

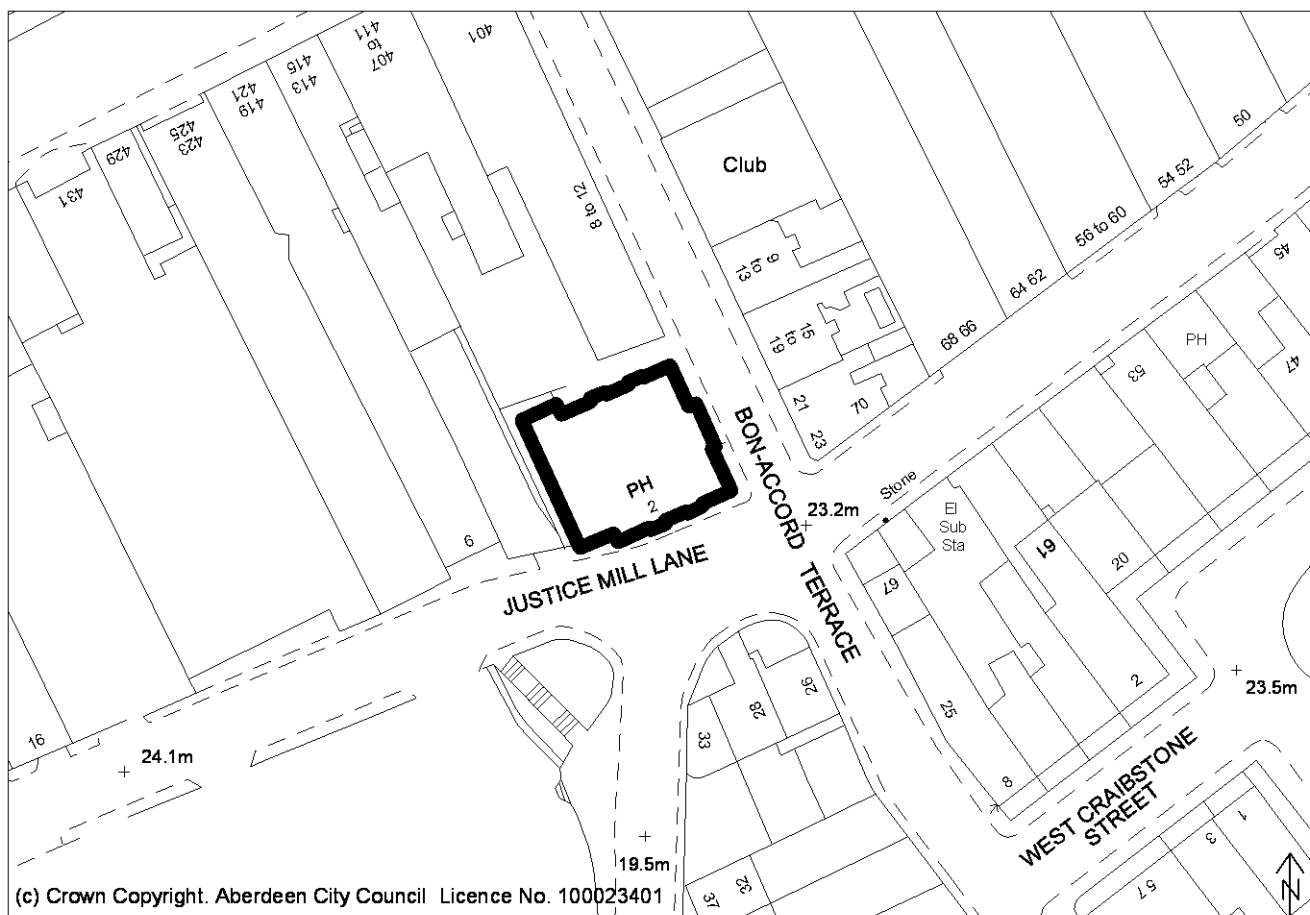
NOX, 2 JUSTICE MILL LANE, ABERDEEN

CHANGE OF USE OF EXISTING
STORAGE AREA TO FORM NEW ROOF
TERRACE

For: CCK Bars Ltd

Application Ref. : P121185
Application Date : 23/08/2012
Officer : Matthew Easton
Ward: Torry/Ferryhill (Y Allan/A Donnelly/J
Kiddie/G Dickson)

