| THE HIGHLAND COUNCIL | Agenda Item | 5.9 |
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| SOUTH PLANNING APPLICATIONS COMMITTEE 20 May 2014 | Report No | PLS/040/14 |

14/00754/FUL: Mr Angus MacDonald Development Site East of Cathedral, Ness Walk, Inverness

Report by Area Planning Manager - South

| Ş | SUMMARY | |
|---|---------------------------------|--|
| | Description : Refreshment kiosk | |
| | Recommendation - GRANT | |
| | Ward: 15 - Inverness Central | |
| | Development category : Local | |
| | Pre-determination hearing : n/a | |

Reason referred to Committee : Objections from 5 or more separate addresses. Community Council objection.

1. PROPOSED DEVELOPMENT

- 1.1 The proposal seeks to renew planning permission for a refreshment kiosk to be located on Ness Walk. The kiosk measures 6.44m (roof gutter to roof gutter) in length by 2.9m (roof gutter to roof gutter) in width and extending to 2.5m at the eaves and 3.7m to the ridge. The kiosk is designed in Victorian style and uses materials to give a traditional appearance. As with the current permission, the roof will be clad in slate grey coloured sheet zinc cladding, cast iron gutters, cast iron brackets and natural stone panels (for the most part) for the walls. Powder coated fibre cement panels to match the stone will be used for the door on the south elevation and on the base course of the rear (west) elevation. The kiosk will be orientated in a north-south direction with the serving hatch opening out onto Ness Walk. The kiosk will be level with the road surface of Ness Walk and below the level of Bishop's Road.
- 1.2 **Variations**: A revised plan was submitted in April 2014 (drawing ref 135 09C).

2. SITE DESCRIPTION

2.1 The site is located in the planted area close to the southernmost entrance to St. Andrew's Cathedral car park. Following detailed discussion with the Flood Team, the precise location of the kiosk has been adjusted to take account of approved flood defence works. The planted area is level with Bishops's Road while Ness Walk is set at a lower level. The front of the kiosk will be level with the pedestrianised area on Ness Walk.

3. PLANNING HISTORY

- 3.1 02/00431/OUTIN outline consent granted for the same design of kiosk at the north end of Ness Walk to the east of the Cathedral.
- 3.2 05/01051/REMIN reserved matters granted for the kiosk.
- 3.3 08/00776/FULIN Section 42 Variation seeking to extend the consent which was granted until 8 December, 2010. This was granted on the basis that a Stopping Up Order would be completed. This was subsequently the subject of a Public Inquiry. The outcome of the Inquiry was that the Stopping Up Order was not confirmed. This was on the basis that the kiosk would cause an obstruction to users of the public footpath including cyclists.
- 3.4 10/03407/FUL detailed planning permission was granted on 31 May, 2011 and is due to expire on 31 May, 2014 for a kiosk at this same location.

4. PUBLIC PARTICIPATION

4.1 Advertised : neighbour notification 28.03.2014; affecting character of Conservation Area 09.05.2014

Representation deadline : 09.05.2014

Timeous representations: 16

Late representations : 0

- 4.2 Material considerations raised are summarised as follows:
 - Detrimental to visual amenity as it is located within the Conservation Area and detrimental to the setting of the riverside. It can be viewed from the east side of the River Ness and would not enhance the area. Previous applications incorporated a slate roof and natural stone panels but revised version is of poorer quality with zinc roof and some fibre cement panels and removal of some of the metal decorative casting.
 - Stopping up order not confirmed for previous location further to the north as the structure would restrict access for pedestrians, wheelchair and buggy users, as well as cyclists, and potential flood scheme may reduce the width of Ness Walk. This site would also be affected by such issues.
 - Concern about any ramped access as it will have a visual impact and reduce the area of the Augsburg Garden and affect use of Ness Walk.
 - Litter even with provision of bins, the proposal will give rise to nuisance in the surrounding area. No large commercial bins should be allowed.
 - No public conveniences in the area.

- Over provision of food outlets.
- Development would restrict access to pedestrians. Space around the kiosk, given the expected cluster of customers around it, will severely restrict the space available on Ness Walk and this was an issue raised with the last stopping up order.
- Road safety kiosk immediately adjacent to Bishop's Road and tree foliage masks the view of the approach to the kiosk. Located opposite the Cathedral car park and children are likely to run across the road.
- Traffic congestion likely to increase with motorists and cyclists pulling in briefly to purchase items. Compromise road traffic safety.
- Safety of children given the increased use of the forecourt to Eden Court Theatre for young people and a busy road separates kiosk from this area.
- Concern that if business fails, kiosk will be abandoned.
- Inverness Civic Trust supports the application.
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. SUPPORTING INFORMATION FROM THE APPLICANT

