

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 12 DECEMBER 2023

PLANNING APPLICATION – 167 HIGH STREET, ARBROATH, DD11 1DY

GRID REF: 364367:741044

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

**Abstract:** This report deals with planning application [23/00417/FULL](#) by Santander for the installation of internal heating, cooling and ventilation equipment, installation of external ductwork and timber fence surround, replacement of external glazing with metal louvres, and removal of external air conditioning condenser unit. This planning application is recommended for approval subject to conditions.

**1. RECOMMENDATION**

It is recommended that the planning application be approved for the reason and subject to the conditions given in Section 9 of this report.

**2. INTRODUCTION**

- 2.1 The applicant seeks planning permission for the installation of internal heating, cooling and ventilation equipment, installation of external ductwork and timber fence surround, replacement of external glazing with metal louvres, and removal of external air conditioning condenser unit at 167 High Street, Arbroath. The site is located in the Arbroath Abbey to Harbour Conservation Area. A plan illustrating the location of the site is provided in Appendix 1.
- 2.2 The application site comprises the ground floor of a larger 3.5 storey building where the upper floors are in residential use. Neighbouring ground floor properties are generally in commercial use and include a public house. The rear of the building is largely bound/ enclosed by a combination of stone walls and neighbouring buildings. The ground floor and flat roof section of the bank premises are indicated to be in the sole ownership of the applicant.
- 2.3 The proposed internal heating, cooling and ventilation equipment would be installed within the ground floor of the building and this work does not require planning permission. The proposed external ductwork associated with the equipment would be installed to the rear of the premises on a flat roof, single storey section of the building. It would be enclosed by a cage which would be surrounded by a timber screen which would measure around 1000mm (height) x 1550mm (width) x 1100mm (depth). The proposed metal louvres would replace existing external glazing and associated metal bars on a ground floor window at the rear of the premises. The metal louvres would enable air movement for the proposed internal equipment. An existing external air conditioning condenser unit attached to the building would be removed.
- 2.4 The planning application was subject to variation. The planning application site boundary was amended to reflect land that is indicated to be in the sole ownership of the applicant.

The amended planning application site boundary includes all the land required for the proposal.

- 2.5 The planning application has been subject of neighbour notification, it has been advertised in the local press, and a site notice was displayed as required by legislation.

### **3. RELEVANT PLANNING HISTORY**

- 3.1 A number of planning applications have been submitted in the period since 2018 seeking permission for an assortment of air handling plant, ducting, and associated external alterations to the building. Those applications have not been progressed and are superseded by the current application.
- 3.2 There have been a number of other planning applications relating to the bank premises but none of those are directly relevant to the determination of this proposal.

### **4. APPLICANT'S CASE**

- 4.1 The applicant has submitted a supporting statement, a noise impact assessment, a response to some of the representations which have been received objecting to the proposal, a copy of a building warrant and a certificate of completion for alterations to the bank premises, and documents associated with the title for the bank premises. The aforementioned, with the exception of the title information, can be viewed on the council's [public access](#) website but are summarised below.
- 4.2 The supporting statement indicates that the proposal is required as the bank premises currently has no heating, ventilation or air conditioning which is making the internal environment uncomfortable for employees and customers. It indicates that the proposal would enable the bank to continue to operate and provide a vital community service. It indicates that retaining the bank in Arbroath and specifically the town centre would preserve jobs (it currently employs 10 people), would represent an investment in the town centre and would ensure that the bank premises would remain occupied and would not fall into a state of disrepair which would not protect and enhance the Arbroath Abbey to Harbour Conservation Area. It indicates that the proposal would primarily be located internally with the exception of the proposed external ductwork which would be enclosed by a cage which would be surrounded by a timber fence and would be installed on the flat roof section of the bank premises. This would ensure that the proposal would be sensitive to its surroundings and would benefit the Arbroath Abbey to Harbour Conservation Area as previous units have and will be replaced. It indicates that the proposals impact on amenity would be minimal as demonstrated in the submitted noise impact assessment. It also indicates that the proposal would comply with the relevant policies in the development plan.
- 4.3 The noise impact assessment indicates that it assessed the potential noise impacts from the proposal on existing noise sensitive receptors in the area and, where necessary, specified appropriate design solutions to mitigate potential adverse noise conditions. It indicates that the scope and methodology of the noise impact assessment was previously agreed with the council's environmental health service. It indicates that the required mitigation would be implemented which ensures that the proposal would be able to meet all the adopted noise level criteria.
- 4.4 The response to representations indicates that the noise impact assessment confirms that the proposed mitigation would ensure that the noise levels recommended by the council's environmental health service would be met. It indicates that the proposed air