Advert : Section 34 -
Proj. Pub. Concern
Advertised on : 05/09/2012
Committee Date : 8 November 2012
Community Council : No response
received



RECOMMENDATION: Approve subject to conditions

DESCRIPTION

The site is the bar and nightclub known as 'Nox' (previously 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. Nox'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.
- Planning permission (120490) for a roof terrace was refused by the Development Management Sub-Committee on 14th June 2012.

The decision was contrary to the recommendation by planning officers and the reason for refusal was *'that the introduction of the proposed roof terrace would generate additional noise and disturbance which would have an adverse impact upon the amenity of surrounding residential properties.'*

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. The terrace would be largely covered

by a fixed glass canopy. 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 two sets of double doors.

Access to the store rooms within the remainder of the floor space would be via doors from the terrace.

Comparison with previous refusal (120490)

The proposal is in essence a re-submission of the application refused in June 2012; however amendments have been made which materially change the proposal and which consist of –

- acoustic self closing doors providing access to the roof terrace via two rather than one lobby;
- acoustic ceiling tiles and panels or curtains fitted to the lobbies between the club and roof terrace;
- acoustic insulation and timber linings fitted to the end walls of the terrace area;
- the roof terrace would be covered by a fixed glass canopy rather than retractable awnings; and
- the submission of a noise impact assessment in support of the proposal.

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.

CONSULTATIONS

ROADS SECTION – No observations.

ENVIRONMENTAL HEALTH – Initial concern the music could be heard at residential properties and the hotel when traffic noise reduces; recommendation that staff should be monitoring the terrace after 10pm; and advice provided on noise breakout from all entrances / exits. After clarification from the applicant the proposal is considered acceptable although a condition that no music should be played on the terrace should be attached.

COMMUNITY COUNCIL – No comments received.

REPRESENTATIONS

Four letters of representation have been received from surrounding properties. One is from Aberdeen Considine solicitors who occupy a building at 413 Union Street and whose 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 which the management of the premises do nothing to address.
- 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.
- By approving the application the Council would be avoiding its responsibility in relation to the well known anti-social behaviour issues in the Justice Mill Lane area.
- Residents of the flats in 12 Bon Accord Terrace would be affected by noise bouncing off the wall opposite the terrace, have their privacy affected and would be affected by smoking fumes.
- The proposal would reduce the value of neighbouring residential properties.
- There is no requirement for a roof terrace.

PLANNING POLICY

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.

National Guidance

Planning Advice Note 1/2011 (Planning and Noise) and Technical Advice Note: Assessment of Noise – Advice from the Scottish Government on the role of the planning system in helping to prevent and limit the adverse effects of noise and guidance on the technical evaluation of noise assessments.

EVALUATION

Principle of Proposal

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 or management of a particular business or 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.

Consideration of Amendments since Previous Refusal

The previous application was recommended for approval by planning officers however the sub-committee resolved to refuse the application on the grounds that it would generate additional noise to the detriment of residential properties in the area.

A noise impact assessment has been submitted in support of the application, which describes the results of the noise measurements which were undertaken in July 2012, the predicted noise implications of the roof terrace and recommendations to mitigate any impact.

The report found that at the measurement position outside 33 Hardgate (which would apply to the hotel and other nearby residential properties) there would be no overall increase in the ambient noise levels if the roof terrace were to be created.

The noise assessment states that “there may potentially be a reduction in the noise level compared to the existing situation as the majority of smokers will relocate from the front entrance to the roof terrace”. This would reduce the number of people on Justice Mill Lane street and the amount of time the main entrance doors are open, thus reducing the potential for noise breakout from the building.

