

PLANNING APPLICATION REFERENCE: 131611

CHANGE OF USE/CONVERSION OF FIRST TO FOURTH FLOORS TO FORM 45 SERVICED APARTMENTS AND REPLACEMENT WINDOWS AND ASSOCIATED DORMER WINDOWS AND ROOF LIGHTS

at

UNION BUILDINGS, THE ATHENAEUM, 15 UNION STREET, ABERDEEN

We act for Gordon Investment Corporation Limited, owners of The Athenaeum Bar and the nightclub premises currently known as "Snafu", forming the basement and ground floor of the building known as Union Buildings, 1 – 15 Union Street, Aberdeen.

An application has been submitted by Keppie Design and Planning on behalf of Markten Limited for the change of use/conversion of the first to fourth floors to form 45 serviced apartments and replacement windows and associated dormer windows and roof lights at Union Buildings, The Athenaeum, 15 Union Street, Aberdeen.

This follows on from a previous application submitted in respect of the subjects under the Council's reference 130946, which we previously objected to, and which was ultimately approved by the Council.

Our clients **object** to the current application for all the reasons contained in our previous objection (a copy of which is annexed) together with the following additional reasons:

- The Noise Report submitted with the application relates to a different development / layout
- The applicant has erected a wall on the ground floor which has since been removed, however any noise assessment which makes reference to the wall, or a future requirement for a wall, should be reviewed in this context.
- The current ground floor layout does not correspond with the layout plans submitted with planning application reference 131611. Therefore, any proposed changes are not accurately represented in the planning application.
- The Council is currently consulting on draft Supplementary Guidance for Serviced Apartments running from 13 November to 11 December 2013. The Application is therefore premature until such time as this guidance is in place.

1 Noise Report

- 1.1 The main issue in relation to the application is the control of noise, primarily noise from the licensed premises on the ground floor and basement, and how this would impact on the amenity of occupiers of the serviced apartments.
- 1.2 The Applicants seek to provide comfort by submitting a Noise Impact Assessment prepared by Bureau Veritas.
- 1.3 The Noise Impact Assessment was prepared by Bureau Veritas in relation to a different development with a different layout. Therefore the value of the Noise Impact Assessment submitted with the application should be disregarded.

- 1.4 Without an up to date Noise Assessment based on the current application and layout, the applicants are unable to demonstrate that the occupiers of the application subjects will be protected from noise emanating from the ground and basement premises.

2 Noise Containment Works

- 2.1 The applicant has recently erected a wall on the ground floor of the building, seeking to provide separation between the bar and nightclub, and the stairwell leading to the proposed apartments.
- 2.2 Due to ownership issues, the applicant was not entitled to erect this wall, and our clients liaised with the applicant over its removal. It has since been removed. The applicant advised our client directly that they would remove the wall and replace it with double doors once they have secured planning consent.
- 2.3 As the wall has been removed, any noise assessment which makes reference to the wall, or a future requirement for a wall, should be reviewed in this context. Our client's concern is that this wall may be temporarily reinstated, given that the applicant has building warrant approval, and that any future noise assessment may be carried out with this wall in place, and therefore give a false measurement.
- 2.4 The application should not be approved on the basis of the potential existence of this temporary wall.
- 2.5 In the event that the application is approved, then any obligations in respect of noise should take account of the removal of this temporary wall.
- 2.6 Our client has concerns about the independence of a noise assessment instructed and paid for by the applicant, and the potential for lack of independence that arises from this. Our client feels it is important to have the noise assessment independently verified, or for an independent noise assessment to be carried out, at appropriate times of operating hours, to give a true reflection and accurate readings.

3 Supplementary Guidance on Serviced Apartments

- 3.1 On 12 November 2013 the Council's Enterprise, Strategic Planning and Infrastructure Committee approved a recommendation that the draft Serviced Apartments Supplementary Guidance be released for a four week consultation running from 13 November to 11 December 2013.
- 3.2 Given the Council is in the process of preparing and adopting Supplementary Guidance in respect of Serviced Apartments, it would appear premature to consider the current application prior to such supplementary guidance being adopted.

