

AGENDA ITEM NO 6

REPORT NO 39/19

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 5 FEBRUARY 2019

PLANNING APPLICATION - CORN EXCHANGE MARKET PLACE ARBROATH DD11 1HR

GRID REF: 364294 : 740889

SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report deals with planning application no. 18/00489/FULL for a change of use from public footway to an outdoor seating area associated with a public house at Corn Exchange, Market Place, Arbroath, DD11 1HR by J D Wetherspoon PLC. This application is recommended for conditional approval.

1. RECOMMENDATION

It is recommended that the application be approved for the reason and subject to the conditions 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;
- An enhanced, protected and enjoyed natural and built environment.

3. INTRODUCTION

- 3.1 Planning permission is sought to use part of the public footway adjacent to The Corn Exchange Public House, Market Place, Arbroath as an external seating area for customers. This would be an eastward extension to the existing outdoor seating area approved previously by the Development Standards Committee under planning permission 14/00332/FULL.
- 3.2 The proposed seating area extension would measure around 10.4sqm and lies to the north east of The Corn Exchange at the foot of the steps leading to the main entrance of the public house. The combined footprint of the existing outdoor seating area and proposed extension would be around 29.2sqm and would project 3.1m from the base of the building steps and extend 9.4m across the building frontage.
- 3.3 The surrounding area is a mix of commercial and residential uses, with predominantly shops, cafes and offices on the ground floor and residential uses on the upper floors. There is residential accommodation on the two storeys above the café that is located directly opposite the proposed seating area extension. The site lies within the Arbroath Abbey to Harbour Conservation Area.
- 3.4 The proposed seating area extension would consist of four tables each with two chairs. The resultant enlarged seating area would accommodate a total of eight tables and 24 chairs contained

by moveable metal post and vinyl panel barriers.

- 3.5 The application was amended in that the application site is a smaller area and relocated to the north east corner of the building, adjacent to the existing approved pavement café area.
- 3.6 The application was advertised in the Dundee Courier.
- 3.7 This application requires to be determined by the Development Standards Committee due to the recommendation of approval where Angus Council has a financial interest in the development as land owner and where the application has attracted letters of objection.

4. RELEVANT PLANNING HISTORY

Planning application reference 14/00332/FULL for the formation of an external drinking area with portable banner barriers and loose furniture was approved by the Development Standards Committee at its meeting on 5 August 2014 ([Report 312/14](#)).

5. APPLICANT'S CASE

The applicant has provided a statement regarding hours of operation and emergency vehicle and service vehicle access. This indicates the operating hours would remain 8am to 8pm Monday to Saturday and 9am to 8pm on a Sunday. With regards removal for emergency/service vehicles, all the furniture is temporary in nature and would be easily moved. There is always a member of front of house staff allocated to supervise the area and they would stack and move the furniture out of the way if required.

6. CONSULTATIONS

Angus Council Environmental Health - This Service offered no objection to the proposal, subject to the attachment of conditions regulating amplified music and hours of use.

Community Council - There was no response from this consultee at the time of report preparation.

Angus Council Roads - This Service offered no objection to the proposal.

Scottish Water - There was no response from this consultee at the time of report preparation.

7. REPRESENTATIONS

- 7.1 Two letters of objection have been received in relation to the proposal. The letters of representation will be circulated to Members of the Development Standards Committee and a copy will be available to view in the local library or on the council's [Public Access](#) website.

- 7.2 The main points of concern are as follows:

- Noise and disturbance from patrons;
- Anti-social behaviour;
- Adverse impact on the conservation area;
- Attracting seagulls to the area;
- Obstruction of access to neighbouring shops;
- Creation of a "bottle neck" in the pedestrian precinct;
- Obstructing access for emergency vehicles.

These matters are addressed in the Planning Considerations Section below.

