

**KEY INFORMATION**

Ward Maryfield

**Proposal**

Change of use of upper level of amusement arcade to club and bar and new ground floor doorway

**Address**

22-26 Seagate  
Dundee  
DD1 2EQ

**Applicant**

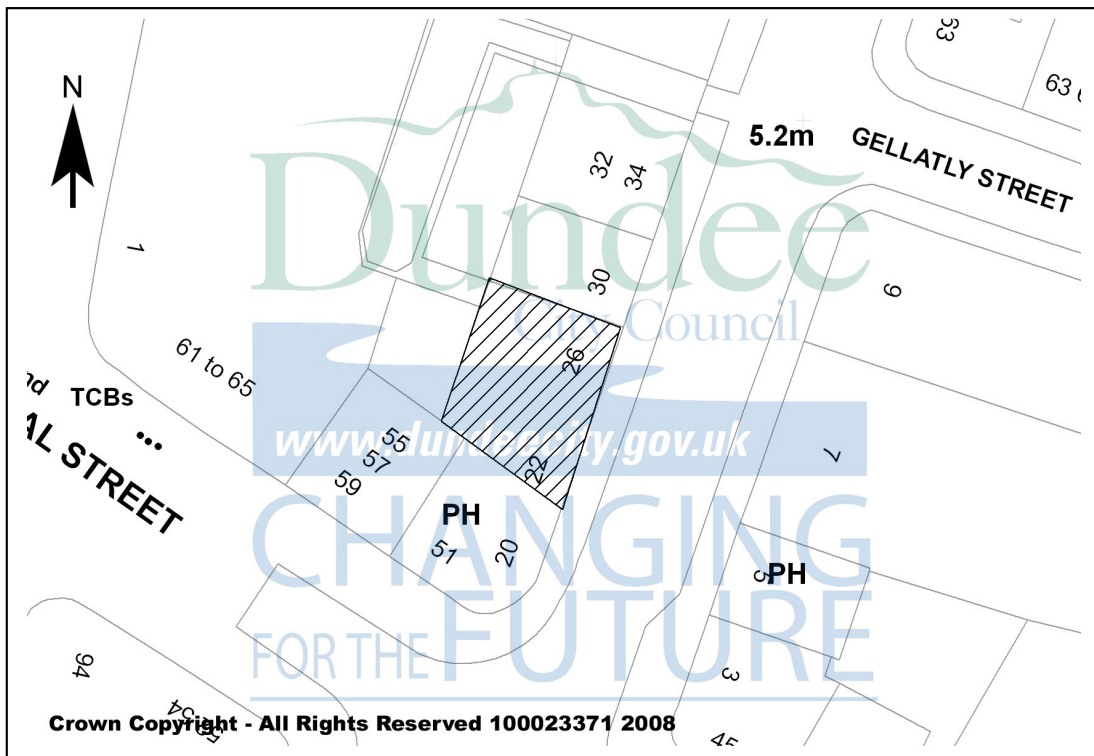
Slot Leisure  
22-24 Seagate  
Dundee

**Agent**

Gauldie Wright and Partners  
2 Osborne Place  
Dundee  
DD2 1BD

Registered 8 Feb 2008

Case Officer C Walker



## Proposed Night Club in Seagate

A change of use of part of an amusement arcade to club and bar is **RECOMMENDED FOR REFUSAL**.  
Report by Director of Planning and Transportation

**RECOMMENDATION**

The proposed development contravenes Policy 52 of the adopted Local Plan and would have an adverse impact on the amenities of nearby residents by reason of noise and disturbance. The application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought to change the use of the upper (mezzanine) floor of this amusement centre to a club and bar. Proposed hours of operation are from 9.00pm to 2.30 am.
- The site comprises part of a Category A listed building with existing and proposed flats on the upper floor levels. There are public houses to the north and south of the site and on the opposite side of the Seagate.
- Policy 52 of the Local Plan restricts over concentration of licensed premises in the city centre.
- 3 letters of objection were received from neighbours concerned about noise and disturbance from the premises.
- The proposed development contravenes Policy 52 of the adopted Local Plan and would have an adverse impact on the amenities of nearby residents by reason of noise and disturbance.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to change the use of the upper (mezzanine) floor of this amusement centre to a club and bar. Proposed hours of operation area are from 9.00pm to 2.30am and the applicants state that the premises have a capacity of approximately 60 (excluding staff).

