

Item: 4.1

Planning Committee: 31 August 2022.

Conversion of Former Shop Premises and Adjoined Courtyards to Mixed Use Entertainment Venue (Use Classes 1, 3, 10 and 11) at 18 Bridge Street, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Planning permission in principle is sought to convert the former Gardens Buildings at 18 Bridge Street, Kirkwall, to a mixed-use entertainment venue featuring a restaurant/cafe, bowling alley, music venues, nightclub, gymnasium, exhibition space, visitor centre and retail. The site is allocated within the Orkney Local Development Plan 2017, reference K-25, as a mixed-use site and forms part of a wider allocation incorporating K-26 and K-27. One letter of support and seven objections have been received, primarily based on impacts to third party amenity and road safety. Roads Services has objected on grounds of lack of parking provision. As an application in principle, if approved, matters of detail can be specified in conditions. Taking account of comments from consultation bodies, it is considered that issues raised can be adequately addressed by conditions including requiring mitigation and surveys, and matters would be fully assessed in a subsequent application. It is considered that the proposal complies with Orkney Local Development Plan 2017 policies 1, 2, 3, 4, 8, 13 and 14 and relevant guidance. Accordingly, the application is recommended for approval.

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|---------------------|--|
| Application Number: | 22/221/PIP. |
| Application Type: | Planning Permission in Principle. |
| Proposal: | Conversion of a former shop, bakery, store and adjoined courtyards to a mixed use restaurant/cafe, bowling alley, music venues, nightclub, gymnasium, exhibition space, visitor centre and retail (Use Classes 1, 3, 10 and 11). |
| Applicant: | Mr Wm Neil Stevenson. |
| Agent: | Mr Stephen J Omand. |

1.2.

All application documents (including plans, consultation responses and representations) are available for members to view at the following website address:

https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm
(then enter the application number given above).

2. Consultations

2.1. Roads Services

Roads Services has objected, as follows: “While it is possible to work out the parking requirement in accordance with the NRDG for some areas of this development, further information and the intended operational plan for the site area would be required to determine the full parking provision that should be provided within the boundary of the site.

In addition to the issue of parking provision it is also unclear how service, delivery vehicles can be accommodated on site. The NRDG indicates that developments of this nature should provide sufficient room within the boundary of the site to enable service, delivery vehicles to access and egress the site in a forward direction.

Therefore, Roads Services object to this development proposal until such time that further information is provided about parking provision and service / delivery vehicle access is addressed.

It should also be noted that given the location of the site the only two vehicular accesses to the site are far from ideal as should the Bridge Street access be used for service, delivery access, this would increase traffic through Bridge Street, Albert Street and Laing Street. The only other access currently available is via Garden Street which given the location of the access in this area, the geometry of the road and the amount of on street parking make using the access rather challenging.”

2.2. Environmental Health.

“The proposed development site is located within the town centre, already having a mixture of commercial and residential uses. The residential uses are primarily flatted properties above adjacent retail premises, but there is residential terraced housing approx. 50 metres to the east on an adjacent street. On the main street, where the development is proposed, there already exists a couple of licensed establishments, and late-night food providers within close proximity.

Environmental Health’s main concerns would be the impact of noise break-out from the proposed Nightclub and other areas of the building with amplified music, forming part of the proposed redevelopment, to the surrounding noise sensitive receptors (NSRs). The use of the outside spaces for outdoor leisure and open-air restaurant/café are also of concern.

Because of these concerns, a Noise Impact Assessment (NIA) will be required to support any future detailed planning application, and appropriate criteria should be provided to form the basis for consideration within the future NIA.”

2.3. Other Consultation Bodies

Scottish Water, Orkney Heritage Society, Development and Marine Planning, and the Health and Safety Executive were also consulted. These consultation bodies have not objected or raised any issues which cannot be addressed by planning conditions.

3. Representations

3.1.