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 The application site is located in the Conservation Area and Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the council to pay special attention to the desirability of preserving or enhancing the character or appearance of that area in determining this application.
- 8.3 In this case the development plan comprises:-
- TAYplan (Approved 2017)
 - Angus Local Development Plan (ALDP) (Adopted 2016)
- 8.4 The application is not of strategic significance and the policies of TAYplan are not referenced in this report. The relevant policies of the ALDP are provided in Appendix 2 and have been taken into account in the preparation of this report.
- 8.5 The application relates to a proposal to use part of the public footway in the Market Place pedestrianised area as an outside seating area associated with the existing Corn Exchange Public House. This would be an eastward extension to the existing outdoor seating area approved previously by the Development Standards Committee under planning permission 14/00332/FULL.
- 8.6 Policy DS1 of the ALDP identifies development boundaries for towns and, among other things, states that proposals for 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. The application site lies within the development boundary of Arbroath and is not allocated or otherwise identified for development.
- 8.7 Policy DS4 indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the amenity or environment of existing or future occupiers of adjoining or nearby property. The Council's Planning Advice Note: 2/2018 also provides guidance in relation to restaurants and cafes. The public house and restaurant associated with the proposal is well established and the guidance contained in Advice Note 2/2018 is therefore not particularly applicable on that basis. The Advice Note does state, however, that premises offering sit down eating facilities are complimentary to the shopping experience. The general location is compatible with the Advice Note guidance.
- 8.8 The proposal is for an extension to the existing outdoor seating area which has been in situ for a number of years. There is no evidence of substantiated complaints associated with amenity impacts arising from the use of that existing area. Angus Council's Environmental Health Service has not objected to the proposal but has recommended that conditions are attached restricting the hours of use of the area and preventing the use of amplified sound. The proposed conditions would be consistent with those previously imposed by committee in relation to the operation of the existing outdoor seating area.
- 8.9 This is a town centre location where some congregation and activity can reasonably be expected to occur. The application site is open to surveillance from surrounding footways and property, and there is a CCTV camera located on a building to the north. There is street furniture within the space that is designed to be used as seating and the steps of the public house also provide outside seating opportunities within the space. This is a relatively modest extension to the existing outdoor seating area and there is no evidence to suggest that the existing seating area has given rise to

unacceptable amenity impacts. It is considered that restricting the hours of use of the seating area and use of amplified sound in line with Environmental Health Service recommendations, should prevent significant or unacceptable amenity impacts. The licencing regime carries provision to vary the licence should the seating area be operated in an unsatisfactory manner and Police Scotland has powers to deal with unlawful behaviour. The consumption of food outdoors has the potential to attract pests and vermin such as the seagulls but it is not anticipated the scale and nature of this modest extension would significantly increase the levels of attraction currently experienced or, similarly, those that could reasonably be expected from food being consumed and disposed by persons using street furniture, steps and bins in the surrounding area.

- 8.10 The application site consists of a 1.1m wide by 9.4m length strip equating to roughly 10.4sqm. This would expand the existing area of customer seating to around 29.2sqm area and extend around 1.1m to the east at a point where the public footway is around 10.5m wide. Taking account of the existing approved area of customer seating, when in use this proposal would reduce the width of the public footway to 7m at the narrowest separation distance with the rear elevation of the former Court House and leave around 2.6m clearance between the proposed seating area and an intervening low height wall and tree planter in the public realm. The Roads Service has confirmed that the proposal would allow sufficient space for pedestrian movement. The Roads Service has also confirmed that existing traffic orders generally prevent vehicular access and movement within Market Place and that the measures proposed by the applicant to ensure authorised vehicular access are appropriate. Copies of the relevant traffic orders are available to view on the council's [Public Access](#) website.
- 8.11 The site is adjacent to several listed buildings and is located within a conservation area. The existing outdoor seating area is now an established part of the townscape. The tables, chairs and post and vinyl barriers are easily removable and do not adversely affect the setting of the listed buildings or the appearance of the conservation area. The area has historical associations as a market place is within the commercial core of the town. The proposed extension to the existing outdoor seating area would not adversely affect the character of the conservation area and may help sustain the vitality of the town centre area.
- 8.12 The proposal does not give rise to any significant issues in terms of other relevant development plan policy and the application is compatible with the development plan.
- 8.13 In terms of material considerations account must be taken of the relevant planning matters raised in the letters of representation. Issues regarding amenity and public order/anti-social behaviour have been discussed above. As indicated, the existing outdoor seating area appears to have operated successfully for a number of years without evidence of significant adverse impact. Licensing and law enforcement authorities have powers to address any issues in relation to public order.
- 8.14 The Roads Service is satisfied that the proposal makes adequate provision for pedestrian passage within the area. Market Place is a pedestrianised thoroughfare within which vehicular access is prohibited by two traffic orders. The first order was made by Angus District Council in 1985, under Section 201 of the Town and Country Planning (Scotland) Act 1972. This Order converted the road at Market Place to footpath and contained certain exemptions, as explained below. The second Order is a Traffic Management Order made by Angus Council in 2004, under various Sections of the Road Traffic Regulation Act 1984. This order covers the whole of Arbroath but in terms of Market Place it replicates the restrictions provided for under the original conversion order, to the extent that:
- (i) The driving of motor vehicles in Market Place is prohibited over its entire length;
 - (ii) The terms of the prohibition splits the road into two sections:
 - (a) Section 1 extends from its junction with Gravesend for a distance of 35 metres or

thereby eastwards and allows exemptions for amongst other things, loading.

