

ITEM No. 6 (b)

Report No 513/97

ANGUS COUNCIL

DEVELOPMENT CONTROL COMMITTEE

6 MAY 1997

**SUBJECT: PLANNING APPEAL DECISION
DALHOUSIE BAR, 1 MARKET STREET, BRECHIN**

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

Abstract: This report presents the findings of the Reporter appointed by the Secretary of State to determine the appeal against the refusal of Angus Council to grant consent for the formation of a beer garden to the rear of the Dalhousie Bar, 1 Market Street, Brechin.

1 RECOMMENDATION

It is recommended that the Committee notes the outcome of the above appeal.

2 INTRODUCTION

2.1 The Development Control Committee at the meeting on 23 May 1996 refused Planning Permission for the formation of a beer garden utilising disused ground at the rear of the Dalhousie Bar, Market Street, Brechin (01/96/1044).

2.2 The applicant Mr M Tait appealed against the refusal and the Reporter's conclusions and decision are presented below.

3 REPORTER'S DECISION

3.1 On the basis of the written submissions and the site inspection, I consider that the determining issues in this appeal are whether the proposal would adversely affect the amenity of this part of the conservation area; and whether the proposal at appeal would detract from the qualities of the category B listed building.

3.2 Prior to addressing the first determining issue, I note that neither of the principal parties has drawn attention to any local plan policies that would be applicable to the proposed development. In this situation, I find that neither the terms of the development plan or the provisions of section 18a of the Act are directly relevant to the appeal proposal.

3.3 Turning to amenity, I note that the appeal site lies at the rear of properties that face to the south and east towards St David and Market Street respectively and that only a limited number of flats have indirect views over the proposed beer garden. The site inspection showed that the rear windows (which relate to service rooms and to small bedrooms rather than living rooms) are small, are curtained and do not appear to be in general use during the day. The separation distances of 7 to 15 metres reflect marked differences in height, include considerable intervening areas of sloping roofs and do not offer direct views over the appeal site for persons within the

rooms themselves. Similarly, the adjoining business premises (notably the chemist to the south) do not have occupied rooms that overlook the proposed beer garden. In these circumstances, I consider that only very modest numbers of residential properties have rear windows that look over the appeal site; that such direct views as do occur are not intrusive; that these residents have not objected; and that the appeal proposal would not lead to unreasonable intrusion into the amenity of any of the nearby properties.

- 3.4 The site inspection showed that there is constant noise within the appeal site which arises principally from the movement of cars into and out of the busy central area car park immediately to the north. In addition, there is readily apparent daytime buzz from vehicles and pedestrians using the heavily trafficked St David and Market Streets. This bustle (which is typical of the core of all towns) indicates that any noise generated by patrons using a 50 square metre beer garden sited to the rear of stone built properties would be most unlikely to be intrusive during the great majority of the day. Only when the commercial and retail activity within Brechin's core dies down in the late evening it is likely that the conversation and movement associated with a small beer garden would intrude into the consciousness of the limited number of residents in the area.
- 3.5 With regard to the impact upon amenity, I note that your client has volunteered conditions (notably in relation to opening hours and the playing of music) that would assist greatly in keeping any intrusion within reasonable limits. In this context, I regard the noise criterion proposed by environmental health officials as providing an appropriate threshold. I conclude that, subject to the imposition of appropriate conditions that would safeguard the amenity of the area, there are no objections in principle to the introduction of a modestly sized beer garden within the appeal site. Such facilities can be of great appeal to users of public houses during the relatively limited number of summer days when weather conditions are conducive to sitting out, thereby increasing the attraction of Brechin for tourists.
- 3.6 In assessing the impact upon amenity, it is necessary to taken into account the fact that the appeal site lies within a conservation area (where the provisions of 262(8) of the Act apply). The sites inspection showed that, whilst both St David and Market Streets have attractive, well maintained frontages, the rear of the buildings have experienced considerably less investment. The process is readily apparent at the appeal site where on-going neglect has led to the collapse of the roof, to the exposure of the internal stone walls to the elements, to extensive dumping and to the stacking of empty bottles. Similarly, the separation in ownership of the appeal site from the bar has contributed to the downward spiral in both the condition and the appearance of the site. From the submissions, I find that this process of decline is likely to accelerate unless a viable, positive use can be identified.
- 3.7 The appeal proposal would involve the appeal site being cleared up, the walls being treated, the access being controlled and the introduction of various items of furniture and decoration. In total, I find that these measures would upgrade the amenity of the area to a level that conforms with the standards that prevail in the immediate vicinity. In addition, by introducing a positive use (principally during the summer months of the year) and by linking the ownership of the site to the adjoining bar, there would be specific provision for the ongoing maintenance of the improved