In terms of the flats on Bon Accord Terrace to the immediate north of the application premises, the rear of these flats faces into a car park and the backs of buildings on Union Street. This at present would be a quieter area with distant noise from surrounding streets and mechanical plant from buildings on the rear of Union Street being audible. The noise impact assessment demonstrates that outside these flats, the predicted noise level from the roof terrace would be below that of the existing ambient noise in the area when the nightclub is closed. With the ambient noise and nightclub noise combined there would be an increase in +1db L_{Aeq} , taking account of the façade amplification from the adjacent building. This is considered a minor increase in magnitude in terms of PAN 1/2011 (*Planning and Noise*), and not sufficient reason alone to recommend refusal of the application.

Various recommendations are made to decrease the potential for noise breakout from the club and the applicant has confirmed that these measures will be implemented as well as additional measures as outlined below –

Lobby Design

- the two access lobbies to the terrace should be fitted with thick carpet, class A acoustically absorbing ceiling tiles or panels to the ceiling and to the walls (or alternatively thick curtains).
- the doors installed in the lobbies should be steel acoustic doors with a minimum weighted sound reduction index (SRI) of R_w 45dB. The

perimeter of the doors should have generous rebates to allow seals to be fitted to both the doors and frames and door threshold.

- the doors should be fitted with self closing mechanisms or monitored by door stewards to ensure they remain closed when not in use. The applicant has further advised that when only the ground floor of the premises is open, the door off of the stairwell would be used to access the terrace. There is no music in the stairwell and therefore little potential for noise to escape. If the upper floor is open as well, then only one door would be used (to the left of the DJ booth) and it would be monitored by door stewards.

Roof Terrace Design

- 30m² of the outer walls should be constructed in 20mm timber and an inner face of decorative slated wood panels with an open area of 30%. The cavity should contain acoustically absorbent material.
- The roof finish should be timber or a retractable awning. A glazed roof structure would be best (which is proposed).

The noise impact assessment has been examined by Environmental Health and after clarification of a number of points, has been found to be acceptable.

The change from retractable awnings to a glass roof would help keep noise within the terrace.

It is considered that there would be no adverse impact on the offices of Aberdeen Considine Solicitors at 413 Union Street. 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 glass roof 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.

Other Matters

- Property values are determined by the market and are not a planning consideration.
- Whether or not the roof terrace is required or not is for the management of the premises to decide. The planning authorities only need to take into account planning considerations and not whether the terrace is required.
- The issues relating to existing noise from the premises and recommendations by Environmental Health that door stewards are utilised on the terrace are not matters which can be addressed through the planning process and should be dealt with through the licensing regulations.

Summary

In conclusion, this application is considered to be materially different from the previous application determined in June 2012 as a result of the noise attenuation measures which are proposed to address the potential for the surrounding properties to be disturbed by additional noise and the submission of the noise impact assessment.

It is considered that these measures would be acceptable and that the noise impact assessment demonstrates that the noise implications of the proposal would be minor. This has been accepted by the Council's Environmental Health service. Therefore, despite the decision by the sub-committee to refuse the previous application, it is considered that for the reasons above the proposal would be acceptable in terms of residential amenity as well as all other material considerations.

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. The noise impact

assessment demonstrates that there would be no increase in noise levels to the residential properties and hotel to the south and that there would be a minor increase in noise level for the flats on Bon Accord Terrace. Given the mixed use zoning of the area it is considered that this would be acceptable. The increase in floor space would be relatively small and it 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 of how the noise attenuation recommendations (contained in sections 6.3 – 6.11 of Acoustic Assessment R-6013-SL1-RGM, dated 21st August 2012 by Robin Mackenzie Partnership) will be implemented have been submitted to and approved in writing by the planning authority. Thereafter the agreed measures shall be implanted in their entirety and shall remain in place so long as the roof terrace is in use unless a written confirmation of a variation is received by the planning authority – in order to maximise the acoustic attenuation of the building and protect nearby properties from noise disturbance.

(2) that no amplified music or public announcement equipment shall be fitted to, or be in use outwith the fabric of the main building – in order to protect nearby properties from noise disturbance.

(3) that no development shall take place unless details of the position of any relocated 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.