(b) Section 2 continues on from the end of (a) above and allows exemptions for vehicles in connection with road, public utility or buildings works and for vehicles used by the emergency services or the local authority only.

- 8.15 The driving of motor vehicles for the delivery or collection of goods from premises located adjacent to that part of the road in relation to the application is prohibited and anyone doing so commits an offence. Whilst a delivery vehicle could theoretically enter the area adjacent to the site, the driver of any vehicle so doing would be committing an offence as there are Orders in place that specifically prohibit such access. The issue of restricted access for vehicles servicing properties in that area should not be taken into account in determining this planning application as no right of vehicular access currently exists in this area. The presence of the portable structures is not considered to give rise to any significant issues in terms of pedestrian or authorised vehicular access and safety.
- 8.16 The proposal is for a small extension to an existing outdoor seating area associated with a public house. Available information indicates that the existing area has operated for a number of years without significant impact on amenity. The proposed extension would be subject to the same planning controls as the existing outdoor seating area and subject to those controls there is no reasonable basis to consider that any impacts associated with the enlarged area would be unacceptable. The Roads Service is satisfied that adequate space remains for pedestrian movement and the presence of the portable structures is not considered to give rise to any significant issues in terms of pedestrian or authorised vehicular access and safety. The issue of restricted access for vehicles servicing properties in that area should not be taken into account in determining this planning application as no right of vehicular access currently exists in this area. The representations submitted by interested parties have been taken into account in preparation of this report. Where appropriate conditions are proposed to deal with potential amenity impacts but there are no matters raised that justify refusal of the application contrary to the provisions of the development plan. The proposal complies with the relevant development plan policy and there are no material considerations that justify refusal.

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 subject to conditions for the following reasons, and subject to the following condition(s):

Reason(s) for Approval:

1. The proposal complies with relevant policies of the development plan subject to the stated conditions and would not adversely affect the setting of listed buildings or the character and appearance of the conservation area. There are no material considerations that justify refusal of planning permission.

Conditions:

1. The external seating area hereby approved shall not be used by any person/s after 20:00hours (8:00 pm) on any day.

Reason: In the interests of protecting the amenity of nearby residential property.

2. No music or amplified sound shall be provided anywhere within the external seating area hereby approved.

Reason: In the interests of protecting the amenity of nearby residential property.

**KATE COWEY
SERVICE LEADER - PLANNING & COMMUNITIES**

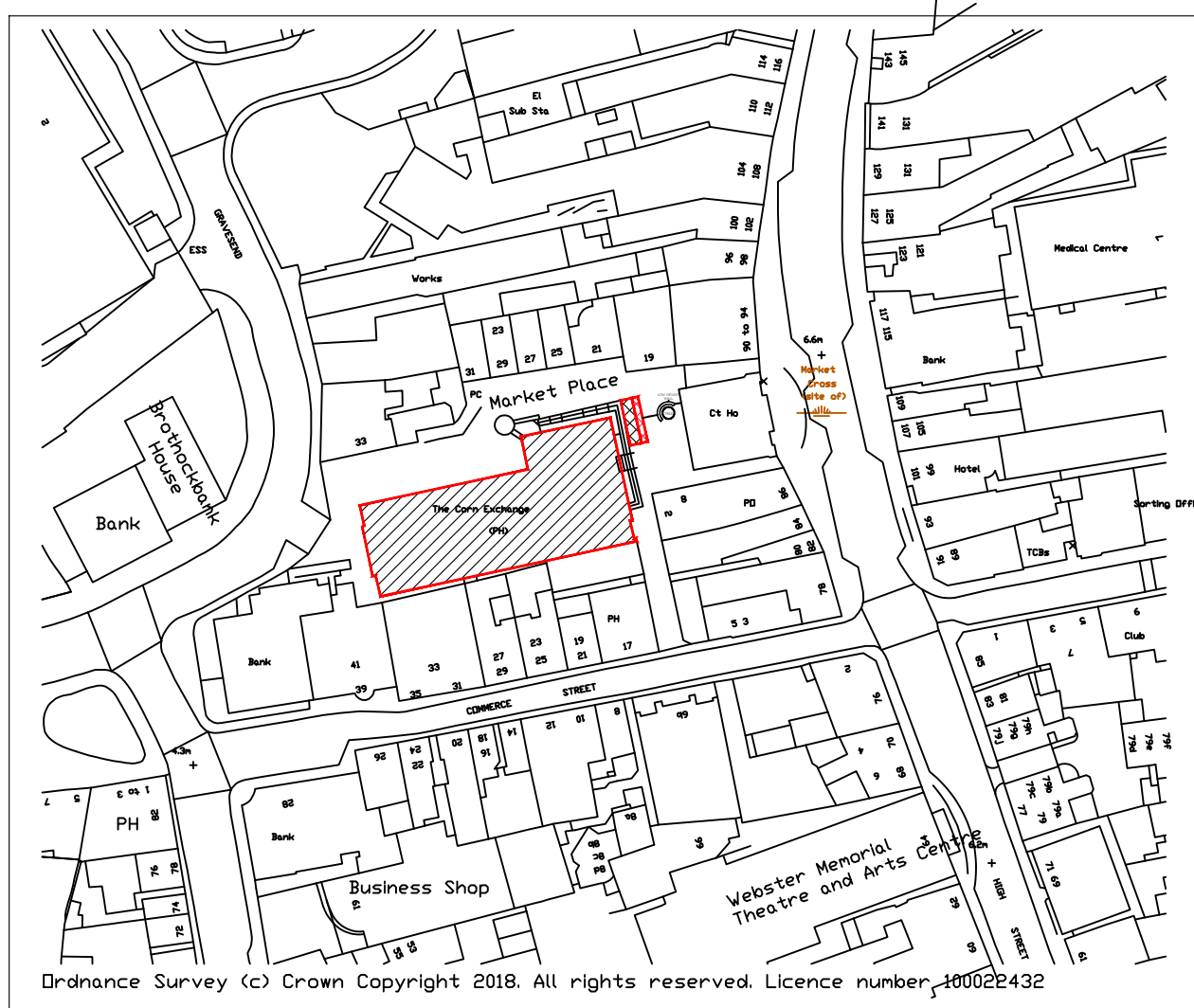
NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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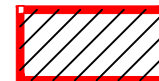
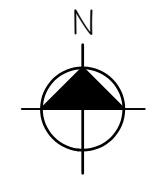
APPENDIX 1: LOCATION PLAN
APPENDIX 2: RELEVANT DEVELOPMENT PLAN POLICIES

