

KEY INFORMATION

Ward Maryfield

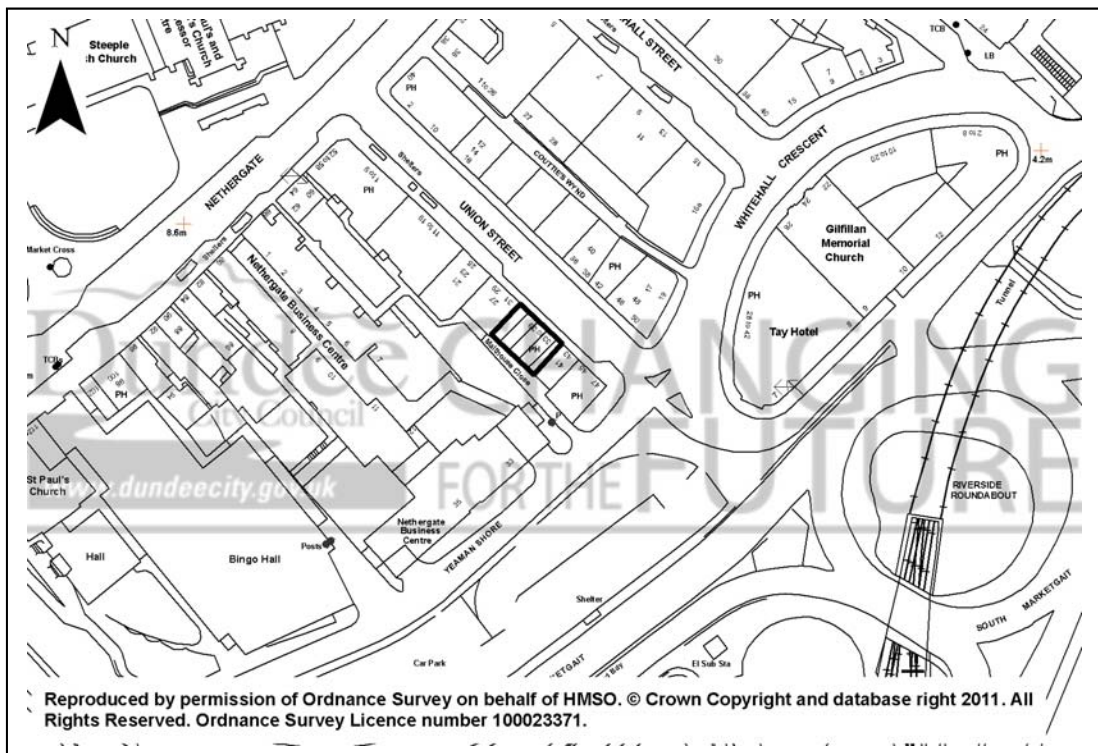
Proposal

Part change of use from public house to nightclub

AddressRendezvous
39 Union Street
Dundee**Applicant**Mr James Fyffe
31 Charlotte Street
Dundee
DD3 8QP**Agent**Mark Walker Architect
1 Laurelbank
Dundee
DD3 6JA

Registered 7 Jan 2011

Case Officer P Frickleton



Conversion of Basement of Union Street Pub to Nightclub

The part change of use from public house to nightclub is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The proposed development is considered to be in accordance with the relevant policies of the Development Plan. There are no material considerations that would justify the refusal of this application contrary to the provisions of the Plan. The application is therefore recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- This application seeks planning permission for a part change of use of the existing public house at 39 Union Street (former Rendezvous) to a night club.
- The proposal falls to be considered under Policy 1 (Vibrant and Sustainable Communities), Policy 52 (Restraint on Licensed Premises in the City Centre), Policy 60 (Alterations to a Listed Building) and Policy 61 (Development in Conservations Areas) of the Dundee Local Plan Review 2005.
- 10 valid letters of objection have been received on the grounds of, amongst other things, noise disturbance from the increased operating hours and increased instances of anti-social behaviour.
- Members will recall that this application was deferred from the Development Management Committee on 21 March 2011 to allow an acoustic noise report to be carried out. There is additional information in the main report.

DESCRIPTION OF PROPOSAL

This application seeks planning permission for a part change of use of the existing public house at 39 Union Street (former Rendezvous) to a night club.

Permission was recently granted for a new frontage for the public house which will incorporate signage for the night club below. These works have now been implemented.

In accordance with the Council's scheme of delegation, this application requires to be reported to the Development Management Committee as 10 valid letters of objection have been received from neighbouring residents.

The application was originally reported to the Development Management Committee on 21 March and was deferred on the grounds that Members required to be satisfied that adequate sound proofing has been installed in the premises prior to determining the application. The applicant has commissioned a specialist to carry out an acoustic noise report, the findings of which are detailed under Other Material Considerations.

