

REPORT TO: Planning Committee

MEETING DATE: Tuesday 7 February 2017

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 Day for the following reason: This application has generated significant public discussion and debate within the local community, and I therefore think it is appropriate that Elected members have an opportunity to consider the application(s) at committee.*

Application No. **16/00962/P**

Proposal Erection of freestanding removable canopy

Location **The Harbour
Victoria Road
North Berwick
East Lothian**

Applicant Mr Stirling Stewart

Per Somner Macdonald Architects

RECOMMENDATION Application Refused

PLANNING ASSESSMENT

This application relates to an area of land of North Berwick harbour. The land is on the northwest side of the harbour. It has an irregular shape and has an area of some 50 square metres. It is hard surfaced. It is bounded to the northwest by the harbour wall and to the northeast, southeast and southwest by other hard surfaced parts of the harbour. There is an existing timber shed to the northeast of the site and there are a number of benches and litter bins sited on the parts of the harbour to the southwest and northeast.

The harbour is within a mixed-use area, defined by Policy ENV2 of the adopted East Lothian Local Plan 2008. It is within the North Berwick Conservation Area. North Berwick harbour and thus also the land of the application site is listed as being of special architectural or historic interest (Category B).

By being in this harbour location the application site is within an area that is identified by the Scottish Environment Protection Agency (SEPA) as being at risk from coastal flooding.

On 13th April 2012 planning permission (Ref: 11/00786/P) was retrospectively granted for the siting on the land of the majority of this current application (Ref: 16/00962/P) of a snack bar, external seating area and a storage cage for gas cylinders for a temporary period of five years and, for each calendar year, only between the months of April to October (inclusive). Outwith those months of each year the snack bar and associated items have to be entirely removed from the land.

On 9th May 2012 listed building consent (Ref: 11/00786/LBC) was retrospectively granted for the siting of the snack bar, the storage cage and for the erection of signage.

On 15th May 2012 advertisement consent (Ref: 11/00787/ADV) was retrospectively granted for the display of signage on the snack bar and in the form of barriers placed around the seating area.

On 3rd August 2012 planning permission (Ref: 12/00419/P) was granted for the siting on the southwest part of the land of the site of the snack bar of a freestanding retractable removable canopy on steel posts and for its associated fixings. Planning permission 12/00419/P was granted part retrospectively as the two base plates onto which the steel posts of the canopy would be attached had already been sunk into the surface of the harbour land. The canopy would be positioned to the southwest side of the snack bar approved by the grant of planning permission 11/00786/P.

Planning permission 12/00419/P granted approval for the erection of the freestanding retractable removable canopy and its supporting posts for a temporary period of time only until the 31st October 2017, after which time no parts of them shall be located within the application site. Planning permission 12/00419/P was also granted subject to a condition requiring that the retractable canopy and its supporting posts only be sited on the application site for the months of April to October, inclusive, each calendar year of the duration of the temporary period of the planning permission granted for them. Outwith those months of each year the retractable canopy and its supporting posts have to be entirely removed from the land.

On 9th August 2012 listed building consent (Ref: 12/00419/LBC) was granted for the erection of the freestanding retractable removable canopy, its steel posts and its associated fixings. Listed building consent 12/00419/LBC was also granted subject to a condition requiring that the retractable canopy and its supporting posts only be sited on the application site for the months of April to October, inclusive, each calendar year of the duration of the temporary period of the planning listed building consent for them. Outwith those months of each year the retractable canopy and its supporting posts have to be entirely removed from the land.

At the time of this application (Ref: 16/00962/P) the retractable canopy and its support posts approved by the grant of planning permission 12/00419/P is not in situ at the application site, this being the part of the calendar year when the canopy and its support posts are required to be removed from the site in accordance with condition 2 of planning permission 12/00419/P.

Planning permission is now sought for the erection of a different form of freestanding removable canopy and its associated framework and fixings.

The proposed canopy would be positioned to the southwest side of the snack bar approved by the grant of planning permission 11/00786/P. It would measure some 6.9 metres in length by some 4.0 metres in width. The proposed canopy would be positioned over the footprint of the temporary retractable canopy approved by the grant of planning permission 12/00419/P. The now proposed canopy would be rectangular

in shape with a mono-pitched roof that would be some 2.7 metres high at its highest point and some 2.26 metres high at its lowest point.