4 Conclusion

- 4.1 We reiterate the key issue here is that the application is likely to lead to conflicting land use within the building, increasing the likelihood of future complaints to environmental health.
- 4.2 Against the above background, and the lack of supporting noise reports in respect of the current application, we would therefore respectfully request that the current application is refused.

Ledingham Chalmers LLP

Agents for Gordons Inns Limited

04 December 2013

Annexations:-

1. Objection to Planning Application 130946 dated 07 August 2013

PLANNING APPLICATION REFERENCE: 130946

CHANGE OF USE/CONVERSION OF FIRST TO FOURTH FLOORS TO FORM 40 SERVICED APARTMENTS AND REPLACEMENT WINDOWS AND ASSOCIATED DORMER WINDOWS AND ROOF LIGHTS

at

UNION BUILDINGS, THE ATHENAEUM, 15 UNION STREET, ABERDEEN

We act for Gordon Inns Limited, owners The Athenaeum Bar and the nightclub premises currently known as "Snafu", forming the basement and ground floor of the building known as Union Buildings, 1 – 15 Union Street, Aberdeen.

Our clients **object** to the application which has been submitted by Keppie Design and Planning on behalf of Markten Limited for the change of use/conversion of the first to fourth floors to form 40 serviced apartments and replacement windows and associated dormer windows and roof lights at Union Buildings, The Athenaeum, 15 Union Street, Aberdeen for the following reasons:

- The amenity of residents of the application subjects would be significantly impacted upon by the noise emitting from the bar and nightclub.
- The proposal conflicts with the presumption in favour of retaining and developing commercial uses within the City Centre Business Zone.
- Due to the shared access from the fire door of the nightclub into the central stairwell of the building the application fails to comply with the Supplementary Guidance on Harmony of Uses
- The proposals in the application will not secure residential amenity, and the application fails to comply with the Supplementary Guidance on Harmony of Uses
- The applicants are unable to carry out the proposals and recommendations in their noise assessment, as they do not own, or have rights of access over much of the property required to mitigate against noise.
- The application is for Floors 1-4. A previous application (A8/1173) for floors 1-4 was submitted in 2008, and although this was not granted, the Council made it very clear that consent would not be approved on the first floor. The applicant's own noise assessment states that in relation to the first floor, even if mitigation measures were all achieved "it is difficult to say whether the appropriate noise criteria could be met".
- Conflicting land use within the building is likely to result in future complaints to environmental health.
- The proposed development will generate additional traffic in an area with very little parking, or stopping-off, and will cause a hazard to road users through vehicles parking nearby the premises.
- The proposed development does not include any car parking provision, and will therefore lead to additional pressure on car parking in the surrounding streets.

1 Background

- 1.1 The Union Buildings, of which the Athenaeum forms part, have operated as a bar and restaurant for over 200 years.
- 1.2 In 1973, the building was destroyed by fire, and reconstructed internally, retaining the original granite facade, but supported by a steel superstructure.
- 1.3 The building is therefore of "non-traditional" construction.
- 1.4 As such, noise emanates through the steel pillars and beams in the building in a way that it might not in a traditional granite and timber property.
- 1.5 The upper floors of the building have historically been used as office premises. Given the nature of the operating hours of a bar and nightclub, and the operating hours of an office, there has been little or no conflict in use arising out of the operations of the bar and nightclub.
- 1.6 Any change to permit serviced apartments – effectively residential accommodation – in the upper floors will result in a real and significant conflict in use, primarily through the noise generated from the bar and nightclub.
- 1.7 Despite the proposals in the application to mitigate against noise, our clients do not believe the applicant is capable of mitigating noise levels to the extent required to protect residential amenity within the building.

