

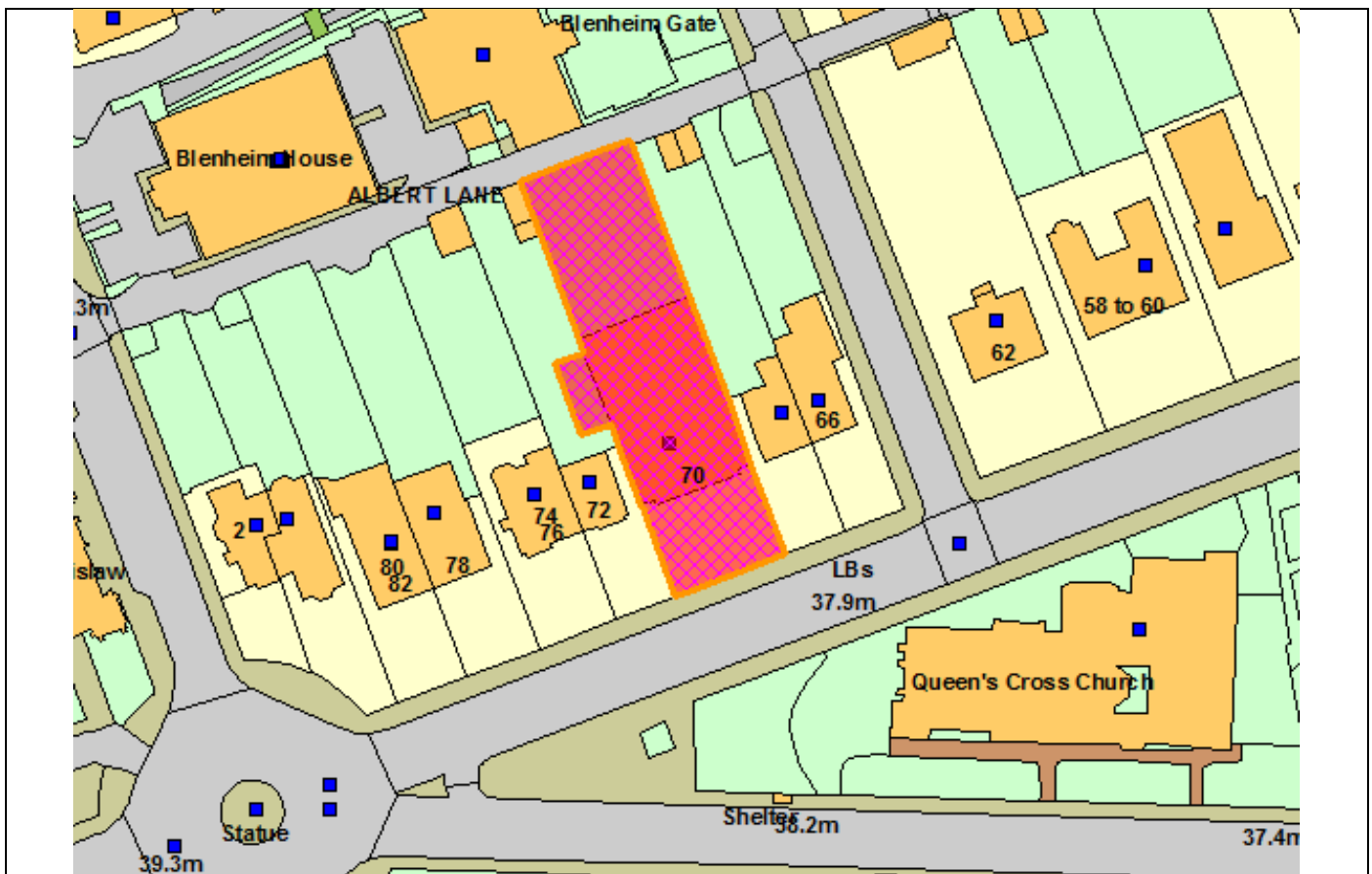


Planning Development Management Committee

Report by Development Management Manager

Committee Date:

Site Address:	Soju Bar and Diner, 70 Carden Place, Aberdeen, AB10 1UL
Application Description:	Variation of condition 2 (roof terrace operating hours) of planning permission 180390/DPP to extend operating hours on roof terrace
Application Ref:	190760/S42
Application Type	Section 42 (Variation to Conditions)
Application Date:	10 May 2019
Applicant:	Elements Scotland Ltd
Ward:	Hazlehead/Ashley/Queens Cross
Community Council:	Queen's Cross And Harlaw
Case Officer:	Jamie Leadbeater



© Crown Copyright. Aberdeen City Council. License Number: 100023401 - 2018

RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

The curtilage of a detached 1½ storey Victorian villa with modern flat roof extension to rear, the building is in use as a public bar (Sui Generis) at ground floor level and office space at the floor levels directly above and looking onto the roof terrace. The property is sited on the northern side of Carden Place, to the east of the Queen's Cross roundabout. The bar is served by a surface car park within the undeveloped rear curtilage, with access off Albert Lane.

In terms of wider context, the nearest residential properties are located c. 37m away to the west on Carden Place and over 50m away on Blenheim Place to the north-east, whilst the nearest residential unit on Fountainhall Road to the west is approximately 95m away. Offices exist outwith the same structure of the application property which sit immediately adjacent to the site on both sides and directly opposite to the rear c. 30m away, on the northern side of Albert Lane which look directly over the car park and roof terrace contained within the site's bounds.

In terms of designations, the site falls within the West End Office Area and the Albyn Place/Rubislaw Conservation Area as designated in the Aberdeen local Development Plan 2017.

Relevant Planning History

Application Number	Proposal	Decision Date
190177/DPP	Erection of outdoor bar enclosure unit on first floor terrace area with associated works (part retrospective)	03.04.2019 Status: Refused
180390/DPP	Proposed use of roof space to rear to form outdoor seating area, and alteration and extension to existing adjoining courtyard area including installation of replacement doors	03.07.2019 Status: Approved Conditionally

APPLICATION DESCRIPTION

Description of Proposal

Permission is sought to vary the terms of Condition 2 (roof terrace operating hours) pertaining to the planning consent granted under application 180390/DPP which sought to formalise use of a first-floor open terrace to accommodate patrons from the bar-restaurant contained within the envelope of the building, as extended, at ground floor level.

At present, Condition 2 controls hours of using the open first-floor terrace from 6pm to 11pm, Monday to Friday, and 12pm to 11pm on Saturday and Sundays. The proposal under this application seeks to extend hours of using the terrace from 12pm until 11pm from Monday to Friday.

Supporting Documents

All drawings can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PR530XBZFS000> .

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because the application has been subject of 6 or more objections and thus falls outwith the Council's Scheme of Delegation.

CONSULTATIONS

ACC - Environmental Health – Object.

The area surrounding the licensed premises comprises a mixture of business and residential uses. A number of complaints have been received by the Environmental Health Service pertaining to noise emitting from the outdoor seating area causing disturbance to offices close by. In addition, such complaints have arisen from nearby residents who have expressed concern that existing licensing conditions have not been adhered to, resulting in action being taken by the Council's Licensing Team and Police Scotland.

Queen's Cross & Harlaw Community Council – Strongly object, as owners seem to have difficulty in adhering to present licensing conditions.

In September 2018, the Community Council reluctantly agreed to license the premises (including the open terrace) to operate 6pm -10pm Monday to Friday and 12pm to 10pm on Saturdays and Sundays. Other licensing requirements include: no cooking on the terrace, no bar on the terrace, the terrace to be staffed at all times by at least one of staff, and no music to be played on the terrace. Despite these licensing conditions being in place, management of the licensed premises has "flouted" with conditions pertaining to its license agreement to the extent that the Police has had to become involved in a problem at the premises recently. Questions are raised about the number of customers allowed on the roof terrace at any one time.

