

REPORT TO: Planning Committee
MEETING DATE: 7 June 2022
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Note - this application was called off the Scheme of Delegation List by Councillor Findlay for the following reasons: I believe it is for the Committee to decide whether an increase in noise levels and neighbour disturbance is acceptable in a residential and conservation area.

Application No. **22/00267/P**
Proposal Erection of covered roof area (Retrospective)
Location **40 Main Street
Gullane
EH31 2AL**

Applicant Mr L Crolla
Per Format Design

RECOMMENDATION Consent Granted

REPORT OF HANDLING

PROPOSAL

This application relates to the restaurant named 'Main Course' which occupies the ground floor premises of a two storey and attic terraced building located at the west end of Rosebery Place on the south side of Main Street in Gullane. The first floor component of the building is in use as a residential flat. The building is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018 and it is also within Gullane Conservation Area.

The premises fronts onto the public road of Main Street to the north. To the west is the residential property named 'The Saughs', to the east are the ground floor commercial properties of Rosebery Place with flats above and to the south of the premises is the rear garden of the neighbouring house named 'Kirklands'.

In October 2013, planning permission (Ref: 13/00643/P) was granted for the change of

use of the premises from a delicatessen (Class 1) to restaurant (Class 3) and for the extension to an existing chimney pot on the rear (south) elevation of the building. Planning permission 13/00643/P has been implemented for some time.

In January 2015, planning permission (Ref: 14/00925/P) was granted for alterations to shopfront and installation of awnings. Planning permission 14/00925/P has been partly implemented as the alterations to the frontage of the building have been undertaken.

In March 2017, planning permission (Ref: 16/01027/P) was granted for a single storey flat roofed extension onto the rear (south) elevation of the building. Planning permission 16/01027/P has been implemented and the extension now forms part of the built form of the building.

In February 2021, planning permission (Ref: 20/01391/P) was granted for alterations and extension to the building, formation of hardstanding area and erection of shed and fencing (Part Retrospective).

In March 2021, the Council refused a certificate of lawfulness (Ref: 20/01403/CLU) for the use of the rear garden area of the building as a restaurant (Class 3) use for the following reason:

'It has not been demonstrated that the lawful use of the rear garden area has changed from a domestic garden associated with the first floor flat of 41 Main Street to an outdoor drinking/dining area used in association with the restaurant use operating from 40 Main Street. Neither has it been demonstrated that the rear garden has been in use as an external dining/drinking area for a period of 10 years or more. Therefore the rear garden area of the building of 40/41 Main Street cannot be lawfully used as an external dining/drinking area in association with the existing restaurant use operating from the ground floor premises of the building'.

The applicant appealed against the decision to refuse a Certificate of Lawfulness to the Scottish Government's Directorate of Planning and Environmental Appeals on 25th March 2021. On 15th June 2021 the Reporter, appointed by the Scottish Ministers to determine the appeal, dismissed the appeal concluding that a certificate of lawfulness should not be granted.

Planning permission is now retrospectively sought for the erection of a covered roof area, in the form of an open ended canopy, which abuts the side (west) elevation wall of the building and otherwise part of the west boundary wall enclosing the side garden of the building. It is supported by timber columns that abut the inner side of the stone wall enclosing the west boundary of the building.

Through separate application 22/00266/P planning permission is sought for change of use of garden area to outdoor eating/seating area (Retrospective). A separate report on application 22/00266/P is, at this time, on the Council's Scheme of Delegation List.

DEVELOPMENT PLAN

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 Development Plan 2018.

There are no policies of the approved South East Scotland Strategic Development Plan (SEsplan) relevant to the determination of this application. Policies CH2 (Development Affecting Conservation Areas) and DP2 (Design) of the adopted East Lothian Local Development Plan 2018 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.