- 5.1 The kiosk is a free-standing building with traditional materials to reflect the traditions and character of the town. It will stand alone as a further element of traditional character without competing with or overshadowing surrounding buildings. The location of mains services under the footpath and the difficulty of "stopping up" part of the footpath, in addition to verifying ownership, have resulted in the applicant moving the kiosk to a different position.
- 5.2 Adjustments were also made to the size of the unit to allow for the proximity of the pavilion to the road and for the integrity of the flood barrier to be achieved. The heavier slate finish to the roof was altered to a zinc finish and some of the decorative metalwork was omitted in order to make the kiosk more easily demountable because of the flood defence wall. The location is closer to Eden Court and more closely integrated with the riverside planters. It will appeal to a greater section of the passing public but remove concerns about the proximity to the Cathedral. The site was chosen to be clear of both trees and lighting poles. The proposed design continues to reflect the same character and materials of the previous applications. Being set into the planted area and surrounded by mature trees and bushes it will quickly become part of the streetscape without intruding onto Ness Walk.
- 5.3 There are currently ramped accesses at each end of the planter onto Ness Walk and the applicant is prepared to construct a flight of steps adjacent to the kiosk (with pedestrian guard rails and foliage control) to allow for a direct link from Bishop's Road to the kiosk.

5. CONSULTATIONS

- 5.1 **Ballifeary Community Council: Object** to the proposal and consider it inappropriate for a commercial kiosk to be located on Ness Walk within the Conservation Area. Road traffic safety concerns about the close proximity of the kiosk to the flow of vehicles exiting the Cathedral Car Park and using the Eden Court car park. Safety of pedestrians and cyclists on the footway/cycleway could be compromised by people using the kiosk. Object to the proposed appearance of the kiosk, noise and cooking odours and the potential for litter and to attract seagulls. There is considered to be adequate provision for refreshments in the area. The grant of permission would set a precedent for proposals of a similar nature and note that the site is not allocated for development in the Local Plan.
- 5.2 **SEPA:** No objections.
- 5.3 **Transport Planning :** No objections.
- 5.4 **Flood Team:** No objections. Discussions have taken place with the applicant to see how the kiosk can be accommodated in the light of any works necessary to form the flood defence works. The kiosk can be erected provided it is removed, at no cost to the Council, to allow for construction of the flood wall. It has also been designed to accommodate the wall. As Council ground, there will need to be a lease and a stopping up order.

5.5 **Forestry Officer:** No objections

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 **Highland-wide Local Development Plan 2012**

- 28 Sustainable Design
- 29 Design Quality and Place Making
- 57 Natural, Built and Cultural Heritage

6.2 Inverness Local Plan

Not applicable

7. OTHER MATERIAL CONSIDERATIONS

- 7.1 **Draft Inner Moray Firth Local Development Plan** Not applicable.
- 7.2 **Highland Council Supplementary Planning Policy Guidance** Not applicable.
- 7.3 **Scottish Government Planning Policy and Guidance** Not applicable.

8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.
- 8.3 The reason for this further application is due to the fact the Stopping Up Order procedure has to be carried out again. This means that the present consent will expire before the Inquiry takes place. In terms of the previous application, the submission remains the same as that granted consent in May 2011.

8.4 **Development Plan Policy Assessment**

- 8.4.1 There are no site specific policies that relate to this application and its location. Highland-wide Local Development Plan Policy 28 is the general policy against which all proposals must be assessed. The site lies within the Conservation Area where there is a general duty to assess the extent to which a proposal preserves or enhances the special qualities of the area. The planning history to the proposal is important in terms of consideration of its compliance with policy.
- 8.4.2 Against that background, outline consent was granted for a kiosk at the north end of Ness Walk by the then Planning Committee in October 2002. This was followed up by an application for the approval of reserved matters which was approved in December 2005. The outline consent was due to expire in October 2007 but extended for 1 year due to the need to apply for a Stopping Up Order. A further application was made in 2008 to extend it further to allow for completion of the stopping up procedure, which involved a public inquiry. The outcome was that the Reporter declined to confirm the Order.
- 8.4.3 As a result, the applicant decided that an alternative location had to be found to address the concerns expressed by the Reporter at the Inquiry. This location is further to the south than the site which first obtained planning permission. In comparison to the original permission, it is located further away from the entrance to the Cathedral, a Grade A Listed Building, and outwith its setting and therefore represents a marked improvement. This application is to renew the previous, and most recent, consent 10/03407/FUL which is due to expire on 31 May, 2014, and is necessary to allow for a further stopping up procedure. The Inquiry will take place after the expiry of the consent hence the need to extend the consent. The last application was granted by the Committee following a recommendation for approval. As with the last application, it is felt the proposed kiosk can be supported particularly since it is less detrimental in visual amenity terms and complies with the general policy requirement to show sensitive siting where there is potential impact on the historic environment.

