

KEY INFORMATION

Ward Broughty Ferry

Proposal
Erection of 20 flats

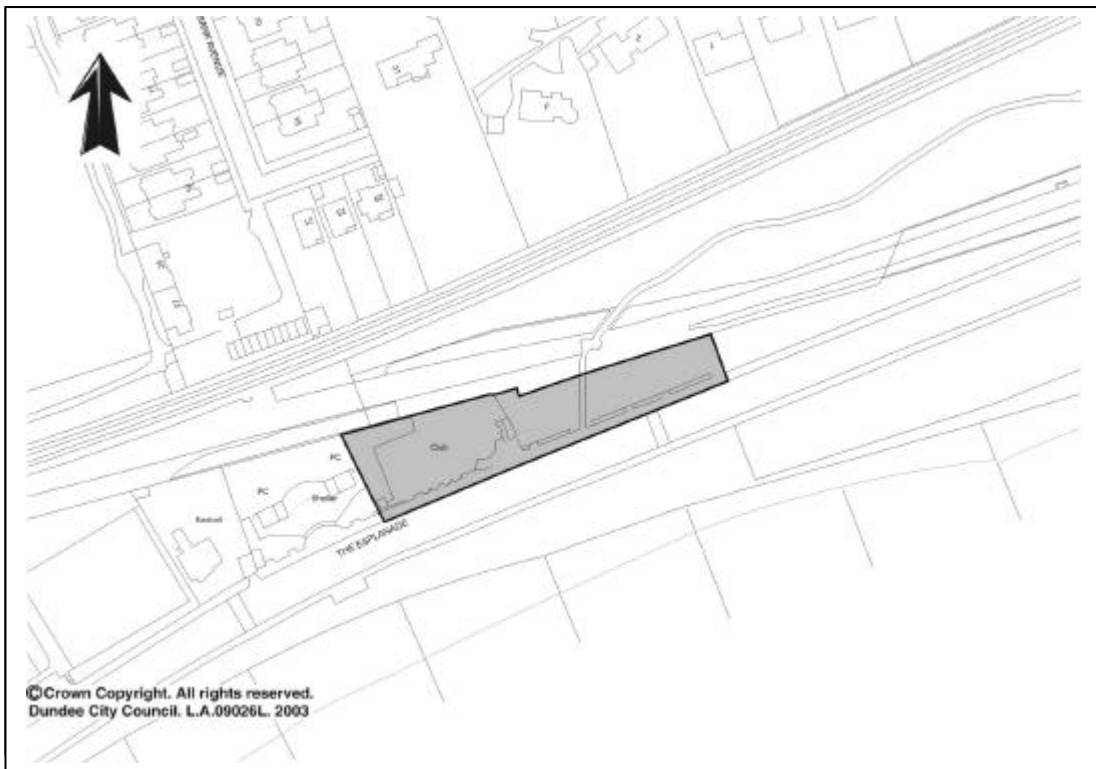
Address
Jacques Night Club
The Esplanade
Broughty Ferry
Dundee

Applicant
Redwood Leisure Ltd
Dunsinane House
Kilspindie Road
Dundee
DD2 3PW

Agent
KDM Architects
15 Camperdown Street
Broughty Ferry
Dundee
DD5 3AA

Registered 5 May 2006

Case Officer C Walker



Proposed New Housing at Jacques Night Club

The erection of 20 flats is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of Planning and Transportation

RECOMMENDATION

Although the proposed development contravenes the presumption against apartments in the Development Plan, it is the most appropriate form of housing for the site, provides generous space standards, is attractively designed and will not adversely impact on the adjoining Nature Reserve. The concerns of the objectors are not sufficient to justify the refusal of the application.

SUMMARY OF REPORT

- Planning permission is sought for a residential development of 20 large apartments in 2 buildings of modern design on the site. The site is prominently located on the Esplanade adjacent to the Broughty Ferry Local Nature Reserve.
- Policy 4 of the adopted Local Plan contains a presumption against apartments. Policy 70 of the Plan states that development proposals must not adversely affect the nature conservation qualities of Local Nature Reserves.
- At the time of writing this Report, 9 individual letters of objection were received. A petition of objection is expected but has not yet been received. A letter and a petition containing 311 signatures in support of the development were received. The principal concerns of objectors were the adverse impact on the Nature Reserve and the design and density of the development. Those in support welcome the removal of a problem building and use.
- SNH have no objections to the proposals, the Council's Countryside Ranger has concerns about the impact on the reserve and the Community Council object to the development.
- There are sufficient material considerations to justify the approval of the application despite the fact that the Local Plan supports houses on this site and that insufficient weight can be given the views of objectors such as to refuse the proposed development. Members should be aware that if they are minded to approve the development then the application would first have to be referred to the Scottish Ministers.

