

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 4 JANUARY 2018

**PLANNING APPEAL DECISION
PUBLIC CONVENIENCE OLD SHORE HEAD ARBROATH DD11 1BB**

REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

Abstract:

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine the appeal by Carswell Properties Limited against the decision by Angus Council to refuse the change of use from public convenience to hot food takeaway, crab and lobster shack, including alterations to the building and the formation of an outdoor seating area at Public Convenience Old Shore Head Arbroath DD11 1BB. The reporter allowed the appeal and granted planning permission subject to five conditions listed.

1. RECOMMENDATION

It is recommended that the Committee notes the outcome of the above appeal.

2. INTRODUCTION

- 2.1 At its meeting on 8 August 2017 the Development Standards Committee refused planning application 17/00372/FULL for the change of use from public convenience to hot food takeaway, crab and lobster shack, including alterations to the building and the formation of an outdoor seating area (Report [248/17](#) refers).
- 2.2 The applicant, Carswell Properties Limited appealed against the refusal and the Reporter's conclusions and decision are presented below.

3. REPORTER'S DECISION

Reasoning

- 3.1 I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Because the appeal site is located within a conservation area, I must also pay special regard to the preservation and enhancement of the conservation area.
- 3.2 Having regard to the provisions of the development plan the main issue in this appeal is the potential effect on the amenity of nearby residents.
- 3.3 The development plan covering the appeal site consists of the Tayplan Strategic Development Plan and the Angus Local Development Plan. I take the view that the proposal does not raise strategic issues and that the policies of significant relevance to the appeal are all contained in the local development plan.
- 3.4 In terms of the principle of the development, the plan identifies the appeal site as falling within the development boundary for Arbroath, where Policy DS1 offers general support for proposals of an appropriate scale and nature. In terms of the loss of the public convenience, Policy TC8 allows for the loss of existing public community facilities in circumstances including where the existing use is surplus to requirements or no longer viable, and no suitable alternative community uses can be found for the building. The council has confirmed that the building has been closed since February 2014, is surplus to requirements and that there are other toilet facilities in the wider area. I am not aware that any alternative community use has been proposed, and given the small size of the building, it does not appear well suited for other community uses. I am therefore satisfied that the proposal complies with Policy TC8.

- 3.5 Policy TC17 applies a 'town centre first' approach to retail development that would attract significant numbers of people. The appeal site is outwith the defined town centre, but could well be described as edge-of-centre. In any event, due to its small scale I do not consider the proposal could be said to be likely to attract significant numbers of people. For these reasons I do not believe there to be any great conflict with Policy TC17. Overall I consider that the principle of the development is in line with the provisions of the development plan.
- 3.6 In terms of more localised impacts, Policy DS4 resists development that would have an unacceptable adverse impact on the surrounding area or the amenity of the occupiers of nearby properties. Particular mention is made of noise (and the times when this is likely to occur), odour and fumes, provision for refuse collection/ storage, car parking and highway safety.
- 3.7 The appeal site is located in a mixed use area, characterised by residential property but also a level of commercial activity including a working boat yard, and a number of fish retailers and licensed premises. The site is also close to the town centre and to the operational harbour. I therefore consider that a level of activity is already characteristic of the area, and that the introduction of this modest additional business would be unlikely to significantly increase activity levels in the locality.
- 3.8 A number of residential properties exist close to the appeal site to the west and north. Closest of all, and therefore in my view most likely to suffer any adverse impact, are 23 and 23a Old Shore Head, whose front elevations face the proposed takeaway across the Old Shore Head road at a distance of around 14 metres. In interpreting Policy DS4's provisions relating to amenity and the proximity of residential properties to takeaways, I have found it useful to consult the council's advice note on hot food takeaways, which appears to be a soundly based document. This states that hot food takeaways should not normally be permitted in predominantly residential areas unless in a freestanding location that will not unduly detract from residential amenity. The preferred location for hot food takeaways is stated to be within the periphery of town centres or in mixed use areas where other criteria can be met and there are already a significant number of properties in non-residential use. Hot food takeaways are generally not supported directly abutting residential property.
- 3.9 While the northern side of Old Shore Head could be described as 'predominantly residential', I consider 'mixed use' would be a better description of the wider environs of the appeal site. In any event, the proposed takeaway would occupy a stand-alone building. It is located in the periphery of the town centre where there are a significant number of nonresidential properties and does not directly abut a residential property. I therefore find that the proposal complies with the locational policies of the council, and this indicates to me that its location is likely to be broadly acceptable in amenity terms.
- 3.10. The guidance goes on to note that it would be unreasonable to oppose a takeaway that met the locational guidance on the grounds of noise, and I agree that, subject to suitable conditions, the level of noise likely to be generated should not exceed what can reasonably be expected in this mixed use area on the periphery of the town centre.
- 3.11 Regarding odour and fumes, I note that the only expert evidence I have, from the council's senior environmental health officer, is that, subject to suitable conditions, there will not be a significant impact on the amenity of the area. Regarding parking, I do not consider it would be reasonable to require dedicated parking provision for a takeaway of this scale, and that on-street parking is available on both sides of Old Shore Head. Regarding the congregation of people around the proposed takeaway, I note the footway to the north and west of the building is significantly extended, well beyond the minimum 1.5 metre width given in the council's advice note as necessary to prevent a road safety hazard.
- 3.12 The council has raised particular concerns regarding the proposed outdoor seating. I consider that the presence of tables and seating is likely to mean customers linger in the vicinity of the proposed takeaway for longer, increasing the levels of activity associated with the use somewhat. However, given that the seating area would be separated from the public fronts of residential property by a public road, and the mixed use, edge-of-centre character of the area discussed above, I consider that levels of activity are likely to remain within acceptable limits.
- 3.13 For the reasons set out above I conclude that overall the proposal has an acceptable impact on the surrounding area and on the amenity of nearby residents, and is therefore compliant with Policy DS4.