2 Noise

- 2.1 The applicants acknowledge in Clause 3.4 of the Supporting Planning Statement that the main issue in relation to the previous applications, and which also applies in respect of this application, is the control of noise, including noise from the licensed premises on the ground floor and basement.
- 2.2 Their view is that this is dealt with effectively in terms of the Noise Impact Assessment prepared by Bureau Veritas.
- 2.3 The applicants acknowledge that conversion to residential use is dependent on the appropriate levels of amenity being provided to the residents of such developments.
- 2.4 If the application was approved, and the upper floors converted to serviced apartments or residential accommodation, the amenity of those residents would be significantly impacted upon by the noise emitting from the bar and nightclub.
- 2.5 It is therefore our clients' view that the applicants are unable to protect the residents of the application subjects from the noise emitting from the ground and basement premises.

3 Harmony of Uses

- 3.1 The City Council's Supplementary Guidance on Harmony of Uses – Residential, Licensed Premises and Commercial Uses published in March 2012 is particularly relevant to this application. In the section headed "Liquor Licensed Premises" this acknowledges that there are potential conflicts between liquor licensed premises and housing in the city centre.

- 3.2 Within the City Centre Business Zone areas there is a presumption in favour of retaining and developing commercial uses. This is to avoid the potential conflict.
- 3.3 The SG also provides, under the heading "Living/ Working Above or Below a Business" that *"Living and/ or working above or below a business can prove to be a challenge as both possess potential conflicts between the appropriate and necessary functions of a thriving commercial area and residential uses. The challenge is to reduce any conflict to a minimum through careful siting and design of new residential properties and new licensed or noisy activities and premises and through the Local Development Plan to attract commercial and employment uses to contribute to the vitality of the City."*
- 3.4 Given the present demand for quality city centre office space, the applicant has not justified the need to depart from the current permitted use of the upper floors of the building as office premises.

4 Shared Access

- 4.1 The fire doors for the nightclub on the basement floor lead to the central stairwell of 15 Union Street.
- 4.2 The Supplementary Guidance on Harmony of Uses states that applications for residential conversions will be refused where there is a common or shared access with licensed premises or other use detrimental to residential amenity.
- 4.3 The restriction on shared access is not just due to the potential for interaction between users of the bar and nightclub, and residential dwellers, but for multiple reasons, including, as detailed in the next section, the potential for the transmission of noise.
- 4.4 It is clear from the applicant's Noise Assessment that the central staircase is a key transmitter of noise.
- 4.5 There is no discretion in the Supplementary guidance, and therefore the Council should follow the guidance and refuse the application.

5 Noise Assessment

- 5.1 The Supplementary Guidance on Harmony of Uses requires a Noise Impact Assessment to be prepared in respect of residential developments in the city centre.
- 5.2 It states that *"Proposals for new residential developments or conversion of existing premises to residential use will only be allowed in parts of the City Centre where a suitable residential amenity will be secured"*
- 5.3 Applications for residential conversions will be refused where (a) suitable residential amenity cannot be achieved or maintained, or (b) the proposed development is within the same built structure as a public house unless a noise assessment has been submitted by a suitably qualified consultant prior to determination of any planning application that demonstrates that adequate noise attenuation can be achieved.

- 5.4 The onus is therefore on the applicant to demonstrate that adequate noise attenuation can be achieved.
- 5.5 The noise assessment makes reference to the previous application reference A8/1173. This application was not granted, however it was clear that the Council was not prepared to consider the change of use of the first floor of the premises, and that this should create a "buffer zone" between the bar and nightclub, and any residential accommodation.
- 5.6 A draft condition which was proposed in respect of that application required the applicant to detail all measures necessary to ensure satisfactory noise attenuation for the building, dealing with noise emanating from...the nightclub and public house...which measures shall include...a "box within a box" internal construction within the residential flats..."
- 5.7 The Noise Assessment in respect of the current application looks at additional mitigation measures, in order to bring into residential use the first floor of the building.
- 5.8 However, the premise of the Noise Assessment (at 2.4) is that users of serviced apartments will be less likely to complain about noise than purchasers of residential dwellings.
- 5.9 The assessment of nuisance does not take account of whether the complainer is a tenant, short term occupier or owner. Also, despite the applicant referring to the use as serviced apartments, the premises may be used for long term residential accommodation.
- 5.10 Therefore, this assumption in the Noise Assessment that serviced apartment users are less likely to complain about noise should be given no weight.
- 5.11 The noise measurements contained in the Noise Assessment will have to be reviewed by the Council's environmental health team for their own comments. However, section 4.14 advises that music from the nightclub is clearly audible on the first floor, reaching up to 69.9dB in some places. Section 4.15 refers to is as being approximately 38dB above the inaudibility criteria.
- 5.12 Noise levels in the 2nd and 3rd floors also reach well in to the mid 50s dB, with the 4th floor close to 60 dB.

