

REPORT TO: Planning Committee

MEETING DATE: Tuesday 4 October 2016

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Berry for the following reasons: There is confusion regarding outside seating. The application appears to allow it and local residents are concerned about being disturbed, despite the fact that the applicant assured North Berwick Community Council that outside seating indicated on plans was a mistake.

Application No. **16/00478/P**

Proposal Rooftop cafe extension, erection of fencing, formation of decked sitting area and external escape stair

Location **91 High Street
North Berwick
East Lothian
EH39 4HD**

Applicant WhyNot?

Per Architecturejfltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The property to which this application relates is a shop and cafe that occupies the ground floor component of a two and a half storey building located on the south side of High Street, North Berwick. It includes a single storey flat roofed outshot that abuts the southern end of the original building. By being within North Berwick Town Centre the shop and cafe is within an area of mixed uses as defined by Policy ENV2 of the adopted East Lothian Local Plan 2008. It is also within North Berwick Conservation Area.

The building is bounded to the north by the public road and footpath of High Street, to the west by a shop with residential accommodation above, to the east by a private car park beyond which there is a neighbouring flatted building and to the south by the residential property of 18 St. Andrew Street.

In May 2014, planning permission (Ref: 14/00083/P) was granted retrospectively for the part change of use of the ground floor component of the building from retail (class 1) to cafe use (class 3) and for the re-painting of its frontage.

Planning permission is now sought for (i) the addition of a dome shaped, aluminium framed, first floor glazed extension that would project some 3.5 metres above the single storey flat roofed section of the building, (ii) the formation of a decked seating area around the proposed roof top extension, (iii) the erection of a 1.8 metres high timber fence and gate that would enclose the proposed extension and decked seating area, and (iv) the erection of a metal staircase that would abut the west end of the rear (south) elevation of the building.

Subsequent to the registration of this application the applicant's agent has submitted a design statement, the menu for the cafe and a revised supporting statement. The applicant has also confirmed in writing that the proposed external staircase would be used for emergency access or escape purposes only.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas), ENV4 (Development within Conservation Areas) and DP6 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. It is stated in Scottish Planning Policy that proposed development within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character and appearance of the conservation area should be treated as preserving its character and appearance.

Four written objections to the application have been received. The main grounds of objection are:

(i) the proposed roof top extension would overlook the car park and private seating area belonging to the neighbouring flatted building known as 'Tigh Mhor'. Residents of the flatted building currently enjoy sitting outside the front of the flatted building in sunny days from April to September. There would be no privacy to the flats that have bedrooms and kitchen areas facing onto the private car park area and towards the proposed extension. The proposals would be detrimental to the privacy and noise levels of the residents who live in the flatted building;

(ii) the proposed roof top extension would result in odour issues. Concerns are raised over its visual appearance. The back door of the cafe is open throughout the working day

and the noise from building work and subsequent noise entering the cafe would cause a disturbance to both the staff and customers;

(iii) the proposals would reduce the value of neighbouring properties;

(iv) litter pollution as a result on napkins and other litter items being blown or thrown from the external seating area with the fence being only 1.8 metres high; and

(v) North Berwick is already well served with cafes (in excess of 20) and it appears as though the applicant is just moving his cafe business to the roof top of the building. If the applicant re-arranged the tables and chairs within the interior of the premise there would be no need for a roof top extension.

This application has to be determined on the merits of the development proposed in it and whether or not the building could be re-configured internally to accommodate additional seating is not a material planning consideration in such a determination.

Matters of littering and/or refuse collection are controllable under legislation other than planning.

The affect of a proposed development on property value or its affect on the saleability of a property are not material planning considerations in the determination of an application for planning permission.

Any matters of alleged nuisance to neighbours from any construction works that may be carried out would be for the Council's Environmental Protection Manager to investigate under separate environmental protection legislation. Any skips to be sited on the public road would require a permit for that from the Council's Road Services.

North Berwick Community Council, as a consultee to this planning application, state that only the interior of the 'geodesic dome' should be used by patrons of the cafe. The rest of the roof space should not be used for seating or the serving of food and drink to patrons to ensure the limiting of noise disturbance to nearby residents and to ensure seagulls and other birds are not attracted to any external serving of food and drink.

The proposed extension and decked sitting area would be used in association with the cafe use function of the cafe and shop. Policy ENV2 states that uses which are associated with a town centre will be acceptable in principle. These uses include retailing, business and office use, leisure and entertainment and housing. Proposals that would have a significant adverse impact, particularly on residential property, will not be permitted.

The proposed development would extend the cafe use of the existing shop premises, which is a well-established commercial use within the town centre of North Berwick. The proposed extension of the cafe use of the shop and cafe premises is a use acceptable in principle to the mixed uses of the town centre and one that can contribute to the vitality and viability of the town centre. It is consistent with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The Council's Economic Development and Strategic Investment Manager is supportive of the proposed development, as it would enable the growth of an existing business and would be consistent with the Council's East Lothian Economic Development Strategy 2012-2022.

