

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 06 MARCH 2018

PLANNING APPLICATION – 2A ST MALCOLM'S WYND, KIRRIEMUIR, DD8 4HB

GRID REF: 338508: 754002

REPORT BY HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

Abstract:

This report deals with planning application No 17/00913/FULL for the proposed change of use from a nightclub to a public bar at 2A St Malcolm's Wynd, Kirriemuir, DD8 4HB. This application is recommended for conditional approval.

1. RECOMMENDATION

It is recommended that the application be approved for the reasons and subject to the condition given in Section 10 of this report.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 The applicant seeks full planning permission for the change of use from a nightclub to a public bar.

3.2 The application site relates to the first floor of a 2 storey building that adjoins the Category B listed Airlie Arms Hotel, Kirriemuir. The building, which is also listed under the Airlie Arms Hotel listing, dates from around the late 18th and early 19th century and is of a timber and slate construction. The building, which contains an Indian restaurant on the ground floor, is located within the town centre and conservation area of Kirriemuir and sits back from St Malcolm's Wynd. The building was most recently used as a nightclub and is situated in a mixed use area where other licensed premises are located including the Airlie Arms Hotel, The Roods Bar and Amigos Bar. The closest residential properties are located above commercial property on The Roods. There is a small informal parking area to the north.

3.3 The application seeks planning permission for a change of use of the premises from a nightclub (Class 11 use) to a public bar (Sui Generis or unclassified use). The applicant has indicated that the pub would be open Monday to Thursday 11am-12am, Friday & Saturday 11am-1am and Sunday 12pm-12am. No external alterations are proposed to the building as part of this application.

3.4 The application has not been subject of variation.

3.5 The application has been subject of statutory publicity and consultation and was advertised in the local press as required by legislation.

4. RELEVANT PLANNING HISTORY

Listed Building Consent (17/00936/LBC) for internal alterations was approved on 21 February 2018.

5. APPLICANT'S CASE

- 5.1 The applicant has indicated that there would be no external alteration to the appearance of the building other than a 'good clean and possible touch up of paint and making good any defects'; there would be no alterations to the outside or in the roof space; providing details of waste storage arrangements; opening hours and the potential for a future smoking shelter.
- 5.2 The applicant has indicated that the only hot food prepared on the premises would be toasted sandwiches and the reheating of pies.
- 5.3 The supporting information is available to view on the Council's [Public Access](#) website.

6. CONSULTATIONS

- 6.1 **Angus Council Roads** – offers no objection to the proposal.
- 6.2 **Scottish Water** – there was no response from this consultee at the time of report preparation.
- 6.3 **Community Council** – there was no response from this consultee at the time of report preparation.
- 6.4 **Angus Council Environmental Health Service** - offers no objection to the proposal on amenity grounds noting that the existing use of the building is a nightclub with potentially later opening hours. Environmental Health suggests a condition be attached to any permission which restricts the type of food and the range of cooking equipment which can be used on the premises.

7. REPRESENTATIONS

- 7.1 Five letters of representation have been received all in objection to the proposal. The letters of representation will be circulated to Members of the Development Standards Committee and a copy is available to view on the council's [Public Access](#) website.
- 7.2 The main points of objection are as follows:-
- **Unacceptable amenity impacts by way of noise, overlooking and loss of privacy, outlook, sunlight daylight and overshadowing**
 - **Failure to comply with Policy DS4**
 - **Increased opening hours**
 - **Lack of refuse collection/storage details**
 - **Traffic congestion and lack of parking and delivery space**
 - **Poor accessibility to the building**

These matters will be addressed under Planning Considerations below.

- 7.3 Other matters have been raised and are addressed at this stage: -
- **Lack of provision for a smoking area** – the applicant has not proposed an external smoking area as part of this application and there is no requirement under the relevant local plan policies to do so. There is also no requirement for a smoking area as part of obtaining a liquor licence. Should the applicant wish to erect a smoking shelter at a later date this may require a further permission and/or consent.
 - **Overprovision of public bars within the town centre and impact upon existing businesses** - It is not the purpose of the planning system to restrict commercial competition. The Council's planning policies generally seek to direct new commercial leisure businesses to town centre locations in order to protect their vitality, viability and vibrancy. The existing use of premises is a nightclub which could have operated during similar hours to the pub resulting in very similar impacts on existing business within the town.
 - **Resultant anti-social behaviour and littering** - it is not the purpose of the planning system to regulate anti-social behaviour and I do not consider that the provision of a public house of this scale in a building last used as a nightclub would in itself exacerbate any existing anti-social behaviour to a level that would justify refusal of this application. There are public bins in close proximity to the site.