6 Compliance with Requirements of Noise Assessment

- 6.1 The Noise Assessment, at Section 5.3 acknowledges that it will prove to be very difficult to fully isolate the entertainment noise.
- 6.2 As it is clear that a significant amount of noise is transmitted from the bar and nightclub rather than the street, it is our view that the proposals in respect of glazing will do little to reduce the noise impact internally.
- 6.3 Section 5.9 of the Noise Assessment states that "it is imperative that improvements are made to the fire door and fire escape route" and recommends partitioning off the fire escape route.
- 6.4 However, this part of the property is not owned by the applicants, and is not within their control to carry out such works. Furthermore, given this is a fire escape, serving not only the nightclub but also the upper floor premises, the

proposals to partition off the fire escape may not comply with building regulations.

- 6.5 The Noise Assessment also proposes further noise reduction measures including replacement of the nightclub fire door, introduction of absorptive materials on the basement floor and fire escape area, and the blocking up of the store cupboard.
- 6.6 Additionally, it proposes isolating the speakers within the nightclub.
- 6.7 The applicants are unable to carry out the proposals and recommendations in their noise assessment, as they do not own, or have rights of access over such parts of the property required to mitigate against noise.
- 6.8 Section 5.10 of the Noise Assessment suggests that if these activities could be undertaken, it could reduce noise levels by up to 40 – 50 dB within the entrance foyer area. There is no suggestion, however, that this would reduce noise levels within other parts of the upper floors, where noise is transmitted directly through the structural walls and steel frame of the building.

7 Buffer Zone

- 7.1 Bureau Veritas, in their preparation of the Noise Assessment and recommendations advise at Section 5.14 that it was their recommendation to keep the first floor as a buffer zone. However they have been pressed into amending their position by the applicants, hence the unrealistic, and impossible to achieve, mitigation measures. Clearly, if these were considered effective, Bureau Veritas would not have made the statement they did in section 5.14.
- 7.2 Bureau Veritas go on to state that even if the applicants were to incorporate "box within a box" construction on the first floor, it is difficult to say whether the appropriate noise criteria could be met.
- 7.3 Given the high risk of future complaints to Environmental Health, and the uncertainty of the acceptability of even the most significant mitigation measure, (including several proposals relating to property not owned by the applicants), it is unlikely that appropriate conditions could be drafted in a way that would provide adequate protection to residential occupiers, or satisfy the planning authority or Environmental Health.
- 7.4 Therefore the application should be refused.

8 Additional Noise Comments

- 8.1 The noise assessment carried out by Bureau Veritas suggests that the nightclub has upgraded its sound system since 2008, resulting in higher readings when the assessment was undertaken in 2013 compared to 2008. Our clients have advised that the entertainment system has not been upgraded since 2008, and therefore if there has been any change in the noise readings over that time, we would question the accuracy of the previous, and most recent noise assessments.
- 8.2 There is no suggestion that the noise readings taken at the property reflect an accurate position as to the maximum noise output likely to be experienced. Assessments were only carried out on two dates (23rd and 31st May 2013).

Bureau Veritas advise that on 23rd May there was an "acoustic performance" within the bar. This may therefore not have been a typical level of noise, and does not necessarily reflect the maximum noise levels likely to be experienced. If noise levels are generated above that in the sample period of the noise assessment, then any mitigation based on these levels may not be sufficient to protect the residents.