DESCRIPTION OF PROPOSAL

Planning permission is sought for a residential development of 20 apartments on the site. The proposal comprises 2 buildings, each of 3 storeys. The west most building, which sits in the same location as the night club, comprises 12 apartments, 4 on each level. The east most building, which sits on the former car park, provides 8 garages at ground floor level and 4 apartments on each of the two upper floors. Between the buildings it is proposed to provide a parking area of 13 spaces. It is proposed to maintain the access path to the Nature Reserve in its current location although the upper floors of the east most block will be built over it. Further parking is provided in the form of 9 spaces in front of the garages at the east most block.

The proposed apartments are generously sized ranging from 80 to 105 sq. metres, with 6 units having 3 bedrooms and the remainder having 2. Every unit will have at least 1 balcony (some will have 2) ranging in size from 8 to 20 sq. metres.

The proposed development effectively fills the application site. Small areas of amenity space are provided on either sides of the buildings. Cycle parking and bin storage has been indicated to the side and rear of the west most building and underneath the east most building.

The proposed buildings are of modern design, with walls finished in white render and a timber effect cladding. In addition it is proposed to use natural sandstone to the sides and rear of the ground floor of the east most unit. The front elevations have extensive areas of glazing and the balconies form an important feature on all elevations. The flat roof is to be finished in a grey membrane.

It is proposed to landscape the site in a manner reflecting the surrounding environment with beach shingle surrounding the buildings, planter beds with trees and ornamental maritime plants to the front of the site and native shrub planting to the rear. Curtilage boundaries of natural stone walls and post and wire fences are proposed. The plans indicate that two mature road side trees will be felled to accommodate the new entrance to the development.

The applicants have produced an independent ecological survey and impact assessment for the proposed development. It states that the proposed development will have no impact on most of the reserve and that all rarer higher plant species occur at some distance from the apartments.

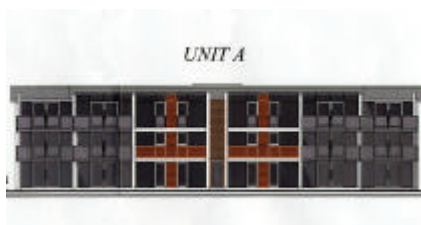


VIEW FROM WEST APPROACH

However it states that there will be some negative impacts with temporary loss of scrub and grassland during construction and shading of these areas



after development has taken place, the permanent loss of semi natural scrub and dune habitat in the former car park which, although not part of the Nature Reserve, forms a link between the seafront dune grasslands and the Nature Reserve and finally the loss of the stone wall. It suggests mitigation measures of minimising the construction area, reinstating damaged habitats and developing a landscaping scheme which incorporates native species and local sand and shingle and reinstates the stone boundary wall.



The applicants have stated that following discussions with the Countryside Ranger they have agreed to resow the area around the site with native species, to retain the existing access to the Nature Reserve, to permit access for maintenance of the Nature Reserve and to construct dry stone

walls to allow native species to establish themselves.

Finally the applicants have submitted a design statement justifying the provision of apartments (as opposed to houses) on the site. They refer to the unique beach front location and views from the development, the suitability of this type of apartment development to modern lifestyles, the provision of security for the Esplanade with this residential development.

SITE DESCRIPTION

The site comprises some 0.2 hectares of ground on the north side of the Esplanade. The western portion of the site is occupied by Jacques Night Club, a functional flat roofed building with rendered walls and few openings. The eastern part of the site is a disused car park which has been colonised with vegetation and shrubs from the adjoining land to the north. A low stone wall with planters separates the former car park from the Esplanade. A public footway from the Esplanade into the Broughty Ferry Local Nature Reserve bisects the site.

To the west of the site is the Glass Pavilion, a recently developed cafe and restaurant redeveloped from a Category C listed former beach shelter. To the south, on the opposite side of the Esplanade, is open grassland adjoining the beach. To the north and east is the Broughty Ferry Local Nature Reserve.

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 application site is indicated as part of an existing residential area where Policy 1: Vibrant and Sustainable Communities seeks to safeguard the amenity of residential areas in terms of design as well as layout, parking and traffic movement, and noise and smell issues.

Policy 4 sets out standards for the design of new housing. The proposed development meets these standards other than the presumption against flats. However flats can be permitted in certain circumstances.