8. PLANNING CONSIDERATIONS

- 8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the planning authority, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 8.3 Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the planning authority in considering whether to grant planning permission for development which affects a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
- 8.4 In this case the development plan comprises:-
- TAYplan (Approved 2017)
 - Angus Local Development Plan (ALDP) (Adopted 2016)
- 8.5 The proposal is not of strategic significance and the policies of TAYplan are not referred to in this report. The local development plan policies relevant to consideration of this application are provided in Appendix 2.
- 8.6 Policy DS1 in the Angus Local Development Plan (ALDP) states that within development boundaries, proposals will be supported where they are of a scale and nature appropriate to the location and where they accord with other relevant policies in the ALDP. The application site is not allocated or safeguarded for any particular use in the Angus Local Development Plan ALDP.
- 8.7 The site is located within Kirriemuir town centre. The local development plan indicates that Angus Council will apply a town centre first policy to support the primacy of the town centre as the most appropriate location for a mix of uses including retail, leisure, offices, community and cultural facilities. It indicates that directing such a mix of uses to sites situated within town centres will support the vibrancy, vitality and viability of the town centres throughout the day and into the evening. Policy TC17 states that the town centres are the most appropriate locations for uses which attract significant numbers of people including Class 11 (nightclub) uses. Policy TC17 offers support for proposals in town centres which are in keeping with the townscape and pattern of development and which conform to the character, scale and function of the town centres.
- 8.8 The application seeks planning permission to change the use of a nightclub (Class 11) to a public house (Sui Generis) in the Kirriemuir town centre. The proposed public house use shares very similar characteristics to a nightclub in that it involves the sale of alcohol on the premises into the evening. The site is located in a mixed use area which currently contains three licensed premises (Roods Bar, Amigos Bar, Airlie Arms) and the use proposed is consistent with the pattern of development in the area as it relates to the reuse of an existing licenced premises.
- 8.9 It is noted that the objections raise issues relating to overprovision of licenced premises in the town. It is not the purpose of the planning system to regulate commercial competition and the focus of the plan is to direct this type of use to locations within town centres to protect the vibrancy, vitality and viability of the centre. It is noted that the Operating Plan associated with the nightclub licence indicated that it could open between lunchtime and until 0100 or 0200 in the morning and as such the impact of the proposed public house would be similar to how the existing use of the premises could operate. The proposal would not involve any physical alterations to the exterior of the premises and the proposed use is similar to that which could currently occupy the building. On that basis I do not consider the proposed use would detract from the character, scale or function of the town centre. Policy TC19 does not apply to the proposal because the site is located within the defined town centre.
- 8.10 Policy DS4 deals with amenity and indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby property. Policy DS4 refers to impacts including overlooking and loss of privacy, outlook, sunlight, daylight and

overshadowing; noise disturbance; provision for refuse collection/storage; the effect and timing of traffic movement to, from and within the site and car parking and impacts on highway safety. The objections make reference to these impacts and suggest that the proposal is contrary to this policy.

