

**INVERSNECKY CAFE, 7-8 SEA BEACH,  
ESPLANADE**

**CHANGE OF USE TO OUTSIDE SEATING  
AREA IN ASSOCIATION WITH THE  
INVERSNECKY CAFE**

For: Mr Martin Vicca

Application Type : Detailed Planning Permission  
Application Ref. : P130431  
Application Date: 04/04/2013  
Officer: Gavin Clark  
Ward : George Street/Harbour (A May/J  
Morrison/N Morrison)

Advert : Section 34 -Proj. Pub.  
Concern  
Advertised on: 17/04/2013  
Committee Date: 16 May 2013  
Community Council : no response  
received.



**RECOMMENDATION:**

**Approved Unconditionally**

## **DESCRIPTION**

The existing site consists of a single storey semi-detached building located on the west side of the Beach Esplanade.

The building presently houses the “Inversnecky Café” and comprises a kitchen, seating and service areas. Customers access the premises directly from the Beach Esplanade.

There is a café, “The Pavilion” located in the neighbouring property, with a number of other café’s and restaurants located in the immediate vicinity. Codona’s Amusement Arcade is located to the immediate west, and Aberdeen Beach is located to the west.

The pavement outside is 7m at its narrowest.

## **RELEVANT HISTORY**

None

## **PROPOSAL**

It is proposed to use the pavement at the front of the building to place tables and chairs for use by customers. An informal seating arrangement has been in place for a period of time, with the current application seeking to formally regulate this use.

The proposed layout plan shows that there would be seven tables and twenty-four chairs. The seating area would be 12m long and 3.2m wide, which includes a gap to allow customers to enter and exit the building. The solid panel style removable barriers would be a maximum 920mm in height.

## **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council’s website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?130431>

On accepting the disclaimer enter the application reference quoted on the first page of this report.

## **REASON FOR REFERRAL TO SUB-COMMITTEE**

The application has been referred to the Sub-committee because the proposal is considered to be a project of public concern. Accordingly, the application falls outwith the scope of the Council’s Scheme of Delegation.

## **CONSULTATIONS**

**Roads Project Team** – response received, no objection.

**Environmental Health** – response received, no objection.

**Enterprise, Planning & Infrastructure (Flooding)** - response received, no objection.

**Community Council** – no response received.

## **REPRESENTATIONS**

None

## **PLANNING POLICY**

### **Aberdeen Local Development Plan**

Policy NE3: Urban Green Space - states that proposals for extensions of existing buildings as part of a conversion or rehabilitation scheme will be permitted in the green belt provided the original building remains dominant, the design of the extension is sympathetic to the original building in terms of massing, detailing, and materials, and the siting of the extension relates well to the setting of the original building.

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 elements, together with the spaces around buildings, including streets, squares, open space, landscaping and boundary treatments, will be considered in assessing that contribution.

### **Supplementary Guidance**

Harmony of Uses – Residential, Licensed Premises and Commercial Uses – The Council supports and encourages the provision of street cafes in the city centre, as they make a positive contribution by adding vitality, colour, life and interest to the street scene. They can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live, and work in Aberdeen.

It is important that street cafes are properly designed, administered and managed to ensure that they meet the high standards expected in Aberdeen city centre. They should not obstruct public space or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

Before agreeing to planning permission for a street café, the Council must ensure:

1. They do not constitute a hazard; there should be enough pavement width or equivalent space to accommodate the seating, tables and café operation without causing hazard to, or invade the privacy of, other adjacent legitimate uses or impede access into or egress from nearby buildings or spaces or block a desire line.

2. If the development provides shelter from the elements, it should do so without permanently altering the physical fabric of the building to which they are attached or spaces in which they are located; and

3. They do not result in or contribute to an inadequate amenity for existing residential uses. Appropriate facilities to dispose of litter should be provided, without adversely affecting the quality, amenity or cleanliness of the City Centre.

## **EVALUATION**

### Analysis:

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.

The Harmony of Uses Supplementary Guidance states that pavement cafes provide a positive contribution to areas by adding vitality, colour, life and interest to the street scene. The proposal would therefore be encouraged by planning policy.

The site is located within the Urban Green Space, which states that alterations/extensions to buildings will be encouraged provided the original building remains dominant, the design of the extension is sympathetic to the original building in terms of massing, detailing, and materials, and the siting of the extension relates well to the setting of the original building. The proposal involves the installation of outdoor seating. This use is considered acceptable given its location, with a number of similar uses in the immediate vicinity, therefore the proposal accords with Policy NE3 of the Local Development Plan. As a result, the proposal is also seen to accord with Policy D1 of the Aberdeen Local Development Plan.

### Public Safety:

The tables and chairs would occupy part of the pavement which is occupied informally. The supplementary guidance states that pavement cafes must not constitute a hazard and should ensure that there is enough pavement width or equivalent space to accommodate the seating, tables and café operation without causing hazard to, or invade the privacy of, other adjacent legitimate uses or impede access into or egress from nearby buildings or spaces or block a desire line.

The pavement on the front of the property is 7m between the front of the building and the kerb at its narrowest. The tables and chairs would occupy 3.2m of pavement width, which would result in 3.8m remaining. The Council's Roads

Projects Team have considered the proposal and have raised no objection to the proposal, indicating that sufficient pavement width would remain.

In summary the proposal is considered to have taken into account the matters raised in the supplementary guidance and would therefore have no adverse impact upon public safety which would warrant refusal of planning permission.

### **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.

## **RECOMMENDATION**

**Approved Unconditionally**

## **REASONS FOR RECOMMENDATION**

The proposed addition of an outdoor seating area is considered to be acceptable. The proposal would not negatively impact on the surrounding area, and raised no concerns in terms of public safety. The proposal therefore accords with Policies NE3 and D1 of the Aberdeen Local Development Plan and the Supplementary Guidance in relation to Harmony of Uses – Residential, Licensed Premises and Commercial Uses

**Dr Margaret Bochel**

Head of Planning and Sustainable Development.