

Perth and Kinross Council  
Planning & Development Management Committee – 24<sup>th</sup> October 2018  
Report of Handling by Interim Development Quality Manager (Report No. 18/339)

<b>PROPOSAL:</b>	Alterations and formation of decking to provide outdoor seating area, installation of a screen fence and associated works.
<b>LOCATION:</b>	The Caledonian Bar, 35 James Square, Crieff, PH7 3EY.

Ref. No: 18/01094/FLL  
Ward No: P6- Strathearn

**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 OF PROPOSAL**

- 1 Full planning consent is sought for alterations and the formation of decking to provide an outdoor seating area and associated works at The Caledonian Bar, 35 James Square, Crieff. The property forms part of a category C listed building in the Crieff Conservation Area. The proposed works involve replacing an existing window on the rear (south) elevation with a door to allow access to a proposed new outdoor seating area at first floor level providing 36 covers.
- 2 Previous applications for both listed building consent and planning consent were withdrawn due to potential concerns with the outdoor canopy, lighting and heating in terms of detrimental impact on the setting of the listed building and Conservation Area. Other concerns were raised in terms of the use of the outdoor area as the proposed canopy along with the heating, lighting and hours of use (10am until 10pm) would have provided a more permanent and prolonged use of the area which would have had the potential to impact on neighbouring residential amenity, which is likely to give rise to noise complaints.
- 3 This amended proposal is for two large freestanding umbrellas in lieu of the canopy which are freestanding, proposed planters and lighting which will require fixings onto the building. The erection of acoustic screening to the boundary is also proposed, as well as the existing signage will be relocated to the balustrade. The hours of use have been amended to 10am to 9pm 7 days a week from the previously proposed 10am to 10pm.
- 4 There is an associated listed building consent application which was recently approved under delegated powers ([18/01095/LBC](#)).

## **PRE-APPLICATION CONSULTATION**

- 5 The proposal has been subject of a pre-application enquiry 17/00580/PREAPP which advised that the principle of the proposal was acceptable. However, the use of the upper floors of the building which would overlook the terrace was unknown and as such there could be an impact on residential amenity from the use of the terrace, noise, smoke odour etc.

## **NATIONAL POLICY AND GUIDANCE**

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

### **Scottish Planning Policy 2014**

- 7 The Scottish Planning Policy (SPP) was published in June 2014 and sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:
  - The preparation of development plans;
  - The design of development, from initial concept through to delivery; and
  - The determination of planning applications and appeals.
- 8 The following sections of the SPP will be of particular importance in the assessment of this proposal:
  - Sustainability : paragraphs 24 – 35
  - Placemaking : paragraphs 36 – 57
  - Listed Buildings: paragraph 141

### **Planning Advice Notes**

- 9 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
  - PAN 40 Development Management
  - PAN 68 Design Statements
  - PAN 77 Designing Safer Places

## **Creating Places 2013**

- 10 Creating Places is the Scottish Government's policy statement on architecture and place. It sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy and set out actions that can achieve positive changes in our places.

## **DEVELOPMENT PLAN**

- 11 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2014.

## **TAYPlan Strategic Development Plan 2016-2036**

- 12 TAYPlan sets out a vision for how the region will be in 2036 and what must occur to bring about change to achieve this vision. The vision for the area as set out in the plans states that:

*"By 2036 the TAYplan area 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, study and visit, and where businesses choose to invest and create jobs."*

- 13 The following sections of the TAYplan 2016 are of particular importance in the assessment of this application.

## **Policy 2: Shaping Better Quality Places**

- 14 Seeks to deliver distinctive places by ensuring that the arrangement, layout, design, density and mix of development are shaped through incorporating and enhancing natural and historic assets, natural processes, the multiple roles of infrastructure and networks, and local design context.

## **Policy 9: Managing TAYPlans Assets**

- 15 Seeks to respect the regional distinctiveness and scenic value of the TAYplan area through safeguarding the integrity of natural and historic assets; including habitats, wild land, sensitive green spaces, forestry, water environment, wetlands, floodplains (in-line with the Water Framework Directive), carbon sinks, species and wildlife corridors, and also geo-diversity, landscapes, parks, townscapes, archaeology, historic battlefields, historic buildings and monuments; and by allowing development where it does not adversely impact upon or preferably enhances these assets.

