

**KEY INFORMATION**

Ward East End

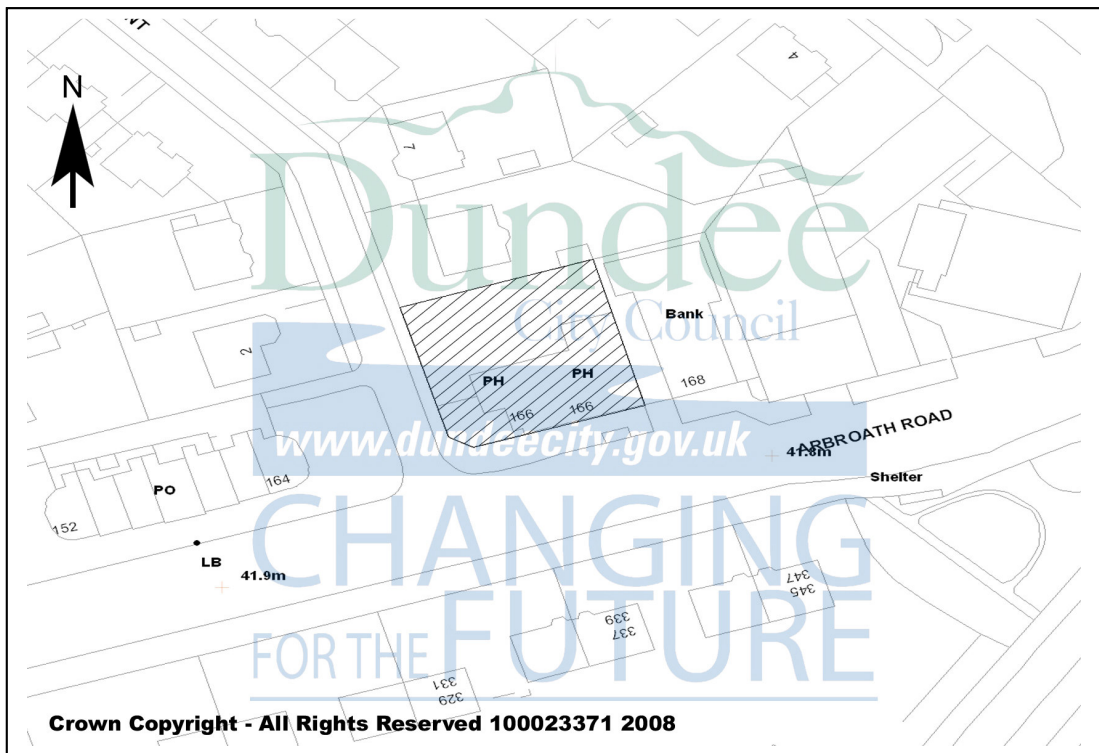
**Proposal**

Mobile Canopy

**Address**The Boars Rock  
168 Arbroath Road  
Dundee**Applicant**Redwood Leisure Ltd  
Dunsinane House  
Kilspindie Road  
Dunsinane Industrial Estate  
Dundee  
DD2 3JP**Agent**ARKTX Chartered Architects  
187 Strathmartine Road  
Dundee  
DD3 8BL

Registered 23 Sept 2008

Case Officer J Young



# Consent Sought for Canopy at the Boars Rock

Consent for a Mobile Canopy is **RECOMMENDED FOR REFUSAL**. Report by Director of Planning and Transportation.

**RECOMMENDATION**

The proposal is contrary to Policy 1 of the Dundee Local Plan Review 2005 due to the potential adverse affect on residential amenity. The objections are supported. The application is recommended for **REFUSAL**.

**SUMMARY OF REPORT**

- Planning permission is sought for the erection of a mobile canopy to the rear of a public house at 168 Arbroath Road. The canopy has been in place for a year. The applicant states that the canopy is a shelter for mobile scooters for some clients who use the public house.
- Policy 1 of the Dundee Local Plan Review 2005 is of relevance to the determination of the application. It seeks to protect the environmental quality enjoyed by local residents.
- Two letters of objection were received from neighbouring residents to the north of the application site on the grounds of noise disturbance, appearance and anti-social problems.
- Regardless of the applicants stated intentions, the proposal will encourage the congregation of people in an area where they would not normally gather and this will lead to unacceptable noise levels for adjacent residents. Therefore the application is contrary to Policy 1 of the Local Plan and the objections are supported.