Seven objections have been received, from:

- Anne McOmish, 1 St Olafs Wynd, Kirkwall, KW15 1JB.
- Chloë Jowett and Peter Ford, 10 St Olafs Wynd, Kirkwall, KW15 1JB.
- Karen Mack, 8 St Olafs Wynd, Kirkwall, KW15 1JB.
- Angus Windwick, 46 St Catherines Place, Kirkwall, KW15 1HX.
- Elizabeth Fraser, 52 St Catherines Place, Kirkwall, KW15 1HX.
- Mary Gray, 20 Garden Street, Kirkwall, KW15 1JA.
- Miss Carola Huttman, Flat 1, Nicols House, St Olafs Wynd, Kirkwall, KW15 1JB.

3.2.

Objections are based principally on potential impact on residential amenity, due to noise and parking provision.

3.3.

One letter of support has been received from:

- David and Katie Foulis, Trek and Travel, 15-19 Bridge Street, Kirkwall, KW15 1HR.

4. Relevant Planning History

| Reference | Proposal | Location | Decision | Date |
|-----------|---|--|----------|------------|
| 21/191/PP | Change of use from store to gymnasium (Class 11). | 18 Bridge Street, Kirkwall, KW15 1HR. | Approved | 09.07.2021 |
| 21/345/PP | Change of use of car park to community events and activities (limited days per year). | 18 Bridge Street Car Park, Kirkwall, KW15 1HR. | Approved | 04.10.2021 |

5. Relevant Planning Policy and Guidance

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website at:

The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 3 – Settlements, Town Centres and Primary Retail Frontages
 - Policy 4 – Business, Industry and Employment
 - Policy 8 – Historic Environment and Natural Heritage
 - Policy 13 – Flood Risk, SUDS and Waste Water Drainage
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Planning Policy Advice
 - Amenity and Minimising Obtrusive Lighting (2021).

6. Legal Aspects

6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”

6.2.

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lord’s judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

6.3.

Annex A continues as follows:

- The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision.
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.

- Consider whether or not the proposal accords with the development plan.
- Identify and consider relevant material considerations for and against the proposal.
- Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
 - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy and UK Government policy on reserved matters.
 - The National Planning Framework.
 - Policy in the Scottish Planning Policy and Designing Streets.
 - Scottish Government planning advice and circulars.
 - EU policy.
 - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance.
 - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act.
 - Community plans.
 - The environmental impact of the proposal.
 - The design of the proposed development and its relationship to its surroundings.
 - Access, provision of infrastructure and planning history of the site.
 - Views of statutory and other consultees.
 - Legitimate public concern or support expressed on relevant planning matters.

- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

6.4.

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

6.5.

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

7. Assessment

7.1. Principle

7.1.1.

Planning permission in principle is sought for the use of the application site as a mixed-use entertainment venue, incorporating existing buildings. The site is located adjacent to Bridge Street in Kirkwall, including vacant buildings, and is within the settlement boundary of Kirkwall and Kirkwall Conservation Area, as indicated on the Site Plan attached as Appendix 1 to this report. Policy 3A applies a sequential approach for business development, noting that development “will be supported within Kirkwall and Stromness Town Centres to support their vibrancy, vitality and viability...For retail, commercial, leisure, office, community and cultural facilities that attract significant footfall, a town centre first principle will apply.”

7.1.2.

Policy 4 notes that, “The Plan supports the principle of...creating new businesses in appropriate locations. In general, developments that would create significant footfall...will be directed toward relevant sites within the settlements”. In relation to ‘Mixed Use Allocations’ as defined, Policy 4A notes, “In principle, all uses will be supported within mixed-use sites...”.

7.1.3.

The site is allocated as a 'Mixed Use Site', reference K-25, within the Local Development Plan. Supplementary Guidance: Settlement Statements provides details of the allocation, including the requirement for a joint development brief with allocations K-26 and K-27 for the detailed development of the site, and noting the potential for archaeological assets within the site and a requirement to protect the setting of surrounding listed buildings.

7.1.4.

