

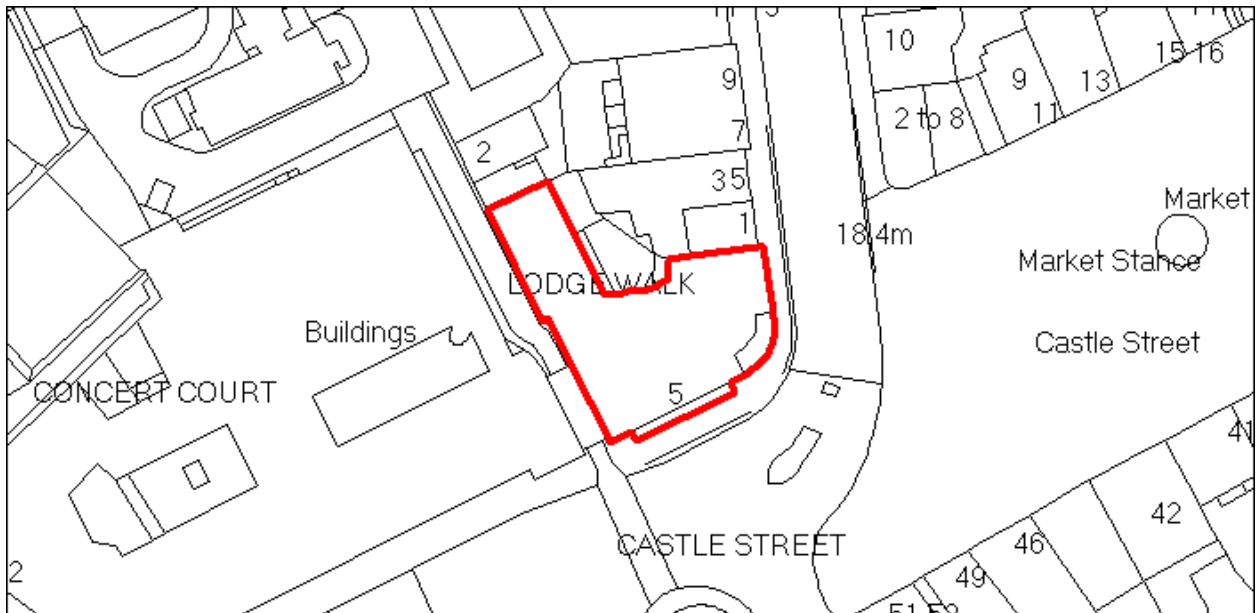
Planning Development Management Committee

5 CASTLE STREET, ABERDEEN

PART CHANGE OF USE OF PAVEMENT TO
FORM PAVEMENT CAFE FOR 5 TABLES AND
10 CHAIRS

For: J D Wetherspoon

Application Type : Detailed Planning Permission	Advert : Section 34 -Proj. Pub.
Application Ref. : P131365	Concern
Application Date: 20/09/2013	Advertised on: 02/10/2013
Officer: Robert Forbes	Committee Date: 28 November 2013
Ward : George Street/Harbour (A May/J Morrison/N Morrison)	Community Council : Comments



RECOMMENDATION:

Approve Unconditionally

DESCRIPTION

The site comprises part of the public footpath adjacent to the south elevation of Archibald Simpson public house, which is located within a category A listed building of early 19th century origin and neo-classical design. The pub is accessed at the corner with King Street, with the main doors recessed from the street and set back within a colonnade feature. The pub offers a range of drinks and food but currently has no external eating or drinking area. The ground floor level of the pub is elevated above street level by approximately 1m and there is a flight of steps up from pavement level. Disabled access is provided via a rear door accessed off Lodge Walk.

The upper floors of the building are used as offices. The closest residential property is located about 35m to the south of the site on the corner of Marishal Street and Castle Street (above Old Blackfriars public house). There are existing seasonal pavement cafes associated with Blackfriars and La Lombarda restaurant nearby.

RELEVANT HISTORY

Planning permission and listed building consent for conversion of the premises, a former bank, to create a public house was granted in the 1990's (96/0258).

A planning application for change of use of the pavement at the site frontage to form an external drinking / eating area was submitted in 2005 (ref. A5/2059). This was recommended for conditional approval but was refused by Planning Committee in February 2006. A subsequent appeal to the Scottish Ministers saw permission granted but the proposal was not subsequently implemented. That permission expired in November 2011.

PROPOSAL

The proposal is for the creation of an outdoor seating area to be used in conjunction with the existing pub use. A total of 5 tables and 10 chairs would be provided along the southern building frontage, extending about 12m along its length. The width of the area would be 1.5m. In excess of 3.5m of clear footway width would remain. No permanent street furniture or fixings are proposed.

