

Perth and Kinross Council
Development Management Committee – 16th November 2016
Report of Handling by Interim Head of Planning

Change of use from garden centre to café /takeaway (Class 3), alterations and formation of outdoor seating area at Ez Grow, 77 Scott Street, Perth, PH2 8JR.

Ref. No: 16/01572/FLL
Ward No: N12 – Perth City Centre

Summary

This report recommends approval of the application as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 The application site is EZ Grow Garden Centre at 77 Scott Street, Perth. The application seeks detailed planning permission for alterations and the change of use from a garden centre to a café/takeaway (Class 3) with the formation of an associated outdoor seating area. The site lies within the Perth Central Conservation Area.
- 2 The internal works are relatively minor and involve the formation of a kitchen area, seating areas and the improvement of the existing toilet facilities to become an accessible toilet. The external works involve replacing the existing timber door and associated cladding with a new double door for improved access to the facility and the removal of the polycarbonate sheeting on the existing greenhouse structure to provide a sheltered seating area. There will be no alterations to the existing access to the site or the existing parking area.
- 3 The proposals have been advertised in the Local Press and a site notice posted, in accordance with Regulation 5 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

NATIONAL POLICY AND GUIDANCE

- 4 The Scottish Government expresses its planning policies through The National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

DEVELOPMENT PLAN

- 5 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2012-2032 and the Perth and Kinross Local Development Plan 2014.

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

- 6 Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of TAYplan should be noted. The vision states *“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*

Perth and Kinross Local Development Plan 2014

- 7 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 8 The relevant policies are, in summary:

Policy PM1A - Placemaking

- 9 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

Policy PM1B - Placemaking

- 10 All proposals should meet all eight of the placemaking criteria.

Policy RC1 - Town and Neighbourhood Centres

- 11 Class 1 (retail) uses will be supported in identified town and neighbourhood centres commensurate with the role of the centre within the established retail hierarchy. Use Classes 2 & 3, leisure, entertainment, recreation, cultural and community facilities will also be encouraged in ground floor units provided they contribute to the character, vitality and viability of the retail core and satisfy the criteria set out. Use of pavement areas for restaurant/cafes/bars is acceptable in the prime retail area. Housing and other complementary uses are encouraged on the upper floors.

Policy RD1 - Residential Areas

- 12 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private and public open space will be retained where they are of recreational or amenity value. Changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

Policy HE3A - Conservation Areas

- 13 Development within a Conservation Area must preserve or enhance its character or appearance. The design, materials, scale and siting of a new development within a Conservation Area, and development outwith an area that will impact upon its special qualities should be appropriate to its appearance, character and setting. Where a Conservation Area Appraisal has been undertaken the details should be used to guide the form and design of new development proposals.

Policy TA1B - Transport Standards and Accessibility Requirements

- 14 Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

Policy EP8 - Noise Pollution

- 15 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

OTHER POLICIES

- 16 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997). Scottish Planning Policy 2010 Historic Scotland's Scottish Historic Environment Policy (SHEP).

SITE HISTORY

- 17 Planning application 16/01462/FLL for the change of use from garden centre to cafe/takeaway (class 3) and installation of replacement doors was withdrawn to allow detailed drawings to be revised.

CONSULTATIONS

EXTERNAL

- 18 **Scottish Water:**
No response.

INTERNAL

- 19 **Commercial Waste Team**
No objection to the proposal however would recommend adding a condition to the permission in regard to bin storage.
- 20 **Transport Planning**

No objection.

21 Environmental Health

No objection to the proposal however request that 4 conditions are added to the permission. These conditions would control opening times for the outdoor seating area, delivery times, the ventilation system and any noise generation from plant equipment.

22 Local Flood Prevention Authority

No objection to the proposal however would recommend that during the alterations flood resilient construction methods and materials are used where possible as the site is situated just out with the SEPA 1 in 200years flood envelope.

REPRESENTATIONS

23 Ten objections were received highlighting the following concerns:

- Adverse effect on visual amenity (including lighting)
- Inappropriate land use (contrary to LDP policies)
- Noise pollution and general disturbance/ intrusiveness
- Over intensive development
- Potential to become a 'licensed' venue
- Overlooking
- Extension of period of disturbance to neighbours
- Ventilation concerns (including odour) for kitchen/ cooking area

24 All the relevant planning issues which have been raised are covered in the Appraisal section of this report.

ADDITIONAL STATEMENTS

25

Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement / Design and Access Statement	Not required
Reports on Impact or Potential Impact	Not required

APPRAISAL

Policy Appraisal

- 26 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The determining issues here are whether the proposals comply with Development Plan policy or if there are other material considerations, which justify a departure from policy. The most relevant policies to be considered are outlined in the policy section above and are considered in more detail below.

