

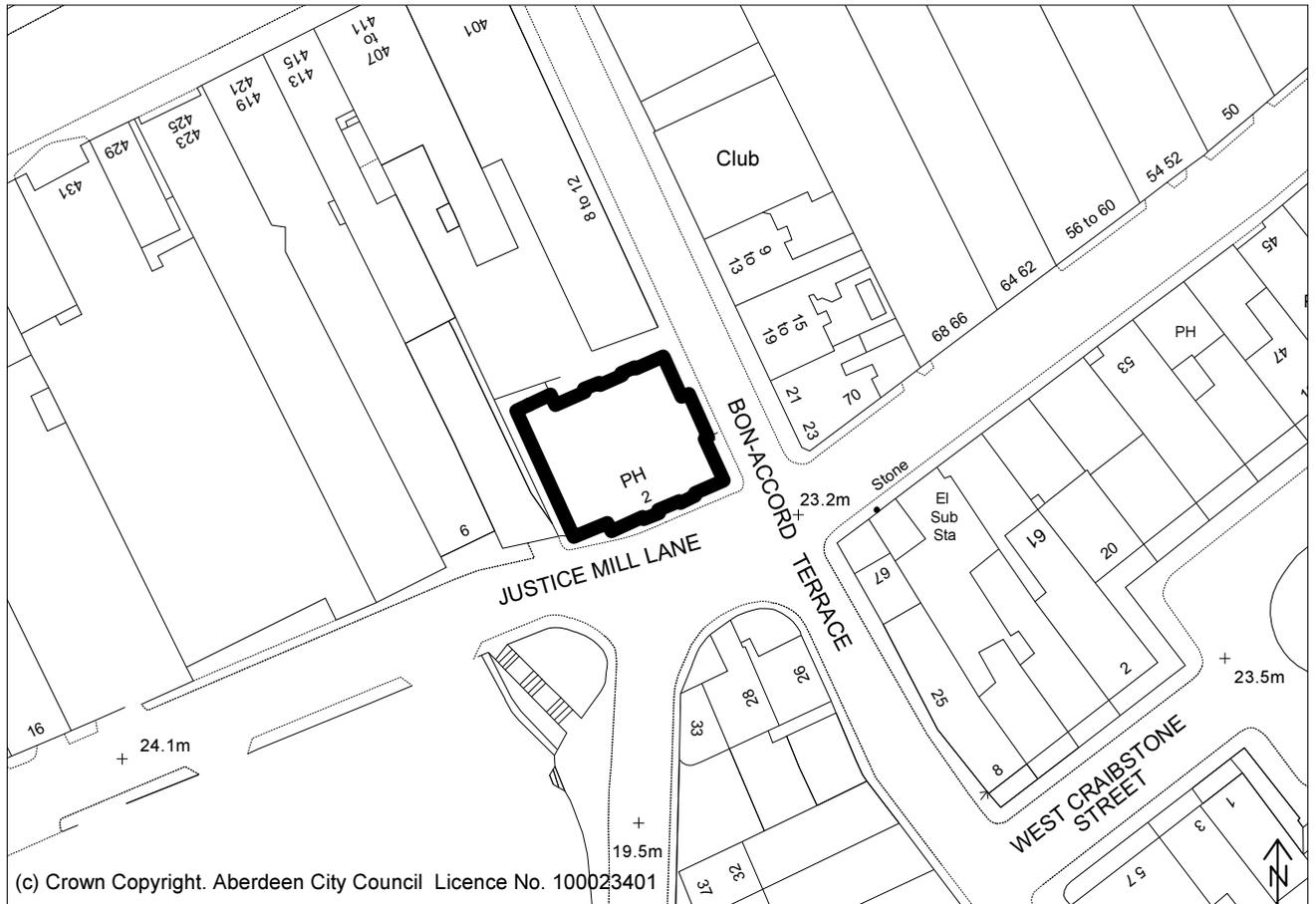
BAD APPLE, 2 JUSTICE MILL LANE,
ABERDEEN

CHANGE OF EXISTING STORAGE AREA
TO FORM NEW ROOF TERRACE

For: Mr Calum MacKinnon

Application Ref. : P120490
Application Date : 17/04/2012
Officer : Matthew Easton
Ward:

Advert : Section 34 -Proj. Pub.
Concern
Advertised on : 25/04/2012
Committee Date : 14 June 2012
Community Council :



RECOMMENDATION: Approve subject to conditions

DESCRIPTION

The site is the bar and nightclub known as 'Bad Apple' which is located with a granite and slate built former church building situated on the corner of Justice Mill Lane and Bon Accord Terrace.

