

345 UNION STREET, ABERDEEN

PROPOSED NOODLE BAR
RESTAURANT/TAKE-AWAY

For: Mr Stuart Crichton

Application Ref. : P121461
Application Date : 16/10/2012
Officer : Jane Forbes
Ward: Torry/Ferryhill (Y Allan/A Donnelly/J
Kiddie/G Dickson)

Advert : Section 34 -Proj. Pub.
Concern
Advertised on : 07/11/2012
Committee Date : 15 February 2013
Community Council : No response received



RECOMMENDATION: Approve subject to conditions

DESCRIPTION

The application site lies on the south side of Union Street, within Conservation Area 2, and comprises a ground floor retail unit of some 420m² which forms part of a 2½ storey Category C(S) listed building, with flatted properties located on the upper floors. The unit has a recessed doorway and fully glazed shop-front of modern design facing onto Union Street, whilst to the rear of the site, access is available to an enclosed service yard which is shared with “Soul”, a bar/diner occupying the former Langstane Kirk property. The shop unit was previously occupied by fashion retailer Jaegar, but has lain vacant since Spring 2012. Immediately to the east of the site is the entrance door to the residential properties located on the upper floors at No 343 Union Street, and to the west of the site is “Yu” restaurant.

PROPOSAL

Detailed planning permission is sought for a change of use of the premises from Class 1 (Shop) to a mixed use Class 3 (Food and Drink) comprising a noodle bar restaurant and associated take-away facility. The proposal includes internal alterations to the premises to accommodate a 60 seat restaurant and cooking facilities.

REASON FOR REFERRAL TO SUB-COMMITTEE

The application relates to Schedule 3 Development, and therefore in terms of the Council’s Scheme of Delegation, must be determined by the Development Management Sub Committee.

CONSULTATIONS

ROADS SECTION – Response received – no objections.

ENVIRONMENTAL HEALTH – Response received – as far as the duties of the Environmental Health Service are concerned, the proposed ventilation system and noise attenuation measures, if effectively implemented, would satisfy the concerns of the Service in addressing potential odour and noise nuisance. Although the Service does not object to the application, should the Committee be of a mind to grant approval then certain conditions should be attached (See attached memo).

FLOODING – Response received – no observations.

COMMUNITY COUNCIL – No response received.

REPRESENTATIONS

Two letters of objection have been received from owners/occupiers of neighbouring properties. Concerns raised are summarised as follows:-

- The proposed restaurant/take-away would be located below residential properties;
- Likely noise nuisance from the proposed restaurant/take-away and from customers accessing/exiting the premises;
- Adverse impact from odours generated from the restaurant/take-away;
- Over-supply of food outlets within the vicinity.

PLANNING POLICY

Scottish Planning Policy – States that Town Centres should be the focus for a mix of uses including retail, leisure, entertainment, recreation, cultural and community facilities as well as homes and businesses. SPP also outlines that

any change to a listed building should be managed to protect its special interest while enabling it to remain in active use.

Aberdeen Local Development Plan: 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.

Aberdeen Local Development Plan: Policy C2 (City Centre Business Zone and Union Street) – States that a proposal for a change of use from retail (Class 1 of the Use Classes Order) to another use within the City Centre Business Zone, and specifically in Union Street, will only be acceptable if it accords with the Union Street Frontages Supplementary Guidance.

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

Supplementary Guidance

Union Street Frontages – 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 percentage 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.

The application site is within sector E, which stretches along the south side of Union Street and Holburn Street, from Soul Bar at 333 Union Street to The Glentanar Bar at 35/39 Holburn Street. There are 44 individual units within sector E where a minimum level of 30% retail frontage is required.

Harmony of Uses – Residential, Licensed Premises and Commercial Uses – 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.

This supplementary guidance uses the term 'hot food shop' as the definition of premises for which the main use is selling hot food for take-away, although such businesses may also operate as a restaurant/café.

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require planning applications to be determined in accordance with the development plan unless other material considerations suggest otherwise.

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.

The proposed development is considered to comply with Scottish Planning Policy which supports a mix of uses within Town Centres. In addition to this, the proposal would allow for the ground floor of this listed building to be brought back into active use, after having been vacant for several months, and without any significant alteration which may impact on its special interest and character.