- 8.11 The proposal would utilise an existing building which was most recently used as a nightclub. The hours of operation associated with the existing use could result in greater amenity impacts than the proposed public house use. The application does not propose an increase to the footprint or provide for the installation of any new windows and the proposal would not increase overlooking or overshadowing from the building, or result in an increased loss of privacy, outlook, sunlight, daylight.
- 8.12 In considering noise disturbance, third party concerns have also been raised with regards to increased opening hours commenting that the nightclub only opened on one day per week. The Operating Plan associated with the license for the nightclub allowed for opening hours of Monday to Thursday 11am-1am, Friday and Saturday 11am-2am and Sunday 12.30pm-2am with seasonal variations at Christmas and New Year. Whilst they are a matter more appropriately controlled through the licencing regime, the opening hours proposed for the public house include Monday to Thursday 11am-12am, Friday & Saturday 11am-1am and Sunday 12pm-12am which (if approved) would result in earlier closing than what was permissible for the nightclub. Accordingly the proposed public house use could be seen as an amenity improvement from the nightclub use. The Environmental Health Service has reviewed the proposal and has offered no objection commenting that noise from a night club could potentially be greater than a public house use.
- 8.13 The proposal has the potential to impact on neighbouring property through odour impact. Information submitted with the application suggests that the public house would be used for preparation of toasted sandwiches and the reheating of pies. A planning condition is proposed which would restrict the type of food that could be sold and equipment which could be used to prepare food on the premises. This is necessary to protect amenity from odour impacts. Subject to the imposition of this condition, I am satisfied that the proposal should not result in unacceptable odour impacts.
- 8.14 The applicant has advised an area will be designated for bin and recycling storage, adjacent to the east elevation of the building behind the staircase where existing waste bins are located. With regards to concerns over traffic congestion and lack of parking and delivery space; there is limited parking within the immediate area but there is a small informal parking area to the north of the building and a large public car park in close proximity to the site, off Reform Street, which could serve the proposal. The existing nightclub use does not benefit from car parking and given that the site is located within the town centre I do not consider the absence of dedicated car parking to be a significant issue. The site is well located in respect of existing public transport facilities and is accessible on foot from much of Kirriemuir. The Roads Service has considered the proposal in terms of traffic, road safety and parking issues and offers no objection to the development. Returning to Policy DS4, I note that this is a mixed use area which contains a number of licenced premises and I do not consider that the proposal would result in amenity impacts which are greater than those which could be experienced were the nightclub to reopen.
- 8.15 Policy PV8 refers to development affecting listed buildings and conservation areas and states that development proposals will only be supported where they would not adversely affect the integrity of the site or the reasons for which it was designated; or any significant adverse effects on the site or its setting are significantly outweighed by social, environmental and/or economic benefits; and appropriate measures are provided to mitigate any identified adverse impacts. No external alterations are proposed to the building other than façade cleaning, paintwork maintenance and repair of any defects. It would be beneficial to bring an empty listed building back into a purposeful use. The use of the premises as a public house rather than a nightclub would not materially impact on the character of the wider conservation area.
- 8.16 Policy DS2 relates to accessible development. Third party objections have been received which raise concerns with regards to poor accessibility to the building. The application relates to a town centre building in close proximity to existing public transport links and there is considered to be adequate capacity in the local road network to accommodate the development. With regards to easy access for people with restricted mobility, the application relates to a first floor premises accessed by an external staircase. However the proposal relates to an existing building which has a lawful use as a nightclub. The development would not be of a scale that requires the submission of a travel plan or the provision of walking, cycling or new public transport infrastructure in kind or by way of a developer contribution.

- 8.17 The letters submitted in objection to the proposal by third parties are noted and discussed above and the material planning issues raised have been taken into account in preparation of this report. It is not the role of the planning system to restrict commercial competition and policies of the development plan are intended to focus development which attracts significant numbers of people into the town centres in order to protect their vibrancy, vitality and viability. The proposal is considered to comply with the relevant policies of the development plan, subject to stated conditions, and there are no material considerations that would justify refusal of planning permission.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

EQUALITIES IMPLICATIONS

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

10. CONCLUSION

It is recommended that the application be approved for the following reason and subject to the following conditions:

Reason(s) for Approval:

The proposal complies with the relevant provisions of the development plan. There are no material considerations that justify refusal of the application.

Conditions:-

1. No hot food shall be cooked or prepared on the premises other than the toasting of sandwiches or the reheating of food in a microwave/microwave oven. There shall be no frying of food on the premises.
Reason: In order to ensure the proposed use does not give rise to unacceptable odour impacts on adjacent residential occupiers.

