

ABERDEEN CITY COUNCIL

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COMMITTEE	Development Management Sub-Committee	
DATE	18 July 2013	
LEAD HEAD OF SERVICE Margaret Bochel		DIRECTOR Gordon McIntosh
TITLE OF REPORT	Planning Digest	
REPORT NUMBER	EPI/13/113	

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1. PURPOSE OF REPORT

- 1.1 To advise Committee about recent appeal decisions, recent updates in Scottish Government Planning Advice and other aspects of the planning service.

2. RECOMMENDATION

- 2.1 To note the outcome of the appeal decision.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising from these appeal decisions.

4. OTHER IMPLICATIONS

- 4.1 The report is for information and does not have any implications for any legal, resource, personnel, property, equipment, sustainability and environmental, health and safety and/or policy implications and risks.

5. BACKGROUND/MAIN ISSUES

**PLANNING DIGEST**

**APPEAL DISMISSED**

**27 Crown Terrace – Alterations, refurbishment and change of use to form 7 flats  
Planning Application Reference: P120615  
Planning Appeal Reference: PPA-100-2045**

Members may recall that, contrary to officer recommendation, the above planning application was refused at the Development Management Sub-Committee at its meeting of 23<sup>rd</sup> November 2012. The application was refused because it was “contrary to the Aberdeen Local Development Plan Policy H2 (Mixed Use Areas), specifically that the development would impact negatively on the current non-residential uses (offices) within the same building and as a result, raise security issues throughout the building which would have an impact on the viability of these businesses and that the development would not create a satisfactory residential environment by virtue of its location above restaurants”

In summary, the Reporter agreed with the position taken by the Sub-Committee, although he was of the view that the provision of additional residential units in Crown Terrace would be unexceptional.

He also considered that the existing complex internal layout of the building and the disposition of the existing restaurant uses meant that the proposed use would not impinge on the viability or operation of the existing restaurant uses, particularly as these have their own self contained entrances. He considered that any concerns of a smell nuisance to residents from cooking odours were not justified as the opening windows of the proposed flats would be in different elevations of the venting ducts associated with the restaurants. He noted that Environmental Health officers did not object to the proposal.

However, the Reporter was not satisfied that the proposed use could co-exist with existing office users. He considered that the introduction of a residential users’ access to a key shared staircase would give rise to a number of operational conflicts and would potentially compromise the security of the building, particularly outside working hours. This would impinge on the viability and operation of the existing office users. This was reinforced by the fact that the appeal premises enjoy no right of common ownership but have only a right of access over the stairway. The modifications necessary to address security and other issues alluded to by the appellant’s agent would require a measure of agreement and cooperation on the part of the relevant owners which does not appear to be forthcoming and cannot, it would appear, be compelled. Accordingly he dismissed the appeal.

The appeal decision can be viewed at  
<http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=qA342427>

### **Imposition of conditions on planning approvals**

Following discussion on the attachment of conditions at recent Development Management Sub-Committee meetings, in particular, the ‘hours of construction’ condition, Members are asked to note the following guidance in relation to the imposition of conditions

All conditions imposed by the local authority have to meet the 6 tests laid down in Scottish Government Circular 4/1998 in as far as they must be: necessary to make

the development acceptable in planning terms, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

Protocols have been agreed in relation to consultation responses between the Development Management Team and both the Environmental Health and the Roads Project Teams. Guidance in these protocols states that consultation responses should specify which requirements are to be imposed by way of condition to make the development acceptable and clearly distinguish these conditions from advisory notes to the applicant relating to other requirements of the Council etc

In relation to the Environmental Health Protocol the following guidance is given

#### Valid conditions

- Conditions that control opening hours of a premises or the cooking operations (eg no deep fat frying) are legitimate where these are essential to protect residential amenity in as far as they serve a planning purpose and have the ability to be enforced.

#### Invalid conditions

- Conditions that seek to control
  - the ongoing management or operation of a premises (for instance specifying that bins are only put out immediately prior to uplift) or
  - the ongoing maintenance of equipment (for instance maintenance of ventilation equipment)are not enforceable and cannot legitimately be imposed

Conditions that do not clearly specify what the applicant has to do or what is permissible are neither enforceable nor precise and cannot be legitimately imposed.

- Conditions that seek to impose a requirement that is the domain of other controls (possessed by the local authority or other public body eg SEPA) or that place a possible future requirement based on a possible or hypothetical situation cannot legitimately be imposed.
- It is debatable whether the condition that is normally imposed restricting the hours of construction work is a legitimate planning condition as it is, in practice, impossible to enforce or monitor and also duplicates other controls available to the local authority under separate legislation. The issue that the condition seeks to address is the possibility of noise disturbance for a limited period to sensitive receptors (normally residential properties) caused by construction vehicles/machinery/activity which may or may not be a nuisance. This is more effectively dealt with by Environmental Health controls (Control of Pollution Act) in circumstances where nuisance occurs or is possibly occurring

With this in mind conditions that seek to control of hours of construction should not be attached to applications for householder developments and, in other circumstances, should only be attached where there is a particular likelihood of

a detrimental impact on residential amenity should construction occur outwith standard working hours.

It would be preferable that working hours be included as an informative note on all decision documents that details the controls available to Environmental Health should a nuisance be caused during construction. With this in mind officers in Development Management and Environmental Health are working together to devise a suitable informative note relevant to working hours to include on relevant decision notices.

## 6. IMPACT

The Scottish Government has stated that an effective planning service is fundamental to achieving its central purpose of sustainable economic growth. As such the information in this report relates to a number of Single Outcome Agreement Outcomes:

1 - We live in a Scotland that is the most attractive place for doing business in Europe;

2 - We realise our full economic potential with more and better employment opportunities for our people;

10 - We live in well-designed, sustainable places where we are able to access the amenities and services we need;

12 - We value and enjoy our built and natural environment and protect it and enhance it for future generations;

13 - We take pride in a strong, fair and inclusive national identity; and

15 - Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Public – The report may be of interest to the development community and certain matters referred to in the report may be of interest to the wider community.

## 7. BACKGROUND PAPERS

None.

## 8. REPORT AUTHOR DETAILS

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