

257 UNION STREET, ABERDEEN

CHANGE OF USE FROM CLASS 1 (SHOP)
TO MIXED USE (CLASS 3 RESTAURANT
AND PUBLIC HOUSE)

For: Prime Properties Ltd

Application Ref. : P121396
Application Date : 03/10/2012
Officer : Matthew Easton
Ward: Torry/Ferryhill (Y Allan/A Donnelly/J
Kiddie/G Dickson)

Advert : Section 34 -Proj. Pub.
Concern
Advertised on : 17/10/2012
Committee Date : 15 February 2013
Community Council : No response received.



RECOMMENDATION: Approve subject to conditions

DESCRIPTION

The site is a retail unit situated on the south side of Union Street, between its junction with Huntly Street on the north side and Bon Accord Street on the south side. It comprises a ground floor of approximately 350m² and a basement of 338m².

The unit is within a three storey and attic granite building which dates from c.1890 and was designed by A. Marshal McKenzie. The ground floor has a frontage onto Union Street and there is a service door at the back of the premises directly onto Langstane Place. The upper storeys of the building which are separate, form 259 Union Street (Victoria House) and accommodate four separate office users.

The unit is currently occupied by fashion retailer G-Star Raw. The shop front is largely glazed with a recessed doorway and has distinctive clerestory windows featuring a crisscross pattern.

The building was listed as category B in 1967 and is situated within Conservation Area 2 (Union Street).

Union Street and the surrounding area is characterised by a variety of uses including retailers, licensed premises and office and residential use within upper storeys.

PROPOSAL

It is proposed to change the use of the premises from Class 1 (Shop) to a mixed use comprising Class 3 (Food and Drink) and a public house.

This would allow the premises to operate as a restaurant / bar in a similar fashion to Soul Bar at 333 Union Street or the Filling Station at 254 Union Street.

No physical alterations are proposed at this stage.

HISTORY

- Planning permission (A6/1523) for a change of use from retail to restaurant with public house license was approved by the Planning Committee in November 2006. The proposal at the time would have maintained the percentage of retail in sector F above 70% as required by the supplementary guidance. This permission has never been implemented and expired in November 2011.
- Advertisement consent, planning permission and listed building consent (A7/1012, A7/1013 and A7/1015) for alterations to the existing shop front were approved by delegated powers in August 2007. This was in order fit-out the premises for the current occupier G-Star Raw.

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 proposed use being a licensed premises.

CONSULTATIONS

ROADS SECTION – No objection to the application. Eight additional parking would be required over the existing use. No parking would be provided, however it is noted that the development is located within the city centre and as such has good access to public transportation. There are public car parks within walking distance to the development it is not envisaged that there would be any parking problems as proposal is within a controlled parking zone. The development is below the thresholds to require Strategic Transport Fund contributions to be required.

ENVIRONMENTAL HEALTH – No response received.

COMMUNITY COUNCIL – No response received.

REPRESENTATIONS

None received.

PLANNING POLICY

Aberdeen Local Development Plan 2012

Policy C1 (City Centre Development – Regional Centre) – Development within the city centre must contribute towards the delivery of the vision of the city centre as a major regional centre as expressed in the City Centre Development Framework. As such the city centre is the preferred location for retail, commercial and leisure development serving a city-wide or regional market.

Policy C2 (City Centre Business Zone and Union Street) – Proposals for change of use from retail (Class 1 of the use classes order) to other uses within the city centre business zone will only be acceptable if the proposal is in Union Street it must accord with the Union Street Frontages Supplementary Guidance.

Policy R6 (Waste Management Requirements for New Development) – Details of storage facilities and means of collection must be included as part of any planning applications for development which would generate waste.

Supplementary Guidance

Union Street Frontages SG – The Union Street Frontages Policy has existed since 1977 with the aim of maintaining an appropriate mix and location of shopping, service and commercial leisure functions on Union Street. It does this by applying minimum percentages of ground floor retail frontage that are required in individual sectors of Union Street.

Proposals for a change of use from retail (Class 1) to non-retail uses such as cafes, restaurants, hotels, leisure and financial and professional services are measured against these minimum percentages as well as other relevant criteria.

Proposals to enhance the vitality and viability of Union Street as a key retail location within the city centre will be supported.

The percentages required to be maintained for each sector varies, depending on the relative desirability of maintaining retail use in that sector or alternatively encouraging a diversity of uses.

West of the Union Terrace and Bridge Street junction proposals for change of use from retail to uses such as cafes, restaurants (Class 3) hotels (Class 7), leisure (Class 11) and financial and professional services (Class 2) will be approved provided that daytime vitality is enhanced or adequately maintained and an active street frontage is maintained.