The proposed commercial use of the premises at No 345 Union Street as a restaurant would not be contrary to Policy C1 in the Aberdeen Local Development Plan which states that the preferred location for retail, commercial and leisure development is within the City Centre.

Similarly the proposal is considered to be compliant with Policy C2 (City Centre Business Zone and Union Street) as a result of it according with the Supplementary Guidance on Union Street Frontages as demonstrated below.

The Union Street Frontages Guidance aims to maintain an appropriate mix and location of shopping, service and commercial leisure functions on Union Street. The specific level of retail frontage which must be retained along the section of

Union Street within which this application site is located is 30%. Whilst this proposal to change from Class 1 (Retail) use to a mixed use Class 3 (Food and Drink) restaurant and take-away would result in the existing 38% frontage in retail use dropping to 36%, the level of retail use within this sector would nevertheless remain well above the minimum of 30%. As such, whilst concerns were raised with regards the over-provision of food outlets within the vicinity, it can be demonstrated that the proposed change of use to restaurant/take-away for this premises would not be contrary to Council policy on Union Street Frontages.

The Supplementary Guidance also states that in this specific section of Union Street, ie West of the Union Terrace and Bridge Street junction, proposals for changes 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 daytime vitality is enhanced or adequately maintained, and an active street frontage is maintained.

In this instance it is considered that the proposed use of the premises as a restaurant/take-away would maintain an adequate level of daytime vitality. It is proposed that the premises would operate from 11am to 11pm, and whilst this would introduce a slightly later morning opening than may be expected for a retail business, it would nevertheless allow for the overall opening hours of the premises to be extended.

The Supplementary Guidance also seeks to maintain active frontages, and in this regard the fully glazed shop-front which would remain as part of the proposal, alongside the positioning of dining tables close to the front of the premises facing onto Union Street would ensure the satisfactory retention of a 'live' shop front on this site.

It was initially considered appropriate to assess the proposed development in terms of Supplementary Guidance 'Harmony of Uses – Residential, Licensed Premises and Commercial Uses', however the guidance specifically relates to 'hot food shops' which are defined as 'premises for which the main use is selling hot food for take-away'. Notwithstanding that the guidance accepts that hot food take-aways may also operate as restaurants or cafés, in this instance the proposal clearly relates to the premises being operated as a restaurant, first and foremost, with the take-away facility complementing the 60 seat restaurant.

Whilst as a result of the above it was not deemed appropriate that the application be assessed specifically against policy relating to the 'Harmony of Uses', it is nevertheless necessary in assessing the proposed development to consider its likely impact on existing amenity, and this would include considering its impact on the residential amenity of the flatted properties located directly above the application premises. Given that Union Street and the surrounding area is currently the focus of late night activity in the city, with numerous licensed premises and late night uses in the immediate neighbourhood, any additional noise impact as a result of the proposed change of use to the premises is likely to be minimal.

In order to ensure that concerns raised in relation to noise nuisance from the proposed restaurant/take-away are satisfactorily addressed, Environmental Health Officers have requested a condition which requires an appropriate noise assessment to be undertaken and submitted for the approval of the planning authority, with any potential noise disturbance to residents living above the premises to be specifically addressed. Furthermore, a condition has also been recommended which restricts the hours of operation of the proposed take-away facility to that of the existing restaurant, with these opening hours previously having been intimated by the applicant. A condition is recommended to restrict service deliveries and collections to between 0700-1900 Monday to Saturday and 0900-1900 on Sundays, which is considered appropriate, given the city centre location and existing activity which takes place therein.

Access is available from the rear of the site to a shared enclosed yard area which currently provides a bin storage facility to the neighbouring premises at 'Soul' restaurant/bar. A condition has been recommended requiring the submission of additional information and providing clarification for on-site refuse storage and uplift arrangements. The proposal is therefore deemed to be in accordance with Policy R6.

