

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 13 AUGUST 2024

PLANNING APPLICATION: ROO'S LEAP, 2 TRAILL DRIVE, MONTROSE, DD10 8SW

GRID REF: 372300 : 758231

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

1. ABSTRACT

- 1.1 This report deals with planning application [24/00250/FULL](#) by Roo's Leap for the formation of a beer garden including the erection of nine shelter structures and perimeter planters at Roo's Leap, 2 Traill Drive, Montrose. The application is recommended for approval subject to conditions.

2. RECOMMENDATION

- 2.1 It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

3. INTRODUCTION

- 3.1 The applicant seeks full planning permission for the formation of a beer garden including the erection of nine shelter structures and perimeter planters at Roo's Leap, 2 Traill Drive, Montrose. A plan showing the location of the application site is provided at Appendix 1.
- 3.2 The application site relates to an area of land to the rear/ west of a long-established restaurant. It is a mixed-use area where there are a number of commercial and residential uses. There is a residential property to the south and the former Mercantile Golf Club House to the north which are both in the applicant's ownership.
- 3.3 The area of land benefits from an extant planning permission which allows the use of the land as a beer garden. That permission also allowed for the erection of shelter structures, but in different positions than currently proposed. The shelter structures have been erected in the position proposed by the current application and in this respect, the application is retrospective.
- 3.4 The current application includes the previously approved beer garden but extends to include the rear section of the former Mercantile Golf Club building where it is indicated toilet provision would be available. It seeks permission for a different configuration for the shelter structures and perimeter planters. Each shelter structure would measure 3m x 4m with a height of around 2.4m.
- 3.5 The application has not been subject of variation.
- 3.6 The application has been subject of statutory neighbour notification and was advertised in the press as required by legislation.

4. RELEVANT PLANNING HISTORY

- 4.1 There are a number of planning permissions which have been granted for developments at Roo's Leap and the area covered by the current planning application, but two are of particular relevance to this application.
- 4.2 The first relates to the former Mercantile Club House, but it includes the area of land covered by the current application. That permission (ref: [20/00651/FULL](#)) provided for the proposed change of use, extension, and alteration of former Mercantile building to accommodate a new restaurant, bar and coffee shop. The terms of that permission allow the outdoor area subject of the current application to be used as a beer garden. That application was approved on 5 August 2021, but conditions attached to it have not been discharged and the permission has lapsed.
- 4.3 The second permission (ref: [21/00354/FULL](#)) was granted on 6 May 2022 and it specifically allows for the land to the rear of Roo's Leap and the Mercantile building to be used as a beer garden. In addition, it allows for the erection of gazebo structures. The Mercantile building did not form part of that permission, but it was indicated that the toilets within the former locker room area to the rear would be used in association with the beer garden.

5. APPLICANT'S CASE

- 5.1 The applicant has submitted a noise management plan and statement in response to objections. These are available to view on the Public Access system, but in summary terms they indicate: -
- patrons would not be permitted to use external areas beyond 10pm.
 - staff would closely monitor outside spaces to manage noise and take action if necessary.
 - a noise complaints procedure would be used to record and investigate complaints.
 - music would only be played from speakers that are directed away from any neighbouring properties and at a level that is not audible to neighbouring properties.
 - no live music/ DJ's would be performing in this area.
 - CCTV would be used to monitor the area to assist with the noise management.

6. CONSULTATIONS

- 6.1 **Angus Council – Roads** – has not objected to the proposal in respect of traffic safety subject to a condition relating to the provision of cycle parking.
- 6.2 **Angus Council – Environmental Health** – no objection subject to conditions requiring noise management measures.
- 6.3 **Scottish Water** – no comment received.
- 6.4 **Community Council** – no comment received.

7. REPRESENTATIONS

- 7.1 Five letters of representation have been received which raise objection to the application. Those letters are provided at Appendix 2 and are available to view on the council's [Public Access](#) website.

7.2 The following matters have been raised as objections: -

- Noise and disturbance from use of the outdoor area, particularly associated with amplified music.
- Issues associated with previous use of the beer garden.

7.3 In addition, concern is raised regarding the adequacy of neighbour notification. In this respect, the neighbour notification has been undertaken by the council in accordance with the provisions of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. In addition, the application has been subject of advertisement in the press and details of the application have been published on the council's Public Access system.