Appendix 1

NOTE - Responsibility is not accepted for errors made by others in scaling from this drawing. All construction information should be taken from figured dimensions only



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INDICATES SITE AREA



INDICATES EXISTING APPROVED PAVEMENT CAFE AREA



INDICATES PROPOSED PAVEMENT CAFE EXTENSION

REVISIONS

- REV A - HATCHING ADJUSTED TO SUIT NEW LAYOUT
- REV B - LOW HEIGHT WALL AND TREE DETAIL ADDED.

MT 23.11.18



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CLIENT	JD WETHERSPOON PLC	
PROJECT	PUB NO: 1044 THE CORN EXCHANGE ARBROATH	
DRAWING	LOCATION PLAN	

SCALE	DATE	DRAWN
A4/1:1250	MAR 2018	ALS
PROJECT No	DRAWING No	REVISION
7509	201	A

Relevant Development Plan Policies

Angus Local Plan Review 2009

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 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.

Table 2: Network of Centres

Network of Centres	Scale and Function	Appropriate Use Classes* within Town Centres outwith defined Core Retail Areas
Larger Town Centres a) Arbroath b) Forfar c) Montrose	These centres provide the location for larger scale developments and the main comparison shops whilst also providing local services, community facilities and convenience shops which serve local communities.	1, 2, 3, 4, 7, 8, 9, 10 and 11.
Smaller Town Centres a) Brechin b) Carnoustie c) Kirriemuir d) Monifieth	These centres provide the location for smaller scale developments whilst also providing local services, community facilities and convenience shops which serve local communities.	1, 2, 3, 4, 7, 8, 9, 10 and 11.
Commercial Centres a) Ethiebeaton Park (Monifieth)	This centre is situated in an out-of-town location and is an established comparison retail, leisure and visitor attraction. The centre comprises a garden centre, units retailing products that cater for the tourist market, gym and leisure centre, hotel, restaurant/pub and a drive-thru restaurant**.	1, 3, 7 and 11.

b) Westway Retail Park (Arbroath)	This centre is situated in an out-of-centre location and is an established retail destination. The centre comprises a supermarket and petrol filling station, retail warehouse units, car valeting and sales and drive-thru restaurants**.	1, 3, 7 and 11
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* Identifying acceptable uses within each Centre does not imply permitted change between those uses. Any change of use proposal, along with potentially ancillary uses, will be subject to assessment against national and strategic legislation as applicable and other relevant policies within the Local Development Plan.

** The type of retail uses and range of goods which can be retailed are restricted to those identified in associated legal agreement(s) and conditions attached to planning permissions.

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.