The proposal would provide approximately 140m<sup>2</sup> of gross floor space on the upper floor level as well as 34m<sup>2</sup> at the ground floor entrance and waiting area. Elevational alterations would be carried out to provide a new entrance to the facility from the Seagate.

In response to concerns outlined by the Planning and Transportation Department, the applicants have written to state that they exceed the Local Plan Policy 52 restriction on licensed premises of 300m<sup>2</sup> by only 25m<sup>2</sup>, that they will provide a small entertainment venue and that the licensed premises on the opposite side of the Seagate do not comply with Policy 52. They suggest that the requirement for a noise assessment should be made a condition of planning permission. Their view is that there should be no difficulty in insulating noise generated from within the premises from adjoining flats and that they cannot control external noise generated by patrons of the club. They also indicate a willingness to have hours of operation curtailed during the week but not at weekends.

## SITE DESCRIPTION

The site comprises part of the ground floor and all of the upper (mezzanine) floor of an amusement centre on the west side of the Seagate, close to the junction with Commercial Street. The facility is located in a substantial stone building which is Category A listed and the upper 3 storeys and attic levels contain flats (either existing or proposed).

Immediately to the south, at the junction of Seagate and Commercial Street is a public house ("Tickety Boo's") with flats above and to the

north is another public house ("The Bush Bar") with flats above. On the opposite side of the Seagate are 2 large public houses ("Lloyd's" and "Yates").

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

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



### Dundee Local Plan 2005

The following policies are of relevance:

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:

- with a total floor area in excess of 300m<sup>2</sup>; or
- any more than one in five units in a single frontage where the combined floor area is in excess of 300m<sup>2</sup>.

Policy 60 Alterations to Listed Buildings requires such alterations to have regard to the preservation or enhancement of the listed building.

Policy 61 Development in Conservation Areas requires new development to preserve or enhance the character of the surrounding area.

## 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

Planning permission and listed building consent were granted in May 2007 to convert the second and third floors of this building (immediately above the application site) to provide 4 flats - applications 06/00837/COU and 06/00838/LBC refer. Works to implement these consents have commenced on site.

There is an accompanying application for listed building consent for this development the report on which is contained elsewhere in this Agenda - application 08/00089/LBC refers.

## PUBLIC PARTICIPATION

The applicant carried out the statutory notification of neighbours and the proposal was advertised both as a bad neighbour development and as contravening Policy 52 of the Local Plan. 3 letters of objection were received from the occupiers of adjoining dwellings. The objectors are concerned about noise and disturbance from the premises, its close proximity to their dwellings and the number of public houses in the vicinity.

Copies of these letters are available for inspection in the Members Lounges and the points raised are considered in the Observations Section of this Report.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards has stated that given the proximity of residential accommodation a full Noise Impact Assessment should be submitted for this development.

## OBSERVATIONS

In accordance with the provisions of Section 25 of the Act the Committee is required to consider:

- whether the proposals are consistent with the provisions of the development plan; and if not
- whether an exception to the provisions of the development plan is justified by other material considerations.

## The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above. The proposed development contravenes Policy 52 of the adopted Local Plan as in combination with the public houses on either side of the site, it exceeds the 300m<sup>2</sup> limit specified. The preamble to the policy points out that licensed premises can affect the amenity of an area particularly where there may be residential accommodation close by (as is the case here) and that traffic and noise nuisance should be closely examined.

The application site is a classic example where further licensed premises could result in a serious impact on residential amenity. The property directly adjoins flats (existing and proposed) in the same building. However because the proposed use is as a club, the proposed hours of operation are from 9pm to 2.30 am. The development will therefore generate noise at times when background levels are lower and when the adjoining public houses will be closed (they are licensed until midnight).

Whilst Policy 52 accepts that uses such as this can make a positive contribution to the diversity and vitality of City Centres, it recognises that over concentration of such uses can affect residential amenity. Residential use is an increasing component of upper floors in this part of the city and it is important to ensure that the amenity of such areas are



protected.