The combination of defined Town Centre location, the 'Mixed Use' allocation within the Local Development Plan and Policy 4 support for multiple uses within a mixed-use site, supported by Policy 3 support for mixed, high footfall uses in a town centre, are such that the principle of the development is acceptable. As an application in principle only, an approval would effectively confirm the allocation and therefore development as anticipated by the Local Development Plan, with the addition of any parameters as stated by consultation bodies with regards residential amenity or other matters.

7.2 Matters Specified by Condition

7.2.1.

As an application in principle only, if approved, all matters of detail would be assessed following submission of any subsequent application for approval of the matters specified in conditions.

7.2.2. Design, Appearance and Character of the Area

Whilst in principle only, it is pertinent to consider the impact on the character and appearance of Kirkwall Conservation Area, within which the development is located, and principally any impact on the existing building façade facing Bridge Street. The gables of the existing buildings, although set back from the building line, and the associated forecourt, form a strong relationship with the street. In conjunction with preparation of a development brief as specified in the allocation, the design and finishes of the building and forecourt are matters that would be specified in planning condition as requiring confirmation in any subsequent application.

7.2.3. Flood risk

The site is identified as being at risk of surface water flooding, as is much of the town centre. The existing use of the site as a store and car park, and the proposed mixed, commercial uses are in the same vulnerability classification within the SEPA Flood Risk and Land Use Vulnerability Guidance. As such, there would be no increased risk. Engineering Services was consulted on 1 July 2022. No consultation response has been received; however, it is considered that resilience measures and any other works required in relation to surface water flooding would be specified in planning condition as requiring confirmation of any subsequent application.

7.2.4. Foul and Surface Water Drainage

The matters of foul drainage connection to the public system and any measures to manage surface water would be specified in planning condition as requiring confirmation in any subsequent application.

7.2.5. Archaeology

Supplementary Guidance: Settlement Statements notes “There is significant potential for archaeological discoveries to be made whilst redeveloping this site”. In conjunction with preparation of a development brief as specified in the allocation, measures for investigation and, where appropriate, preservation of archaeology would be specified in planning condition as requiring confirmation in any subsequent application.

7.2.6. Access and Parking

Roads Services has objected to the application, principally due to lack of information. Whilst the submitted site area and proposed uses can be used to estimate car parking and delivery vehicle requirements, that level of detail is not known on the basis the application is in principle only. As stated in section 7.1.3 above, a joint development brief is required for K-25, K-26 and K-27, which would be required prior to any subsequent application for approval of matters specified in conditions. Any such development brief will provide an opportunity to demonstrate how adjacent land could aid parking, manoeuvring delivery or other provisions required for the current application site.

7.2.7.

The application site is allocated for mixed-use development. Any such development would have parking demand, based on the provisions of the National Roads Development Guide; the Local Development Plan allocation therefore anticipates this demand for this application site. The application is in principle only and notwithstanding the objection from Roads Services, in conjunction with preparation of a development brief as specified in the allocation, full details of access, parking, loading, drop offs, manoeuvring etc would be specified in planning condition as requiring confirmation in any subsequent application. On this basis, the allocation in the Local Development Plan is considered to outweigh the objection from Roads Services.

7.2.8. Noise and Amenity

The site is located within the town centre where there is a mixture of residential and commercial uses, including some late-night premises nearby. The site is flanked on three sides by residential properties: Bridge Street properties to the south and west, St Catherine’s Place to the east, and St Olaf’s Wynd and Garden Street to the south.

7.2.9.

Given the nature of the proposed development, with late night functions in proximity to neighbouring properties, there is potential for adverse amenity impacts that require to be addressed to ensure no unacceptable disturbance on any third-party residential property or its occupants. Potential amenity impacts would include, but

not necessarily be limited to, noise, traffic, fumes and vibration. Amenity impacts would be assessed by Environmental Health should full details be submitted. Environmental Health confirmed no objection to the current application, subject to a detailed condition regarding assessments required, primarily related to the proposed nightclub and outdoor leisure facilities.

