

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 20 APRIL 2021

**PLANNING APPLICATION – THRUMS HOTEL, 25 BANK STREET, KIRRIEMUIR, DD8 4BE
GRID REF: 338665 : 753983**

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report deals with planning application No. [21/00063/FULL](#) for the formation of a beer garden including the erection of wall and external alterations to Thrums Hotel, as well as the change of use of land to form a car park with barrier (retrospective) to serve the hotel at Thrums Hotel, 25 Bank Street, Kirriemuir by Mr David Clark. 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
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 Full planning permission is sought for the formation of a beer garden with ancillary works and retrospective permission for the change of use of land to form a car park with barrier. A plan showing the location of the site is provided at Appendix 1.

3.2 The application site extends to approximately 1,100sqm and comprises of a long-established hotel and public house with an area of hard standing to the rear (north) located within the Kirriemuir Conservation Area and town centre. The two storey hotel building is painted white with a slate roof. The west section of the building is Category B listed but the proposal does not directly alter this area. The external hardstanding area is currently used as a smoking zone and a car park for the hotel and a 1m high steel barrier and arm entrance gate have been installed along the eastern boundary of this space. Vehicular access to the site is taken from School Wynd to the east, via the arm gate. The site is surrounded by a mix of residential and commercial uses.

3.3 The proposal seeks planning permission for the erection of a 1.8m high white rendered wall with a timber gate and a timber and poly-carbonate shelter measuring roughly 20sqm as part of the 50sqm (approx.) proposed beer garden. An existing wall and smoking shelter would be removed from this area to accommodate the proposal. A new timber multi-pane double door would be formed in the north elevation of the building in place of an existing window and single door to provide access from the building to the beer garden. The proposal also seeks retrospective permission for the use of the remaining external hardstanding area to the north of the building as a car park to serve the hotel, as well as the erection of the 1m high steel barrier and arm entrance gate which bounds the eastern boundary. The application proposes to paint the existing barrier black.

3.4 The drawings named and numbered Existing Site Layout Plan & Elevations no. 001 Rev B, Proposed Site Layout Plan & Elevations no. 002 Rev E and Existing & Proposed Door & Windows Elevation & Roof Detail no. 003 Rev A amend and supersede the drawings named

the same and numbered 001, 002 Rev C, 002 Rev B and 003. The amended drawings introduce a wall surrounding the proposed beer garden (replacing a proposed fence), includes a cross section of the new opening proposed in the north elevation of the building and details of the finish colour of the proposed new door.

3.5 The application has been subject of statutory neighbour notification, a site notice was displayed, and the application was advertised in the press as required by legislation.

4. RELEVANT PLANNING HISTORY

There is no planning history which is relevant to the current application.

5. APPLICANT'S CASE

5.1 The following documents have been submitted in support of the application:

- Supporting Planning Statement
- Noise Management Plan
- Response to Objections
- Use Information

5.2 The supporting information is available to view on the council's [Public Access](#) website and is summarised at Appendix 2.

6. CONSULTATIONS

6.1 **Angus Council – Roads** – has offered no objection to the proposal.

6.2 **Scottish Water** – there was no response from this consultee at the time of report preparation.

6.3 **Kirriemuir Community Council** – there was no response from this consultee at the time of report preparation.

6.4 **Aberdeenshire Archaeology Service** – has offered no objection to the proposal and advises no archaeological mitigation is required.

6.5 **Angus Council - Environmental Health** – has offered no objection to the proposal and notes information has been submitted to demonstrate that the proposed use can be effectively managed and comments that the applicant would need to apply to alter their licence to incorporate an outdoor drinking area. Environmental Health has indicated that there would be a robust requirement for ongoing compliance with a number of licencing conditions designed to prevent public nuisance with sanctions available to the licensing board if deemed necessary.

7. REPRESENTATIONS

7.1 30 letters of representation have been received, 17 offer support; one provides neutral comment; and 12 raise objection. The letters are provided at Appendix 3 and can be viewed on the council's [Public Access](#) website.

7.2 The following concerns have been raised in objection to the proposal and are discussed under Planning Considerations below: -

- Adverse impact on amenity from antisocial behaviour, littering and noise nuisance in the area, most notably in the evenings, and potential to exacerbate existing issues
- Little assurance of compliance with noise management plan or attenuation provided by proposed fence
- Letters of support not all from residents in proximity to the proposal
- Support for town centre and COVID recovery is overstated
- Safety issues associated with proposal
- Non compliance with the development plan

The following matters are also raised and are dealt with below:-

- There should be a review on all pubs in Kirriemuir involving the Police – such a review is outside of the scope of the application being considered. Police Scotland is not a statutory consultee in the planning process but would be involved in consideration of a licence application for the premises.
- Alleged non-compliance with COVID rules – this is not a matter for the planning authority and is governed by other legislation.