The application site is within sector F, which is the stretch on the south side of Union Street from Bridge Street to Bon Accord Street (167 – 269 Union Street). There are 30 units within in sector F and the percentage required by the supplementary guidance is 70%.

Harmony of Uses – Residential, Licensed Premises and Commercial Uses SG – Within the City Centre Business Zone areas there is a presumption in favour of retaining and developing commercial uses which includes the provision of restaurants.

On Union Street, liquor licensed premises at ground floor level will require to comply with the Union Street Frontage Guidelines. Policy C2 City Centre Business Zone and Union Street may also apply. Where the Frontages Guidelines allow, permission may be granted for a liquor licensed premises provided none of the upper floors of the application property or adjacent properties are in residential use, in order to safeguard residential amenity.

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, as amended, 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.

Legal Challenge to the Aberdeen Local Development Plan

Tesco Stores Ltd has submitted an appeal to the Supreme Court against the decision of the Inner House of the Court of Session to refuse its application to quash the Aberdeen Local Development Plan. Tesco has been unsuccessful regarding both an interim suspension and a full appeal in front of three judges in the Inner House and the Council has received robust advice from Counsel that the reasoning of the Inner House is sound and there are strong grounds to resist the appeal.

Planning applications continue to be determined in line with the Aberdeen Local Development Plan but the appeal is a material consideration and the Council has to take into account the basis for the legal challenge when determining applications. It should also be pointed out that the Court indicated that, even if

Tesco's arguments had found favour, it would have been inclined to quash the plan only in so far as it related to Issue 64 (Allocated Sites: Woodend...Summerhill... etc.) and that it would be disproportionate to quash the whole plan.

This evaluation has had regard to and taken into account the legal challenge. None of the policies or material considerations which apply to this application would be affected by the terms of Tesco's challenge. The recommendation would be the same if the application were to be considered in terms of the 2008 Aberdeen Local Plan.

Union Street Frontages Guidelines

In order for a change from retail to another use to be considered acceptable in terms of the Union Street Frontages Guidelines, the change of use should not result in the actual percentage of retail falling below the minimum retail percentage for the relevant individual sector. The proposed use must also either enhance or maintain daytime vitality and an active street frontage.

The percentage of retail frontage required in sector F is currently 72.5% which is 2.5% above the sector F requirement of 70%. This proposal, if approved and implemented would reduce the percentage of retail to 67.7%, which is 2.3% below that required in sector F.

The applicants have provided supporting information from their marketing agent which states that after marketing the property for a period of six months they have been unable to attract serious interest from retailers. There have however been a number of enquires from restaurant businesses.

The troubles facing retailers during the recession has been well documented in the media with several well known names failing and either disappearing from the high street entirely or downsizing to operate with a reduced number of stores. Within the UK, over 200 medium to large retailers have failed since 2008. In Aberdeen some of the larger retailers affected have included, JJB Sports, Past Times, Peacocks, Game, Zavii, Bruce Millers, Odd Bins and Comet.

Aberdeen also saw the opening of 65,000m² of floor space at Union Square in October 2009. Many of the retailers which have opened at Union Square are new brands to Aberdeen and include Apple, House of Fraser.com, Hollister, Zara, Fossil, Dune and Superdry. It is clear that Union Square has absorbed a large amount of latent demand which existed for retail space in the city centre prior to its opening.

With this in mind and taking into account the wider outlook for the retail sector, it is difficult to see where the demand for retail floor space on Union Street is going to come from. Many retailers are either reducing their number of stores or disappearing from the high street altogether.

The supplementary guidance is a strong material consideration in the determination of the application. It does allow a limited flexibility of 1% below the minimum required level where the proposed new use would maintain daytime vitality and an active street frontage. However the proposal would take the

percentage below even this element of flexibility (1.3% below the flexibility allowed and 2.3% below the required level of 70% for sector F).

The percentages for this sector were set prior to 2008 and it is clear that the local and wider economic climate for retailers and circumstances in Aberdeen have changed since this time and this factor should also be considered as a significant material consideration. Therefore it is suggested that a deviation from the guidelines may be appropriate if the proposed use meets the other criteria in the guidance which requires new uses to ensure that daytime vitality and an active street frontage would be enhanced or adequately maintained.

Although a typical restaurant bar may not open as early in the morning as a retail use may it is considered that a restaurant bar use would generally maintain daytime vitality in accordance with the supplementary guidance. There is also the potential for later morning openings being balanced out by longer opening hours in the evening which would enhance the evening economy on Union Street.