- 8.4.4 Apart from the principle of the proposal the design is another important consideration. It is a Victorian style design which employs high quality materials. The roof is to be clad in slate grey coloured zinc cladding ; there are cast iron gutters, and iron brackets with natural stone panels for the walls. Fibre cement panels will be used for the side door and the bottom course of the elevation onto Bishop's Road. These materials were approved as part of the last application and there would be no requirement to insist on natural slate for the roof. Due to the proposed flood wall the agent decided to remove the natural slate and some of the decorative metalwork to make the kiosk demountable as it will have to be removed in the event of the erection of the flood wall. The design is considered to be of an appropriate quality for this location within the Conservation Area and is not considered to have a detrimental affect on the setting of the Cathedral and the river.
- 8.4.5 Consideration has also to be given to the impact on the flood wall should it be erected. Extensive discussions have been carried out with the Flood Team to ensure the kiosk will not interfere with its construction and agreement has been reached. As Council owned ground, a lease will have to be drawn up to ensure, amongst other matters, the kiosk is removed during the construction of the flood wall and then replaced, all at the applicant's cost.

8.5 Material Considerations

8.5.1 In terms of the concerns expressed by the objectors the location is not viewed as detrimental to visual amenity for the reasons stated above. Also the materials are considered appropriate for a Conservation Area and indeed were accepted on the grant of the previous planning permission. The Stopping Up Order is separate from the planning process and should not have a bearing on the outcome of the determination of the planning application. The applicant has addressed the comments made by the Reporter following the earlier Stopping Up Order to allow for continuing use of the pedestrianised area by pedestrians and cyclists. The applicant is willing to provide litter bins, and this can be governed by appropriate conditions.

Overprovision of food outlets and the proximity of public conveniences are not material planning considerations. The location within the planted area will cause minimal disruption, and the impact on the Augsburg Garden will be limited. The kiosk has been designed with the flood wall in mind and located so as not to significantly affect trees within the planted area. With the last application, the applicant suggested the provision of steps adjacent to the kiosk onto Bishop's Road but there is no requirement (in terms of road traffic safety) to do so and given the perceived fears about pedestrian safety it should be discouraged. In any event this is a separate matter not currently under consideration. There are existing ramped accesses at either end of the planted area. Deliveries to the kiosk are for the applicant to manage and it is noted that there are double yellow lines on Bishop's Road.

9. CONCLUSION

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations. It is considered reasonable given the issues associated with the Stopping Up Order that a further period of three years be granted to enable the development to proceed.

10. **RECOMMENDATION**

Action required before decision issued \underline{N}

| Notification to Scottish Ministers | Ν |
|------------------------------------|---|
| Notification to Historic Scotland | Ν |
| Conclusion of Section 75 Agreement | Ν |
| Revocation of previous permission | Ν |

Subject to the above, it is recommended the application be **GRANTED** subject to the following conditions:

1. The colour of the materials and finishes of the kiosk shall be black or other dark colour to be agreed with the Planning Authority. Prior to the start of development, an exact specification for the material to be used in the stone panels shall be submitted to and approved in writing by the Planning Authority. The development shall thereafter proceed in accordance with the approved details.

Reason : In the interests of visual amenity as the kiosk is located in the Conservation Area.

2. Notwithstanding Class 3 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, or any order revoking and re-enacting that Order, with or without modification, the use of the kiosk is restricted to the sale of cold food, soft drinks, confections, ice cream, and hot beverages only. The sale of any other hot food, except crepes and waffles, is specifically excluded, and will require the express consent of the Planning Authority.

Reason : In the interests of amenity and to control the use of the kiosk.

3. Unless otherwise approved in writing by the Planning Authority, the kiosk shall only operate between the hours of 8.00 am to 11.00 pm, April to September, and 8.00 am to 8.00 pm, October to March.

Reason : In the interests of amenity and in order to avoid disturbance and nuisance.

4. There shall be no music, vocals, or other amplified sound or similar noise emanating from the kiosk.

Reason : In the interests of amenity and in order to avoid disturbance and nuisance.

5. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 no advertisements such as signage, posters or lettering will be erected on the kiosk without the express consent of the Planning Authority.

Reason : In the interests of amenity and in order to avoid disturbance and nuisance.

6. The three litter bins shown on the approved plan shall be a "Glasdon" or similar design to reflect the Conservation Area status and shall be installed prior to the use being implemented. The applicant shall ensure all litter is cleared from outside the kiosk after closure of the kiosk on a daily basis and within an area to be agreed before development commences on site and thereafter agreed in writing, all to the satisfaction of the Planning Authority.

Reason : In the interests of amenity and in order to avoid disturbance and nuisance.