Policy 55 Urban Design puts an emphasis on good design and on protecting the setting of listed buildings.

The application site is not allocated as open space in the adopted Local Plan and therefore does not enjoy the protection normally afforded to areas of open space under Policy 66B.

The adjoining Nature Reserve is protected by Policy 70 of the Plan which states that development proposals must not adversely affect the nature conservation qualities of Local Nature Reserves. It adds that any development proposals affecting these sites must be accompanied by an ecological assessment that details the likely impacts along with proposed mitigation measures.

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.

LOCAL AGENDA 21

The proposed development is considered to be sustainable and in general accordance with the Council's Agenda 21 policies as it involves the reuse of a previously developed site.

SITE HISTORY

An application for a similar housing development was withdrawn by the applicants in March 2006 - application 05/01074/FUL. The current application is different from the previous proposals in that there are 4 less apartments, the path to the Nature Reserve is not rerouted, the flat sizes are larger and the design has been amended.

PUBLIC PARTICIPATION

Statutory neighbour notification was carried out and the proposal was advertised as potentially contravening Policy 4 (presumption against flats) of the adopted Local Plan, as

development altering the character of an area of established amenity and as affecting the setting of the adjoining listed building.

At the time of writing this report 9 letters of objection had been received and a petition of objection is anticipated but not yet received. A letter and a petition containing 311 signatures in support of the development were received.

The valid concerns of the objectors are as follows:

- 1 The proposed development will adversely impact on the Nature Reserve. Some objectors state that the eastern part of the site is part of the reserve. The projection of the building over the access path to the reserve is unsatisfactory. The Structure Plan and Local Plans are contravened in this regard.
- 2 The design and layout of the development are unsatisfactory. The site is being overdeveloped, the buildings are too high and the design and finishing materials are inappropriate for this location. No open space is provided for the development. The Local Plan is contravened in this regard.
- 3 The development will adversely impact on the adjoining listed building. The Local Plan is contravened in this regard.
- 4 The development will cause excessive noise and traffic levels
- 5 The development contravenes the Local Plan as it is a new housing release on a greenfield site.

A substantial proportion of the objectors state that if the development were confined to the site of the night club only and did not encroach on the former car park then they would not object to the development.

The letter and petition in support welcome the proposed development on the basis that it will remove an ugly building and a use which causes major problems for local residents in terms of noise and anti social behaviour.

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

Scottish Natural Heritage: SNH has no objections to the proposed development but advises that the Councils assessment of the proposals should take into account SNH Guidance on Local Nature Reserves, Local Plan policies 66B and 70 and Dundee Partnership for the Environment Draft Environmental Strategy 2005. Conditions and/or a Section 75 Agreement to protect and enhance the reserve are suggested.

Leisure and Communities Dept Countryside Ranger: The changes to the plans are an improvement on the previous proposals but there is still a concern about the principle of development, buildings shading areas of the reserve, the reserve being used as a garden area for the apartments and possible surface water run off.

Head of Environmental Health and Trading Standards: Noise Impact from the railway track will need to be assessed and a standard condition on potential contamination should be imposed given the proximity of the site to former railway track.

Broughty Ferry Community Council object to the development on grounds of poor design, density, impact on the listed building and the Nature Reserve, provision of flats, lack of drying areas, and amenity ground, the Council's conflict of interest as land owner and potential problems with the adjoining restaurant use.

OBSERVATIONS

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

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b 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 principle of developing housing at this location is appropriate in circumstances where it is identified as part of an existing housing area.

Policy 1: Vibrant and Sustainable Communities seeks to safeguard the amenity of residential areas in terms of design as well as layout, parking and traffic movement, and noise and smell issues. It is framed mainly in terms of introducing non residential uses into residential areas.

Policy 4 sets out standards for the design of new housing. The proposed development conflicts with the presumption against flats. For this reason it was advertised as a departure from the Plan.

In this case it is considered that the development of the site for housing is acceptable in principle. It is further considered that there is a justification for the construction of apartments rather than town houses. Appendix 1 to Policy 4 states that flats will be permitted where exceptional circumstances demand a flattened solution. In this case the site is very exposed to public view and a well designed apartment block would be the most appropriate form of development. Houses, with the inevitable requirements for extensive and fenced off garden areas and the tendency towards more standardised designs, would be difficult to incorporate onto the site.