A 'live' or 'active' shop front is one which is designed to extend the influence and animation of interior uses outwards into the surrounding street by visual contact between inside and out. The current shop front achieves this well with the use of large areas of glazing. There are no proposals at this stage for alterations to be made to the shop front, however, a further planning application and listed building consent would be required if alterations were proposed. The building is category B listed and therefore it is unlikely that anything other than minimal interventions would be supported by the planning officers. Additionally, restaurant bars are likely to consider it beneficial to have an active frontage in order to attract customers into the premises. The retention of the existing shop front would therefore maintain the active and live street front which currently exists.

Therefore in summary, the proposal is technically at odds with the supplementary guidance (1.3% below the flexibility allowed by the guidelines and 2.3% below the required level of 70% for sector F), but it is considered that given the difficult trading circumstances which retailers face, the proposal has the potential to actually assist in the overall aim of the frontages guidance and the City Centre Development Framework and in turn Policy C1 and Policy C2, which is to ensure that Union Street remains as the focus of city centre activity and as a commercial thoroughfare.

Granting a change of use at the premises would allow the building owner to market the property not only to retailers but to restaurant / bar use, bringing in a wider pool of potential occupiers and therefore reducing the risk that the premises remains vacant for a prolonged period of time. The proposed use is likely to be one which would maintain daytime vitality to an acceptable level and would maintain a live frontage.

Amenity

Union Street and the surrounding area is the focus of late night activity in the city centre and there is number of licensed premises and late night uses in the immediate area. There are also residential properties to the rear of the premises on the opposite side of Langstane Place and six flats in the upper stories of the adjacent building. Although the Harmony of Uses guidance discourages licensed premises from being located adjacent to buildings which feature residential

properties in their upper floors, it is considered that the change of use to a mixed use restaurant bar would not have any significant additional impact upon the amenity of the area. This is because there is a significant level of activity in the area and any change in amenity which the premises would result in would be minimal.

However, the rear door onto Langstane place faces the Galleria Shopping Centre which has flats above it. There is therefore the potential for service deliveries and collections to cause disturbance to residents in the area. To address this concern a condition has been attached to restrict service deliveries and collections to between 0700-1900 Monday to Saturday and 0900-1900 on Sundays, which are considered reasonable times given the city centre location and activity which takes place there.

An internal area within the basement for refuse storage is shown on the indicative plans which would be taken onto Langstane Place for collection. This plan is indicative and therefore a condition has been attached requiring internal refuse, recycling and bottle storage to be provided and available for use. The proposal accords with Policy R6.

At this stage no details of ventilation or extraction equipment has been submitted. The nature and location of such equipment would be largely dictated by the final internal layout and requirements of any future occupier. Therefore it is not possible to determine if there would be any adverse visual impact due to the installation of such equipment. However, there would appear to be scope for extraction equipment to be installed on the rear roof of the building. Therefore a condition has been attached requiring details to be submitted for approval, through which it will be ensured that the visual impact and the any potential impact upon the building's special architectural or historic interest or the visual amenity and character of the conservation area, is minimised.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The percentages for this sector as set out in the Union Street Frontages Guidelines were set prior to 2008 and it is clear that the local and wider economic climate for retailers and circumstances in Aberdeen have changed since this time. This factor is a significant material consideration.

Because of this background and because the new use is likely to at least adequately maintain daytime vitality and an active street frontage, it is considered that a deviation from the guidelines is appropriate. The proposal has the potential to assist in the overall aims of the Union Street Frontages Guidelines, City Centre Development Framework and Policy C1 and Policy C2 of the Aberdeen Local Development Plan, which is to ensure that Union Street remains as the focus of city centre activity and as a commercial thoroughfare.

Given the mix of uses and evening economy which exists within the city centre it is not considered that the proposal would have any significant additional impact upon the amenity of the area than is already experienced and is therefore in

general accordance with the Harmony of uses guidance. Appropriate conditions have been included to address matters relating to the provision of refuse storage, service delivery and collections and the provision of extraction equipment to deal with cooking odours. The proposal complies with Policy R6 of the Aberdeen Local Development Plan.

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

(1) that the use hereby granted planning permission shall not take place unless a scheme for the provision of refuse, recycling and empty bottle storage within the premises has been submitted to and approved in writing by the planning authority. The premises shall not open for business unless the approved scheme has been fully implemented and is available for use - in order to preserve the amenity of the neighbourhood and in the interests of public health and public safety.

(2) that the use hereby granted planning permission shall not take place unless a scheme showing the proposed means of filtering, extracting and dispersing cooking fumes from the premises has been submitted to and approved in writing by the planning authority and that the said scheme has been implemented in full and is ready for operation – in order to protect neighbouring properties from cooking odours.

(3) that service deliveries and collections shall be restricted to between 0700-1900 Monday to Saturday and 0900-1900 on Sundays - in order to minimise disturbance to neighbouring residential properties facing onto Langstane Place.

Dr Margaret Bochel

Head of Planning and Sustainable Development.