conditioning unit would be installed internally and would be mounted on anti-vibration mounts, which would be rubber pads or springs installed on the base. It indicates that the operating hours for the air conditioning unit would be from 08:00 – 16:30 during a Monday to Friday, from 08:00 – 12:00 during a Saturday, and off all day on a Sunday. It indicates that the proposal would not require any amendments or new structures in the rear courtyard to the northeast.

4.5 The copy of the building warrant and the certificate of completion are for alterations to the bank premises which the applicant has indicated would have included the flat roof section.

4.6 The documents associated with the title for the bank premises indicate that the applicant is the sole owner of the flat roof section. They also indicate that no other third parties benefit from a right to use the flat roof section of the bank premises.

## 5. CONSULTATIONS

5.1 **Community Council** – there was no response from this consultee.

5.2 **Aberdeenshire Council Archaeology** – no objection.

5.3 **Angus Council – Environmental Health Service** – no objection subject to a condition which would regulate noise levels generated from the proposal.

5.4 **Angus Council – Roads** – no objection.

5.5 **Scottish Water** – no objection.

## 6. REPRESENTATIONS

6.1 Twenty letters of representation (from thirteen different properties) were received objecting to the proposal. The letters of representation are provided in Appendix 2 and can also be viewed on the council's [public access](#) website.

6.2 The main points of concern are as follows: -

- Adverse impacts on occupiers of neighbouring properties and pets by virtue of noise and vibration.
- Insufficient/ irrelevant noise testing has been undertaken by the applicant.
- The air conditioning units have already been and will be operated again outwith business hours.
- Ownership and use of the rear courtyard and flat roof section of the bank premises.
- Appropriateness of rear extension to the building.
- Adverse impacts on the surrounding area in terms of the design and appearance of the development, including adverse impacts on the Arbroath Abbey to Harbour Conservation Area.

These matters are addressed under planning considerations.

## 7. PLANNING CONSIDERATIONS

7.1 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.

- 7.2 The planning application site is located in the Arbroath Abbey to Harbour 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 the conservation area in determining this planning application.
- 7.3 In this case the development plan comprises: -
- [National Planning Framework 4](#) (NPF4) (Adopted 2023); and
  - [Angus Local Development Plan](#) (ALDP) (Adopted 2016).
- 7.4 The development plan policies relevant to the proposal are provided in Appendix 3 and have been taken into account in the preparation of this report.
- 7.5 The ALDP was adopted in September 2016 while NPF4 was adopted in February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and the provision of a local development plan, whichever of them is the later in date is to prevail.
- 7.6 The planning application site is located in the core retail area of Arbroath town centre as defined by the ALDP. Policy DS1 in the ALDP indicates amongst other things that 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.
- 7.7 Development plan policy generally seeks to encourage, promote and facilitate development in town centres, recognising they are accessible locations and important assets. NPF4 and the ALDP also seek to safeguard the environment and avoid unacceptable impact on amenity.
- 7.8 The key considerations in relation to this proposal are whether it is of an appropriate scale and nature of development for the location, whether it could operate without giving rise to unacceptable impacts on the amenity of occupants of nearby properties, whether it would give rise to unacceptable impacts on the natural, built, or cultural environment, whether it would preserve or enhance the character or appearance of the Arbroath Abbey to Harbour Conservation Area, and whether it would give rise to unacceptable impacts on infrastructure.
- 7.9 Development plan policy gives positive support to proposals in town centre locations. Policy TC17 in the ALDP indicates amongst other things that support will be given to 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 centre. The proposal relates to a town centre use in a town centre location. Air handling plant and machinery associated with commercial premises located in town centre locations is common throughout Angus, and the general nature of the proposal, which would support a town centre use, would be consistent with development plan policy.
- 7.10 Policy 23 in NPF4 indicates amongst other things that proposals that are likely to raise unacceptable noise issues will not be supported. Policy DS4 in the ALDP indicates amongst other things 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 properties. A noise impact assessment has been submitted in support of the proposal which indicates that the proposal, which