The site is within the city centre boundary and the area is generally characterised by a mix of commercial and leisure uses. However there are residential properties interspersed with these uses and beyond Justice Mill Lane to the south the area is principally residential in character.

To the north of the property is a block of 3½ storey flats at 8 – 12 Bon Accord Terrace. Beyond this is the back of properties on Union Street.

To the west is the car park and rear access to the Aberdeen Considine solicitors office at 413 Union Street.

To the south across Justice Mill Lane is the Radisson Park Inn hotel, three dwellinghouses at 26 and 28 Bon Accord Terrace and 33 Hardgate. Bad Apple's sister bar Amicus Apple is located on the corner of Langstane Place and Bon Accord Terrace.

To the east across Bon Accord Terrace is a 3½ storey tenement with a restaurant located on the ground floor and flats in the upper storeys.

HISTORY

- Planning permission (89/1164) was granted by the Planning Committee in September 1989 for a change of use from a wholesale warehouse to a restaurant on the first floor and bar on the ground floor.
- Planning permission (93/2639) was granted by the Planning Committee in February 1994 for a change of use of the ground floor bar to a place of entertainment and formation of a dance floor (27% of the ground floor).
- Planning permission (96/0652) was granted by the Planning Committee in May 1996 for a change of the first floor bar to a place of entertainment.

PROPOSAL

It is proposed to remove a section of the lower part of the roof on the west elevation in order to allow the creation of an external beer garden / terrace. The terrace would be enclosed by the walls of the building on the north, south and east sides and would have glass balustrades on its open side which would be approximately 1.8m in height. It would be covered by retractable awnings coloured black. The terrace would have a floor space of approximately 36m² (8m x 4.5m).

The terrace would be accessed from the first floor of the premises through a set of double doors. Access to the store rooms within the remainder of the floor space would be via doors from the terrace.

REASON FOR REFERRAL TO SUB-COMMITTEE

The application has been submitted to the Sub-Committee because it is considered a Schedule 3 development due to the premises subject of the application being licensed and six or more objections have been received.

CONSULTATIONS

ROADS SECTION – No observations.

ENVIRONMENTAL HEALTH – In order to reduce the likelihood of any potential noise nuisance to surrounding properties, management will be required to implement a system of work to ensure that the doors leading to the proposed smoking terrace area immediately closed following customers accessing or leaving the terrace.

COMMUNITY COUNCIL – No response received.

REPRESENTATIONS

Six letters of representation have been received from surrounding properties. One is from Aberdeen Considine solicitors who occupy a building at 413 Union Street and who's car park is located alongside the proposed terrace. The remainder are from residents in the surrounding area. The following matters of concern are raised –

- The proposal would increase the instances of vandalism, vomiting, urinating, fighting, littering and generally rowdy and disruptive behaviour which takes place in the area due to drunk customers from the application premises.
- The proposal would increase the number of people on the street outside the premises and increase the risk of pedestrians being run over by a car or a serious crash occurring.
- The creation of a roof terrace would allow empty bottles, glasses and cigarettes to be thrown from the terrace and seriously harming pedestrians or property.
- The area is increasingly becoming residential in nature and noise levels at night are already beyond what is reasonably acceptable to residents.
- Alterations to the internal structure of the building may reduce the dampening effect on music from within the club and additional doors would increase the opportunity for noise to escape from the club.
- The roof terrace would overlook and disturb the solicitors office at 413 Union Street and risk injury or damage to pedestrians and vehicles using the rear car park and rear access to the offices.

