

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: Given the significant levels of public interest and debate this application has generated, I feel that members should have an opportunity to consider the issues at committee.

Application No. **16/00860/P**

Proposal Erection of additional canopies

Location **26 Victoria Road**
North Berwick
East Lothian
EH39 4JL

Applicant Messrs Stirling Stewart and Craig Cockburn

Per Somner Macdonald Architects

RECOMMENDATION Application Refused

PLANNING ASSESSMENT

This application relates to the building and land of the former coastguard station at 26 Victoria Road, which are on the east side of Victoria Road, close to the junction of Victoria Road with Melbourne Road. The building is detached and is single storey in height. A narrow strip of land surrounds it on each of its four sides. That area of land is enclosed by a rubble stone wall and on the opposite sides of the wall is a footpath. A pedestrian gate in the length of wall on the west boundary provides access to the property from the adjacent length of footpath. That length of footpath is accessed from the adjacent part of the public road of Victoria Road.

The property is bounded to the south and east by part of an area of public open space known as Anchor Green. On the part of Anchor Green to the south is a memorial cross. To the north is the scheduled monument of St Andrews Church, including the Old Parish Church Porch. Also to the north are residential properties, the harbourmasters office and the buildings of the Scottish Seabird Centre. To the west is the public road of Victoria Road, on the opposite side of which are residential properties.

The application site is in an area of mixed use as defined by Policy ENV2 of the adopted East Lothian Local Plan 2008. It is also within North Berwick Conservation Area.

On 11th January 2012 planning permission 11/00064/P was granted for: (i) the change of use of the former coastguard station building to use as a restaurant and takeaway with an external decked seating area; (ii) the installation of vents and a flue on the building; and (iii) the addition of a bin store onto the north elevation wall of the building. The use of the building as a restaurant and takeaway that is named 'The Rocketeer' has commenced therefore, planning permission 11/00064/P has been implemented.

On 6th November 2012 planning permission 12/00410/P was retrospectively granted for alterations and additions to the building comprising: (i) the addition of a painted timber bin store and maitre d station onto the west elevation wall of the building; (ii) the installation of a rectangular aluminium vent grille in west elevation wall of the building; (iii) the removal of the white rendered finish of the north and south elevation walls of the building and the cleaning of the resultantly exposed stonework of those elevation walls; (iv) the re-rendering of the east elevation wall of the building with a buff/brown coloured render; (v) the provision of a circular glass window in the entrance door of the south elevation wall of the building; (vi) the installation of two wall mounted lights (Type B), one to each side of the entrance door in the south elevation wall of the building; (vii) the installation of two wall mounted lights (Type A) on each of the north, east and south elevation walls of the building; and (viii) the installation of a dark green coloured gas meter housing cabinet in a position low down on the north elevation wall of the building. Planning permission 12/00410/P was also retrospectively granted for the formation of Indian sandstone slabs that had been laid around the building; between the building and the rubble stone boundary wall, and for the 1.3 metres wide, black painted metal open railing type gate that had been erected across the pedestrian entrance in the west boundary wall.

Planning permission 12/00410/P did not grant approval for two wall mounted heaters with associated wiring boxes that had been installed on each of the north, east and south elevation walls of the building, or for a retractable awning that had been installed on each of the south and east elevation walls of the building, as also retrospectively applied for. These elements of unauthorised development carried out at the premises were refused by conditions of planning permission 12/00410/P. The refusal was on the grounds that: (1) they were each harmfully obtrusive additions to the building that give a cluttered affect to the building, all harmful to its architectural character and appearance and as such cause the building to appear intrusive and incongruous within its setting and cause the building to have a harmful affect on the character and appearance of the Conservation Area and the setting of Anchor Green and of the scheduled monument of St Andrews Church and the Category B listed Old Parish Church Porch; and (2) accordingly, the wall heaters, wiring boxes, awning housings, awnings and respective brackets are all contrary to Policies ENV1C, ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies ENV3, ENV4, ENV7, DP2 and DP6 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: February 2010 and the Scottish Historic Environment Policy: December 2011.

The decision to refuse by condition of planning permission 12/00410/P the installation of the retractable awnings was subsequently appealed to the Scottish Ministers (Scottish Executive Ref: PPA/210/2032). That appeal was dismissed on 28th March 2013.