includes mitigation measures, would comply with the noise levels recommended by the council's environmental health service. The council's environmental health service is satisfied that the submitted assessment is suitable and demonstrates that the proposal would comply with noise limits which would be appropriate for the location of the site, and which would ensure that the proposal would not cause an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties. A noise limit condition is proposed in the interests of protecting the amenity of occupants of neighbouring properties. The council's environmental health service is satisfied that the proposal would not cause an unacceptable adverse impact by virtue of noise or vibration.

- 7.11 The enclosure would be located around 800mm from a communal stairwell window and would partially obscure a section of that window. However, the window is relatively large, and the enclosure would affect only a lower corner of the window and the impact on levels of light and outlook for users of the communal pedestrian stairwell would not be significant. The enclosure would sit below the sill level of other windows and would not significantly affect those windows or the outlook from them. The relationship between the proposed external enclosure and neighbouring properties is not untypical of that commonly found in town centre locations and should not give rise to unacceptable adverse impact on the environment or amenity of occupants of nearby properties subject to the proposed conditions. The proposal does not give rise to significant issues in terms of the remaining considerations of Policy DS4 in the ALDP.
- 7.12 In terms of appearance and wider visual impact, the proposed external alterations are to the rear of the bank premises. The external ductwork would be enclosed by a cage which would be surrounded by a timber fence and would be installed on the single storey, flat roof to the rear of the premises. The installation would be small scale and would affect only a secondary elevation of the building which is not readily visible from the public realm. It would be similar in scale and appearance to an existing box on the roof which it is understood accommodates a water tank. Such an arrangement would not be unusual or unacceptable on a largely enclosed, screened, rear elevation in a town centre location. Historic Environment Scotland guidance for new exterior fixtures (on listed buildings) states that *'New external fixtures must be sited to minimise impact on the architectural integrity and fabric of the building. Secondary elevations, outbuildings and roof valleys or flats that are out of sight from principal views can often accommodate new fixtures without significant impact. Close attention to the routing of any associated cabling or pipework away from principal elevations and features will help to minimise the visual effect of new equipment.'* Although the building is not listed, the proposal would be consistent with the aforementioned guidance, and it would not significantly affect the character or appearance of the Arbroath Abbey to Harbour Conservation Area. There is no evidence to suggest that the proposal would cause an unacceptable impact on the natural environment. The proposal would not cause an unacceptable impact on the natural, built, or cultural environment.
- 7.13 The proposal does not give rise to any significant issues in terms of other development plan policy and is of an appropriate scale and nature for the location.
- 7.14 The development is small scale in nature and provides for equipment that is not uncommon in town centre locations. It would help sustain an existing town centre use in a manner that does not give rise to significant impact on the amenity or environment of the area and is compatible with development plan policy.
- 7.15 In terms of other material considerations regard must be had to those letters of representation that raise relevant planning matters.