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?131365>
On accepting the disclaimer enter the application reference quoted on the first page of this report.

REASON FOR REFERRAL TO COMMITTEE

The application has been referred to the the Planning Development Management Committee because an objection has been received from the City Centre Community Council and the recommendation is for approval. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

CONSULTATIONS

Roads Projects Team – No objection. Advise that separate consent is required from the Street Occupation Unit.

Environmental Health – Recommend that consideration is given to addressing the issues of additional refuse generated by the proposal and potential health and safety related issues such as the potential for slip and trips during transportation of food / drinks to and from the outside area.

Enterprise, Planning & Infrastructure (Flooding) - No observations.

Community Council – Object on the grounds of obstruction of the footway, creation of a health and safety hazard and attraction of vermin (sea-gulls).

Scottish Water – No objection.

REPRESENTATIONS

None

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy (SPP) 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.

Town centres are a key element of the economic and social fabric of Scotland, acting as centres of employment and services for local communities and a focus for civic activity, and make an important contribution to sustainable economic growth. 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. Retail and leisure uses are fundamental to the concentration of other activities located in town centres and planning authorities should support a diverse range of community and commercial activities in town centres (para. 52).

The planning system has a significant role in supporting successful town centres through its influence on the type, siting and design of development (para. 57)

All retail, leisure and related developments should be accessible by walking, cycling and public transport. (para. 61).

Aberdeen City and Shire Structure Plan

This provides a spatial strategy to ensure the right development is promoted in the right place. It has the objective of securing sustainable economic growth, by enabling development which is of high quality, protects valued resources and assets, including the built and natural environment, and which is easily accessible.

Aberdeen Local Development Plan

Policy C1 – City Centre Development – Regional Centre

Development within the city centre must contribute towards the delivery of the vision for the city centre as a major regional centre as expressed in the City Centre Development Framework.

Policy C2 – City Centre Business Zone and Union Street.

The City Centre Business Zone is the preferred location for major retail developments as defined in Policy RT1.

Policy T2 - Managing the Transport Impact of Development

New developments will need to demonstrate that sufficient measures have been taken to minimise the traffic generated. Maximum car parking standards are set out in Supplementary Guidance on Transport and Accessibility.

Policy R6 - Waste Management Requirements for New Developments

Details of storage facilities and means of collection must be included as part of any planning application for development which would generate waste. There should be sufficient space for the storage of residual, recyclable and compostable wastes in accordance with Supplementary Guidance on Waste Management.

Policy NE10 – Air Quality

Planning applications for development which has the potential to have a detrimental impact on air quality will not be permitted unless measures to mitigate the impact of air pollutants are proposed and can be agreed with the Planning Authority. Such planning applications should be accompanied by an assessment of the likely impact of development on air quality and any mitigation measures proposed (see Air Quality Supplementary Guidance).

Supplementary Guidance

Harmony of Uses – Street Cafes.

Aberdeen City 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.

The SPG identifies a number of factors against which proposals require detailed assessment, including residential amenity, public safety and visual impact.

Air Quality

Air Quality is a material planning consideration in the Development Management process. New developments may increase the emission of pollutants that are harmful to human health and impact on the quality of life.

This SPG provides guidance on the way in which air quality and air pollution issues will be dealt with through the planning system. The guidance has the following objectives: -

- To set out the policy framework
- To ensure air quality is properly considered in the planning process and highlight developments where air quality may be a material consideration
- To identify development proposals that will require an air quality assessment

- To provide guidance on the process of air quality assessment
- To set out the Council's approach to the use of planning conditions and S75 agreements in respect of air quality

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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to preserve and enhance the character or appearance of conservation areas

Principle

As an adjunct to the existing authorised use as licensed premises, the proposal raises no significant policy concerns in terms of land-use change. The principle of development of pavement cafes has long been accepted by the Council as an appropriate means of enhancing vitality and viability within the city centre and is compatible with the spatial strategy for the city centre as set out in the Local Plan (para 2.8-11) and in supplementary guidance. By enabling increased activity and animation at street level adjacent to a rather blank, albeit imposing, ground floor frontage, this proposal would enhance the vitality and viability of the retail centre and would therefore accord with the objectives of local plan policies C1, C2 and SPP regarding town centres.

Residential Amenity

Given the significant distance between the proposed facility and existing flats (35m), the presence of other licensed premises and street cafes which are closer to these existing flats, and the heavily trafficked nature of the intervening public road, it is considered that there would be no adverse impact on residential amenity.

Conservation / Listed Building / Visual Impact

As no external alterations to the building or permanent fixtures such as canopies are proposed and the proposed use is likely to be seasonal / transient, it is considered that there would be no significant nor permanent effect on the character of the conservation area / setting of the listed building, or on visual amenity in general, so that such character would be preserved.