The Reporter's reasons for refusal were that the building is in a prominent position with a simple architectural form, all of which is important in terms of the wider characteristics of the conservation area and the building's relationship with the adjacent Category B listed Old Parish Church Porch and the scheduled monument of St Andrews Church, both to the north of the site. In those circumstances the appeal was dismissed on the grounds that: (1) the awning brackets are a visually unfortunate addition to the building; (2) when open the awnings by their size and colour are unduly prominent and conspicuous; (3) the visual prominence of both awnings adversely affects the setting of the adjacent listed building and scheduled monument; and (4) the two awnings, their housings and brackets are not sensitive alterations and do not respect the particular context of the building.

The Reporter went on to comment that there was no evidence that the awnings were opened infrequently or exceptionally and that when open the visual impact was significant and detrimental. He also commented that there was no evidence to demonstrate that the business would fail without the awnings in place. He concluded that in his opinion he had no reason to believe that it is not possible for an alternative design approach to reconcile the need for shelter against the visual impacts.

The decision to refuse by condition of planning permission 12/00410/P the installation of the wall mounted heaters and their associated wiring boxes was not appealed to the Scottish Ministers.

Planning application 13/00065/P was registered in March 2013 for the erection of a glazed extension to the former coastguard station building, which is now operating as the restaurant and takeaway that is named 'The Rocketeer'. Following discussions between the Applicant, his Agent and the Planning Officer, that application was withdrawn whilst the Applicant considers the specifics of the design of the extension proposed.

On 16th May 2014 planning permission 14/00185/P was granted for the temporary siting for a period of two years of five foldaway gazebos on the areas of land to the south and east sides of the former building, between the building and the rubble stone boundary wall. Two of the gazebos would be sited on the area of land to the south of the building and three would be sited on the area of land to the east of the building. Planning permission 14/00185/P has now lapsed.

On 6th March 2015 planning permission 14/00980/P was granted for the addition of two canopies to be attached to the former coastguard station building, which is now operating as the restaurant and takeaway that is named 'The Rocketeer'. One canopy would be attached to the south elevation wall of the building and one would be attached to the east elevation wall of the building. Planning permission 14/00980/P also granted approval for the addition of windbreaks to the south, east and north boundary walls that enclose the narrow strips of land on each side of the four sides of the building. Planning permission 14/00980/P has been implemented and the windbreaks have been installed and the framework of the two canopies has been built.

The docketed drawings for planning permission 14/00980/P show each of the canopies respectively approved to be attached to the east and south elevations of the building as having a simple framework comprising single circular upright poles supporting a canopy comprising of single circular horizontal crossbars at top and bottom with single circular connecting support bars.

The framework of the canopies as built differs from the form approved by the grant of planning permission 14/00980/P in that it incorporates additional horizontal circular

crossbars below the approved canopy structure.

The matter of the canopies as they have been built not according with the drawings docketed to planning permission 14/00980/P is not a material consideration in the assessment of this application for planning permission for additional canopies. This matter has been referred to the Council's Planning Enforcement service for investigation.

Planning permission is now sought the addition of further canopies to the former coastguard station building, which is operating as the restaurant and takeaway that is named 'The Rocketeer'.

It is now proposed to attach a canopy to the north elevation of the building. That proposed canopy would extend across the full length of the north elevation of the building. It would project out away from the building as far as the north boundary wall that surrounds the building. The proposed canopy would also project an additional 3 metres out from its eastern end as far as the east boundary wall surrounding the building so that it would wrap around the northeast corner of the building to connect with the canopy approved to be attached to the east elevation of the building by the grant of planning permission 14/00980/P.

A further additional canopy would be attached to the southeast corner of the building. That canopy would project out away from the building as far as the south and east boundary walls that surround the building, and would connect the canopy approved to be attached to the east elevation of the building by the grant of planning permission 14/00980/P with the canopy approved to be attached to the south elevation of the building by that grant of planning permission.

Each of the proposed canopies would comprise of transparent Perspex panels supported on galvanised steel frames and would be attached to the building and the surrounding boundary walls using brackets and fixing bolts. The framework of the proposed canopies would comprise of single circular upright poles supporting a canopy comprising of single circular horizontal crossbars at top and bottom with single circular connecting support bars and with additional horizontal circular crossbars below the canopy structure.