In terms of the potential for odour nuisance from cooking undertaken on the premises, the proposal includes detailed drawings on the installation of a ventilation system to the rear of the property. The proposed ventilation system would exit the building roof plane at 1st floor level and continue along the western (side) elevation of the property in line with an existing chimney breast. A condition has been recommended ensuring the appropriate installation and continued maintenance of the ventilation system, thereby ensuring any adverse impact on the amenity of the residential properties is suitably addressed. Whilst the ventilation system would be located between 2 windows providing daylight to the flatted properties on the 1st floor of the building, it is considered that given the separation distance between both window openings (1.75 metres) and the ventilation system, and the relatively minor projection from the chimney breast of the ventilation system (300mm), any visual impact as a result of its proposed location would be minimal.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The proposal is considered to comply with Policy C1 'City Centre Development - Regional Centre' in the Aberdeen Local Development Plan, and given that it is in accordance with the Union Street Frontages Supplementary Guidance, is also deemed to comply with Local Plan Policy C2 'City Centre Business Zone and Union Street'.

Taking into consideration the range of current uses and evening economy which exists within the city centre and within close proximity of the application site, it is deemed that the proposal would have minimal impact on the amenity of the surrounding area. Notwithstanding this, appropriate conditions have been included to ensure any unacceptable level of noise nuisance resulting from the

proposed development is suitably addressed, and conditions have also been attached which 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 is therefore compliant with Policy R6 of the Aberdeen Local Development Plan.

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

(1) that prior to commencing operation, the use hereby granted planning permission shall not take place unless a scheme capable of filtering, extracting and dispersing of cooking fumes has been installed within the premises, is ready for operation and that a system of regular maintenance of the aforementioned ventilation system has been submitted, and agreed in writing, all to the satisfaction of the planning authority - in order to preserve the amenity of the neighbourhood.

(2) that prior to commencing operation for food service, such use hereby granted planning permission shall not take place unless satisfactory noise attenuation measures against internally generated noise, including noise generated from the operation of the ventilation system (both internally and externally) have been completed in accordance with a scheme that has been submitted to and approved in writing by the planning authority. Such a scheme shall ensure that the internal noise level in residential properties above and adjacent to the hot food shop is not greater than 45 dB[A] during the day and 35 dB[A] at night in each habitable room, all in accordance with details submitted to and approved in writing by the planning authority before development commences, unless the planning authority has given prior written approval for a variation - in order to preserve the amenity of the neighbourhood.

(3) that no development pursuant to this planning permission shall take place nor shall the building be occupied unless there has been submitted to and approved in writing for the purpose by the Planning Authority a noise assessment, in accordance with Planning Advice Note (PAN) 1/2011 Planning & Noise and its accompanying Technical Advice Note. The assessment, which should be prepared by a suitably qualified independent noise consultant, should address the potential for the premises to cause noise disturbance to residents living in the upper floor flats directly above and in close proximity to the application premises. The assessment should identify the likely sources of noise disturbance and recommend any measures necessary to ensure a satisfactory noise attenuation for the building and reasonably protect the amenity of nearby residents of the development from all such sources of noise that have been identified. The property shall not be occupied unless the said measures have been implemented in full - in the interests of residential amenity.

(4) that the use hereby granted planning permission shall not take place unless provision has been made within the area immediately surrounding the application site for customer litter disposal in accordance with a scheme which has been submitted to and approved in writing by the planning authority - in order to preserve the amenity of the neighbourhood and in the interests of public health.

(5) that the hours of operation of the proposed hot food-take-away shall be restricted to the opening hours of the restaurant, thereby preventing the potential for noise nuisance to occur from customers visiting and leaving the premises and/or groups congregating outside the premises late at night - in the interests of residential amenity.

(6) that, except as the Planning Authority may otherwise agree in writing, no construction or demolition work shall take place: (a) outwith the hours of 0700-1900 hours, Monday-Friday inclusive;

(b) outwith the hours of 0800-1600 hours on Saturdays; and

(c) no works should be audible outwith the site boundaries on Sundays

[For the avoidance of doubt, this would generally allow internal finishing work, but not the use of machinery] - in the interests of residential amenity.

(7) that service deliveries/uptime to and from the premises be restricted to occur only between the hours of 07:00 -19:00 Monday to Saturday and 10:00 - 16:00 Sundays - in the interests of residential amenity.

(8) that the use hereby granted planning permission shall not take place unless provision has been made within the application site for refuse storage and disposal in accordance with a scheme which has been submitted to and approved in writing by the planning authority - in order to preserve the amenity of the neighbourhood and in the interests of public health.

Dr Margaret Bochel

Head of Planning and Sustainable Development.