Refuse / Litter

Given that the proposal results in only a marginal increase in the existing number of covers within the premises, and given that the requirement for provision of refuse storage was addressed when the original planning permission for the pub was granted (with existing refuse containers provided in Lodge Walk at the side of the rear of the premises) it is considered unnecessary to impose a condition requiring additional refuse provision. It is anticipated that ashtrays would be provided on the tables by the operator and emptied by their staff, in the normal way that restaurants / bars operate, thereby avoiding the creation of litter

associated with smoking, as routinely happens in many existing public spaces within the city. Given the existing refuse facilities associated with the licensed premises, it is therefore considered that the proposal accords with local plan policy R6. Managing the pavement café service and site cleanliness / litter are issues which are addressed in the Council's design guide for pavement cafes. These matters are considered separately from the planning process during the application for a pavement café permit and through other powers. It is not necessary or appropriate to duplicate these controls by imposition of planning conditions.

Health / Safety

It is considered that the health and safety concerns raised by the Community Council and the Environmental Health officer regarding the potential for slips and tripping during transport of food / drinks and potential attraction of vermin are health and safety matters for the owner / operator of the public house to address (e.g. by collection / removal of used food and drink receptacles by staff) and are controlled via relevant legislation so that they are not relevant material planning considerations.

Public / Road Safety

Whilst it is recognised that the occupation of part of the footway would alter existing pedestrian flow / routes, this is the case with any pavement café and in this case, the footway is considered to be of adequate width to accommodate the proposed use without adverse impact on other existing users. The Council's Roads officers have raised no concerns in relation to obstruction of the footway, the creation of a public road safety nuisance, or conflict with the use of the nearby bus stops or adjacent pedestrian crossing on Castle Street. The proposals is therefore considered acceptable on road safety / transport grounds.

Air Quality

It is noted that the site lies within an Air Quality Management Area which has been designated due to the high levels of air pollution, primarily due to gaseous vehicle emissions. However, the Council's Environmental Health officers have no objection to the proposal on the grounds of exposure of the public to air pollution, or potential generation of increased pollution (e.g. due to smoking) and have not requested the submission of an air quality impact assessment in terms of the SPG. It is noted that in other similar situations within the city centre, such assessment has not been required to be undertaken in determining similar planning applications. In any event it is unclear what, if any mitigation measures would be possible to implement, other than reduction / removal of motor vehicle traffic from the adjacent street, which is a wider matter for the Council to consider.

Although there is a degree of tension with local plan policy NE10, given the above factors, it is considered that the absence of an air quality impact assessment or proposed mitigation measures does not warrant refusal of the proposal, taking a proportionate approach.

Street Café SPG Compliance

As regards compliance with the Council's SPG regarding Street Cafes, the specific issues of relevance are addressed above. The proposal would have no

adverse effect on residential amenity and involves no physical alterations to the building or significant or permanent visual impact. There would be adequate pavement width, no unacceptable creation of a hazard to other users, no impeding of access into / egress from nearby buildings and no insurmountable litter issues. Although no canopies are proposed, the location of the site, in that it has a southerly aspect, is such that users of the facility would benefit from exposure to sunlight and would be sheltered from northerly winds. It is therefore considered to accord with the SPG.

Appeal Decision

With regard to the previous appeal decision, it is noted that there has been no significant change in the physical context of the site. Although there has been subsequent change in planning policy, at national, strategic and local levels, this lends increased weight to approval of the development given the location of the site within the city centre. As explained above, it is considered that imposition of conditions restricting the operation of the use is not necessary. The hours of operation of the pavement café is similarly a matter which is considered separately by the Council through licensing and the pavement café permit application processes.

RECOMMENDATION

Approve Unconditionally

INFORMATIVE NOTE

As well as the Council's Planning Department, the Council's Licensing Committee has responsibility for granting licenses. Proposals for street cafes must also adhere to other regulations from the Council's Roads Department. There is a Council approved policy for the introduction of tables and chairs within pedestrian areas and on footways. If this application is approved, the applicant would have to comply with this policy. The applicant is required to contact the Street Occupation Unit on (01224) 522427 with regards to this matter.

REASONS FOR RECOMMENDATION

The proposal relates directly to the use of the existing adjacent premises. It would enhance the vitality and viability of the retail centre and would therefore accord with the objectives of local plan policies C1, C2 and SPP regarding town centres. There would be no adverse impact on residential amenity, road safety, or on the character of the conservation area / setting of the listed building.

Dr Margaret Bochel

Head of Planning and Sustainable Development.