PLANNING POLICY

Aberdeen Local Development Plan (2012)

Policy D1 (Architecture and Placemaking) – To ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting. Factors such as siting, scale, massing, colour, materials, orientation, details, the proportions of building element, together with the spaces around buildings, including streets, squares, open spaces, landscaping and boundary treatments, will be considered in assessing that contribution.

Policy D5 (Built Heritage) – Proposals affecting conservation areas and listed buildings will only be permitted if they comply with Scottish Planning Policy.

Policy H2 (Mixed Use Areas) – Applications for development or change of use within mixed use areas must take into account the existing uses and character of the surrounding area and avoid undue conflict with the adjacent land uses and amenity.

The site is within the identified city centre boundary and is within Conservation Area 2 (Union Street).

Supplementary Guidance

Harmony of Uses (Residential, Licensed Premises and Commercial Uses) – In the city centre where policies other than Policy C2 (City Centre Business Zone) apply, applications for liquor licensed premises are considered on their individual planning merits. Proposals require however to be in accordance with other approved planning policies of the Council.

In all other areas of the City Centre zoned as mixed use in the Local Development Plan, proposals for liquor licensed premises will be considered on their individual planning merits. Approval will not normally be granted however, if the upper floors of the application property or adjacent properties are in residential use and or the amenity of other existing housing, sites zoned for housing, or identified as suitable for housing in the Local Plan, would be adversely affected by proposals.

EVALUATION

The site is located within the city centre and is zoned as a mixed use area. In such locations account should be taken of the existing context and how different uses may impact upon one another.

Leisure uses and licensed premises located on Justice Mill Lane, Langstane Place and the surrounding area, generate significant levels of activity well into the evening and early hours of the morning. As with any city centre in Scotland there will be a degree of disturbance and anti-social behaviour in the vicinity of licensed

premises. It is acknowledged that this occurs and that it is to the detriment of residents in the area.

However, planning is concerned with the land use implications of the proposal, rather than the specific operation of the licensed premises. The majority of the objections relate to the anti-social behaviour of people in the area during the evening. Whilst it is accepted that anti-social behaviour takes place, any which is attributed to customers of the premises is a matter for the police and licensing authorities to address, rather than the planning system. It is perfectly feasible that a licensed premises is operated with little disruption to the surrounding area and the reputation or behaviour of customers of a particular business should not be taken into account in determining planning applications.

Therefore the main determining factor in this application is whether the proposed terrace would impact upon the amenity of surrounding uses to such an extent that the amenity of the area would be altered to an unacceptable level. The effect upon the character of the conservation area and visual amenity are also material considerations.

Amenity

Given the city centre location and the area's notoriety as a focus of late night entertainment, a degree of disturbance is inevitable and the same level of amenity enjoyed in largely residential areas will not be experienced here. Taking account of this context, the purpose of the planning system should be to minimise any conflict between sensitive uses in the area. Given the mixed use zoning of the area, the supplementary guidance requires the application to be assessed on its own merits and with regard to existing or proposed housing in the area.

The location of the terrace would be on the western side of the building, facing the car park of Aberdeen Considine solicitors and the wall of the former 'Budz Bar' building. In terms of any impact upon residential properties to the south across Justice Mill Lane, it is considered there would be an insignificant effect given the mixed use zoning of the area. Given the background noise from traffic and people on Justice Mill Lane, it is unlikely that any noise generated by people using the terrace would be distinguishable or increase overall noise levels in the area.

Of more concern is the flat on Bon Accord Terrace to the immediate north of the application premises. The rear of these flats faces into the car park of Aberdeen Considine and the backs of buildings on Union Street. This at present would be a relatively quiet area with only distant noise from surrounding streets likely to be audible. With the introduction of a terrace close to the rear of these flats there is the risk that the level of established amenity would be altered to the detriment of the flat occupiers. Therefore in order to minimise this potential impact the size of the proposed terrace has been reduced by retaining the part of the roof closest to the rear of the property. This would decrease the size of the terrace so it can accommodate less people and would also move it away from the rear of the property, increasing the distance between it and the flats and retaining more of the roof structure to create a noise buffer. It is considered that

the revised scheme would be acceptable and that there would be minimal impact upon the properties to the rear of the premises.