amenity. Moreover, subject to the imposition of appropriate conditions that would limit the hours of operation of any beer garden, the playing of music and the definition of upper noise limits (as recommended by the environmental health department), I find that the proposed development would meet the test in section 262(8) of the Act of preserving and enhancing the amenity of the conservation area.

- 3.8 In relation to the listed building issue, the site inspection showed that the former Dalhousie Hotel is an attractive Mid Victorian building with fine architectural details. The character of both the front and the rear of the category B listed structure has been fully retained during the conversion to a bar with 4 flats on the upper floors. In complete contrast, the appeal site (which originally was small, roofless store to the rear and to the side of the listed building) was constructed to a functional design using standard materials. The site inspection showed that no maintenance has been carried out in the 50 square metres for many years, thereby leading to a progressive decline in its visual and structural qualities. It is clear that this decline is likely to continue unless a viable use can be found for the site.
- 3.9 The appeal proposal involved, inter alia, the upgrading of the site by the removal of the rubbish, the refurbishment of the walls, the insertion of a security door, the provision of relevant tables and chairs and the introduction of hanging baskets. Whilst I accept that these measures would not create a traditional rural beer garden, I find that they would provide a pleasing, relatively small urban facility that would be appropriate in a site close to the centre of Brechin. Moreover, it is clear that both the former hotel and the current bar have provided alcoholic drinks in the locality for many years and that no record of inappropriate behaviour has been identified. In these circumstances, I conclude that the appeal proposal would reflect a pattern of use that has been in existence for many years; that the upgrading of the appeal site would remove an unsightly feature that detracts from the current amenity; that the proposed design would create a facility that compliments the main features of the listed building; that, subject to the imposition of appropriate conditions upon any consent that may be granted, no adverse impact upon the architectural or historical features of either the listed structure or the adjoining buildings would occur; and that there are no grounds of refusing the proposed change of use on the basis of the second determining issue.
- 3.10 I have taken into account all the other matters raise but none outweighs the considerations leading to my conclusions. Accordingly, in exercise of the authority delegated to me, I sustain your client's appeals and grant planning permission and listed building consent for the change of use of the appeal site to the rear of the Dalhousie Bar to form a beer garden as set out in planning application 01/96/1044COU and listed building consent 02/96/1005LB subject to the following conditions:-
- 1 The permission hereby granted shall lapse if the development is not begun within 5 years from the date of this decision.
 - 2 The beer garden shall not be used outwith the hours 11.00 am to 8.00 pm Monday to Saturday and 12 noon to 6.00 pm on Sunday. Outwith these hours, the appeal site shall be locked and not be open to the public.

- 3 No live or recorded music shall be played within the beer garden at any time.
- 4 Noise levels emanating from the beer garden shall not exceed 5 db(A) above ambient as measured at the boundary of the neighbouring properties.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications.

5 CONSULTATION

- 5.1 The Chief Executive, Director of Law and Administration and Director of Finance have been consulted in the preparation of this report.

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.

AA/JJ/SP/IAL

24 April 1997

Alex Anderson
Director of Planning, Transport & Economic Development