REPRESENTATION

Five objections to this application have been received. The main grounds of objection are:

- (i) the roof structure has been built without planning permission having first been sought for it;
- (ii) the erected covered roof structure impacts on general repairs and maintenance of a neighbouring residential property, restricts access to maintain the wall from the objectors' side and may cause structural damage to the existing boundary wall;
- (iii) the erected covered roof structure results in a neighbouring property becoming semi-detached as opposed to detached;
- (iv) the top of the covered roof structure is poorly kept, such that debris gathers on it, which is an eye sore from the windows of a neighbouring residential property;
- (v) the erected covered roof structure extends the restaurant's kitchen area and encourages the kitchen door to be left open. The kitchen door is meant to be a self-closing door as per condition 2 of planning permission 16/01027/P and, when it is not closed properly, noise levels and smells are increased;
- (vi) fumes and smells from cooking in the kitchen area of the building pollutes washing within the drying greens of neighbouring properties;
- (vii) concerns are raised as to what is, and could be, stored underneath the covered roof area which may result in a fire safety hazard;
- (viii) there appears to be no adequate drainage arrangements to prevent water draining from the covered roof area into the rear wall of a neighbouring residential property; and
- (ix) the covered roof area impacts on the privacy of neighbouring residential properties.

In response to some of the points raised by the objectors above:

The fact that the covered roof area has already been erected without planning permission having first been granted for it does not debar the applicant from applying retrospectively for planning permission and does not preclude a determination of this application on the merits of the proposed development, assessed against relevant development plan policies and other material planning considerations.

The matter of whether or not any structural damage could be caused to the boundary wall of a neighbouring residential property as a result of a proposed development, or any restriction to access for repairs or maintenance of a neighbouring property, is not a material consideration relevant to the determination of an application for planning permission.

The fact that the covered roof area abuts the mutual boundary wall of a neighbouring residential property does not change the status of that neighbouring house to a 'semi-detached' property. Nevertheless, this matter is not, in itself, a material consideration relevant to the determination of an application for planning permission.

Whether or not the top of the covered roof structure is poorly kept is not a material consideration relevant to the determination of an application for planning permission.

The erected covered area is not enclosed and does not form part of the kitchen of the existing building. However, failure to comply with any conditions imposed on a grant of planning permission, particularly with regards to condition 2 of planning permission 16/01027/P as stated by the objectors, would be a matter for the **Council's Enforcement Officer** to investigate.

Any fumes and smells that are expelled from the kitchen into the communal rear garden areas which pollutes washing within drying greens is a matter controlled through legislation other than planning. Any complaints received in relation to this would be investigated by colleagues in Environmental Health and Trading Standards service.

Any materials stored within the covered area that could result in a fire hazard safety is not a material consideration in the determination of an application for planning permission.

Matters relating to drainage and water run-off are not material considerations in the determination of an application for planning permission. Such matters are controlled under other legislation other than planning legalisation.

The remaining points raised by the objectors are addressed elsewhere within this report of handling.

COMMUNITY COUNCIL COMMENTS

Gullane Area Community Council, as a consultee to this application, state that this application has the potential to cause noise and odour nuisance to neighbouring residential properties and, should planning permission be approved, that consideration be given to imposing conditions that could usefully be applied to limit any noise/odour concerns.

PLANNING ASSESSMENT

The erected covered roof area, in the form of an open ended canopy, abuts the side (west) elevation of the building and otherwise part of the west boundary wall enclosing part of the garden of the building. It is rectangular in shape measuring some 5.4 metres long, some 3.1 metres wide and some 2.8 metres above ground level. Its shallow mono-pitched roof covering is clad in a white coloured, aluminium framed, corrugated finish. In its position, affixed to part of the side (west) elevation of the building, the erected covered roof area is not visible in public views of it. Nevertheless, due to its discreet position and its relatively small size, scale and low height, the erected covered roof is appropriate to its place and well integrated into its surroundings. It does not appear harmfully as a

harmfully dominant, intrusive or incongruous feature within its garden setting. It does not harm the character and appearance of the building or the character and appearance of this part of the Gullane Conservation Area.

The use of it does not, due to the enclosures of the garden of the building, allow for harmful overlooking of any neighbouring residential properties.

Owing to its size, form, height, position and orientation, the erected covered roof area does not give rise to a harmful loss of sunlight or daylight received by any neighbouring residential properties.

The **Council's Senior Environmental Health Officer** raises no objection to this application.

The **Council's Road Services Officer** raises no objection to this application.

On these considerations, the erected covered roof area does not conflict with Policies CH2 or DP2 of the adopted East Lothian Local Development Plan 2018 or with Scottish Planning Policy: June 2014. Therefore, the proposal is considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITION:

1 None.

