contrary to Policies 7, 47, 48, 50 and 51 of the Dundee Local Development Plan 2014. There are no material considerations that would justify approval of planning permission. The proposed development will have a detrimental impact on the historical character and setting of the B-Listed building on Bank Street, the A-Listed The Howff and the Central Conservation Area. It will also have a detrimental impact on the amenity of adjacent residential properties. The proposed development fails to comply with national planning guidance with regard to development affecting a Conservation Area or the setting of a Listed Building. The application fails to satisfy the requirements of the relevant provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.