8. PLANNING CONSIDERATIONS

8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) 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:

- [National Planning Framework 4](#) (NPF4) (2023)
- [Angus Local Development Plan](#) (ALDP) (2016)

8.3 The development plan policies relevant to the determination of the planning application are reproduced at Appendix 3 and have been taken into account in preparing this report.

8.4 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.

8.5 In this case, it is necessary to have regard to the planning history of the development as it represents a significant material consideration. As indicated above, there is a planning permission that allows the outdoor area of land to be used as a beer garden. That permission remains extant, and the area of land can lawfully be used as an outdoor eating and drinking area in association with the restaurant subject to compliance with the relevant conditions attached to the planning permission. While the current application includes use of the outdoor area, and this report will deal with the acceptability of that use, it must be borne in mind that the land can be used for that purpose irrespective of any decision that is made on the current application, subject to the caveat provided above.

8.6 The site is located within the development boundary for Montrose as defined by the ALDP. It is not allocated or identified for any specific purpose in that plan. Policy DS1 in the ALDP states amongst other things 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 plan.

8.7 Development plan policy generally seeks to direct commercial leisure uses to town centre locations with the intention of safeguarding the vitality, viability, and vibrancy of those centres. The development plan does not provide policies that deal specifically with the formation of outdoor eating and drinking areas associated with existing restaurant facilities. However, the development plan framework generally seeks to support business and support economic growth. In this very general respect, the principle of providing a new facility associated with an existing restaurant is broadly consistent with what the

development plan seeks to achieve. The business is long-established and, in an area, where there are other recreational opportunities, and there is a locational justification for the development. The proposal would be unlikely to adversely affect the vitality, viability, or vibrancy of the town centre.

- 8.8 The development plan provides policies that seek to safeguard the amenity of those that live close to and could be affected by proposed development. This includes policies that seek to safeguard amenity impacts arising from noise and activity.
- 8.9 In this respect, use of the outdoor area has potential to adversely the affect amenity of those that live in the area. However, it is not unusual for outdoor eating and drinking areas to be located in the proximity of residential property, and they can coexist without significant issue subject to appropriate controls. In this case, the closest dwelling to the outdoor area is a dwelling to the south of the existing restaurant which is in the ownership of the applicant. The closest dwellings to the west are a little over 30m from the outdoor area and are separated from it by the carriageway of Whinfield Road. The closest dwelling to the north is separated from the outdoor area by part of the former Mercantile building and at a distance in the region of 40m. The environmental health service has reviewed the proposal and has indicated that there should be no unacceptable impact on the amenity of those that live in the surrounding area subject to adherence with suggested conditions that amongst other things, prevent musical entertainment (amplified or unamplified), and live or televised events in the outdoor area at any time. The environmental health service has also suggested that conditions should be attached to limit the terminal hour for use of the outdoor area to 9pm. However, it is understood that hours of use of outdoor areas are generally controlled through the licensing regime, and there are no special amenity circumstances relating to this site that would justify the planning authority imposing conditions to control that matter. While not directly a planning consideration, members may wish to note that the license for the premises prevents use of the outdoor area after 9pm and the provision of music within it, or within the building for the purpose of being heard in the outdoor area.
- 8.10 The information submitted by the applicant suggests that they would seek to play music in the outdoor area, but that speakers would be directed away from residential property and controlled such that it would be inaudible from neighbouring property. Notwithstanding that, it is relevant to note that no noise assessment to support such operation has been provided, and representations submitted in relation to the proposal indicate previous issues arising from noise associated with music played in the outdoor area. Evidence suggests that it may be difficult to control music in the manner described by the applicant and it would be difficult for the planning authority to monitor such an arrangement. The environmental health service maintains its position that music and television facilities should not be available in the outdoor area, and a condition of that nature is considered appropriate in the interests of safeguarding the amenity of those that live in the area.
- 8.11 The structures proposed in outdoor area would have no significant impacts on the character of the building or wider public realm. The area of land on which they would be positioned is reasonably discrete, and the proposed structures and activity associated with them would not be readily visible from surrounding public areas. Where visible from public areas to the west, they would be seen against the backdrop of the existing buildings, and visual impact would not be significant.
- 8.12 The application does not give rise to any significant issues in terms of other development plan policy. The locker room area associated with the former Mercantile building is included within the application site and it is indicated that it would be used for the provision of toilet facilities. The application does not seek change of use of that building

and a condition is proposed to clarify that the permission does not allow for the use of that building for any purpose other than toilet facilities.