## **Perth and Kinross Local Development Plan 2014**

- 16 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. The LDP sets out a vision statement for the area and states that, *“Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.”* It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 17 The principal relevant policies are, in summary;

### **Policy RD1 - Residential Areas**

- 18 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 PM1A - Placemaking**

- 19 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**

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

### **Policy HE3A - Conservation Areas**

- 21 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 HE2 - Listed Buildings**

- 22 There is a presumption in favour of the retention and sympathetic restoration, correct maintenance and sensitive management of listed buildings to enable them to remain in active use. The layout, design, materials, scale, siting and

use of any development which will affect a listed building or its setting should be appropriate to the building's character, appearance and setting.

#### **Policy EP8 - Noise Pollution**

- 23 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.

#### **Policy RC1 - Town and Neighbourhood Centres**

- 24 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 PM2 - Design Statements**

- 25 Design Statements should normally accompany a planning application if the development comprises 5 or more dwellings, is a non-residential use which exceeds 0.5 ha or if the development affects the character or appearance of a Conservation Area, Historic Garden, Designed Landscape or the setting of a Listed Building or Scheduled Monument.

#### **Policy EP5 - Nuisance from Artificial Light and Light**

- 26 Permission will not be granted for proposals where the lighting would result in obtrusive and / or intrusive effects.

#### **Proposed Perth and Kinross Local Development Plan 2 (LDP2)**

- 27 Perth & Kinross Council is progressing with preparation of a new Local Development Plan to provide up-to-date Development Plan coverage for Perth & Kinross. When adopted, the Perth & Kinross Local Development Plan 2 (LDP2) will replace the current adopted Perth & Kinross Local Development Plan (LDP). The Proposed Local Development Plan 2 (LDP2) was approved at the Special Council meeting on 22 November 2017.
- 28 The representations received on the Proposed LDP2 and the Council's responses to these were considered at the Special Council meeting on 29 August 2018. The unresolved representation to the Proposed Plan after this period is likely to be considered at an Examination by independent Reporter(s) appointed by the Scottish Ministers, later this year. The Reporter(s) will thereafter present their conclusions and recommendations on the plan, which

the Council must accept prior to adoption. It is only in exceptional circumstances that the Council can elect not to do this.

- 29 The Proposed LDP2 represents Perth & Kinross Council's settled view in relation to land use planning and as such it is a material consideration in the determination of planning applications. It sets out a clear, long-term vision and planning policies for Perth & Kinross to meet the development needs of the area up to 2028 and beyond. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014. However, the outcome of the Examination could potentially result in modifications to the Plan. As such, currently limited weight can be given to its content where subject of a representation, and the policies and proposals of the plan are only referred to where they would materially alter the recommendation or decision.

## **SITE HISTORY**

- 30 [16/00403/FLL](#) Installation of windows. Application Approved, 13 April 2016 – delegated decision
- 31 [16/00404/ADV](#) Display of signs, Application Approved. 12 April 2016 – delegated decision
- 32 [16/00405/LBC](#) Alterations. Application Approved, 18 April 2018 – delegated decision
- 33 [18/00370/LBC](#) Alterations. Application Withdrawn, 7 June 2018
- 34 [18/00409/FLL](#) Alterations and formation of decking to provide outdoor seating area, installation of canopy, screen fence and associated works. Application Withdrawn, 7 June 2018
- 35 [18/01095/LBC](#) Alterations. Application Approved, 13 September 2018 – delegated decision

## **CONSULTATIONS**

- 36 As part of the planning application process the following bodies were consulted:

### **Internal**

- 37 **Environmental Health (Noise Odour)** – no objection in principle subject to conditional control in relation to external lighting, noise and hours of operation.
- 38 **Transport Planning** – no objections.

## REPRESENTATIONS

39 The following points were raised in the 6 representation received:

- Noise/Impact on Residential Amenity
- Hours of Operation
- Loss of Privacy
- Visual Amenity

40 These issues are addressed in the Appraisal section of the Report. The following matter is best addressed at this stage:-

- Concerns were also raised that the footpath is blocked by refuse bins which contravenes the fire escape. The bin storage area is existing and the proposal does not require additional bin storage capacity. Nonetheless, any contravention of a fire escape is not a planning consideration.

