

64 BRIDGE STREET, ABERDEEN

CHANGE OF USE OF LICENSED GAMING  
MACHINE CENTRE TO LICENSED  
RESTAURANT WITH TAKE-AWAY FACILITY

For: Grampian Leisure Group, Mr John Dawson

Application Type : Detailed Planning Permission

Application Ref. : P130246

Application Date: 26/02/2013

Officer: Sally Wood

Ward : Torry/Ferryhill (Y Allan/A Donnelly/J  
Kiddie/G Dickson)

Advert : Section 34 -Proj. Pub.  
Concern

Advertised on: 20/03/2013

Committee Date: 16 May 2013

Community Council : No response received



**RECOMMENDATION:**

**Approve subject to conditions.**

## **DESCRIPTION**

The building fronts onto College Street and sits at the top of Guild Street. It is five storeys in height and has granite stone walls. At the first floor level is a Tandoori restaurant. There are other commercial uses within the building.

This proposal relates to the ground floor and basement level. The last known use was as an amusements arcade. The unit has an existing shop front, and fitted roller shutters.

## **RELEVANT HISTORY**

### Applicable to the planning unit

89/1842 Change of use of a ground floor retail unit to a pool hall and amusement centre. Approved subject to conditions, 21.12.1989.

### Applicable to other units within Bridge House relevant to the assessment of this application.

90/0405 Change of use of first and second floors of shop to form restaurant. Granted subject to conditions, 07.06.1990.

90/1675 Change of use of first floor shop of bridge house to form a restaurant. Approved subject to conditions, 25.10.1990.

90/1676 Change of use of second floor shop of bridge house to form a restaurant. Approved subject to conditions, 25.10.1990.

120615 - Proposed change of use and alterations on first floor from office to form 7 no flats. The address is 27 Crown Terrace, however it affects what would be the fourth floor on the Bridge Street elevation. The application was refused by Committee, contrary to officer recommendation. The application is subsequently subject to an appeal.

## **PROPOSAL**

The proposal is for a change of use from an amusement arcade (*sui generis*) to restaurant (Class 3). There would be no external alterations proposed, apart from a grille fitted to the external wall within the rear courtyard. Ventilation and cooking filtration would be dealt with by an internal system.

## **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?130246>

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 application was advertised as a Section 34 (Project of Public Concern) under Development Management Procedure Regulations 2008 – Schedule 3. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

## **CONSULTATIONS**

**Roads Project Team** – commented, no observations.

**Environmental Health** – No objections, subject to conditions. Satisfied that the proposed ventilation system will, if effectively implemented, satisfy any potential odour nuisance concerns.

**Enterprise, Planning & Infrastructure (Flooding)** - commented, no observations.

## **REPRESENTATIONS**

Two number of letters of representation have been received. The letters raised relate to the following matters –

1. Documented issues currently include overflowing grease traps and vermin.
2. Restaurant would generate additional deliveries than the existing use, which could block access to the car park or fire escapes; which would have a subsequent impact on existing businesses.
3. Vehicles reversing and entering the pend would be a road safety issue.
4. Dangerous road junction – road and pedestrian safety (particularly customers who may be under the influence of alcohol).
5. Request a condition applied in the event of approval which would prevent loading/unloading within the pend.
6. object to a take-away facility within restaurant
7. Litter

## **PLANNING POLICY**

### **National Policy and Guidance**

The policy seeks to promote appropriate development, particularly within existing settlements. It seeks high quality development that is sympathetic to its setting and takes into consideration amenity.

### **Aberdeen City and Shire Structure Plan**

Provides a spatial strategy for development, to ensure the right development in the right place to achieve sustainable economic growth which is of high quality and protects valued resources and assets, including built and natural environment, which is easily accessible

### **Aberdeen Local Development Plan**

Policy T2 Managing the Transport Impact of Development – new development will need to demonstrate that sufficient measures have been taken to minimise the traffic generated.

Policy D1 Architecture and Placemaking – ensures that high standards of design are achieved through a number of considerations, including context, to ensure that the setting of the proposed development and its design is acceptable.

Policy D3 Sustainable Active Travel – new development shall be designed to minimise private car travel. Promote healthy modes of travel. Ensure permeability and connection to existing development and environment.

Policy H2 Mixed Use Areas – applications for changes of use must take into account the existing uses and character of the surrounding area, and avoid undue conflict with adjacent land uses and amenity.