- 8.13 The development is of a scale and nature appropriate to the area and is in general compliance with the development plan subject to conditions that seek to safeguard the amenity of those that live in the area.
- 8.14 In terms of other material considerations, it is relevant to have regard to the planning history of the site and to the letters of representations submitted in objection in so far as they raise material planning issues.
- 8.15 As indicated above, there is an extant planning permission that allows for the use of the outdoor area. The outdoor area can lawfully be used for the use proposed subject to compliance with the conditions attached to the extant permission. For clarity, the conditions attached to the existing planning permission are generally consistent with those proposed. In addition, the conditions attached to the permission associated with the Mercantile building, which also allowed use of this outdoor area, contained conditions that similarly sought to safeguard amenity by preventing outdoor music. The extant planning permission that allows the outdoor area to be used for eating and drinking in association with the restaurant use is a significant material consideration. The planning history also demonstrates a consistent approach towards preventing music and controlling noise in the outdoor area in the interests of safeguarding amenity.
- 8.16 The concerns raised by the third parties have been considered in assessing the application, and the proposed conditions seek to address the concerns raised which relate principally to issues of noise and disturbance. If planning conditions are breached, the council has power to take enforcement action. However, the council also has separate powers to deal with any breach of license conditions should that occur.
- 8.17 In conclusion, the proposal provides for the formation of an outdoor eating and drinking area in association with an existing restaurant. There is an extant planning permission that allows for that use. The shelter structures within the outdoor area do not give rise to any significant issues in terms of the amenity of the area. While concerns raised by residents in the surrounding area regarding impact on amenity are recognised, it is considered that these can be addressed by the proposed planning conditions. Clearly the applicant and any subsequent operator of the premises has a responsibility to ensure compliance with the conditions attached to the planning permission and similarly to any conditions attached to the premises license. However, subject to the identified conditions the proposal is considered compatible with the development plan as it provides improved facilities for an existing restaurant in a manner that does not give rise to unacceptable impacts on amenity, natural and built environment, road safety or infrastructure. This proposal is compatible with development plan policy and there are no material planning considerations that justify refusal of planning permission.

9. HUMAN RIGHTS IMPLICATIONS

- 9.1 The recommendation in this report for grant of permission/consent, 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

- 10.1 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 provides for improved facilities associated with an existing restaurant in a manner that would not give rise to unacceptable impacts on amenity, natural and built environment, road safety or infrastructure subject to the stated planning conditions. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.

Reason: In order to clarify the duration of this permission in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 (as amended) and to ensure that it will lapse if not implemented within that period.

2. Prior to the commencement of the development hereby approved, the following shall be submitted to and approved in writing by the planning authority: -

(a) a noise management plan. The plan shall include details of how noise from patrons using the outdoor area will be controlled and shall include a complaints procedure. Thereafter, the use hereby approved shall be operated only in accordance with the approved management plan which shall be fully implemented for the lifetime of the development; and shall be reviewed following the receipt of a justified complaint or changes to the site or practices.

(b) a scheme to control the impact of any outdoor artificial lighting on the amenity of adjacent residential properties. Thereafter, any artificial lighting shall be operated only in accordance with the approved scheme.

Reason: In order to protect the amenity of the occupants of neighbouring residential accommodation.

3. No musical entertainment amplified or unamplified, live or televised events, including the use of a PA system shall be permitted in the beer garden at any time.

Reason: In order to protect the amenity of the occupants of neighbouring residential accommodation.

4. That the former locker room area associated with the Mercantile building and located to the north of the outdoor area shall be used to provide toilet and washroom facilities only. Nothing in this permission allows the use of that area or building as restaurant accommodation or for another related use, other than for ancillary storage purposes.

Reason: In order to clarify the terms of this planning permission and to prevent the use of the building for an alternative purpose without the submission and consideration of an appropriate application to allow any change of use.

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: 6 AUGUST 2024

APPENDIX 1: LOCATION PLAN
APPENDIX 2: LETTERS OF REPRESENTATION
APPENDIX 3: DEVELOPMENT PLAN POLICIES