## DESCRIPTION OF PROPOSAL

Full planning permission is sought for the erection of a mobile canopy on the rear elevation of The Boars Rock public house at 168 Arbroath Road. The canopy has been sited at this location for approximately 1 year. The canopy is 3m long, 1.5m wide and 2m high and falls to 1.9m high from west to east. It is fixed to the rear wall of the public house with chains and has wheels, which makes it a moveable structure. The canopy is constructed with steel columns, which have wheels attached at four corner points and it has a steel, gently sloping roof.

The applicants have written to state that the use of the canopy is to protect disabled access scooters and powered wheelchairs from inclement weather. They state that it can also be used for bicycle storage. Finally they add that in order to ensure that there is no dubiety as to its use they have removed the wall mounted cigarette bins which were in place prior to the canopy being installed.

## SITE DESCRIPTION

The application site is located on the north side of Arbroath Road and to the rear of public house premises at 168 Arbroath Road. The building itself has white harled walls and a slate roof. There is a flat above the premises and the nearest house is some 9m to the north (rear) of the site. A car park is located to the rear (north) and is at a lower level than the houses to the north. It is accessed from Montgomerie Crescent to the west. A 1.5m high block wall with timber fence on top is located along the north boundary. The canopy has already been erected and is a lightweight structure with steel poles and roof and has four small wheels. Although it is a moveable structure, it has been fixed to the wall of the public house by chains. Since its erection it has been used by smokers as a shelter but the applicants state that this is not its intended function.

## 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 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

## 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 applicant was served with a planning contravention notice (PCN) on 4 July 2008 seeking the removal of this shelter. In response to this, a planning application was submitted later that month to retain it - application 08/00555/FUL refers. That application was withdrawn by the applicants in September 2008 prior to it being determined by the Councils Development Quality Committee. The applicants stated that they were withdrawing the application because the Council had wrongly assumed that it was for a smoking shelter whereas it was to shelter disabled customers electric wheelchairs.

## PUBLIC PARTICIPATION

Statutory neighbour notification has been carried out and two letters of objection have been received from neighbouring residents to the north of the site with concerns regarding:

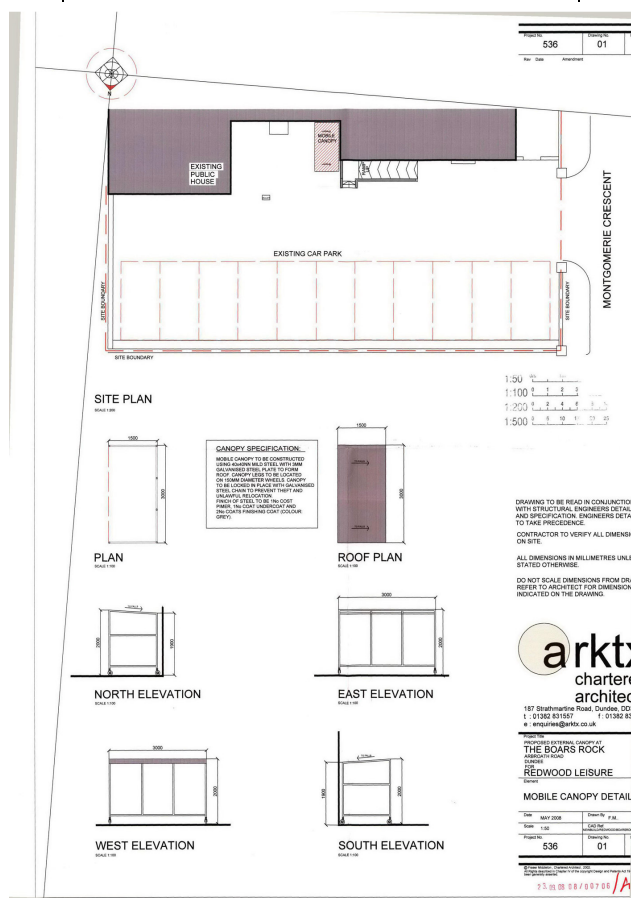
- Noise, Litter and Anti Social behaviour
- People drinking outside the premises

The objectors dispute the applicants claim that this is not a smoking shelter.

Members will already have been served with copies of the objection letters. The issues raised will be discussed in further detail in the Observations section below.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards has stated that if this is purely a shelter for motorised wheelchairs then he has no comments



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

## Scottish Planning Policies, Planning Advice Notes and Circulars

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

but if it is a combined shelter for motorised wheelchairs and smokers then his comments are as for the previous application (08/00555/FUL) when he stated:

"It is accepted that the proposed development is designed to accommodate those patrons of the premises who would wish to smoke. Accordingly, this will encourage people to congregate in a specific area, thereby resulting in the predictable consequence of an elevated noise burden on those residential properties in the proximity of the development.

