

**REPORT TO:** Planning Committee  
**MEETING DATE:** 25 June 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **24/00236/P**

Proposal Change of use of open space to beer garden with seating area, erection of fencing and gates (Part Retrospective)

Location **131 Church Street  
Tranent  
East Lothian  
EH33 1BL**

Applicant Tower 2022 Ltd

Per Scott Allan

**RECOMMENDATION** Application Refused

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to The Tower Inn, 131 Church Street, Tranent and specifically to an area of open space adjacent to the north of the existing single storey detached public house. The building and the area of open space is located on the eastern side of Church Street and to the north of its junction with Duncan gardens. It is within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan (ELLDP) 2018. It is also located within Tranent Conservation Area and the Battle of Prestonpans Historic Battlefield Site.

The area of land the subject of the change of use is an L-shaped area of land, some 70 m<sup>2</sup>, which would extend along the side (north) elevation of the building and project at its maximum length some 9.8 metres. It is a largely grassed area with a small section of hardstanding and steps, accessing into the side of the public house.

Planning permission is sought for the change of use of the area of open space for use as a beer garden in association with The Tower Inn. It is proposed that the beer garden would contain 6 circular tables with fixed benches.

Planning permission is also sought for the erection of timber fencing which would enclose the north, east and west boundaries of the proposed beer garden. The proposed gates would be positioned along the west boundary of the proposed beer garden, between the fence and the building of The Tower Inn. As some of the posts for proposed fence and gates are already in place then this planning application is in part retrospective.

The proposed fencing would vary in height due to the varied gradient of the land however at a maximum would measure some 1.8 metres in height. The length of fencing adjacent to the public footpath along Church Street would measure some 9.8 metres in length, including the installation of the set of timber gates at the south end, attached to the public house. The proposed fencing along the north edge of the proposed area of change of use would measure some 10.6 metres and some 5.4 metres along the east edge.

## **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 adopted National Planning Framework 4 (NPF4) and the adopted ELLDP 2018.

Policies 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of NPF4 and policies CH2 (Development Conservation Areas) and OS1 (Protection of Open Space) of the adopted ELLDP 2018 are relevant to the determination of the application.

Material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that a planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building is located.

Also material to the determination of this planning application is The Cultural Heritage and the Built Environment Supplementary Planning Guidance (SPG) of the ELLDP.

## **REPRESENTATIONS**

Three representations have been received in relation to the application. One of the representations neither supports or objects to the application, one supports the application and one objects to the application.

The main grounds of objection are that:

- \* the development expanded without permission into an area of public park; and
- \* the noise from the beer garden would also cause a problem for the houses nearby.

## **PLANNING ASSESSMENT**

The Tower Inn and area of land subject to the proposed change of use is located between Fowler Street and Church Street within a predominantly residential area as defined by Policy RCA1 of the ELLDP 2018. Policy RCA1 states that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.

In relation to potential impact on residential amenity, the **Council's Environmental Health Officer** has concerns regarding potential impacts of noise associated with the proposed beer garden. He states that there is the potential for loss of amenity due to noise in the forms of laughing, shouting and loud talking associated with the misuse of the beer garden area by patrons. However, the Council's Environmental Health Officer raises no objection to the proposal provided the following conditions are attached to any grant of planning permission: (i) no amplified music and/or amplified speech shall be permitted in the beer garden at any time, (ii) the beer garden shall only be used between the hours of 1100-2000 hours on any day of the week and (iii) The beer garden shall not be used unless and until any doors providing access to the beer garden have been provided with a self-closing mechanism. Any such doors shall remain self-closing and shall not be retained in a continuous open position thereafter unless otherwise approved by the Planning Authority.

The **Council's Safer Communities Team** were consulted on the application and advised they had records of noise complaints against the Tower Inn on the Anti-Social Behaviour register for 2022/2023. However, they are satisfied that if the aforementioned conditions suggested by the Council's Environmental Health Officer are attached to any grant of planning permission they would not object to the application.

The proposals would not allow for harmful overlooking of any neighbouring residential properties.

Therefore, provided the aforementioned planning controls are attached to any grant of planning permission the proposed change of use of the land to a beer garden would not harm the residential amenity of the occupants of nearby residential properties.

The **Council's Road Officer** has no objections to the proposal being satisfied the proposals would not be a road safety hazard.

Policy CH2 of the ELLDP states that all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area.

Policy OS1 of the ELLDP states that alternative uses of amenity open space will be considered where there would be no significant loss of amenity or impact on the landscape setting and where alternative provision of equal community benefit and accessibility would be made available.

The Tower Inn is located at the southern end of a large area of open space, located between Fowler Street and Church Street. The Conservation Area Character Statement contained within the Cultural Heritage and the Built Environment SPG of the adopted ELLDP 2018 states:

"The Tranent Conservation Area is centred on Church Street and High Street, which provided the early growth of the town. One of the main characteristics of the area is its street pattern which features short street in an organic layout. .... The area between Fowler Street and Church Street is grassed and trees add considerably to the area's amenity. It must not be lost to development."

That area of open space, due to its location on the east side of Church Street is an important green space that contributes to the landscape setting and visual amenity of this part of Tranent. It currently has no built development on it and makes a significant positive contribution to the character and appearance of this part of Church Street and therefore to this part of the Tranent Conservation Area.

The change of use of the area of open space to a beer garden and its enclosure with a 1.8m high timber fence and gates would separate that area of land from the larger area of open space of which it is currently a part. This would harm the landscape setting of the area and undermine the contribution this area of open space makes to the visual amenity of the area. Therefore the change of use of the area of land and its enclosure with the fence and gate would therefore be harmful to the character and appearance of this part of the historic core of Tranent Conservation Area and as such would be contrary to Policies CH2 and OS1 of the adopted East Lothian Local Development Plan 2018 and contrary to The Cultural Heritage and the Built Environment Supplementary Planning Guidance of the adopted East Lothian Local Development Plan 2018.

Furthermore by their 1.8m high, close boarded form and roadside positioning, the proposed fencing and gates would be prominent and imposing features that would be out of keeping with the publicly visible boundary enclosures within this part of Church Street and Fowler Street. Therefore the fences and gates would not be appropriate to their location in terms of its positioning, size and form, and would not complement their surroundings. Consequently the 1.8m high close boarded timber fencing and gates would be harmful to the character and appearance of the historic core of the Tranent Conservation Area contrary to Policies 7 and 14 of NPF4 and Policies CH2 and DP2 of the adopted ELLDP 2018 and to The Cultural Heritage and the Built Environment SPG of the ELLDP.

#### **REASONS FOR REFUSAL:**

- 1 The change of use of the area of open space to a beer garden and its enclosure with a 1.8m high timber fence and gates would separate that area of land from the larger area of open space of which it is currently a part. This would harm the landscape setting of the area and undermine the contribution this area of open space makes to the visual amenity of the area. Therefore the change of use of the area of land and its enclosure with the fence and gate would therefore be harmful to the character and appearance of this part of the historic core of Tranent Conservation Area and as such would be contrary to Policies CH2 and OS1 of the adopted East Lothian Local Development Plan 2018 and to The Cultural Heritage and the Built Environment Supplementary Planning Guidance of the adopted East Lothian Local Development Plan 2018.
- 2 The fencing and gates due to their 1.8m height and close boarded form and appearance would be harmful to the character and appearance of the historic core of the Tranent Conservation Area contrary to Policies CH2 and DP2 of the adopted East Lothian Local Development Plan 2018 and to The Cultural Heritage and the Built Environment Supplementary Planning Guidance of the adopted East Lothian Local Development Plan 2018.