7.2.10.

The site is considered capable of accommodating the development proposed whilst protecting neighbouring properties from unacceptable amenity impacts. Full details of mitigation measures and a Noise Impact Assessment would be specified in planning condition as requiring confirmation in any subsequent application.

8. Conclusion and Recommendation

The principle of the development is acceptable, based on the allocation within the Local Development Plan. Subject to appropriate details, assessments and mitigations, and completion of a development brief, which would be amongst matters specified in planning condition to be included in a subsequent application, the application is considered to comply with Policies 1, 2, 3, 4, 8, 13 and 14 of the Orkney Local Development Plan 2017. Objections are of insufficient weight to warrant refusal. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

9. Contact Officers

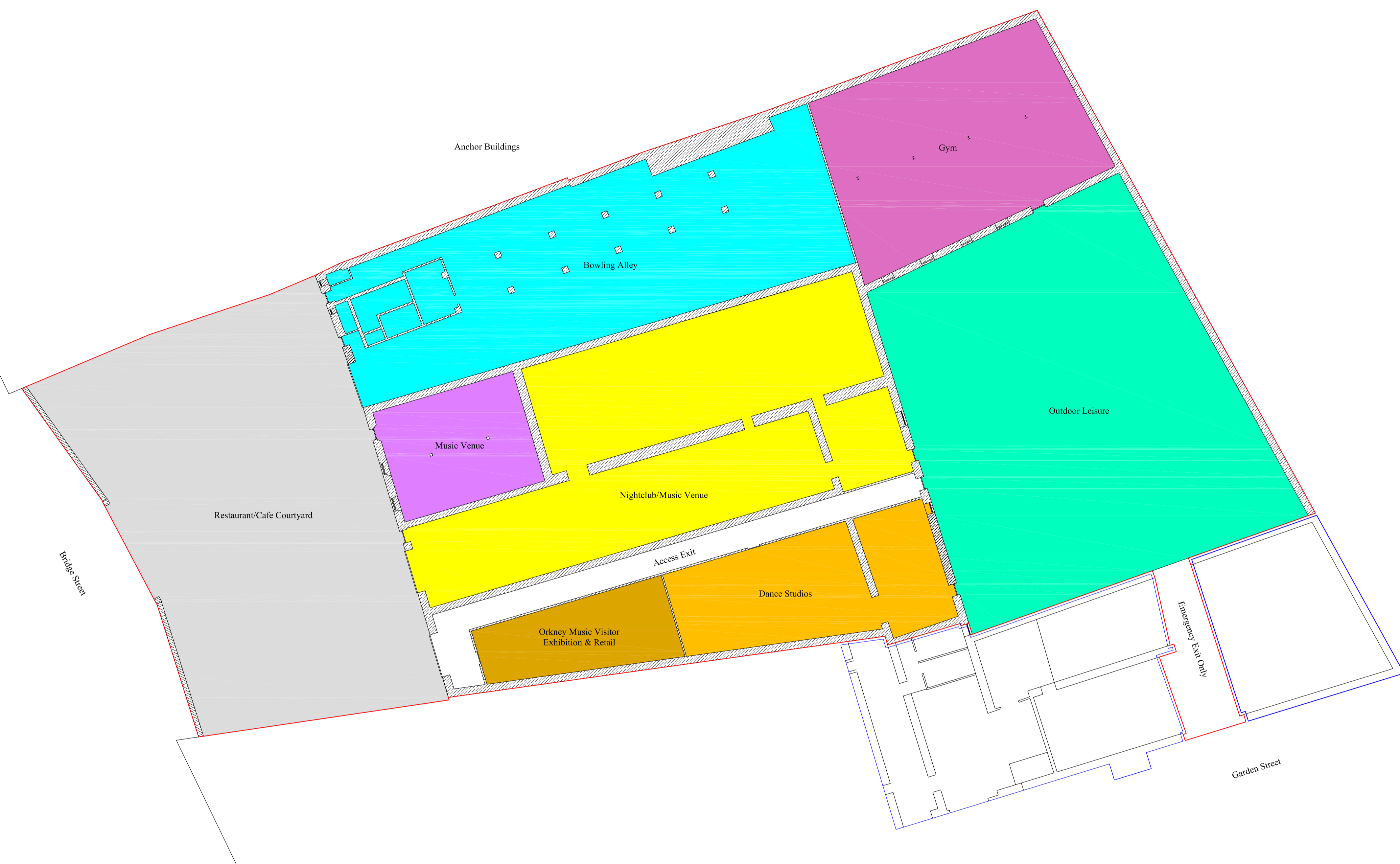
Jamie Macvie, Service Manager (Development Management), Email jamie.macvie@orkney.gov.uk