Principle

- 27 The majority of the application site falls within an identified Residential Area within the LDP, although the access route falls within the designated Town Centre, therefore both Policy RD1- Residential Areas and Policy RC1 - Town and Neighbourhood Centres will apply. This is in addition to all other relevant policies associated with a change of use, including HE3A Conservation Areas, as the site lies within Perth Central Conservation Area.
- 28 For reasons mentioned throughout this report, it is considered that this proposal is compliant with all relevant policies of the LDP and should therefore be recommended for approval. All concerns raised through the objections can be controlled by adding conditions to any consent issued.

Design and Layout

- 29 As the works are in relation to an existing building, there are minimal works required for this change of use. As the site forms part of the Perth Central Conservation Area however, careful consideration should be given to the sensitivity of the development.
- 30 Whilst it is accepted that a new double door will be appropriate to the host building and will make the building more viable as a café, specific details of the door and windows have not been provided. It is therefore recommended that a condition is added to the permission instructing that the specification and proposed materials for the doors and associated windows are not approved and they must be subsequently agreed in writing with the Planning Authority prior to their installation.
- 31 In relation to the external works, the removal of the polycarbonate sheets on the existing greenhouse and the replacement with timber posts is considered to be more appropriate for the Perth Central Conservation Area than what currently exists, as the existing greenhouse is unsightly and does not contribute to the character of the Conservation Area. The existing decking is also considered to be appropriate for a café as it is not visible from the public carriageway and does not have a negative impact upon the host buildings. For clarification, the greenhouse and decking were installed without the appropriate planning permission being in place but are now time barred from enforcement proceedings.

- 32 With regards to the layout of the site as a whole, I believe that due to the 'courtyard' nature of the site, the formation of an outdoor seating area is acceptable in principle. It should also be noted that the neighbouring property, the 'Twa Tams' public house, also has an outdoor seating area however this is utilised as a beer garden and not a café as is proposed under this application. The issues relating to residential amenity associated with this outdoor seating area are discussed further under the 'Residential Amenity' section of this report.

Biodiversity

- 33 There are no issues relating to Biodiversity arising from this proposal however due to the existing building being potentially suitable for bats it is recommended that an Informative in relation to the protection of protected species is added to any consent granted as a precaution.

Residential Amenity

- 34 The main issue of concern with this proposal in relation to residential amenity is the potential noise generation of the proposal. This has been reinforced by the objections received highlighting noise disturbance as a key issue. The formation of an outdoor seating area will undoubtedly cause an increase in noise generation; however this can be controlled by the use of a condition on any consent granted. After consulting my colleagues in Environmental Health, it is recommended that a condition is added limiting the use of the outdoor seating area from 0900 to 1700 hours Monday to Sunday. It is normal practice to limit outdoor seating areas to 1800 hours, however due to the site falling within a residential area I recommend that the use is limited to 1700 hours in this instance. Whilst this will help to protect noise disturbance for neighbouring residential properties after 5pm, it will still provide adequate hours for the café to operate efficiently.
- 35 An additional condition is also recommended to be added which limits the opening hours of the café itself. This will ensure that no 'late night' operations are carried out which may attract loud visitors after neighbouring drinking establishments close. A number of objections also highlighted the noise and general disturbance from any potential ventilation that the café may use. Again, after consulting with Environmental Health, this can be controlled by adding a condition. This will ensure an effective ventilation system is installed and thereafter maintained complying with strict noise regulations. To further protect residential amenity, a condition is recommended to control delivery times, which will exclude Sundays as a delivery date.

- 36 In relation to noise, it should also be noted that the proposed café is in a residential area in close proximity to some of the busiest bars and pubs in Perth, including the Green Room, Twa Tams and Cargo. Whilst the Council does not want to support any proposal which will cause further disturbance to neighbouring residential properties in this area, it is expected that overall, any potential noise disturbance from the change of use would be far less than the existing neighbouring commercial premises. It is also considered that the noise disturbance from this proposal is not adversely different from what could be expected under the existing use of the site. As mentioned, the concerns in relation to noise can be controlled through strict conditions to minimise the impact of this development to neighbouring residential properties in this residential area.
- 37 Overlooking is listed as one of the objections. However, due to the courtyard nature of this proposal with high sided boundary treatments, I do not consider overlooking to be an issue associated with this proposal. A number of objections also highlighted the appropriateness of the site for a café development. Whilst this is noted, I do not believe that this edge of city centre location would be inappropriate for a development of this nature. This is due a number of similar proposals and uses being supported by the Council in similar locations throughout the city and also being associated with such a central location.
- 38 Overall, whilst it is noted that there are issues in relation to residential amenity arising from this proposal, I do not believe that these issues cannot be adequately controlled via conditions and it is not considered that there are any issues which cannot be controlled which are great enough to warrant the refusal of this application.