REPRESENTATIONS

The application has received 7 written representations (6 objections, 1 support) which raise the following points:

Reason(s) to object

- The two offices (occupied by Bidwells and Lefevre Litigation respectively) within the same building as the licensed premises operate between 9am – 5pm, Monday to Friday, and are located immediately adjacent to the roof area covered by the application. The proposed extension in operating hours would amount to noise interference which adversely affects the professional demands of each business's operations and subsequent ability to run businesses effectively;
- Surrounding area is heavily residential in nature, with school children passing the site. Extending the hours of operation before 4pm would be unacceptable if the owners of the bar-restaurant are to respect the needs of local residents and professional businesses;
- Noise disturbance has been bad enough at weekends on Blenheim Place, and would hate to be subject of the same disturbance during the week. Soju needs to respect the general living demands of those who live and work in the west end.
- Present owners of the Soju have shown blatant disregard for current licensing and planning conditions, evidenced by a "Sunday all-day party" in March on the roof terrace.
- When used, the roof terrace/balcony is very spacious and accommodates a large number of people who cause noise disturbance to nearby residential properties on Carden Place by shouting, use bad language, laughing and playing music under the influence of alcohol. This is particularly apparent when windows within residential properties are open. If the application were to be approved, then this impact on residential properties would be worsened.

Reason(s) to support

- Extension to operating hours of the terrace would support local businesses to stay open;
- As resident nearby at 71 Blenheim Place, never been disturbed by noise emanating from the roof terrace.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, regard is to be had to the provisions of the Development Plan and that determination shall be made in accordance with the plan, so far as material to the application unless material considerations indicate otherwise.

Notwithstanding the above, section 42 of the 1997 act allows the planning authority to consider only the question of the conditions subject to which the planning permission should be granted.

National Planning Policy and Guidance

- Scottish Planning Policy
- PAN 1/2011 – Planning and Noise

Aberdeen City and Shire Strategic Development Plan (2014) (SDP)

The purpose of the SDP is to set a spatial strategy for the future development of the Aberdeen City and Shire. The general objectives of the plan are promoting economic growth and sustainable economic development which will reduce carbon dioxide production, adapting to the effects of climate change, limiting the use of non-renewable resources, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility.

From the 29 March 2019, the Strategic Development Plan 2014 will be beyond its five-year review period. In the light of this, for proposals which are regionally or strategically significant or give rise to cross boundary issues between Aberdeen City and Aberdeenshire, the presumption in favour of development that contributes to sustainable development will be a significant material consideration in line with Scottish Planning Policy 2014.

The Aberdeen City Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Proposed Aberdeen City & Shire SDP 2020 may also be a material consideration.

Aberdeen Local Development Plan (2017)

- Policy B3 – West End Office Area
- Policy T5 – Noise

Supplementary Guidance

- Noise

EVALUATION

The primary issue in determining this application is whether or not the proposed extended hours of using the open terrace would be to the undue detriment of the adjoining offices and the wider amenity of nearby by residents. In reaching a conclusion, the most defining factor to consider is whether or not the likely additional/more prolonged noise output arising from increased operation would be of an acceptable level or not.

In order to investigate whether the likely increase in noise output arising from the more prolonged operation of the roof terrace would be acceptable, the Council's Environmental Health Service has been consulted. They have objected to the proposals citing concerns about the likely adverse noise impact arising from the proposed extended hours on the adjoining offices, as the proposed extended hours of operation coincide with the greater proportion of hours that offices adjoining are in operation, 9am to 5pm. The existing condition was specifically imposed on the existing consent to make use of the roof space acceptable by avoiding conflict with the function of the offices. It should be noted from the letters of objection that the applicant's landlord has objected to the proposal citing concerns about the likely adverse impact it would have on the offices, as well as representatives of each of the two tenants occupying each of the offices themselves objected to the above effect. Whilst the Community Council have objected, their concerns relate more to the conduct of how the licensed premises has been run relative to existing licensing and planning conditions, including the very condition which is being sought to be varied under this application.