The proposed development involves an extensive site coverage, but unlike the previous proposals (05/01074/FUL) landscaped areas are provided between and to the sides of the buildings and adequate provision has been made for cycle parking and bin stores. Although the site is surrounded by open space, all housing developments should have private ground and this is a requirement of Policy 4 of the Plan. In this case substantial balconies are proposed for all the proposed apartments, and it is considered that these balconies coupled with the space around the buildings, provide an adequate useable outdoor area.

It is considered that a modern design approach is wholly appropriate for this site. The beach front context with extensive views mean that a building with extensive glazing and balconies on the south facing elevation is appropriate as opposed to a more traditional design. Thus the extension of the adjoining listed building with what is effectively a large glass box on its front elevation has been a very successful development despite being in no way "traditional" to Broughty

Ferry. In this case it is considered that the buildings are well designed, with attention having been given to the side and rear elevations as well as the prominent front elevations.

Policy 55 Urban Design puts an emphasis on good design and it is considered, for the reasons stated above, that the design of the development meets the high design standards required at this location.

Policy 55 also refers to protecting the setting of listed buildings. In this case the listed building is already affected by the adjoining night club building. It is considered that the proposed development will enhance the setting of the listed building.

The adjoining Nature Reserve is protected by Policy 70 of the Plan. In this case the applicants have produced an ecological assessment along with proposed mitigation measures which suggests that the development will not adversely affect the nature conservation qualities of the Local Nature Reserve.

No change to the route of the path to the Nature Reserve is proposed. There is no doubt that there will be impacts on the reserve, however taking into account the views of Scottish Natural Heritage and the mitigation measures proposed, it is concluded that the proposed development would not contravene Policy 70 of the Plan.

It is concluded from the foregoing that the provision of apartments (as opposed to houses) on this site contravenes Policy 4 of the adopted Local 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 requires planning authorities, in considering applications that affect the setting of 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 55 of the adopted Local Plan and it was considered that the proposal would

have a positive impact on the setting of the adjoining listed building.

(b) The Grounds of Objection

- 1 The proposed development will adversely impact on the Nature Reserve. This matter has already been considered in the assessment of the development against Policy 70 of the Plan and it has been concluded that there will not be a significant adverse impact. It is considered that maintaining the access path in its current location is an appropriate solution and that any fears about a loss in security by having to pass under the building are more than compensated for by the fact that the building will overlook the nature reserve.
- 2 The design and layout of the development are unsatisfactory. The site is being overdeveloped, the buildings are too high and the design and finishing materials are inappropriate for this location. The Local Plan is contravened in this regard. These matters have already been considered in the assessment of the development against Policies 4 and 55 of the Local Plan and it has been concluded that the scale, design and layout of the development are satisfactory.
- 3 The development will adversely impact on the adjoining listed building. This matter has already been considered in the assessment of the proposed development under Policy 55 of the adopted Local Plan and it was considered that the proposal would have a positive impact on the setting of the adjoining listed building.
- 4 The development will cause excessive noise and traffic levels. The scale of the development is modest in terms of noise and traffic generation and will not be significant compared with the traffic levels using the Esplanade and the busy restaurant/cafe to the west of the site.
- 5 The development contravenes the Local Plan as it is a new housing release on a greenfield site. The site is previously developed land incorporating a night club and car park.

(c) The Letters in Support

It is accepted that there is substantial local support for the removal of the nightclub and indeed many of the objectors would not object if the development related only to the site of the nightclub. There is no doubt that the night club use has been problematic in terms of residential amenity and the design of the building is unattractive. The amount of weight to be attached to the level of support for the development needs to be tempered by the fact that the removal of a problematic but authorised use could not justify the approval of an otherwise unacceptable development. However for reasons set out in this report, it is considered that the proposed development is acceptable on its own merits.

(d) View of Consultees

Scottish Natural Heritage: SNH have not objected to the development and it has been concluded that the development will not adversely impact on the Nature Reserve.

Leisure and Communities Dept Countryside Ranger: it is considered that most of the detailed concerns have been addressed by the current submission.

Head of Environmental Health and Trading Standards: A planning condition on noise impact could be imposed should Members be minded to approve this application.

Broughty Ferry Community Council: Most of these concerns have been addressed in the consideration of objections. Additional concerns about the Councils conflict of interest as land owner are addressed by the fact that the application would first need to be referred to the Scottish Ministers before it could be approved. Concerns about potential problems with the adjoining restaurant use are not considered to be sufficient to justify refusal of the application given the nature of the restaurant use and the existing position of ventilation equipment.