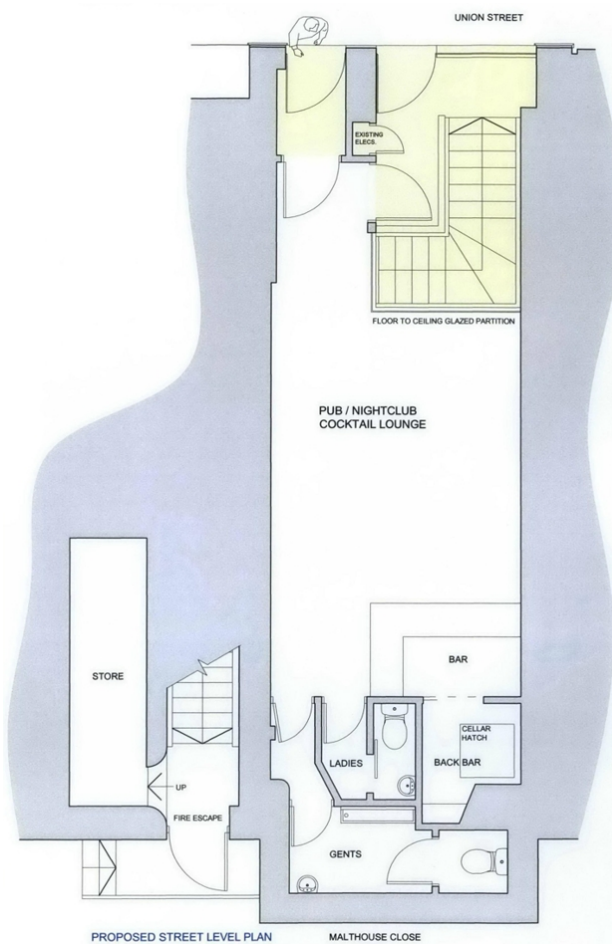
SITE DESCRIPTION

The application property is located on the west side of Union Street. The property forms part of a Category B Listed Building and lies within the Central Conservation Area. It forms the ground floor unit and basement of a terraced 4 storey tenement building. The ground floors of adjoining buildings to the north and south are occupied by a cafe and entrance doorways to the upper floors. On the opposite side of Union Street adjacent to the application site are retail units and a public house.

There is office accommodation on the floor directly above the application site and residential properties on the upper floors above. There are residential properties on the opposite side of Union Street above the commercial units.

The building housing the application site is of a traditional stone built appearance with a pitched roof finished in slate. The windows of the upper floors are timber framed sash and case in design. The existing public

house at 39 Union Street is circa 1980s design with subsequent additions, the current frontage and signage is dated in appearance and detracts from the appearance of the Listed Building. Permission has been granted for a new frontage, which has now been installed.



layout, parking and traffic movement issues, noise or smell.

Policy 52: Restraint On Licensed Premises in the City Centre - within the City centre as defined on the Proposals Map, care will be taken to avoid an excessive concentration of public houses and nightclubs, particularly those in close proximity to residential areas. As such, there will be a presumption against the establishment of licensed premises (excluding restaurants) in the City Centre:

- a with a total floor area in excess of 300m²; or
- b any more than one in 5 units in a single frontage where the combined floor area is in excess of 300m².

This restraint will not apply in the Cultural Quarter although the development of night clubs will be carefully controlled so that they do not dominate its character and disrupt the Quarter as a daytime visitor environment.

Policy 60: Alterations to Listed Buildings - the alteration of a listed building will only be acceptable where the proposals have regard to the

preservation or enhancement of its architectural or historic character. Alterations will not be permitted where the works would diminish the architectural integrity of the building or its historic interest.

The City Council will provide specific supplementary guidance on the following: window and door alterations, advertisements, shopfronts, roller shutters, treatments to masonry and painting and use of materials.

Policy 61: Development In Conservation Area - within Conservation Areas all development proposals will be expected to preserve or enhance the character of the surrounding area. This will require the retention of all features which contribute to the character and appearance including unlisted buildings of townscape interest, trees and landscape features and the historic

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities - The City Council will promote vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New development should be in accordance with other policies in the Plan and seek to minimise any affect on the environmental quality enjoyed by local residents by virtue of design,

pattern of streets and spaces, as identified in the Conservation Area management plans to be advanced in the near future.

Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

The site has been subject of the applications below:

10/00712/FULL - Proposed new shopfront - approved 14 January 2011.

10/00713/LBC - Proposed new shopfront - approved 11 February 2011.

10/00755/ADV - display of fascia sign - approved 1 March 2011.