The proposed canopy would comprise of flexible plastic sheet panels supported on metal channels attached to a galvanised steel post framework that would be attached by fixing bolts to steel base plates that would be sunk into the surface of the harbour land. The upright posts and framework of the canopy would comprise circular 100mm diameter posts on its northwest side, circular 30mm diameters posts on its northeast, southeast and southwest sides and circular 30mm diameters crossbars forming its roof structure. The existing support posts of the canopy approved by the grant of planning permission 12/00419/P would be utilised in the construction of the now proposed canopy. The flexible plastic sheet panels would enclose the roof and the northwest, southwest and southeast sides of the proposed canopy. Its northeast side would not be enclosed and would remain open.

Since the application was registered an amended drawing has been submitted by the applicant's agent to clarify the dimensions and form of the proposed canopy and to show details of the method of fixing the proposed canopy into the harbour land and of the fixing of the plastic sheets to the framework of the proposed canopy.

Through separate application 16/00963/LBC listed building consent is sought for the erection of the proposed canopy, its steel posts and its associated fixings. A separate report on application 16/00963/LBC is, at this time, on the Committee Expedited List.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that this application for planning permission 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 ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas) and DP2 (Design) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting the setting of a listed building and development within a conservation area given in Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving and enhancing the building, its setting and any features of special architectural or historic interest which it possesses.

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. Planning permission should normally be refused for development within a conservation area that fails to preserve or enhance the character or appearance of the area.

One public representation to the application has been received. In its objection to the proposed development is raised on the grounds that the proposed rectangular framework, in the angled position proposed for it alongside the harbour wall and the snack bar would dangerously narrow the quayside at this location, and observation is made that a rounded or hexagonal plan shape would be more appropriate at this place and be less of a hazard to passersby.

North Berwick Community Council, as a statutory consultee to the application, expresses their support for the proposals in principle subject to the proviso that the structure is removed completely at the end of the summer season.

The Council's Road Services has no comment to make on the proposed development.

The Council's Environmental Protection service has no comments to make on the proposed development.

Historic Environment Scotland has no comments to make on the canopy, supporting framework and base plates or on the positioning of them on the Category B listed harbour.

By being in the harbour location the application site is within an area that is identified by the Scottish Environment Protection Agency (SEPA) as being at risk from coastal flooding. SEPA advises that because the proposed canopy would not increase the footprint of the existing snack bar and its seating area and would not result in a change of use to a more vulnerable use they raise no objection to the proposed development.

The Council's Structures, Flooding and Street Lighting Team Manager advises that he concurs with SEPA's comments and thus raises no objection to the proposed development.

By its size, height, form, positioning and orientation and distance away from nearby residential properties the proposed canopy would not result in any harmful loss of sunlight or daylight to, or result in any harmful overlooking of any neighbouring residential property.

In an email submitted with the application, the applicant's agent confirms that the proposed canopy would be erected in time for the opening of the snack bar, which in 2017 would be 1st April, and that it would be removed by the end of October.

The purpose of the proposed canopy is to provide shelter for users of the tables and chairs of the seating area of the snack bar approved by the grant of planning permission 11/00786/P.

The proposed canopy would be supported by twelve support posts, and thus there would be twelve base plates embedded into the harbour land. Five of the twelve base plates would be positioned immediately to the southeast side of the harbour wall. There would be one support post and therefore one base plate supporting each of the northeast and southwest sides of the proposed canopy and a further five support posts and base plates supporting the southeast side of the proposed canopy. The proposed

base plates would be made of steel and would measure some 200mm by 200mm and would have a projecting section measuring some 300mm that would be embedded into the harbour land using concrete. The steel support posts of the proposed canopy would be attached to the base plates. The proposed canopy would have a mono-pitched roofed form that would be some 2.7 metres high at its highest point (its northwest side) and some 2.26 metres high at its lowest point (its southeast side).

Due to their form and fixing to the harbour the base plates for the posts of the proposed canopy could not easily be removed once installed. They would have to remain in place during the months of the year when the snack bar and seating area would not be in place. However, due to their small size and low surface profile and the already somewhat uneven surface of the harbour area they would only be visible in close up views. In those limited public views of them they would be seen in the context of the mix of stone and concrete surface finishes of this part of the harbour and in the context of nearby metal railings, steps and benches. They would not in their setting appear harmfully prominent, intrusive or exposed in the functional setting of this operational harbour. They would not be harmful to the special architectural or historic interest of the listed harbour.

The canopy, including its supporting posts, approved by the grant of planning permission 12/00419/P, is a maximum of some 2.7 metres in height. It is small in size and comprises a retractable fabric canopy enclosed in a metal casing supported on two metal posts. When extended, the fabric canopy would be some 5.4 metres by 2.3 metres in extent.