7.3 The following matters have been raised in support of the proposal and are discussed under Planning Considerations below: -

- Provision of a new beer garden would be beneficial for and help to maintain a vibrant town centre
- Supports the expansion and diversification of a local hospitality business
- Have not experienced noise issues from existing operations
- Support COVID recovery

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 In this case the development plan comprises:-

- [TAYplan](#) (Approved 2017)
- [Angus Local Development Plan](#) (ALDP) (Adopted 2016)

8.3 The application is not of strategic significance policies of TAYplan are not referred to in this report. The policies of the Angus Local Development Plan form the main basis for the consideration of the proposal. The relevant policies of the Angus Local Development Plan are reproduced at Appendix 4.

8.4 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. Section 64 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 the conservation area in determining this application.

8.5 The application site is located within the Kirriemuir Town Centre as defined by the ALDP and relates to an existing hotel/public house and an area of hardstanding located to the rear of the building. Policy DS1 in the ALDP states that for unidentified sites 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.

8.6 Policy TC17 seeks to protect and enhance the scale and function of town centres and a town centre first approach is applied to uses that attract significant numbers of people, including commercial leisure uses. The policy indicates that 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.

8.7 The proposal is directly associated with the operation of an existing town centre hotel/public house. As the proposal is located within a town centre location there are a variety of uses, including both commercial and residential properties, in the surrounding area and planning policy generally seeks to direct this type of use to central locations. It is not uncommon for public houses to be located in town centre areas and there are other beer gardens elsewhere within Kirriemuir town centre. The principle of the proposed use conforms with the character and function of a town centre.

8.8 The key consideration in relation to this proposal relates primarily to the impact of the development on the amenity of the area and those that live in the vicinity of the site. The existing business will generate a degree of noise and activity at this location, and there are other public houses and eating establishments in the vicinity that contribute to the area's

vitality. The proposed beer garden area is relatively small and discretely located to the rear of the main building. It is set back from the public footway and separated from neighbouring buildings by the car parking area or existing outbuildings. The proposed wall, in conjunction with existing outbuildings, would provide a level of noise attenuation. The applicant has provided a Noise Management Plan which identifies noise reduction measures which would be implemented, including a 9pm restriction on use of the external drinking area. The Environmental Health Service has been consulted on the application and offers no objection to the proposal on the basis that the proposal should not give rise to unacceptable impacts subject to compliance with the noise management plan and the controls imposed by the licensing regime. The development is unlikely to materially alter amenity impacts experienced in the area by virtue of existing uses. The scale of the proposed beer garden and compliance with the submitted noise management plan can be regulated by condition. As indicated above, there are other small outdoor drinking areas associated with licensed premises within and adjacent to the wider town centre area. Those have a similar relationship to neighbouring residential property and generally appear to operate without significant issue. The hardstanding area historically accommodated a petrol filling station and it appears to have been used as an informal parking area for some time. Formalisation of that use does not give rise to any significant issue but it is considered appropriate to attach a condition that restricts use of that land to car parking in order to prevent its use as an extended external drinking or eating area associated with the public house.

- 8.9 The proposal would not result in an unacceptable level of overlooking or overshadowing to neighbouring properties and would regularise formal parking provision to serve the hotel. The applicant has suggested the car park has been in use for over 10 years and as such is lawful, however insufficient evidence has been submitted to demonstrate this. The council's Roads Service has reviewed the proposal and offers no objection. The proposal does not give rise to any issues in terms of Policy DS4.
- 8.10 In terms of design, the scale and location (to the rear) of the proposed new opening within the existing building is acceptable and the new doors would not detract from the appearance of the building. The proposed wall would be of an acceptable scale, set back from the public footpath and finished in a colour to match the existing building and it would largely screen the covered terrace that is proposed. The finish colour of the proposed gate can be regulated by condition. The existing barrier is fairly utilitarian in appearance and has been constructed in unfinished steel. It is indicated that it will be painted black and this would help integrate it into the streetscape. A condition is proposed to regulate the timing of this painting. The proposal would not detract from the character or appearance of the Kirriemuir Conservation Area or the setting of any listed building, subject to condition. The proposal is in keeping with the townscape and pattern of development in the area.
- 8.11 The Archaeological Service has reviewed the proposal and offers no objection, advising no archaeological mitigation is required. The proposal would not have any adverse impacts upon any built or natural heritage designations.
- 8.12 The proposal does not give rise to any significant issues in terms of development plan policy and is considered to be of a scale and nature appropriate to its location.
- 8.13 In relation to material considerations it is relevant to note that representations have been submitted to the proposal. The representations are material, in so far as they relate to relevant planning matters and have been considered in the preparation of this report.
- 8.14 Objections raise concerns regarding adverse impacts on amenity from antisocial behaviour, littering and noise nuisance in the area, most notably in the evenings, and the potential for the proposal to exacerbate existing antisocial behavioural issues in the area. They also raise concern regarding the operation and control of the existing premises and question likely adherence with the submitted noise management plan. Although the proposal is likely to generate a degree of noise and activity, the site is located within a town centre area where a level of activity over and above a residential area is to be expected. There are other outdoor areas associated with licensed premises in the wider area that appear to operate without significant issue, including the Gairie Inn which is opposite the application site. This area is reasonably small and would be screened by the proposed wall and outbuildings. The management and operation of the premises are matters that are properly controlled by the licensing regime. If planning permission is granted a license will be required for use of the outdoor area and issues regarding management would be considered and reviewed through that process. There is no reason to consider that an enclosed beer garden set back from the