In this regard, you should note that I am not an authority on behavioural noise but would nevertheless offer an opinion that that there is no condition that can be applied to a consent which would safeguard the amenity of adjacent residents and protect them from the potential effect of an increased noise climate around their(the residents) property."

## OBSERVATIONS

### Statutory Requirements

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.

Policy 1 of the Dundee Local Plan Review 2005 seeks to protect the environmental quality enjoyed by local residents with particular reference to design, layout, parking and traffic movement issues, noise or smell. It is considered that of these 5 matters referred to, the issue of noise is the only one of direct relevance to the current application.

If this was purely a shelter for motorised wheelchairs then there would be no amenity issues associated with it. However the design of the structure is not practical in terms of sheltering such vehicles, being completely open on two sides and it does not provide any security. An enclosed structure would be much more suitable for such purposes. More



importantly, the structure which has been on the site for approximately a year has functioned during that period as a smoking shelter. Despite the best intentions of the applicants, it is likely to continue in such use (even if it is also used to store motorised wheel chairs) and it would be virtually impossible to supervise and control any policy restricting smokers from using the shelter. Furthermore it is not considered that it would be practical to try to prevent the use of the shelter by smokers by means of a planning condition as such a condition would be virtually impossible to enforce.



It is considered that the proposal to retain this structure will inevitably result in it being used as a shelter for smokers, which will result in an unacceptable level of noise for nearby residents. Patrons will congregate in a specific area and this will subsequently result in an elevated noise burden for adjacent residents. The site is bound

by residential properties to the north and there is a flat directly above the public house. These residents will be potentially affected by increased levels of noise by people congregating at the rear of the public house. The Head of Environmental Health and Trading Standards supports this view.

It is concluded from the foregoing that the proposal will result in noise disturbance to local residents and therefore does not comply with Policy 1 of the adopted Local Plan.

### Other Material Considerations

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

#### Objections

Objectors are concerned about noise, litter and anti social behaviour and people drinking outside the premises. Concerns about noise disturbance have been addressed in the assessment of the proposed development against Policy 1 of the Local Plan and it was concluded that the siting of a shelter at this location would inevitably lead to it being used by smokers congregating in this specific area during the public house opening hours and an increase in noise levels to the detriment of the nearby residents.

Concerns about litter and anti social behaviour have also been raised. The recent removal of the wall mounted cigarette bins may lead to an increase in litter at this location but this is a matter that is governed by separate legislation. Similarly, concerns about drinking alcohol outside the premises can be dealt with under the Licensing Laws.

Finally the objectors dispute the applicants claim that this is not a smoking shelter. They state that when the structure was first erected they were told by the manager that it was a mobile smoking shelter and they suggest that if it was intended to be a shelter for motorised disabled vehicles then it should be enclosed. These matters were considered in the assessment of the development against Policy 1 of the Local Plan and it was concluded that even if it was intended that this structure was to be solely used to

shelter motorised wheelchairs it would inevitably continue to be used by smokers and it would be impossible to restrict such use.

#### Catering for the Needs of Disabled Customers

Proposals to cater for the needs of disabled customers are always encouraged, however in this case it would be preferable if motorised wheel chairs could be taken into the premises providing a much more secure and sheltered environment. If this is not possible and if an external shelter were to be provided there is no reason why this should not be properly enclosed to provide shelter and security.

It is concluded from the foregoing that the application is contrary to the development plan and that there are no material considerations of sufficient strength to justify the grant of planning permission. It is therefore recommended that planning permission be refused.

#### **Design**

The proposed canopy is a very lightweight structure and of minimal design impact on the building.

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### **CONCLUSION**

Regardless of the applicants stated intentions, the proposal will encourage patrons to continue to congregate at this location, which will result in increased noise for local residents. Therefore the proposal is contrary to Policy 1 of the Dundee Local Plan Review 2005. The views of the objectors regarding noise disturbance are supported. There are no material considerations that would justify setting aside the development plan to grant planning permission. It is recommended that planning permission be refused.

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### **RECOMMENDATION**

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

- 1 Regardless of the applicants stated intentions for this structure, the proposal to retain this canopy will encourage patrons to continue to congregate at this location, resulting in increased noise disturbance for local residents, particularly at late evening time, to the detriment of their amenity. For

this reason the proposal is contrary to Policy 1 of the adopted Dundee Local Plan Review 2005. There are no material considerations that would justify setting aside the development plan to grant planning permission.