Policy RT1 Sequential Approach and Retail Impact – all development appropriate to a town centre should be located in accordance with the hierarchy and sequential approach as set out in the policy, and supplementary guidance.

### **Supplementary Guidance**

- Harmony of Uses – residential and other developments within the city (compatibility of residential and non-residential use mix)

### **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.

#### Statement regards to the Adopted Local Development Plan (2012)

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.

#### Principle of the development.

The site lies within an area identified as mixed use within the Local Development Plan. There are existing restaurant and take-away facilities within the locality. In principle there are no objections to the use so long as it would not have an unacceptable impact on residential amenity and road safety, and is of an acceptable design.

#### Design

There are no discernable changes to the exterior of the building. A grill is proposed for the rear elevation to enable the discharge of air, which would be located within the exterior courtyard, away from public frontages. There are therefore no design concerns.

#### Residential Amenity

Environmental Health has commented on the application. It is satisfied that the proposed Trion electrostatic precipitator air purification system will be able to cope with any odour arising in a suitable method. Environmental Health recommends a condition that asks that it is regularly maintained.

In addition Environmental Health request that a noise assessment is undertaken to address the potential of noise arising to the residents living in the upper floors (second floor and above). At first floor it is noted that there is already a restaurant. It is considered that the noise assessment should be supported by any measures needed to mitigate against any noise disturbance that may arise.

Environmental Health recommends a condition that the take-away element is restricted to the existing restaurant opening hours, to minimise disturbance to residents due to people entering and exiting the premises.

All of the above are reasonable requests to mitigate against the potential for noise in the interests of residential amenity.

Environmental Health have requested that the hours of operation of the take-away element are restricted to the hours of the restaurant use. Details of the proposed hours of the restaurant use have not been submitted for consideration, but Environmental Health has advised that without a late hours catering licence the premises could not operate beyond 11:00pm. The late hours catering licence would consider residential amenity concerns amongst others. As there is a mechanism already in place it is considered that limiting the restaurant opening hours is not necessary. However, as the licence may not include the take-away element it is considered appropriate to limit the hours of the take-away use to tie

in with the opening hours of the restaurant to protect residential amenity concerns in relation to noise and disturbance within the area.

Environmental Health has requested a condition to restrict the hours of deliveries and uplifts between 7:00 am and 19:00 Monday-Saturday, and 10:00am till 16:00 Sundays. It is not considered that the Planning Service can control the hours of delivery to the take-away. It would be difficult to enforce. The Planning Service could not prevent vehicles from parking close by waiting to deliver which could be a nuisance in itself. Given the mixed uses within the building, and that there is a restaurant already at first floor, it is considered that there is a sufficient buffer between the residential uses and the planning unit.

Finally in terms of residential amenity, Environmental Health has requested a condition be imposed to control the timing of the works relating to the change of use. This is not considered reasonable or enforceable, and therefore it is recommended that such a condition is not imposed. Environmental Health has its own powers to investigate such noisy operations that may arise. It is considered that the works would not be significant, and would take a relatively short period of time to complete. It is therefore considered unjustifiable to impose such a condition.

### Road Safety

The Roads Project Team have raised no objections to the proposal. It is therefore considered that the proposal would not cause any concerns in terms of road safety. The letters of representation have raised some concerns about pedestrian safety, vehicles, and deliveries, and these are responded to below.

### Other

Environmental Health have requested the provision of litter bins within the immediate area outside the premises

Environmental Health has requested details of the refuse area, which is a reasonable condition to ensure adequate provision. The refuse area would be to the rear of the site. Environmental Health has requested that the refuse area is suitably gullied and provided with a wash-down facility. It requests that any refuse generated is stored within this facility until the time of uplift, however this element is not enforceable and therefore an informative advising the applicant of this will be applied.

The two letters received raised a number of considerations.

The current issue regarding the overflowing of grease traps and vermin cannot be a reason to refuse this current application. There are controls which Environmental Health can exercise to overcome such concerns. It is not reasonable to consider that all occupants or owners of a business would operate in a similar manner. It is therefore considered unreasonable to refuse permission on this basis.

The comments with regards to the restaurant generating additional deliveries than the existing use, which could block access to the car park or fire escapes; which would have a subsequent impact on existing businesses; and the possible reversing of vehicles and entering the pend would be a road safety issue. It is noted that the Roads Project Team have not objected to the proposal. The application site does not include the pend. The use of the pend for deliveries or parking is not a matter that the Planning Authority can control, as it is privately owned. It is noted that the application form states that there is no existing parking, and none proposed.