Access to the terrace would be through an initial door from the existing club into a short passage way at the end of which would be a second door providing access onto the terrace. This would help to minimise any noise leakage by having space between the club and terrace. Environmental Health officers have advised that the management of the premises should be required to ensure that the proposed doors would close automatically behind customers entering and exiting the terrace, further minimising any potential for noise escaping. A condition has been attached which requires the applicant to provide details of the doors to ensure that they close automatically.

Although part of the roof would be removed, the substantial granite walls of the original church building would remain which should retain noise within the building as at present. Additionally, Environmental Health officers have raised no concern with the change to the roof in relation to the attenuation of noise.

It is considered that there would be no adverse impact on the offices of Aberdeen Considine Solicitors at 413 Union Street. Times when the terrace would be busy are unlikely to coincide with periods when the offices are occupied and furthermore at a distance of 50m away it is unlikely that noise from the terrace would permeate into the building to the extent that it was anywhere near unreasonable. Although the terrace would be adjacent to their car park, overlooking of a car park is not deemed to be a matter of concern. Any issues with customers dropping or throwing objects from the terrace would be a management or policing issue rather than a planning matter.

Pedestrian Safety

It is not accepted that the small increase in floor space of the premises would lead to any discernible increase in the number of people on Justice Mill Lane in the evening or at closing time. People are responsible for their own personal safety when crossing the road and the presence of a terrace at the application premises is unlikely to have any bearing on the behaviour or personal safety of customers once outside the premises. However, it should also be noted that at the Enterprise, Planning and Infrastructure Committee meeting of 31st May 2012 the committee agreed to instruct officers to proceed with the detailed design of a proposed traffic management scheme for Justice Mill Lane. This should help to alleviate conflict between vehicles and pedestrians in the area.

Visual Amenity

The terrace would be located on the western side of the building at the lower roof level and opposite a neighbouring building, resulting in it being relatively inconspicuous in terms of the wider area. However, the application premises projects further forward than the neighbouring buildings and therefore the terrace would be visible when travelling along Justice Mill Lane from the west and appear quite prominent. At present the side of the building is characterised by mechanical plant units and has a generally untidy appearance. It is considered that the introduction of the terrace would provide an opportunity to improve the

appearance of this side of the building. The plant would require to be re-positioned and a condition has been attached which requires details of the new locations. The terrace itself would be enclosed with exposed stone walls, a glass balustrade and retractable awnings above. It is considered that due attention has been paid to the design of the terrace and that it complies with Policies D1 and D5. The character of the conservation area would be maintained and the visual amenity of the area has the potential to be slightly improved if the mechanical plant is re-positioned in appropriate locations. A condition has been attached requiring details of where the new plant would be located.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

It is acknowledged that residents in the area experience anti-social behaviour from customers of licensed premises in the area. However it is not considered that the proposed terrace would increase levels of disturbance in the area; any noise it likely to be masked by existing activity and given the mixed use zoning it is considered an acceptable feature of the area. The increase in floor space would be relatively small and is not accepted there would be any discernible increase in people on Justice Mill Lane as a result. The visual amenity of the area could be slightly improved with the re-location of the mechanical plant which is currently in place and the character of the conservation area would be maintained.

it is recommended that approval is granted with the following condition(s):

(1) that no development shall take place unless details have been submitted to the planning authority and agreed in writing which demonstrates that the doors between the proposed terrace and existing club would close automatically behind customers entering and exiting the terrace - in order to minimise noise leakage from the premises.

(2) that no development shall take place unless details of the position of any re-located mechanical plant has been submitted to and agreed in writing by the planning authority – in the interests of the visual amenity of the area and character of the conservation area.

Dr Margaret Bochel

Head of Planning and Sustainable Development.