Dean Campbell, Planning Officer, Email dean.campbell@orkney.gov.uk

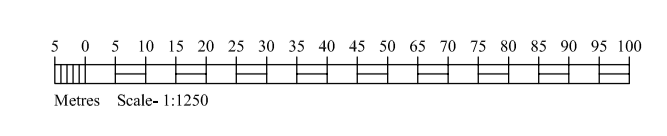
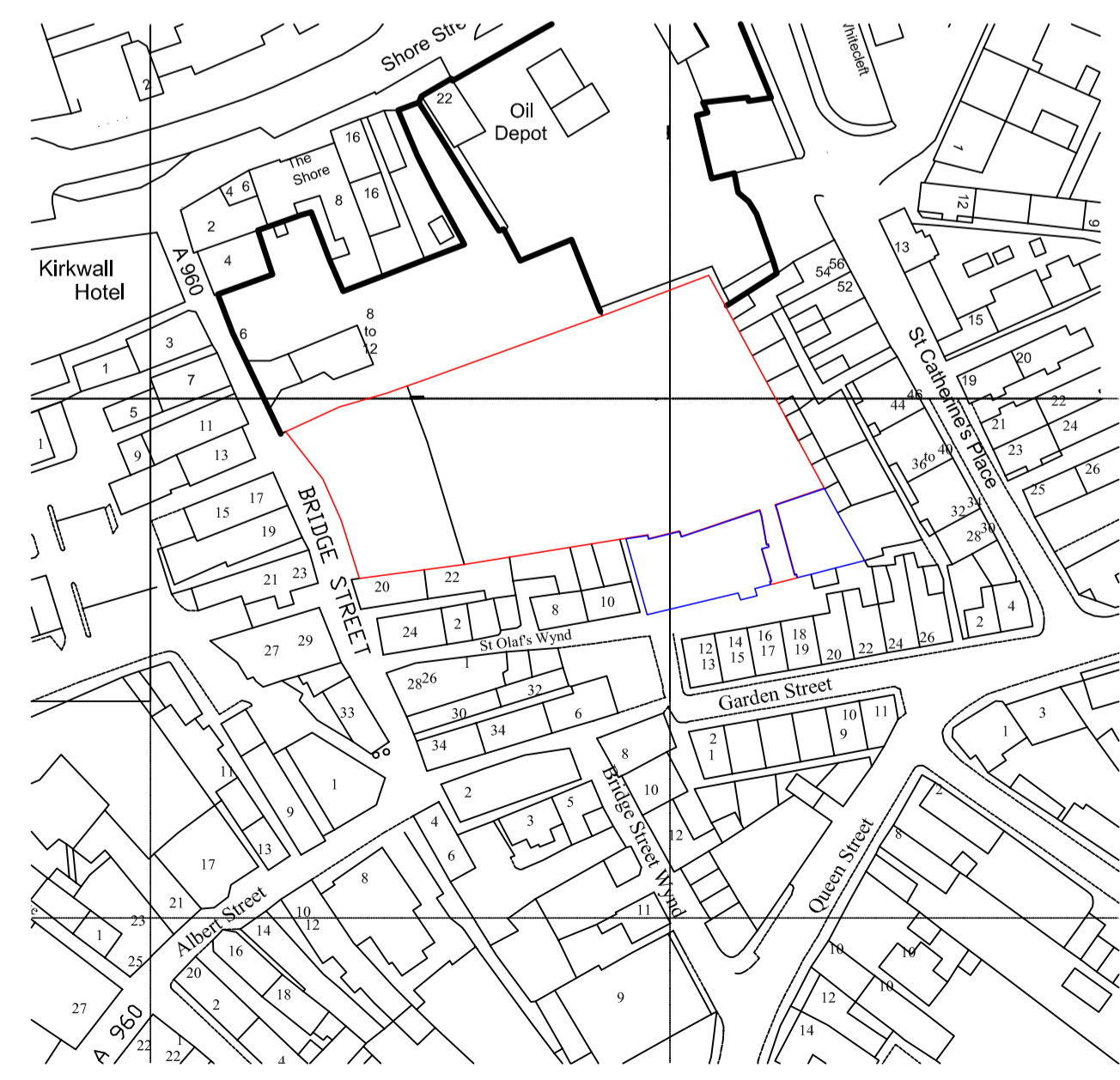
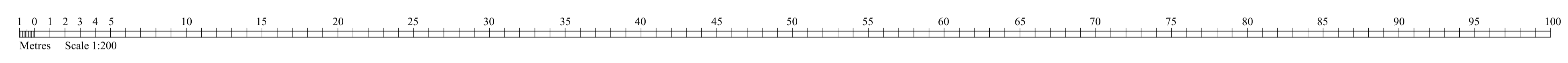
10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