By means of comparison, since the consent was granted for use of the open terrace a retrospective application under ref: 190177/DPP for a freestanding bar dispensing unit on the terrace has been refused by officers in April 2019. Setting aside the impact on the historic environment, the primary concern arising from that proposal was that it was designed to increase use of the open terrace and make it a more integral and central feature of the licensed premises, which consequently would give rise to an uplift in noise disturbance to surrounding properties. That proposal conflicted with the underlying purpose of condition 1 pertaining to the planning consent issued under application 180390/DPP and this proposal now conflicts with the underlying purpose of applying the current condition being considered (condition 2) to the same consent. The consent granted under that application was only meant to serve as a compromise position between formalising an intermittent arrangement not benefitting from planning permission whilst safeguarding the interest of adjoining offices and nearby residential properties. The primary purpose of Policy B3 in the ALDP, which relates to the West End Office Area, a prestigious high-quality office location on the edge of the city centre, seeks to safeguard existing offices and promote their expansion. Should the proposed variation be approved, based upon the consultation comments and concerns outlined by objectors, the likely impact on the offices would be a negative one – particularly as there are two offices contained within the same built structure as the licensed premise which look out directly onto the terrace - and therefore would conflict with the policy's intended purpose. It should also be noted that the likely negative impact on offices strays beyond these offices, but into those immediately adjacent and those directly opposite on the northern side of Albert Lane by virtue of the roof terrace's proximity, open and uncontained arrangement relative to these neighbouring premises. No mitigation has been put forward by the applicant to address the two latter design flaws and it is considered unlikely that any proposals could achieve the desired effect whilst also suitably respecting the site's conservation area context – issues very much at the heart of refusing application 190177/DPP for retrospective bar dispensing unit.

Furthermore, Policy B3 and its pre-text, recognises that the West End Office area comprises residential uses which require protection and states that new development within the designation which does not protect residential amenity will be refused. Whilst the proposed variation to the condition does not constitute "development" in itself, it would materially alter the consented development in its present form and therefore consideration of this inadvertent issue is relevant. The local community council and objectors residing along Carden Place and Blenheim Place have expressed concern about the likely increase in noise disturbance if this application were approved. In all reality, whilst it is likely the greater proportion of nearby residents may not be in residence between 12pm and 6pm, there may equally be a number of residents which work unsociable hours or who are retired. Mindful that may be the case, the extended hours of operation would likely pose an increased risk to those residents' 'quiet enjoyment' of their residential properties, particularly in the summer months when the terrace is likely to be in greatest demand and when local residents with gardens use their gardens most. Subsequently, on balance, it is considered that the proposed extension to the operating hours would pose a threat to residential amenity and therefore creates a

tension with the provisions of Policy B3 in the ALDP. In addition, given that the extended hours may adversely affect the noise sensitive developments i.e. existing buildings in part or wholly residential use, the proposal poses a tension with the aims of Policy T5 in the ALDP as set out both within the policy and its pre-text.

In conclusion, it is considered permitting the proposed variation to the existing condition by would have an undue adverse impact on the amenity and subsequent function of existing adjoining offices, as well as giving rise to the potential of adversely impacting on nearby residential properties. To this end, the proposal is considered to be at odds with Policy B3 and T5 in the Aberdeen Local Development Plan 2017. The application is therefore recommended for refusal.

RECOMMENDATION

Refuse

REASON FOR RECOMMENDATION

The proposed extension to the existing permitted hours of operation of the open terrace is unacceptable due to the likely adverse impact it would have on the amenity and subsequent function of adjoining offices, as well as the amenity of nearby residential properties, as a consequence of likely more prolonged noise disturbance from patrons of the bar and restaurant. As such, the proposal is considered to contravene the core aims of Policy B3 (West End Office Area) and Policy T5 (Noise) in the Aberdeen Local Development Plan 2017.