The proposed canopies would provide some additional shelter from the weather for customers using the outside seating area of the restaurant and takeaway operating from the building.

Since the application was registered the details of the appearance of the proposed canopy structure has been amended to show that it is proposed to be built with the same form of framework structure as the two canopies that have been attached to the south and east elevations of the building. This information is shown on an amended application drawing. An amended location plan drawing has also been provided to correct errors in the scaling of that drawing.

A Design Statement has been submitted with the application. In the Design Statement the planning history for the site is explained. In the Statement it is stated that it is the Applicant's view that some form of shelter for customers in inclement weather is a vital part in ensuring the viability of the business operating as 'The Rocketeer', and that the canopies and windbreaks approved by the grant of planning permission 14/00980/P have been successful to an extent in allowing the much needed trading during inclement weather. The Statement goes on to explain that the Applicant now seeks to extend the canopies to include the southeast and north east corners and the north

elevation in order to enhance the degree of shelter available for customers. The Statement goes on to reiterate statements made by the Applicant that: (i) without some form of heating and protection from the rain his business is not viable and that in economic terms the business has created substantial employment for a number of local people in the long term as well as the injection to the local economy during the construction period; (ii) tourism is a vital part of North Berwick and East Lothian's economic future and the business has proved to be hugely popular; and (iii) the success story of the business has been achieved in hugely difficult and challenging economic times.

The Statement goes on to state that the now proposed canopies would extend and repeat the form of construction approved under the grant of planning permission 14/00980/P and that the natural galvanised finished of the canopy framework would weather gracefully to become an unobtrusive element in the overall setting. The Statement purports that the proposed canopies would be appropriate in the context of the design of the building and its location in the Conservation Area and would not envelop or diminish the finite form of the building, and that by their minimal structural form and attaching in a minimal way to the existing building the canopies would allow the solid form of the building to remain dominant in its setting.

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.

Policies 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV4 (Development within Conservation Areas), ENV7 (Scheduled Monuments and Archaeological Sites), DP2 (Design) and DP6 (Extensions & 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. 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.

Also material to the determination of the application are the Historic Environment Scotland Policy Statement: June 2016 and Scottish Planning Policy: June 2014 with regard to development on or within the setting of a scheduled monument.

It is stated in the Historic Environment Scotland Policy Statement: June 2016 and Scottish Planning Policy: June 2014 that scheduled monuments are of national importance and that they should be preserved in situ and within an appropriate setting. Where works requiring planning permission would affect a scheduled monument, the protection of the monument and the integrity of its setting are material considerations in the determination of whether or not planning permission should be granted for the proposed development.

With regard to archaeological sites and monuments Scottish Planning Policy states that planning authorities should protect archaeological sites and monuments as an important finite and non-renewable resource and preserve them in situ wherever possible. Where in situ preservation is not possible, planning authorities should, through the use of conditions or a legal obligation, ensure that developers undertake appropriate excavation, recording, analysis, publication and archiving before and/or during development. Planning Advice Note 2/2011: Planning and Archaeology similarly advises.

Six public representations to the application have been received. Of those six representations, five of them raise objection to the proposed development and as summarised the grounds of objection are:

1. the reflective surface of the Perspex roofing of the canopies would become more prominent given the larger area of the canopies, would be harmful to the setting of the adjacent scheduled monument and would fail to preserve or enhance the special character and amenity of the conservation area;
2. the proposed canopies would be erected over the one remaining untouched elevation of the building and the only elevation of the building with a window which comprises the chief architectural ornament of the building;
3. it is not clear whether the framework of the proposed canopies would be painted or left as a galvanised steel finish;
4. the proposed canopies comprising Perspex and steel support posts would not safeguard the character and appearance of the building but rather would add to what is already an unsightly eyesore in what is supposed to be a conservation area;
5. the proposals refer to the proposed canopies being removable but gives no information about when they would be removed;
6. the proposals would have a negative visual impact on the setting of the scheduled ancient monument of St Andrews old kirk;
7. the framework of the canopies already approved looks like scaffolding poles and make the building look like a disused bus shelter, and this is not attractive and diminishes the historic area and the existing building;
8. despite the restaurant being closed for the winter there are tables and chairs and signage stacked within the boundary walls of the building, and the Reporter specifically wrote that the building should be left in its original state when the business was closed;
9. the applicant has ignored conditions of the previous permissions;
10. the proposal should be refused as the site is a precious asset to the town and should not be squandered for commercial greed;