Proposed Uses Scale 1:500



| | | |
|--|------------|---|
| Stephen J Omand, FRICS, Chartered Surveyor, 14 Victoria Street, Kirkwall, KW15 1DN. Tel: 01856 876215 Fax: 01856 876199 Email: stephen@sjomand.co.uk | | |
| Project Former Garden's Premises, 18 Bridge Street, Kirkwall, KW15 1HR. | | |
| Title Planning in Principal Change of Use from Retail, Bakery and Storage to Restaurant/Cafe Courtyard, Bowling Alley, Music Venues, Nightclub, Gym, Outdoor Leisure Area, Dance Studios and Orkney Music Visitor Centre, Exhibition and Retail. | | |
| Client Wm Neil Stevenson, 30 Albert Street, Kirkwall, KW15 1HQ. | | |
| Date | June 2022. | Drawn by SJO |
| Scale | As shown. | Draw No 1632/1/P1. Plan size A1 |
| Drawings prepared for Planning Purposes only. DO NOT SCALE. If in doubt, ask. | | |

Appendix 2

01. Within three years of the date of this permission, a written application and plans, in respect of the following matters, shall be submitted to, and approved in writing by, the Planning Authority:

- a) The design and external appearance of all existing and proposed buildings, structures, and any other operational development across the entirety of the application site, including all plans and elevations.
- b) The detailed layout of the site, including all external spaces, with full details of vehicular and pedestrian accesses, footways, landscaping, manoeuvring areas, servicing and delivery provision, refuse bin storage and collection, and parking provision.
- c) Measures to manage surface water drainage, including that no surface water drainage shall run-off to the public road or adjacent land.
- d) The disposal of sewage.
- e) A Construction Method Statement.
- f) A Noise Impact Assessment, and Operational Management Plan including all mitigation measures required to protect residential amenity to the satisfaction of Environmental Health.
- g) A Development Brief. This shall be a joint development brief covering allocations K-25, K-26 and K-27, as required by Supplementary Guidance 'Settlement Statements'.

Reason: The approval is in principle only and these matters must be approved prior to commencement of development.

02. In accordance with condition 01(f) above, no development shall commence until a Noise Impact Assessment (NIA) is submitted, and appropriate criteria provided to form the basis for consideration within the future NIA.