Dangerous road junction – road and pedestrian safety (particularly customers who may be under the influence of alcohol). The existing lawful use is an amusement arcade, which most people would access by foot. The use as a restaurant would not change the existing pedestrian safety. The use is for a restaurant not a public house, and many are licensed premises. It is unreasonable to refuse a planning application on the basis that people may be under the influence of alcohol and may be involved in an accident. There is a footpath outside the premises, which are part of a network of footpaths which people can use to gain safe crossings.

A request was made within the representations for the imposition of a condition should permission be granted which would prevent loading/unloading within the pend. The Planning Authority cannot control the use of the pend as a result of this application. It is noted that the Roads Project Team have not objected to the proposal.

Object to a take-away facility within the restaurant. This comment appears to relate to pedestrian safe access, which is addressed above, and litter.

Litter – the application is for a restaurant and take-away. It is noted that there is a bin adjacent to the footpath within 25 metres of the site for use.

It is judged that the proposal would not, subject to conditions, cause harm to residential amenity, it is therefore considered that the proposal complied with policy H2 of the Local Development Plan. There are minimal design changes, primarily relating to the need for a new ventilation grill which would be placed on the rear elevation, it is therefore considered that the proposal is not in conflict with policy D1. Details of the bin storage area will ensure that the area is suitably screened as may be necessary.

The site is within the city centre, and it is considered will not generate significant traffic than the lawful use as an amusement arcade. Thus the proposal is not in conflict with policy T2. Given that the site is within the city centre it is considered that the proposal is in a sustainable location, where travel can be achieved through a variety of modes, other than just the private car. The proposal is therefore judged to be acceptable against policy D3.

## **RECOMMENDATION**

### **Approve subject to conditions**

## **REASONS FOR RECOMMENDATION**

The proposal is considered to comply with Aberdeen Local Development Plan Policy H2 (Mixed Use Areas) as the proposal would not have an adverse impact on residential amenity, subject to the satisfaction of the conditions imposed.

The external alterations to the building include a refuse storage area and a ventilation grill, full details to be secured by condition, which would be located within the rear courtyard. It is judged that the proposal, subject to securing these details, would not be in conflict with Planning Policy D1 (Architecture and Placemaking) of the Aberdeen Local Development Plan.

The site is located within the City Centre where a range of modes of travel can be undertaken, the proposal is therefore judged to comply with Planning Policies T2 (Managing the Transport Impact of Development) and D3 (Managing the Transport Impact of Development) of the Aberdeen Local Development Plan.

**It is recommended that approval is granted subject to the following conditions.**

(1.) The development hereby approved shall not be brought into use until the extraction system detailed in the planning application has been fully installed in accordance with details that shall be first submitted to and approved in writing by the Planning Authority. – To ensure that adequate filtering, extraction and dispersing of cooking fumes is achieved in the interests of residential amenity.

(2.) Prior to the commencement of development a noise assessment shall be undertaken, carried out by a suitably qualified noise consultant, and be submitted to and approved in writing by the Planning Authority. The noise assessment shall address the potential for the premises to cause noise disturbance to residents living in the upper floor flats within the building and to the occupier of the restaurant directly above the application premises, and the measures to prevent such disturbance.

The noise assessment shall:

- i). Be in accordance with Planning Advice Note 1/2011 Planning & Noise and its accompanying Technical Advice Note.
- ii). Identify the likely sources of noise; and
- iii). Indicate the measures to reasonably protect the amenity of nearby residents of the development from all such sources of noise that have been identified.

Thereafter, the approved mitigation measures shall be implemented in full prior to the development being first brought into use. – In the interests of residential amenity.



(3.) The development shall not be brought into use until the bin refuse area has been provided in full in accordance with details that shall be first submitted to and approved in writing by the Planning Authority. The refuse area shall thereafter be retained at all times for such use. For the avoidance of doubt the refuse area shall be suitably gullied and have a wash-down facility – In the interests of residential amenity and visual amenity.

(4.) The take-away element of the proposal hereby approved shall not operate outwith the opening hours of the restaurant hereby approved. - To prevent 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.

### **INFORMATIVE**

(1.) All commercial refuse generated by the restaurant and take-away use when stored outside should be stored within the bulk refuse area until the time of uplift to enable careful handling of and disposal of waste, and not in other external locations.

**Dr Margaret Bochel**

Head of Planning and Sustainable Development.