PUBLIC PARTICIPATION

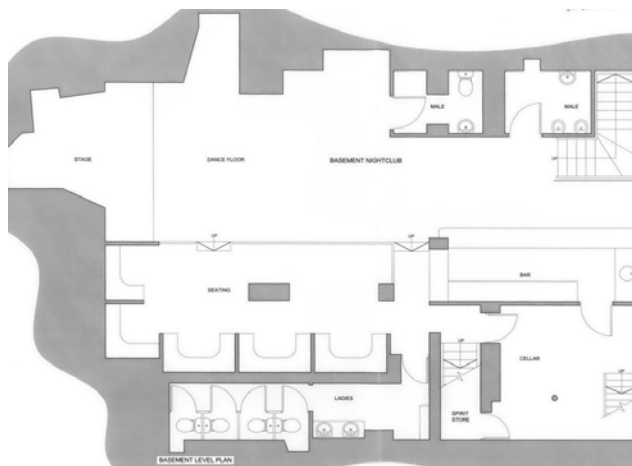
The Council has followed the statutory neighbour notification procedure outlined in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. In addition this application was advertised under the above regulations in the Dundee Evening Telegraph.

10 valid letters of objection were received from neighbouring residents concerned about noise disturbance; instances of anti-social behaviour; litter and the properties prime position on a significant route linking the waterfront and city centre.

Members will already have access to these letters and the points raised are considered in the "Observations" section of this Report below.

CONSULTATIONS

The Council's Head of Environmental Health and Trading Standards has requested that should the Committee be minded to grant planning permission, conditions should be imposed to ensure that music and amplified vocals are inaudible within



any residential property and that noise from ventilation extraction and other services is restricted.

Following deferral of the application by the Development Management Committee the Head of Environmental Health and Trading Standards has considered the acoustic noise report on the premises. He is satisfied with the conclusions of the report which are that if the measures indicated in the report are implemented that inaudibility or near inaudibility can be achieved.



OBSERVATIONS

Statutory Requirements

Section 25 of the Act provides that an application for planning permission (other than for a national development)

shall be determined in accordance the Development Plan unless other material considerations indicate otherwise.

In accordance with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

The Development Plan

The provisions of the Development Plan relevant to the determination of this application are specified in the Policy background section above.

Policy 1 (Vibrant and Sustainable Communities) - Although within a commercial area there are upper floor residential properties located in close proximity to the application site. This policy seeks to protect the environmental quality enjoyed by local residents.

The application site occupies the basement and ground floors of the building with office accommodation directly above on the first floor. The residential element of the building is located on the second floor and upwards, separated from the application site by office accommodation.

The premises are currently operated as licensed premises, a use that has been established for some time. The current proposals do not include any external alterations (the provision of a new frontage has been carried out in accordance with a previous planning permission); therefore there will be no detrimental impact upon the character of the building or City Centre Conservation Area. In the interests of preventing significant instances of noise disturbance from occurring, should the

Committee be minded to approve this application, restrictions would be put in place to prevent instances of noise disturbances from within the building.

Policy 52 (restraint on Licensed Premises Within the City Centre) is supportive of proposals that will not result in an excessive concentration of public houses and night clubs in close proximity to residential premises. As such there will be a presumption against the establishment of licensed premises (excluding restaurants) in the City centre:

- a with a total floor area in excess of 300m²; or
- b any more than one in 5 units in a single frontage where the combined floor area is in excess of 300m².

The existing public house at 39 Union Street has been established for some time and already benefits from a premises licence allowing on-sales of alcoholic beverages and hot food from 11.00am until 12.00 midnight. Therefore, the requirements of Policy 52 are not considered relevant to the outcome of this planning application as the proposals do not seek planning permission for the creation of new licensed premises.

Policy 60 (Alterations to Listed Buildings) is supportive of proposals that seek to preserve or enhance the architectural or historic character of listed buildings. The current proposals do not include any external alterations (the provision of a new frontage has already been approved under delegated powers). Any internal alterations do not affect the fabric of this Category B listed building. The proposals are considered to maintain the architectural and historic character of the building.

Policy 61 (Development in Conservation Areas) requires proposals to preserve or enhance the character of conservation areas. The application site is located within the City Centre Conservation Area. No external works are proposed as part of this application and the change of use will not have a detrimental impact upon the character of the City Centre Conservation Area.

It is concluded from the foregoing that the proposal complies with the provisions of the Development Plan.

Statutory Duty

The proposals shall maintain the existing character and setting of the existing B listed building at 39 Union Street and the historic streetscape of the city centre. The proposed alterations to the internal fabric of the building preserve the character and appearance of the building and the development has no impact on the conservation area. In this instance the statutory duties outlined in Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended are satisfied. A similar conclusion was arrived at in the assessment of the proposals against the Development Plan.

Other Material Considerations

The other material considerations to be taken into account are as follows:

Concerns of Objectors

10 valid letters of objection have been received from neighbouring residents concerned about noise disturbance; anti-social behaviour; litter and the properties prime position on a significant route linking the waterfront and city centre.