7. Unless otherwise approved in writing with the Planning Authority, lighting of the kiosk shall be by concealed downlighters set behind the cast iron eaves panels, which shall be located and designed to minimise external glare and avoid a hazard or distraction to road users to the satisfaction of the Planning Authority. No development shall commence on site until details of the proposed wattage and equipment type has been submitted to and approved by the Planning Authority in consultation with the Roads Authority.

Reason : To minimise light pollution.

8. Unless otherwise approved in writing by the Planning Authority, the building shall be so designed to incorporate materials and a form of construction which is water resistant to take cognisance of the flood risk at this location, and prior to the start of development the exact materials and method of construction shall be submitted to and approved by the Planning Authority. The development shall thereafter proceed in accordance with the approved details.

Reason : To take account of the location of the kiosk close to the River Ness and the potential for flooding of the area.

9. No work shall start on site until a Tree Protection Plan (in accordance with BS 5837-2012) is submitted to, and approved in writing by, the Planning Authority. Thereafter the scheme so approved shall be installed and retained in place throughout the construction period. Such scheme shall contain details of the erection and maintenance of fences around the trees, details of underground measures to protect roots, the control of areas around the trees and any other measures necessary for the protection of the trees. No storage of equipment, materials or machinery, nor dumping of material nor lighting of fires shall be permitted within the agreed tree protection zone, all to the satisfaction of the Planning Authority.

Reason : In order to ensure the protection of existing trees within the site.

10. If trees have to be removed as a result of the works then no works shall start on site until a fully detailed scheme of replacement tree planting, including maintenance, has been submitted for the approval in writing of the Planning Authority and this shall include the planting of similar species and maturity unless otherwise approved in writing. All planting thereby approved shall be undertaken in the first planting season following first use of the kiosk, and shall thereafter be maintained in accordance with the approved scheme of maintenance. Any trees which, within a period of five years from the completion of the house die, are removed, or become seriously damaged or diseased, shall be replaced in the immediately following planting season with others of a similar size and species.

Reason : In the interests of visual amenity.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

- 1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
- 2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found

at: http://www.highland.gov.uk/yourenvironment/roadsandtransport

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationfo rmsforroadoccupation.htm

Mud & Debris on Road

Please note that it an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Lease: as Council owned land, a lease has to be drawn up to site the kiosk and to seek its removal and replacement during the construction phase of the proposed flood wall at the applicant's expense.

Construction Hours and Noise-Generating Activities: You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

| Signature: | Allan J Todd |
|--------------------|---|
| Designation: | Area Planning Manager - South |
| Author: | Keith Gibson |
| Background Papers: | Documents referred to in report and in case file. |
| Relevant Plans: | Plan 1 – Location plan, site plan and elevations per drawing 135 09 Rev |

Appendix – Letters of Representation

| Name | Address | Date Received | For/Against |
|---|--|------------------|-------------|
| Mr & Mrs John Spencer | 6 Culduthel Gardens, Inverness | 31.03.14 | against |
| Mrs Jenny Mayhew | 28 Drummond Circus, Inverness | 16.03.14 | against |
| Mr & Mrs K.Cox | 8 Cradlehall Park, Westhill, Inverness | 17.03.14 | against |
| Janet MacMillan | 54 Harrowden Road, Inverness | 25.03.14 | against |
| Mr John Bamber | Duirinish, 1 Aultnaskiach, Inverness | 28.03.14 | against |
| G.Collins | 43 Drumfield Road, Inverness | 31.03.14 | against |
| Mrs Sheena Robertson | Heathmount, 2 Bishops Road, Inverness | 26.03.14 | against |
| A.M.Roff | Rowan Glen, Upper Braefindon, Culbokie Dingwall | 20.03.14 | against |
| Mr & Mrs David Nelson | Coiltie Garden House, Divach, Drumnadrochit | 20.03.14 | against |
| Mrs Joan Stewart | 25A Ballifeary Lane, Inverness | 20.03.14 | against |
| Mrs Cynthia Nicol | 44 Harrowden Road, Inverness | 20.03.14 | against |
| Provost And Rector St Andrews Cathedral Inverness | St Andrews Lodge, 15 Ardross Street, Inverness | 13.03.14 | against |
| Mr & Mrs J.Green | 38 Ardbreck Place, Inverness | 18.03.14 | against |
| Mr Graham Tuley | 26 Crown Drive, Inverness | 21.03.14 | against |
| Mrs W.A.MacDonald | 5 East Mackenzie Park, Inverness | 19.03.14 | against |
| Inverness Civic Trust | Per Mr John West, 37 Drumdevan Road, Inverness | 24.03.14 | for |





FRONT EAST ELEVATION TO RIVER NESS 1:50



REAR WEST ELEVATION TO BISHOPS ROAD 1:50



PAVILION PLAN - AS MARCH 2013 1:5O