- The NIA should consider, as a primary noise source, noise from the Nightclub, Music Venue and Dance Studio. It is suggested that an assessment of musical breakout noise is undertaken that assesses this noise to the worst affected noise sensitive receptors (NSRs) using octave band frequencies between 63Hz to 4kHz with the criteria of meeting NR25 during daytime hours and NR15 during night-time hours. For the avoidance of doubt, daytime is between 07:00-23:00 and night-time is between 23:00 – 07:00. NR15 is considered similar to inaudibility. The measured/calculated sample length should be NR LAeq,5minutes, as predicted inside the worst affected NSRs.
- To protect NSRs from the underlying conversation, patron noise including from outdoor smoking should be assessed to meet the criteria within BS8233:2014; specifically, patron noise from the smoking areas must not exceed 30 dB LAeq,1hour during the night, as predicted inside the worst affect NSRs. Shouting and screaming cannot be quantified as typical, and instead should be controlled by way of a noise management plan from the Nightclub.
- For patron noise during the daytime from the outdoor leisure area and restaurant/café courtyard, it is suggested that predicted noise levels are no higher than 35 dB LAeq,1hour, as predicted inside the worst affected NSRs.

- The Bowling Alley and Gym may have an adverse impact on the adjoining Anchor Buildings due to structure-borne noise created by impacts from bowling balls on the bowling alleys and weight drops within the gym. Both these uses should be assessed and predict the likelihood of structure-borne noise from impact energy to ensure noise affecting the neighbouring commercial use is minimised and compliant with BS8233:2014 criteria. Amplified music and pin clashing noise from the Bowling Alley, and amplified music from the Gym, should also be considered in line with the criteria provided above for the Music Venue i.e. NR 25 daytime.
- Plant noise should be assessed in accordance with BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound', which is referenced in the TAN that supports PAN 1/2011. It sets out a method for rating and assessing sound of an industrial and/or commercial nature, including "sound from fixed installations which comprise mechanical and electrical plant and equipment". BS4142 would be applicable for use on this development covering any fixed mechanical services plant such as heat pumps, condensers, extract fans and the mechanics of the pin resetting equipment of the Bowling Alley.

Reason: To preserve the residential amenity of the surrounding properties.

03. All excavation and other ground works within the application site hereby approved shall be monitored by a qualified archaeologist in the form of an archaeological watching brief. No development shall commence until details of the qualified archaeologist and the terms of the archaeological watching brief are submitted to, and approved in writing by, the Planning Authority, in conjunction with the County Archaeologist. No excavation or other ground works shall be carried out without the attendance on site of this qualified archaeologist. If any archaeology is revealed, all excavation works shall cease until a written scheme of investigation is submitted to, and approved in writing by, the Planning Authority, in conjunction with the County Archaeologist, to secure the implementation of a programme of archaeological works.

Thereafter, that programme of archaeological works shall be fully implemented in accordance with approved details, and all recording and recovery of archaeological resources from within the development site shall be undertaken to the satisfaction of the Planning Authority, in conjunction with the County Archaeologist. All findings shall be reported to the Orkney Museum to be archived appropriately and a report detailing the findings shall be written and submitted to the Planning Authority within 6 months of the completion of ground works.

Reason: To safeguard and record any archaeological remains within the boundary of the site.

Note: This information can be included in the development brief, as required at condition 01(g).

04. In accordance with condition 01(e) above, no development, including any site clearance works, shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the Planning Authority. The statement shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.

- Storage of plant and materials used in constructing the development.
- The erection and maintenance of security hoarding.
- Measures to control the emission of dust and dirt during demolition and construction.
- A scheme for recycling/disposing of waste resulting from demolition and construction works.
- The phasing of the development.
- Traffic management.

For the avoidance of doubt there shall be no burning or burying of waste within the site. The approved Construction Method Statement shall be applied and complied with throughout the construction period.

Reason: To safeguard the amenity of neighbouring properties and occupants.