- 3.14 Policy PV18 requires proposals that are likely to generate waste to include appropriate facilities for the segregation, storage and collection of waste. I note that a bin is already present on the site, and that the appellant is willing to accept a condition regarding a waste management scheme. On this basis I conclude that there is no conflict with Policy PV18.
- 3.15 Policy PV8 requires proposals affecting conservation areas to demonstrate that the integrity of the historic environment value of the site will not be compromised, or there are economic and social benefits that significantly outweigh the historic environment value of the site. The existing disused toilet block is of no great antiquity, and some lack of routine maintenance has given it currently a somewhat run-down appearance. However the building itself has some architectural quality beyond the merely utilitarian, with an asymmetric roof design being particularly striking. I consider the building to be a good example of its type that contributes positively to the visitor- and harbour-related character of this part of the conservation area. It is important that new uses are found for such buildings if they become vacant, and on this basis I conclude that the proposal complies with Policy PV8.
- 3.16 Because of its compliance with the policies discussed above, I conclude that overall the proposal complies with the development plan.
- 3.17 Turning to other material considerations, I note the comments of the council's economic development service manager that stress the importance of seafood to the economy and marketing of Angus and Arbroath, and the connection between the proposed use and the adjacent working harbour. I consider these points to have validity and to add to the case for allowing this appeal.
- 3.18 Regarding conditions, I am satisfied that those set out in the planning authority's committee report are suitable. For the reasons set out at paragraph 12 above, I do not find that an additional condition restricting the use of outdoor seating is necessary.
- 3.19 I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Conditions

1. That noise from fixed equipment associated with the hot food takeaway shall not give rise to a noise level assessed with windows open within any dwelling or noise sensitive building, in excess of that equivalent to Noise Rating Curve 35 between 0700 and 2200 and Noise Rating Curve 25 at all other times.
Reason: In order to safeguard the amenity of occupants of neighbouring noise sensitive property.
2. For the avoidance of doubt the system for the extraction of cooking odours from within the hot food takeaway is not approved. The hot food takeaway shall not be brought into use until a system for the extraction of cooking odours has been installed in accordance with a scheme that has been approved in writing by the planning authority. The scheme for the extraction of cooking odours shall include:
 - Full details of the proposed odour abatement system including grease filters, pre-filters and carbon filters or any other odour abatement method as considered necessary;
 - Detailed drawings showing all ductwork and the final discharge position with no restrictions i.e. caps or cowls; and
 - A detailed maintenance and cleaning schedule for the kitchen extraction equipment.
 - Thereafter the approved odour extraction system shall be maintained and operated in accordance with the approved scheme and shall be fully operational at all times when the hot food takeaway is in use.*Reason: In order to ensure the provision and maintenance of a satisfactory cooking odour extraction system in the interests of safeguarding the amenity of occupants of neighbouring property.*
3. That prior to the opening of the hot food takeaway a scheme for the management of food waste shall be submitted to and approved in writing by the planning authority. The approved scheme shall be fully implemented on the date of commencement of the use and shall be maintained and operated whilst the hot food takeaway operates from the site.

Reason: In order to ensure the provision of a scheme for the appropriate management of food waste arising from the proposed use in the interests of the amenity of the area.

4. That any amplified music from the hot food takeaway shall be controlled so as to be inaudible within any dwelling or noise sensitive building.

Reason: In order to safeguard the amenity of occupants of neighbouring noise sensitive property.

5. That prior to the commencement of development details of a scheme to mitigate the impact of flooding on the building through the use of flood resilient materials and construction techniques shall be submitted to and approved in writing by the planning authority. Thereafter the development shall be undertaken in accordance with the approved details.

Reason: In order to mitigate the impact of a flood event on the building and in accordance with Policy PV13 of the Angus Local Development Plan.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of 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. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

4. FINANCIAL IMPLICATIONS

There are no financial implications.

5. OTHER IMPLICATIONS

Risk

There are no risks associated with the recommendations contained in this report.

Human Rights Implications

There are no Human Rights implications.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

**STEWART BALL
HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES**

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

REPORT AUTHOR: STEWART BALL
EMAIL DETAILS: PLANNING@angus.gov.uk

DATE: 18 DECEMBER 2017