- 8.3 The noise assessment gives the impression that the previous application (A8/1173) was approved by the Council. The application was not approved and no decision notice was issued. Therefore any reference to "conditions" attaching to the previous application are misleading.

9 Environmental Health

- 9.1 Any complaint in relation to noise by a future resident or occupier in the upper floors will result in the involvement of the local authority's environmental health team, who have a statutory duty to investigate.
- 9.2 The responsibility for noise rests with the emitter, and therefore, by permitting a conflicting land use, it is the owners of the bar and nightclub who are most likely to be prejudiced, through the service of a noise abatement notice.
- 9.3 The responsibility will then fall on the bar and nightclub to mitigate against noise, under threat of prosecution for breach of the noise abatement notice.
- 9.4 It is neither sensible nor in accordance with policy to permit such conflicting land use within the building, where it is so likely to result in complaints to environmental health.

10 Transport

- 10.1 Policy T2 of the LDP requires any development to demonstrate that sufficient measures have been taken to minimise the traffic generated.
- 10.2 The present application does not include a Transport Statement from the Applicants, and given the size of the proposed development, it is unlikely one will be required.
- 10.3 As a result, neither we, nor the Council are able to review a statistical analysis of additional traffic movements as a result of the proposed development.
- 10.4 The Travel Plan prepared by Cameron & Ross does not deal with the question of additional traffic generated.
- 10.5 Exchequer Row, to the rear of the premises, is a narrow cobbled street, lined on both sides by double yellow lines. Whether used as residential apartments, or letting apartments, the proposal would inevitably create additional pressure on the road network, to the detriment of vehicles on Exchequer Row.
- 10.6 The proposed development should therefore be refused on the grounds that the road network is not designed to cope with the additional traffic, dropping off and setting down that would result from the creation of 40 residential apartments.

11 Car Parking

- 11.1 Policy T2 also deals with Car Parking, stating that Maximum car parking standards are set out in Supplementary Guidance on Transport and Accessibility.
- 11.2 The Council's Supplementary Guidance on Transport and Accessibility adopted in March 2012 provides "maximum" car parking requirements for city centre residential developments of 1.5 allocated spaces per dwelling (up to 3 bedrooms).
- 11.3 If the premises are to be treated as a hotel, then the Supplementary guidance provides for 0.6 spaces per bedroom.
- 11.4 Although these are given as "maximum" standards, these are designed to discourage car use. However, failure to provide car parking in line with these figures would lead to a significant overspill from the development into the neighbouring streets.
- 11.5 Within all zones where development proposals include parking provision that is less than the guidelines for that Zone, developers will be expected to provide suitable alternatives such as bus permits and membership to car clubs. The application proposes that the applicant, *"through the existing serviced apartments and Douglas Hotel, have agreed reduced rates with the NCP site. This will allow residents of the apartments to have reduced rates available should this be required"*. There is no evidence to suggest this is an agreed, long term arrangement, and given the commercial interests of the parties, is likely to be unsustainable, particularly in the event of either property changing hands.
- 11.6 In the absence of sufficient car parking spaces within the development, the application should be refused on the grounds of the impact on car parking in the surrounding streets.

12 Additional Comments

- 12.1 The Supporting Planning Statement submitted with the application gives the impression at Clauses 3.1 and 3.2 that the previous applications for the change of use to residential apartments (P101521 and A8/1172) were approved. Note these were listed building consents, and only considered the application from the perspective of the impact on the listed building, and did not consider the planning merits of the application.

13 Conclusion

- 13.1 Against the above background we would therefore respectfully request that the current application is refused.