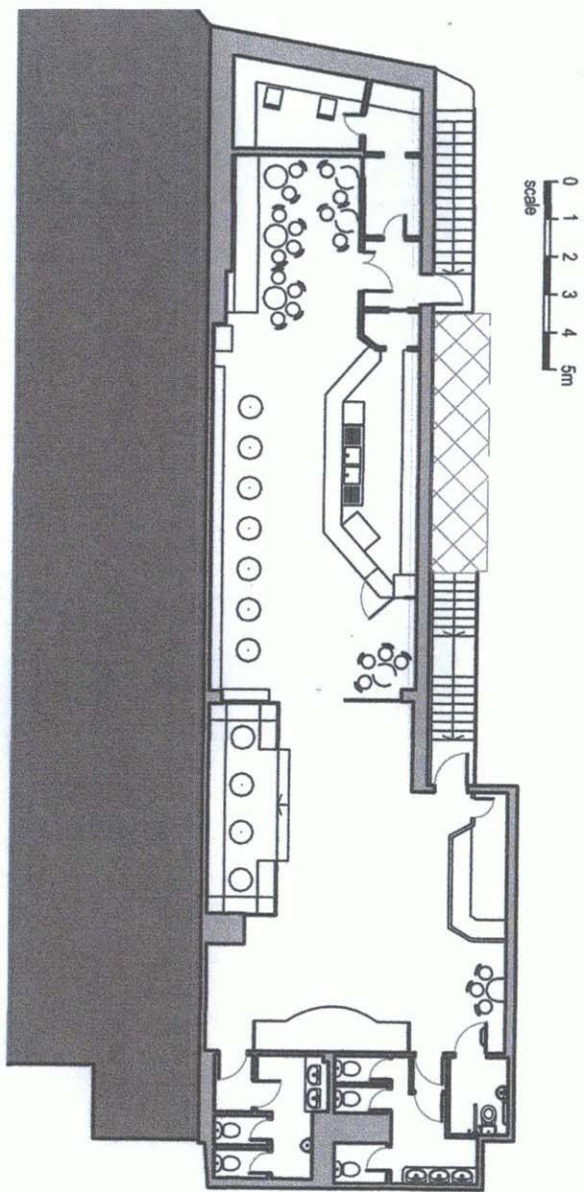
STEWART BALL
HEAD OF HOUSING, REGULATORY AND PROTECTIVE SERVICES

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.

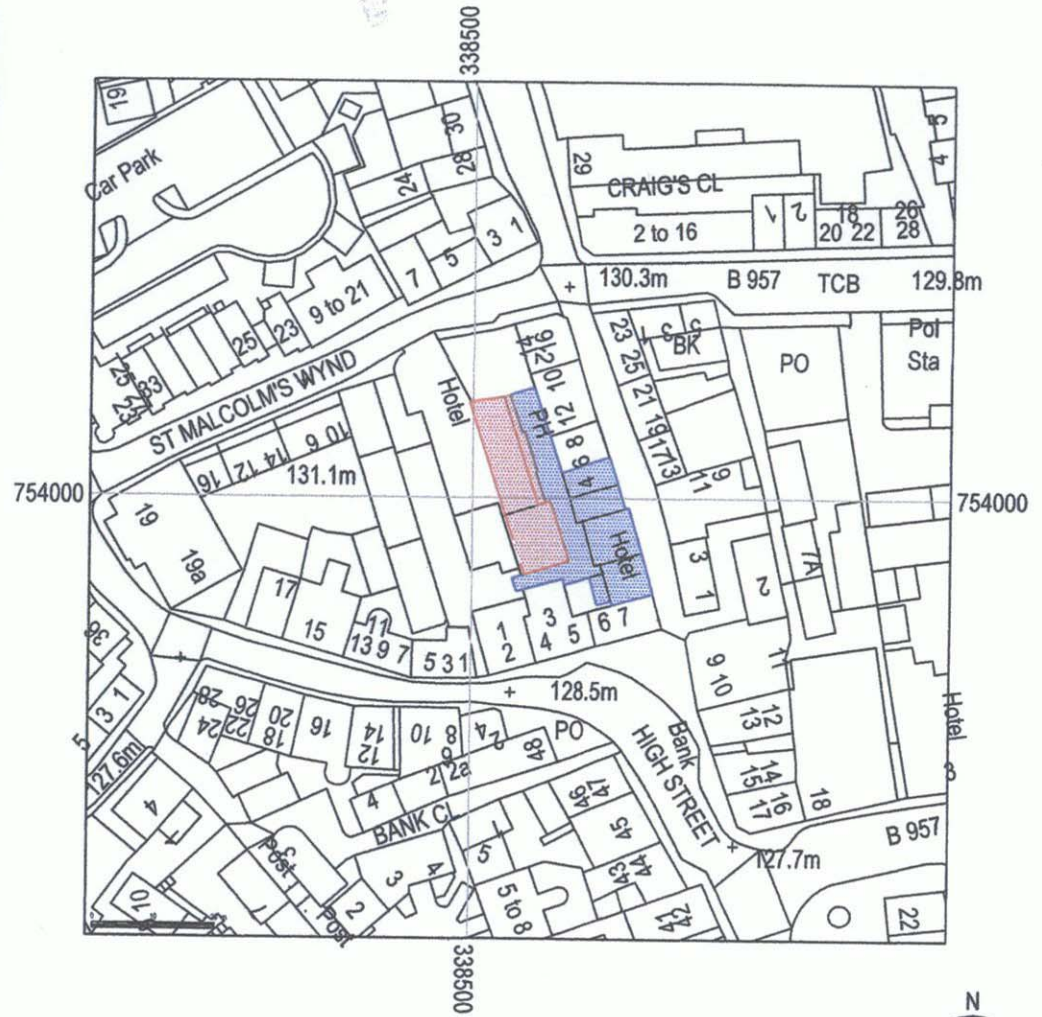
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DATE: 26 FEBRUARY 2017