Visual Amenity

- 39 The visual impact of the works and impact upon the character and appearance of the host building and Conservation Area is considered minimal, as discussed in the 'Design and Layout' section of this report. This is due to the proposed café appearing similar from the streetscene as the existing garden centre does, as only minor alterations are to be carried out to the external of the building itself. Although one of the objections lodged in relation to this application stated that visual amenity would be compromised, with a particular emphasis on light pollution, I do not agree that the visual amenity associated with this proposal would be adversely different from what presently exists. I therefore consider there to be no issues in relation to visual amenity great enough to warrant the refusal of this application.

Roads and Access

- 40 It is considered that there are no road or access implications associated with this proposed development. This is due to the establishment already having suitable access and the provision of a parking space and this will not be altered by the proposal. Furthermore, Transport Planning was consulted as part of this proposal and has no objection, particularly given its city centre location where on-site parking provision is not normally required.

Drainage and Flooding

- 41 There are no drainage and flooding implications associated with this proposed development itself. As identified in the Flooding Officer's response to the consultation however, the site falls just out with the SEPA 1 in 200 year flood envelope which has a medium to high risk of flooding. The Officer has recommended that during the alterations flood resilient construction methods and materials are used where possible. A condition is therefore recommended to be added to any consent to control this.

Developer Contributions

- 42 The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

- 43 The economic impact of the proposal is likely to contribute positively to Perth City Centre by improving the provision of café and takeaway facilities.

LEGAL AGREEMENTS

- 44 None required.

DIRECTION BY SCOTTISH MINISTERS

- 45 None applicable to this proposal.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 46 In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with the approved TAYplan 2012 and the adopted Local Development Plan 2014. I have taken account of material considerations and find none that would justify overriding the adopted Development Plan. On that basis the application is recommended for approval subject to conditions.

RECOMMENDATION

A Approve the application subject to the following conditions:

- 1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the plans approved.

- 2 The development hereby approved shall be constructed so as to be flood resilient in order to reduce the extent of potential flood damage and thereby reduce repair costs and speed up building restoration should a flood event occur.

Reason - The site is located just out with the 1/200 (0.5% AEP) flood extent and therefore has a risk of flooding.

- 3 Prior to the development hereby approved being completed or brought into use, an effective ventilation system commensurate with the nature and scale of cooking to be undertaken shall be installed and operated such that cooking odours are not exhausted into or escape into any neighbouring buildings. Thereafter the system shall be maintained.

Reason - In order to safeguard the residential amenity of the area.

- 4 The hours of operation of the outdoor seating area shall be restricted to between 0900 to 1700 hours Monday to Sunday.

Reason - In order to safeguard the residential amenity of the area.

- 5 The hours of operation of the internal cafe shall be restricted to 0700 hours to 1900 hours daily.

Reason - In order to safeguard the residential amenity of the area.

- 6 Servicing of and deliveries to the premises shall be carried out between 0700 and 1900 Monday to Saturday only, with no servicing or deliveries permitted on Sundays.

Reason – In order to safeguard the residential amenity of the area.

- 7 All plant or equipment shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 25 between 2300 and 0700 hours daily, within any neighbouring residential property, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart.

Reason - In order to safeguard the residential amenity of the area.

- 8 Prior to the development hereby approved being completed or brought into use, a refuse storage area must be provided which is capable of accommodating the following:

- 1 x 360L general container (600 x 880 x 1140mm)
- 1 x 360L DMR container (600 x 880 x 1140mm)
- 1 x 140L food waste container (480 x 544 x 1060mm)

Thereafter, the refuse storage area for the premises shall be operated and maintained such that detriment is not caused to the amenity of occupiers or neighbouring premises and does not cause any blockage of access to neighbouring premises.

Reason - In order to safeguard the residential amenity of the area and to ensure that waste from the premises is dealt with appropriately.

- 9 Prior to the commencement of the development hereby approved, details of the specification and colour of the proposed windows and doors to be used shall be submitted to and agreed in writing by the Council as Planning Authority. The scheme as agreed shall be implemented prior to the completion or bringing into use of the development, whichever is the earliest.

Reason – In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

B JUSTIFICATION

The proposal is considered to comply with the Development Plan and there are no other material considerations that would justify a departure therefrom.

C PROCEDURAL NOTES

None

D INFORMATIVES

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 An application for Building Warrant may be required.

- 5 The presence of protected species, and the extent to which they could be affected by the proposed development, should be established before works commence. Should protected species be identified within the site the developer should ensure that all appropriate measures required to comply with the relevant legislation are carried out. Planning permission for a development does not provide a defence against prosecution under another Act.
- 6 The applicant is advised that any proposed signage will require a further application to be submitted for advertisement consent.

Background Papers: Ten letters of representation

Contact Officer: Sean Panton – Ext 75355

Date: 2 November 2016

**NICK BRIAN
INTERIM HEAD OF PLANNING**

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