11. soon the iconic former Coastguard building will be hidden behind poles and plastic and this is not what visitors to the area want to see;

12. woodwork of the building has been painted without being given permission;

13. there are food safety concerns about the business with food being delivered in the back of a pick-up and that same pick-up taking away waste from the building, which is not very hygienic;

14. the proposal would further erode the already compromised conservation of this historic building;

15. the proposal would be ugly and would be wholly incompatible with the Conservation Area, scheduled monument and listed buildings;

16. the design statement accompanying planning permission 14/00980/P stated "by only attaching to 2 walls of the building the canopies do not envelop or diminish the finite form of the existing building", this clearly implies that canopies attaching to more than 2 walls would diminish the form of the existing building and would not be respectful of it;

17. if planning permission is to be approved there should at least be a condition requiring the complete removal of the whole structure between 1 October and 31 March to allow the original building 'relief' for at least part of the year; and

18. the proposed canopies would mean that the structure would be fully visible from the harbour area and there would be no unspoilt views of the original building.

The remaining representation expresses support for the application, stating that the proposal is an excellent idea that will bring more all weather visitors to the harbour and vary the choice available.

The matters raised by objectors that the applicant has ignored planning conditions, painting parts of the building without being given permission, and regarding the storing of table and chairs and signage within the boundary walls of the building are not material considerations in the determination of this application for planning permission but rather are matters that are being investigated by the Council's Planning Enforcement service.

The matter raised by objectors that there are food safety concerns about the business is not a material consideration in the determination of this application for planning permission but rather is a matter for the Council's Environmental Health Service.

North Berwick Community Council, as a statutory consultee to the application, express their great concern about the historic building being completely enveloped in further awnings, which would further detract from the building and have a harmful impact on the character and appearance of the Conservation Area. They advise that in their opinion the proposed awnings would be unduly prominent and conspicuous, that the visual prominence of the awnings would adversely affect the setting of the adjacent listed building and scheduled monument, and that they do not consider that the additional awnings, their housings and brackets would be sensitive alterations as they do not respect the particular context of the building.

Planning permission 11/00064/P approves the use of the building and surrounding ground as a restaurant and takeaway. In the determination of this application that approval is not for re-consideration. In the determination of this application the

considerations must be restricted to those of the merits or otherwise of the proposed canopies.

Although the application drawings refer to the proposed canopies as removable there is no inherent intention in the proposal that they would be removed from the building on a regular basis. Otherwise the removable nature of the proposed canopies could be viewed as their potential ease in being unbolted from the building.

Planning permission 11/00064/P does not restrict the operating season of the restaurant and takeaway business to specific months in any calendar year but rather allows the operation of the business throughout the whole year with only restrictions on the hours of operation of the business on any day. Therefore, there is no planning control in respect of an operating season for the restaurant and takeaway.

Therefore the assessment of the proposals should be on the basis that they would be perceived as permanent additions to the building. Whether the Applicant chose to otherwise remove them during parts of the year would be personal choice.

The Council's Environmental Protection service, including the Food and Safety Section, has no comments to make on the application.

Historic Environment Scotland have no comment to make on the proposals.

In that the proposed canopies would not require foundations as their framework would be attached to the internal face of the boundary walls that surround the building and to the existing building itself, they would not have any impact on the archaeological interest of the area.

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

The proposed canopies would attach to the north elevation and the northeast and southeast corners of the building. At their highest point they would be some 2.65 metres above ground level and some 2.1 metres in height at their lowest point. The proposed canopies themselves would comprise of galvanised metal framed structures supporting Perspex sheets. The supporting framework would be some 50mm in diameter.

The proposed canopies would attach to the north elevation and the northeast and southeast corners of the building. Combined with the canopies approved by the grant of planning permission 14/00980/P, which are attached to the east and south elevations of the building there would be canopies along three full sides of the building. Along the fourth (west) side of the building are the painted timber storage structures of the bin store and maitre d station approved by the grant of planning permission 12/00410/P.