Policy 60 requires alterations to have regard to the preservation or enhancement of the listed building and Policy 61 requires new development to preserve or enhance the character of the Central Area Conservation Area.

Although the building is Category A listed, the interior mezzanine contains no features of interest. The elevational alterations to the frontage respect the character and appearance of the listed building and the Central Area Conservation Area and are therefore satisfactory.

It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.

## Other Material Considerations

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

### (A) Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The above Act requires planning authorities, in considering applications that affect listed buildings, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

This matter has already been considered in the assessment of the proposed development under Policy 60 of the adopted Local Plan and it was considered that the proposal would preserve the character and appearance of the listed building.

### (B) Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The above Act requires planning authorities, in considering applications in conservation areas to have special regard to the desirability of preserving or enhancing the character or appearance of that area.

This matter has already been considered in the assessment of the proposed development under Policy 61 of the adopted Local Plan and it was considered that the proposal would preserve the character and appearance of the conservation area.

### (C) The Views of Objectors and Consultees

Given the close proximity of the proposed club and bar to residential accommodation, the Head of Environmental Health and Trading Standards has requested that a full Noise Impact Assessment should be submitted. This was requested from the applicants but their response was that the requirement for such an

assessment should be made a condition of planning permission. Their view is that there should be no difficulty in insulating noise generated from within the premises from adjoining flats and that they cannot control external noise generated by patrons of the club. The also indicate a willingness to have hours of operation curtailed during the week but not at weekends.

It is considered that the issue of noise disturbance is fundamental to the determination of this planning application and not something that could be dealt with by planning condition should Members be minded to approve the application. Whilst it might be technically possible to provide a high standard of noise attenuation within the premises, as acknowledged by the applicants, it is virtually impossible to control noise generated by patrons entering and leaving the premises.

Policy 52 of the Local Plan recognises this fact and makes particular reference to traffic and noise nuisance. Even though there are other licensed premises on the Seagate, those adjacent to the application site will be closed well before the proposed 2.30 am closing time at the application site. Patrons leaving the premises at that time will inevitably cause noise disturbance and are likely to be talking, hailing taxis etc at a time when the street would otherwise be fairly quiet. As there are a large number of dwellings directly above the application site, the potential for noise disturbance is significant.

The concerns of the local residents relate to noise and disturbance from the premises, its close proximity to their dwellings and the number of public houses in the vicinity. All these matters have been considered in the assessment of the proposed development against Policy 52 of the Local Plan and it has been concluded that there will be problems with the excessive concentration of licensed premises and noise and disturbance from the operation of the proposed club.

### **(D) Applicants Letter in Support of the Proposal**

The applicants have written to state that they are providing a small facility and will exceed the Local Plan Policy 52 restriction on licensed premises of 300m<sup>2</sup> by only 25m<sup>2</sup>. However

"Tickety Boo's" has a floor area of some 160m<sup>2</sup> so that even without including the floor area of "The Bush Bar", the combined total with the application site is 40m<sup>2</sup> above the 300m<sup>2</sup> limit. In addition the whole purpose of Policy 52 is to prevent an excessive concentration of licensed premises and there are 2 very large public houses directly across the road from the application site (these premises having been permitted prior to the adoption of Policy 52 of the Local Plan).

The applicants statement about noise control and hours of operation have already been considered in the assessment of noise issues above and it has been concluded that there will be an unacceptable problem with noise from the premises late at night time.

It is concluded from the foregoing that there are no material considerations of sufficient weight to justify approving the application contrary to Policy 52 of the Local Plan. It is therefore recommended that planning permission be refused in line with the provisions of the development plan.

### **Design**

The proposed elevational alterations are modest in scale and in keeping with the character and appearance of the listed building.

### **CONCLUSION**

The proposed development contravenes Policy 52 of the adopted Local Plan and would have an adverse impact on the amenities of nearby residents by reason of noise and disturbance.

### **RECOMMENDATION**

It is recommended that consent be REFUSED for the following reason:

### **Reason**

- 1 The proposed development contravenes Policy 52 of the adopted Dundee Local Plan Review 2005 by reason of the over concentration of licensed premises at this location and would have an adverse impact on the amenities of nearby residents by reason of noise and disturbance. There are no material considerations that would justify the approval of this

application contrary to the provisions of the Development Plan.