The now proposed canopy would measure some 6.9 metres in length by some 4.0 metres in width and would be positioned to the southwest side of the snack bar approved by the grant of planning permission 11/00786/P. It would be positioned over the footprint of the temporary retractable canopy approved by the grant of planning permission 12/00419/P. In this it is assumed that it is proposed as a replacement for that temporary retractable canopy.

At a maximum of some 2.7 metres in height the proposed canopy would be of the same maximum height as the canopy and support posts approved by the grant of planning permission 12/00419/P. At such height it would be some 1.3 metres higher than the harbour wall to the northwest of its position and some 0.3 of a metre lower than the height of the snack bar it would be used in association with.

The application site is a prominent location as part of the Category B listed harbour area and this part of the Conservation Area. In its position on the northwest side of the harbour the proposed canopy would be readily visible in public views from around the harbour and in approaches from the south from Victoria Road, which terminates at the harbour. There are also long range views from the west beach and Beach Road to the southwest.

Although at a maximum height of 2.7 metres above ground level the now proposed canopy would be no higher than the retractable canopy approved by the grant of planning permission 12/00419/P, with an area of coverage of some 27.6 metres it would be more than twice the size of the area of coverage of the previous canopy, and thus would be significantly larger in its footprint as well as its bulk and massing than the previously approved canopy.

Its large rectangular form, bare galvanised metal framework and plastic sheeted finish would differ significantly from the lightweight retractable form of the canopy and support posts approved by the grant of planning permission 12/00419/P. Furthermore,

the proposed canopy would be significantly larger than the snack bar it would be positioned alongside. It would not be of a scale and proportion appropriate to its setting. Although the plastic finish of its external walls would give the proposed canopy a lightweight appearance, due to its three sided rectangular form and galvanised steel framework, it would have a more permanent presence than does the already approved retractable canopy and thus it would have a greater bulk and massing than that retractable canopy, which when opened still retains a lightweight and open appearance. Rather the proposed canopy would dominate its surroundings in a manner harmful to the character and appearance of the area. Moreover, its bare galvanised metal framework together with the flexible plastic sheeted finish of its roof and walls would have an unfinished appearance that would have more of the appearance of a sheeted area of scaffolding than a canopy shelter, and would cause the proposed canopy to have a detrimental impact on the character and appearance of the area. In such circumstances the proposed canopy would appear wholly inappropriate in its surroundings and would be harmfully intrusive and incongruous in its setting.

By virtue of its size, scale, architectural form and appearance, external finishes and its positioning the proposed canopy would not be of a proportion and scale appropriate to its surroundings, but rather it would be a prominent and inappropriate addition to the locality that would be harmful to the visual amenity of the area. As an unsympathetic addition to the harbour area the proposed canopy would appear harmfully dominant and incongruous within its setting, and consequently would not preserve or enhance the character and appearance of this part of the North Berwick Conservation Area. It would harmfully dominate its setting, drawing focus away from the special architectural or historic interest of the listed harbour, and as such would be harmful setting of the Category B listed harbour.

Moreover, even as a temporary feature removed as it is proposed it would be outwith the operating season of the snack bar it would be used in association with, the proposed canopy would be of a temporary form, unsatisfactory for being a permanent feature on the harbour and would be a harmful visual intrusion to this part of the Conservation Area and to the setting of the Category B listed harbour.

There is no evidence to demonstrate that the business would fail without the additional canopy in place.

Accordingly, the proposed canopy, steel framework and base plates are contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV3, ENV4 and DP2 of the adopted East Lothian Local Plan 2008, and Scottish Ministers' policy on development affecting a listed building or its setting and development within a conservation area as given in Scottish Planning Policy: June 2014.

REASON FOR REFUSAL:

- 1 The proposed canopy, including its associated framework and fixings, by virtue of its size, scale, form, architectural appearance, external finishes and positioning, would appear harmfully dominant, incongruous and intrusive in its position on the northwest side of the harbour and would not be of a proportion and scale appropriate to its surroundings. As such it would be harmful to the special architectural or historic interest of the Category B listed harbour and would not preserve or enhance the character and appearance of this part of the North Berwick Conservation Area, all contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV3, ENV4 and DP2 of the adopted East Lothian Local Plan 2008, and Scottish Ministers' policy on development affecting a listed building or its setting and development within a conservation area as given in Scottish Planning Policy: June 2014.