While it is acknowledged that there are many upper floor residential properties located in close proximity to the application site, the existing public house is licensed by the Council subject to a condition that requires all music and amplified vocals from within the premises to be inaudible from within adjoining and neighbouring residential properties. A similar license has already been granted by the Council allowing the public house at 39 Union Street to operate until 2.30am subject to a condition that requires all music and amplified vocals from within the premises to be inaudible from within adjoining or neighbouring residential properties.

In this instance the Head of Environmental Health and Trading Standards has also requested that a condition similar to those imposed on the license granted for the premises at 39 Union Street is incorporated into the grant of planning permission should the Committee be minded to approve this application. Although the Council as planning authority is in no way obliged to follow the decision of

the Licensing Board, it is nevertheless considered that the inclusion of the recommended condition by the Head of Environmental Health and Trading Standards shall prevent instances of significant noise disturbances from within the premises at 39 Union Street from occurring that would otherwise adversely affect the level of amenity afforded to neighbouring and adjoining residential properties.

Following a deferral of the application by the Development Management Committee, the applicant commissioned an appropriately qualified noise consultant to carry out an acoustic noise report on the premises. The report assessed the noise breakout from the basement nightclub and ground floor VIP lounge bar at 39 Union Street to existing second, third and fourth floor residential accommodation and considered and recommended any necessary control measures. The report identified measures that need to be put in place in order to reduce the noise breakout levels, these measures should provide sufficient control of noise breakout levels to give levels within second floor (and above) residential accommodation that are below normally acceptable criterion ranges and so that inaudibility or near inaudibility can be achieved. Should the Committee be minded to approve this application, a condition shall be attached to the consent requiring the applicant to implement the measures identified in the noise report.

Instances of noise disturbance; anti-social behaviour and litter occurring after the proposed nightclub has closed or while customers queue to get into the premises are not considered to be so significant as to warrant refusal of planning permission. This is because Union Street is a main thoroughfare through the City Centre providing vehicle access as well as pedestrian access to the facilities located within the City Centre 24 hours-a-day. Therefore, at all times of the day and night there are people and vehicles on Union Street.

It is acknowledged that the application site is located in a dense residential area of the City Centre. Although the City centre is the City's hub of business and leisure activity it is also home to many residents, visitors and students. Therefore, to safeguard the level of amenity afforded to Union Street and neighbouring residential

properties, it is proposed to control the operating hours of the proposed nightclub to between 11.00am and 2.30am Thursday to Sunday and 11.00am to 12.00 midnight Monday to Wednesday should the Committee be minded to approve this application.

The concerns of the Objectors relating to noise disturbance and anti-social behaviour can be addressed by conditions relating to inaudibility and controlling the hours of operation.

In terms of the premises position on a significant route linking the waterfront to the city centre; although the current application raises no design issues permission was recently granted for a new frontage for the public house which will incorporate signage for the night club below. The replacement frontage is of a style and finish that is in keeping with the building and surrounding area and unlike the existing frontage complements rather than detracts from the character and appearance of the listed building and wider Conservation Area.

It is concluded from the foregoing that insufficient weight can be accorded to the views of the objectors such as to justify the refusal of planning permission. It is therefore recommended that planning permission be granted with conditions.

Design

Consent has previously been given for alterations to the frontage of the public house. The current application raises no design issues.

CONCLUSION

The proposals comply with the relevant policies of the Development Plan. The concerns of the Objectors can be addressed by conditions to minimise the impact of the proposed nightclub in terms of noise disturbance and instances of anti-social behaviour. There are no material considerations that would justify refusal of planning permission. It is therefore recommended that planning permission is approved subject to conditions.

RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 Music and amplified vocals from within the proposed nightclub hereby approved shall be so controlled as to be inaudible within any residential property.
- 2 The total noise from the extraction system and all other M&E services shall not exceed NR 35 during the night and NR 45 during the day as measured 1 metre external to the facade of adjacent residential accommodation. For the avoidance of doubt daytime shall be 7.00am to 11.00pm and night-time shall be 11.00pm to 7.00am.
- 3 Prior to the first use of the nightclub hereby approved the recommendations set out in the Noise Impact Assessment (dated 3 May 2011) shall be fully implemented to the satisfaction of the Council.
- 4 The proposed nightclub hereby approved shall operate between the hours of 11.00am and 2.30am Thursday to Sunday and 11.00am to 12.00 midnight Monday to Wednesday.

Reasons

- 1 In the interests of preventing significant instances of noise disturbance from occurring.
- 2 In the interests of preventing significant instances of noise disturbance from occurring.
- 3 In the interests of preventing significant instances of noise disturbance from occurring.
- 4 In the interests of protecting the level of environmental quality afforded to the City Centre as a place to live, work and partake in leisure activities.