- 7.16 Issues regarding amenity impacts are addressed above. The council's environmental health service is satisfied that the noise assessment is suitable and demonstrates that compliance with recognised noise levels could be achieved. A condition is proposed which would provide noise limits in the interests of protecting the amenity of occupants of neighbouring properties. That noise limit takes account of night-time as well as daytime use. Issues associated with previous plant are noted, but this application deals with proposed replacement equipment. The existing air conditioning unit has been erected without the benefit of planning permission and a proposed condition requires its removal prior to operation of the new duct being brought into use. The council cannot directly control operation of the plant that will be within building as it does not in itself require planning permission.
- 7.17 While it is indicated that the flat roof section of the building is utilised by residents of neighbouring properties for informal recreation, there is no evidence of a planning permission or building warrant that would allow such use. The title documents submitted by the applicants indicate they are the sole owner of the flat roof section and that no other party benefits from a right to use the roof. Any dispute regarding land ownership is a civil matter and is not relevant to determination of the application, but in any case, compliance with the noise limits should ensure that there is no unacceptable impact on outdoor amenity areas associated with neighbouring property. The rear courtyard to the northeast is not included in the planning application site boundary. The rear extension has evidently been in situ for a period considerably more than 4-years and it is lawful. Issues associated with the rear extension are not relevant to the determination of the application.
- 7.18 The proposal would not be readily visible from the public realm and its impact on the Arbroath Abbey to Harbour Conservation Area would be negligible. As indicated above, the proposal would comply with guidance that seeks to ensure that development of this nature is located to minimise impact on principal elevations and features of historic interest.
- 7.19 In conclusion, the proposal is associated with the provision of new equipment that would help sustain use of the ground floor of the property for an appropriate town centre use. The retention of a bank and the associated employment within the town centre is desirable. The timber screen on the flat roof would not give rise to any significant visual impact and it would have little impact on the character or appearance of the conservation area. Available information indicates that noise levels would meet recognised criteria, and this type of development is common in town centre locations. The nature of the development proposed is broadly compatible with relevant development plan policy as it does not give rise to unacceptable impacts on amenity, the natural, built or cultural environment, or on infrastructure subject to conditions. The letters of representation which have been received are discussed above and the material planning considerations raised have been taken into account in the preparation of this report. Conditions are proposed where appropriate to address issues that have been raised. However, the proposal complies with the relevant policies of the development plan, subject to the proposed conditions, and there are no material considerations that justify refusal of the planning application.

## 8. 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.

## 9. CONCLUSION

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

### Reason 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, the natural, built or cultural environment, or on infrastructure subject to conditions. The proposal is consistent with the statutory duty to preserve or enhance the conservation area. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

### Conditions:

1. Noise from any fixed plant associated with duct hereby approved shall not: -
  - i) 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 07:00 and 23:00 and Noise Rating Curve 20 between 23:00 and 07:00.
  - ii) exceed 50 dB LAeq (1hour) as measured and assessed within the external amenity area of any noise sensitive property and in accordance with BS 4142:2014 Methods for rating and assessing industrial and commercial sound.

In the event that it is demonstrated to the planning authority that the above noise limits are not being met, the operation of duct and associated plant shall cease immediately following intimation by the planning authority and until such time it can demonstrated that all measures necessary to meet the aforementioned limits have been fully implemented to the written satisfaction of the Planning Authority.

*Reason: In the interests of protecting the amenity of occupants of neighbouring properties from unacceptable levels of noise.*

2. That prior to the duct hereby approved being brought into use, photographic evidence shall be submitted to the planning authority demonstrating that the external air conditioning condenser unit (identified as Daikin RXS50L) and all associated brackets and stands etc which are attached to the eastern elevation

of the ground floor of the bank premises have been removed.

*Reason: In the interests of protecting the amenity of occupants of neighbouring properties as the existing unit is unauthorised and potential cumulative impact that might arise from its use has not been assessed.*

**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: 30 NOVEMBER 2023**

APPENDIX 1: LOCATION PLAN

APPENDIX 2: LETTERS OF REPRESENTATION

APPENDIX 3: DEVELOPMENT PLAN POLICIES