(e) Justification for Providing Apartments as opposed to Houses on the Site

In this case the site is very exposed to public view and a well designed apartment block would be the most appropriate form of development. Houses, with the inevitable requirements for extensive and fenced off garden areas and the tendency

towards more standardised designs, would be difficult to incorporate onto the site. Indeed had the opportunity arisen to prepare a site planning brief, then a form of development similar to that currently proposed would have been encouraged.

The proposed development incorporates large flats with extensive balconies. It provides a type of accommodation on a unique site which is not readily available elsewhere within the city and the Local Plan makes a stated exception for providing a type of accommodation not available in the surrounding area.

The development complies with all other aspects of Policy 4 and the Appendix 1 guidelines.

It is concluded from the foregoing that there are sufficient material considerations to justify the approval of the application despite the fact that the Local Plan supports houses on this site and that insufficient weight can be given the views of objectors such as to refuse the proposed development.

Members should be aware that if they are minded to approve the development then the application would first have to be referred to the Scottish Ministers on grounds that the Council have a financial interest as land owners and the development contravenes Policy 4 of the adopted Local Plan and a substantial body of objections has been received to the proposed development.

Design

It is considered that a modern design approach is wholly appropriate for this site. The beach front context with extensive views mean that a building with extensive glazing and balconies on the south facing elevation is appropriate as opposed to a more traditional design. Thus the extension of the adjoining listed building with what is effectively a large glass box on its front elevation has been a very successful development despite being in no way "traditional" to Broughty Ferry. In this case it is considered that the buildings are well designed, with attention having been given to the side and rear elevations as well as the prominent front elevations. The choice of finishing materials is appropriate for the location and the proposed landscaping and boundary enclosures will help incorporate the development into its unique setting.

CONCLUSION

Although the proposed development contravenes the presumption against apartments in the Development Plan, it is the most appropriate form of housing for the site, provides generous space standards, is attractively designed and will not adversely impact on the adjoining Nature Reserve. The concerns of the objectors are not sufficient to justify the refusal of the application.

RECOMMENDATION

Recommendation 1

In terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997, if Members are minded to approve the planning application it will be necessary to refer it to the Scottish Ministers due to the development contravening Policy 4 of the adopted Local Plan and the substantial body of objections received and the fact that the Council has landownership interests in the site.

Recommendation 2

It is recommended that planning permission be GRANTED subject to the following conditions:-

- 1 The development hereby permitted shall be commenced within five years from the date of this permission
- 2 Samples of the finishing materials proposed to be used shall be submitted to the Council for approval and if approved the development shall be carried out only in accordance with such approved samples
- 3 Full details of the proposed landscaping scheme, including species, sizes and timescales for planting as well as proposals for aftercare and maintenance shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full accordance with such approved details. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those

originally required to be planted in terms of this condition.

- 4 The details set out in the letter from KDM Architects dated 11/5/06 relating to access to and maintenance of the Nature Reserve as well as the Mitigation Measures set out in Section 7 of the "Broughty Ferry Local Nature Reserve Ecological Survey and Impact Assessment for Proposed Development" by Highland Ecology submitted with the letter from KDM Architects dated 15/5/06 shall be incorporated as part of this consent.
- 5 The conclusions of the Rail Traffic Noise Assessment by RMP Acoustic Consultants dated 25/5/06 shall be fully implemented.
- 6 Development shall not begin until an assessment is made of potential contamination on the site and this assessment has been submitted to and approved in writing by the Council. Should contamination be identified then a scheme to deal with it shall be submitted to and approved in writing by the Council.

The scheme shall contain details of proposals to deal with contamination to include:

- 1 the nature, extent and type(s) of contamination on the site.
- 2 Measures to treat/remove contamination to ensure the site is fit for the use proposed.
- 3 Measures to deal with contamination during construction works.
- 4 Condition of the site on completion of decontamination measures.

Before any unit is occupied the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

- 7 The proposed development shall be constructed strictly in accordance with the approved plans.
- 8 The tree to the west of the proposed new access shall be retained and details of the

protection of this tree shall be submitted to the Council for approval before any development is commenced and if approved the development shall be carried out only in full accordance with such approved details.

Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997.
- 2 To ensure that the proposed development has a satisfactory external appearance in the interests of the visual amenities of the area.
- 3 To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
- 4 To ensure that the proposed development does not have an adverse impact on the adjoining Nature Reserve.
- 5 To protect the residential amenity of the future occupiers of the proposed flats.
- 6 To ensure that the site is fit for the proposed use.
- 7 In order to ensure that there is no diminution in the quality of the development or the finishing materials in the interests of visual amenity.
- 8 To retain this mature tree in the interests of visual amenity.