"The Rocketeer" occupies a prominent position in the streetscape on the west side of Victoria Road and close to the junction of Victoria Road with Melbourne Road. The building from which the business of 'The Rocketeer' operates is of a simple rectangular architectural form and is of a traditional vernacular design with a simple vertical timber boarded door to its south elevation and a traditional sash and case window with a six-over-six glazing pattern to its north elevation. The north elevation of the building is largely unaltered with the exception of small lighting fixtures and a gas meter housing. All of which is important in terms of the wider characteristics of the conservation area

and the building's relationship with the adjacent scheduled monument of St Andrews Church, including the Old Parish Church Porch. The building contributes to the special character and appearance of the Conservation Area and the setting of Anchor Green and of the scheduled monument of St Andrews Church.

At their height and by their size and positioning the proposed canopies would be clearly visible on the building. Thus, they would be readily visible in public views from Victoria Road to the west, from Anchor Green, and from Melbourne Road to the south of Anchor Green.

The proposed canopies would be of the same height and scale as the canopies approved by the grant of planning permission 14/00980/P and would be of a similar form to those canopies. However, when combined with the already approved canopies of the south and east elevations of the building, the existing bin store and maitre d station of the west elevation of the building and the windbreaks of the four boundary walls that surround the building, and notwithstanding that the already approved canopies and windbreaks are of predominantly Perspex construction, the proposed canopies and the already approved canopies, windbreaks and storage structures would result in all four of the walls of the building being significantly obscured from view with the resulting effect that the building would be enveloped by canopies and structures so that its simple traditional form and vernacular design would be overwhelmed and obscured, all to detriment of its character and appearance.

The combined effect of the proposed canopies with the canopies approved by the grant of planning permission 14/00980/P would be a canopy structure along three full sides of the building and wrapping around the northeast and southeast corners of the building, that by virtue of its size and form, would not be subservient to or in keeping with the existing building. It would not allow the simple traditional rectangular form and vernacular appearance of the building to remain visible in public views from Victoria Road, Melbourne Road and Anchor Green.

Contrary to that which is purported in the supporting Design Statement submitted with the application, the proposed galvanised metal finished of the canopy framework would not 'weather gracefully to become an unobtrusive element in the overall setting' but rather the galvanised metal finish of the framework of the proposed canopies would have an unfinished appearance that would detract and diminish the vernacular character of the existing building.

Accordingly, in their positioning and by their galvanised metal finish, and combined as they would be with the canopies approved by the grant of planning permission 14/00980/P, the proposed canopies would not be of a proportion and scale appropriate to the existing building and would not be appropriate to their surroundings. Rather they would dominate the building in a manner harmful to its character and appearance. As unsympathetic additions to the building the proposed canopies would appear as unduly harmfully obtrusive additions to the building and together with the canopies approved by the grant of planning permission 14/00980/P and the timber storage structures approved by the grant of planning permission 12/00410/P, they would give a cluttered and overwhelmed appearance to the building.

Thus, by virtue of their size, number, form, proportions, scale, positioning and external finishes the proposed canopies would cause the building to appear harmfully dominant and incongruous within its setting, and consequently would cause the building to have a harmful affect on the character and appearance of the Conservation Area and the setting of Anchor Green and of the scheduled monument of St Andrews Church, including Old Parish Church Porch.

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

Accordingly, the proposed canopies are contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV4, ENV7, DP2 and DP6 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: June 2014 and the Historic Environment Scotland Policy Statement: June 2016.

REASON FOR REFUSAL:

- 1 By virtue of their size, number, form, proportions, scale, positioning and external finishes the proposed canopies, combined as they would be with the canopies approved by the grant of planning permission 14/00980/P, would dominate the building in a manner harmful to its character and appearance and would appear as unduly harmfully obtrusive additions to the building that would not be sympathetic to the building but rather would be harmful to the character and appearance of the building and would cause the building to appear harmfully dominant and incongruous within its setting, and consequently would cause the building to have a harmful affect on the character and appearance of the Conservation Area and the setting of Anchor Green and of the scheduled monument of St Andrews Church, including Old Parish Church Porch, all contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV4, ENV7, DP2 and DP6 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: June 2014 and the Historic Environment Scotland Policy Statement: June 2016.