The proposed extension, due to its contemporary design and fully glazed form, would be architecturally different from the existing building, which predominately has external walls clad in stone and pitched roof slopes clad in slates. However, the single storey component on which the extension would be added is contained behind (to the south) the main two and a half storey building. In its position above the flat roofed section of the single storey component the proposed extension would not be seen in public views of it from High Street to the north. Only its rear (south) elevation would be visible in public views of it from the footpath and road of St. Andrew Street to the south. So too would the section of fencing with gate that would enclose the southern end of the flat roofed section and which would extend some 1.8 metres above the upper surface of it. The proposed external staircase, which would have metal handrails enclosing its east and west sides, would also be visible in its position on the west end of the rear (south) elevation of the single storey component of the building. However, they would only be seen in limited, short duration, views from that public place. In that they would be seen against the backdrop of the greater massing and higher height of the existing two storey and a half storey main building and otherwise in the context of the existing flat roofed single storey outshot to which they would be formed on top of, the proposed extension, fencing with gate and external staircase would not appear harmfully prominent, intrusive or incongruous in their setting within their town centre location. They would be appropriate to their place and would not be harmful to the visual integrity, character and appearance of the existing building. They would not be an overdevelopment of the building. Subject to the colour of the aluminium framing of the proposed extension being agreed in advance prior to the construction of it and providing that the 1.8 metres high close boarded timber fence with gate are finished in a colour to be agreed in advance prior to the painting or staining of them, the proposed extension and fencing with gate would not have a significant visual impact on, and thus would not be harmful to, the character and appearance of the built form of this part of the Conservation Area.

The proposed decked sitting area, due to its containment behind the 1.8 metres high fencing, would not be visible from a public place in its position above the upper surface of the flat roofed top of the single storey component of the building. By virtue of its extent, size, scale, positioning and materials the proposed decked area would be a sympathetic addition on top of the existing flat roofed outshot to the rear of the main building. It would be appropriate to its place and would not be harmful to the visual integrity, character and appearance of the existing building. It would not have a significant visual impact on, and thus would not be harmful to, the character and appearance of the built form of this part of the Conservation Area.

Accordingly, on the matters of visual impact, the proposals are consistent with Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4 and DP6 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

Policy DP6 of the Local Plan also requires that a proposed extension to a building should not adversely affect the existing residential amenity of neighbouring properties. Accordingly it should not result in any significant loss of privacy, daylight or sunlight to neighbouring properties as a result of overlooking or overshadowing.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties it is the practice of the Council, as Planning Authority to apply the general rule of a 9 metres separation distance between the windows of a proposed new development and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new development and the windows of existing neighbouring residential properties.

The application drawings demonstrate that the proposed 1.8 metres high timber fencing and gate would fully enclose the first floor extension and the decked sitting area in their positions above the flat roofed outshot to the south of the main building. The 1.8 metres high fence would be of a sufficient height to ensure that use of the proposed extension and use of the decked sitting area would prevent a person from within the proposed extension or decked sitting area from overlooking a neighbouring residential property. A condition can be imposed on a grant of planning permission to ensure that the 1.8 metres high timber fence and gate are erected, in the positions shown for them, prior to any use being made of the first floor extension or the external decked sitting area and that the fencing and gate be retained in their entirety thereafter.

The proposed external staircase, due to its positioning and due to its limited use for emergency access or escape purposes only, would not be regular enough such that the use of it would allow for harmful overlooking of a neighbouring residential property. It would however be prudent to ensure that the external staircase be used only for emergency access or escape purposes. This can be controlled by a conditional grant of planning permission for the proposed development.

Owing to their size, form, positioning and orientation the proposed extension, decked sitting area, fencing with gate and external staircase would not give rise to a harmful loss of sunlight or daylight received by any neighbouring residential properties.

The Council's Principal Environmental Health Officer raises no objection to proposed development, being satisfied that the use of the proposed extension and/or decked sitting area would not cause any nuisance or disturbance to the amenity of neighbouring residential properties. Any complaints that may arise with regards to noise or odour could be investigated by the Council's Environmental Health Service under statutory nuisance provisions.

On the foregoing considerations of the impact of the proposed development on the privacy and amenity of neighbouring residential properties through its use, overlooking and overshadowing the proposals do not conflict, where applicable, with Policies ENV2 or DP6 of the adopted East Lothian Local Plan 2008.

The Council's Road Services advise that the property that is the subject of this application does not have private off-street car parking provision. However, the proposed extension to the existing cafe will increase parking demand but only by a very small amount. It is also noted that the applicant proposes to install an external staircase to the rear of the building, via and adjacent to a small courtyard accessed from St. Andrew Street but has confirmed that this would provide emergency access or an escape route only, and would not provide access to the cafe or other parts of the premises for members of the public. Thus they raise no objection to the proposed development. Subject to the imposition of a condition to control the use of the external staircase for emergency or escape purposes only, the proposals are consistent with Policy T2 of the adopted East Lothian Local Plan 2008.

CONDITIONS:

- 1 The colour of the aluminium framing of the proposed extension hereby approved shall be submitted for the inspection and approval of the Planning Authority prior to the commencement of its construction. The colour used shall accord with the sample so approved.

Reason:

To safeguard the character and appearance of the building and the character and appearance of the Conservation Area.

- 2 Within 1 month of their erection the fencing and gate hereby approved shall be painted or stained a colour to be submitted and approved by the Planning Authority. The colour of the fencing and gate shall accord with the colour so approved.

Reason:

To safeguard the character and appearance of the building and the character and appearance of the Conservation Area.

- 3 Prior to any use being made of the extension or decked sitting area hereby approved the 1.8 metres high timber fencing and gate also hereby approved shall have been erected in their entirety in accordance with that which is detailed for them in the docketed drawings and thereafter all of that fencing and gate shall remain in place unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and residential amenity of the neighbouring residential properties.

- 4 The external staircase hereby approved shall not be used as a means of pedestrian access to and from the building. It shall only be used for emergency and/or escape purposes.

Reason:

In the interests of pedestrian and road safety.