## ADDITIONAL STATEMENTS

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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

42 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plan comprises the TAYplan Strategic Development Plan 2016–2036 and the Perth and Kinross Local Development Plan 2014. The relevant policy considerations are outlined in the policy section above and are considered in more detail below.

43 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 also requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In addition section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is pertinent which requires the Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

- 44 It should be noted that an application for listed building consent (18/01095/LBC) for the same scheme has been recently approved (13 September 2018). The listed building consent application and planning application are linked insofar as works cannot progress until both applications are approved.

### **Principle**

- 45 In terms of land use policies, the key policies are contained within the Local Development Plan 2014. Within the LDP, the site falls within the Crieff Conservation Area in addition to being a category C listed building and within an identified Town and Neighbourhood Centre, therefore Policy HE3A - Conservation Areas, HE2: Listed Buildings and Policy RC1 - Town and Neighbourhood Centres are directly applicable.
- 46 Policy RC1 supports development in use Class 1 (retail) and Class 2 & 3 (leisure, entertainment, recreation, cultural). The site is located within the town centre; therefore it would not be unexpected to see outside seating areas associated with commercial uses where there is some existing. Therefore in this instance the principal of an outside seating area is considered to comply with the LDP.

### **Design and Layout**

- 47 The proposed outside seating area will be located to the rear of the premises on the flat roof of an existing single storey extension. The proposed seating area faces out onto the public car park area adjoining the premises.
- 48 The outdoor seating area will measure approximately 7.3m by 5.5m and will accommodate 36 covers. An existing window will be removed to be replaced with a door to allow access from the existing lounge area of the premises to the proposed outdoor seating area.
- 49 The plans submitted indicate that an acoustic fence of 1.7 metres in height is to be installed along the west elevation and partially on the south elevation. A frameless glass balustrade measuring 1.1 m in height will also be installed along the south and partially east elevation, with a galvanised metal balustrade of 1.1 m in height along the rest of the east elevation. The height of the proposed balustrade is considered to be of a typical height expected to be installed around the perimeter of a raised terrace. In terms of the materials proposed it would not have an adverse impact on the character with the host building or be harmful to the character of the surrounding area.
- 50 The works to the listed building are minimal which include the formation of a new doorset within an existing window opening and fixings into the existing building for the planter, trellis and lighting. Existing fixings will be used where these exist, or mortar joints where possible to avoid drilling directly into the stone. This has been conditioned as part of the associated listed building



consent. The surrounding balustrade will fall short of the existing building to avoid additional wall fixings.

### **Noise and Residential Amenity**

- 51 The main concern with this proposal relates to potential impacts upon existing residential amenity. This was also the main basis of the 6 objections received. Policy EP8 of the LDP relates to noise. The planning system has an important role to play in preventing and limiting noise pollution. Although the planning system cannot tackle existing noise problems directly, it has the task of guiding development to the most suitable locations and regulating the layout and design of new development. The noise implications of development can be a material consideration in determining applications for planning permission.
- 52 Consultation has been undertaken with Environmental Health (EH) and they note that the nearest residential noise sensitive properties to the bar and proposed outdoor seating area are located directly above premises. Their response also specifies EH has received complaints from residential properties with regards to noise from amplified music from the existing premises. Residential amenity to existing properties could be adversely affected due to noise from patrons using the area and from amplified music breaking out from the premises every time the proposed new door is opened.
- 53 The proposed acoustic fence will not provide any noise attenuation for residential properties located above the premises, although it may serve some protection for patrons using the seated area from noise from the ventilation duct.
- 54 In light of the above, Environmental Health recommend that the hours of use for the outside seated roof terrace be restricted to 6pm in order to protect residential amenity (Condition 5) and that prior to the commencement of development, a noise management plan be submitted (Condition 4). Additionally, no music, amplified or otherwise, shall be permitted in the outdoor seating area at any time (Condition 3). With these Conditions applied, there is not a conflict with Policy EP8.
- 55 It should be noted that the agent was made aware of the restrictive condition in terms of hours of use and an additional supporting statement was subsequently received requesting that the hours of operation be limited to 9pm, 7 days a week. Environmental Health were further consulted and reiterated that the proposed hours of operation should be restricted to 10am to 6pm.
- 56 For the reasons above, the Agent confirmed written acceptance of the restricted hours of operation of the outdoor seating area.