Ledingham Chalmers LLP

Agents for Gordons Inns Limited

07 August 2013

P&SD Letters of Representation		
Application Number: 13/611		
RECEIVED - 5 DEC 2013		
Nor	<input checked="" type="checkbox"/>	Sou
Case Officer Initials:	GC	
Date Acknowledged:	09/12/13	

GAC

PI

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 15:21
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611
Name : Lindsey Pereira
Address : 7 Kelsey Crescent
Cherry Hinton
Cambridge
CB1 9XS

Telephone :
Email : 

type :
Comment :

I wish to object to planning application 131611 on the following grounds:

• The Noise Report submitted with the application relates to a different development / layout

• The applicant has erected a wall on the ground floor which has since been removed, however any noise assessment which makes reference to the wall, or a future requirement for a wall, should be reviewed in this context.

• The current ground floor layout does not correspond with the layout plans submitted with planning application reference 131611. Therefore, any proposed changes are not accurately represented in the planning application.

• The Council is currently consulting on draft Supplementary Guidance for Serviced Apartments running from 13 November to 11 December 2013. The Application is therefore premature until such time as this guidance is in place.

• The applicants are unable to carry out the proposals and recommendations in their noise assessment, as they do not own, or have rights of access over much of the property required to mitigate against noise.

• Conflicting land use within the building is likely to result in future complaints to environmental health.

GAC

PI

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 15:11
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : Tracy Gordon
Address : 8 Linnet Lane
Aigburth
Liverpool
L17 3BG

Telephone :
Email : 
type :

Comment :

I wish to object to planning application 131611 on the following grounds:

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- • The applicant has erected a wall on the ground floor which has since been removed, however any noise assessment which makes reference to the wall, or a future requirement for a wall, should be reviewed in this context.
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- • Conflicting land use within the building is likely to result in future complaints to environmental health.

GAC

PI

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 15:17
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : Patrick Pereira
Address : 7 Kelsey Crescent
Cherry Hinton
Cambridge
CB1 9XS

Telephone :

Email : [REDACTED]

type :

Comment :

I wish to object to planning application 131611 on the following grounds:

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• Conflicting land use within the building is likely to result in future complaints to environmental health.

GAC

PI

From: webmaster@aberdeencity.gov.uk
Sent: 06 December 2013 16:38
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : steve morris
Address : c/o Snafu nightclub
58 Castle Street
Aberdeen

Telephone : [REDACTED]

Email : [REDACTED]

type :

Comment : As per previous comments on previous applications regarding this re-development, my concerns are noise issues from my businesses (Snafu Nightclub and The Athenaeum Bar) on the basement level and ground level of the property.

The noise assessments carried out previously by Bureau Veritas state that:

the close proximity of the first floor to club Snafu and The Athenaeum Bar means that it will prove very difficult to fully isolate the entertainment noise.

Conflicting land use within the building is likely to result in future complaints to environmental health as the communal staircase on the ground level of the development acts as the main fire escape route from the basement nightclub premises.

Whilst I am all for some form of development within this building i must ensure all measures required with regards to the noise assessment are carried out effectively.

SAC

PI

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 14:34
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : Fraser Gordon
Address : 10 Cults Avenue
Aberdeen
AB15 9RS

Telephone :

Email : [REDACTED]

type :

Comment : I wish to object to planning application 131611 on the following grounds:

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• Conflicting land use within the building is likely to result in future complaints to environmental health.

GAZ

PI

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 14:43
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : Alastair Gordon
Address : 40 Springfield Road
Aberdeen
AB15 7RR

Telephone :

Email : 

type :

Comment : I wish to object to planning application 131611 on the following grounds:

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• Conflicting land use within the building is likely to result in future complaints to environmental health.

PI

GAC

From: webmaster@aberdeencity.gov.uk
Sent: 04 December 2013 15:04
To: PI
Subject: Planning Comment for 131611

Comment for Planning Application 131611

Name : Christine Gordon
Address : 40 Springfield Road
Aberdeen
AB15 7RR

Telephone :

Email : 

type :

Comment :

I wish to object to planning application 131611 on the following grounds:

• The Noise Report submitted with the application relates to a different development / layout

• The applicant has erected a wall on the ground floor which has since been removed, however any noise assessment which makes reference to the wall, or a future requirement for a wall, should be reviewed in this context.

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