Appendix 1 : Location Plan



Existing Floor Plan
scale 1:200



Site Location Plan
scale 1:1250



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THE ATTIC CLUB

CRAIG MILNE

Drawing Title
Site Location and Existing Floor Plan

CAD File
328-PL-LODGE.dwg

Drawing Number
328-100

Scale
1:1250 / 200

Date
June 2016

Revision
-

Checked

Appendix 2 : Relevant Development Plan Policies

Angus Local Development Plan

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS2 : Accessible Development

Development proposals will require to demonstrate, according to scale, type and location, that they:

- are or can be made accessible to existing or proposed public transport networks;
- make provision for suitably located public transport infrastructure such as bus stops, shelters, lay-bys, turning areas which minimise walking distances;
- allow easy access for people with restricted mobility;
- provide and/or enhance safe and pleasant paths for walking and cycling which are suitable for use by all, and link existing and proposed path networks; and
- are located where there is adequate local road network capacity or where capacity can be made available.

Where proposals involve significant travel generation by road, rail, bus, foot and/or cycle, Angus Council will require:

- the submission of a Travel Plan and/or a Transport Assessment.
- appropriate planning obligations in line with Policy DS5 Developer Contributions.

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.

- **Safe and Pleasant:** Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of landscaping and open space are incorporated and linked to existing green space wherever possible.
- **Well Connected:** Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- **Adaptable:** Where development is designed to support a mix of compatible uses and accommodate changing needs.
- **Resource Efficient:** Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC17 : Network of Centres

Angus Council will seek to protect and enhance the scale and function of the centres as set out in Table 2 below.

A town centre first policy is applied to uses including retail, commercial leisure, offices, community and cultural facilities that attract significant numbers of people. Support will be given to development proposals in town centres which are in keeping with the townscape and pattern of development and which conform with the character, scale and function of the town centres.

All development proposals within a Commercial Centre will have to satisfy criteria within Policy TC19 Retail and Town Centre Uses.

Policy TC19 : Retail and Town Centre Uses

Proposals for retail and other town centre uses* over 1000 m2 gross floorspace (including extensions) on the edge of or outside of defined town centres (including in out of town locations) will be required to submit relevant assessments (including retail/town centre impact and transport assessments) and demonstrate that the proposal:

- has followed a sequential approach to site selection, giving priority to sites within the defined town centre before edge of centre, commercial centre or out of centre sites which are, or can be made accessible;
- does not individually or cumulatively undermine the vibrancy, vitality and viability of any of the town centres identified in Table 2 in Angus;
- tackles deficiencies in existing provision, in qualitative or quantitative terms; and
- is compatible with surrounding land uses and there is no unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure.

Proposals for retail and other town centre uses⁸ under 1000 m2 gross floorspace (including extensions) on the edge of or outside of defined town centres may be required to submit relevant assessments (including retail / town centre impact, transport and sequential assessments) where it is considered that the proposal may have a significant impact on the vibrancy, vitality and viability of any of the town centres in Angus.

**Town centre uses include commercial leisure, offices, community and cultural facilities.*

Policy PV8 : Built and Cultural Heritage

Angus Council will work with partner agencies and developers to protect and enhance areas designated for their built and cultural heritage value. Development proposals which are likely to affect protected sites, their setting or the integrity of their designation will be assessed within the context of the appropriate regulatory regime.

National Sites

Development proposals which affect Scheduled Monuments, Listed Buildings and Inventory Gardens and Designed Landscapes will only be supported where:

- the proposed development will not adversely affect the integrity of the site or the reasons for which it was designated;
- any significant adverse effects on the site or its setting are significantly outweighed by social, environmental and/or economic benefits; and
- appropriate measures are provided to mitigate any identified adverse impacts.

Proposals for enabling development which is necessary to secure the preservation of a listed building may be acceptable where it can be clearly shown to be the only means of preventing its loss and securing its long term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully in order to preserve or enhance the character and setting of the listed building.

Regional and Local Sites

Development proposals which affect local historic environment sites as identified by Angus Council (such as Conservation Areas, sites of archaeological interest) will only be permitted where:

- supporting information commensurate with the site's status demonstrates that the integrity of the historic environment value of the site will not be compromised; or
- the economic and social benefits significantly outweigh the historic environment value of the site.

Angus Council will continue to review Conservation Area boundaries and will include Conservation Area Appraisals and further information on planning and the built and cultural heritage in a Planning Advice Note.