public road would result in any issues in terms of the safety of patrons and/or users of the public road and the Roads Service has no objection to the proposal.

- 8.15 Objection was raised in relation to letters of supporting having been submitted by residents not living in proximity to the site. Planning legislation does not prohibit public comments from third parties who do not reside in proximity to the development, but the weight attached to comments, particularly regarding matters such as amenity may be affected by the location of the persons making those comments.
- 8.16 Representations submitted in support of the proposal suggest that the development would aid the vitality and viability of the town centre and support COVID recovery. Those submitting objection suggest that the proposals support for the town centre and its role in COVID recovery is overstated. As indicated above, planning policy is generally supportive of commercial leisure uses in town centre locations, but that is subject to consideration of amenity impacts. In this case it is considered that a comparatively small outdoor beer garden area and the other development proposed by this application can be accommodated in a manner that does not significantly affect the amenity of the area subject to compliance with the proposed planning conditions.
- 8.17 In conclusion, the proposal provides for the use of an area of hardstanding to the rear of an existing hotel located in the Kirriemuir town centre as a beer garden and car park associated with the existing business, as well as appropriate development ancillary to these uses. The matters raised in letters of representation have been considered and where appropriate planning conditions are proposed to deal with issues raised in objection to the proposal. Consultation bodies have raised no objection to the proposal. The proposal complies with development plan policy subject to the proposed planning conditions and there are no material considerations that justify refusal of the application.

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.

10. CONCLUSION

It is recommended that the application be approved for the following reason, and subject to the following condition(s):

Reason(s) for Approval:

The proposal is in accordance with the development plan as it is compatible with the locational criteria identified in the plan and as it does not give rise to unacceptable impacts on amenity, natural and built environment, road safety or infrastructure, subject to conditions. The proposal would not adversely affect the setting of listed buildings and would have a neutral impact on the character and appearance of the conservation area. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

Conditions:

1. Within 6 months of the date of this permission the existing steel barrier indicated on drawing Proposed Site Layout Plan & Elevations no. 002 Rev D, submitted as part of this application, shall be painted black.

Reason: In the interests of preserving the character of the conservation area.

2. The proposed gate indicated on drawing Proposed Site Layout Plan & Elevations no. 002 Rev E, submitted as part of this application, shall be painted black or deep purple to match the existing doors at the site.

Reason: In the interests of preserving the character of the conservation area.

3. Only the seating areas enclosed within the proposed masonry wall, as indicated on drawing Proposed Site Layout Plan & Elevations no. 002 Rev D submitted as part of this application, shall be used for the outdoor sale or consumption of food or drink or as outdoor space associated with the public house/hotel. For the avoidance of doubt the wall shall be constructed and painted white prior to the use of the beer garden area and the parking area hereby approved shall be used for the parking of vehicles and for no other purpose associated with the public house/hotel.

Reason: In the interests of amenity and to ensure the beer garden use does not intensify beyond what has been considered as part of this application.

4. The beer garden hereby approved shall be operated in accordance with the Noise Management Plan submitted in support of this application.

Reason: In the interests of preserving the amenity of residents in proximity of the development.

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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DATE: 13 APRIL 2021

APPENDIX 1: LOCATION PLAN

APPENDIX 2: SUMMARY OF APPLICANTS SUPPORTING INFORMATION

APPENDIX 3: LETTERS OF REPRESENTATION

APPENDIX 4: DEVELOPMENT PLAN POLICIES

APPENDIX 5: PLANNING SERVICE PRESENTATION