### Loss of Privacy

- 57 Concerns have been raised insofar as the proposed terrace will allow the public to be able to look into upper floor windows. The distance between the proposed terrace and closest residential window is sufficient to prevent overlooking and the flats in question are elevated above the proposed terrace. As such the proposal will not result in a loss of privacy.

### Lighting

- 58 Policy EP5 of the LDP relates to light pollution and seeks to prevent statutory nuisance from lighting. Consultation has been undertaken with Environmental Health in respect of external lighting. The applicant proposes to install three 7W LED downlights on the south elevation of the building. In their response Environmental Health have advised that there is the potential for external lighting to adversely affect residential amenity. As a consequence they recommended a condition that will ensure adequate control over the proposed lighting so that it will not impact on neighbouring amenity (Condition 2). With this applied, there is not a conflict with Policy EP5.

### **Visual Amenity**

- 59 I note concerns have been raised in respect of the visual impact of the proposal, however, as a result of the scale of the development and the existing setting of the site adjacent to a car park, it is considered that the proposed development will result in little impact on the visual amenity of the area. To the contrary, the proposed planters will enhance the visual amenity of the site and compliment the host building.

### **Drainage and Flooding**

- 60 The proposal raises no issues in terms of drainage or flooding matters.

### **Waste Collection**

- 61 There is an existing bin storage area and the proposal to increase the number of covers does not require additional bin storage facilities. Consultation has taken place with the Council's Commercial Waste team who have confirmed no additional bin storage facility is necessary.

### **Conservation Considerations**

- 62 Policy HE2 and HE3a of the LDP required the impact of any development on character and setting of a listed building and Conservation Area to be assessed. As noted in the Historic Environment Scotland list description, the building is primarily listed for its group interest and contribution to the public square, which will remain unaffected by the proposals. The Square elevation is the east elevation and the current proposals relate the west elevation (rear). The works

proposed are not considered to have an adverse impact on the setting of the Conservation Area and listed buildings. As such I consider the proposal to be consistent with the requirements of Policies HE2 and HE3A of the LDP.

### **Developer Contributions**

- 63 No developer contributions are required in this instance.

### **Economic Impact**

- 64 The proposal will result in an increase in seating for the existing business and as such the overall economic impact will be positive. Such proposals are encouraged as they may add to the vitality and viability of the Town Centre.

### **LEGAL AGREEMENTS**

- 65 Not required

### **DIRECTION BY SCOTTISH MINISTERS**

- 66 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 67 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, I have taken account of the Local Development Plan and material considerations and in this case I am content that the development proposed does not conflict with the Development Plan.
- 68 Accordingly the proposal is recommended for approval subject to the following conditions

### **RECOMMENDATION**

**Approve the application.**

## **Conditions and Reasons for Recommendation**

- 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 approved drawings and documents.

- 2 All external lighting shall be sufficiently screened and aligned so as to ensure that there is no direct illumination of neighbouring land and that light spillage beyond the boundaries of the site is minimised to a degree that conforms to requirements to meet the Obtrusive Light Limitations for exterior Lighting Installation for Environmental Zone -E2 contained within Table 2 of the Institute of Light Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011.

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

- 3 No music amplified or otherwise, shall be permitted in the outdoor seating area at any time.

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

- 4 Prior to the commencement of development, a noise management plan shall be submitted for the written approval of the Council as Planning Authority. The aforementioned plan shall include details of how noise from the use of the outside seating area will be controlled and include a complaints procedure. The approved plan shall be fully implemented upon commencement of the development and shall remain in effect throughout the lifetime of the use of the outdoor seating area to the satisfaction of the Council as Planning Authority.

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

- 5 The hours of use for the outside seating area are 1000 to 1800 hours daily.

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

## **B JUSTIFICATION**

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

## **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.

Background Papers: 6 letters of representation  
Contact Officer: Gillian Peebles 01738 475330  
Date: 11 October 2018

### **ANNE CONDLIFFE INTERIM DEVELOPMENT QUALITY MANAGER**

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