

# Planning Development Management Committee

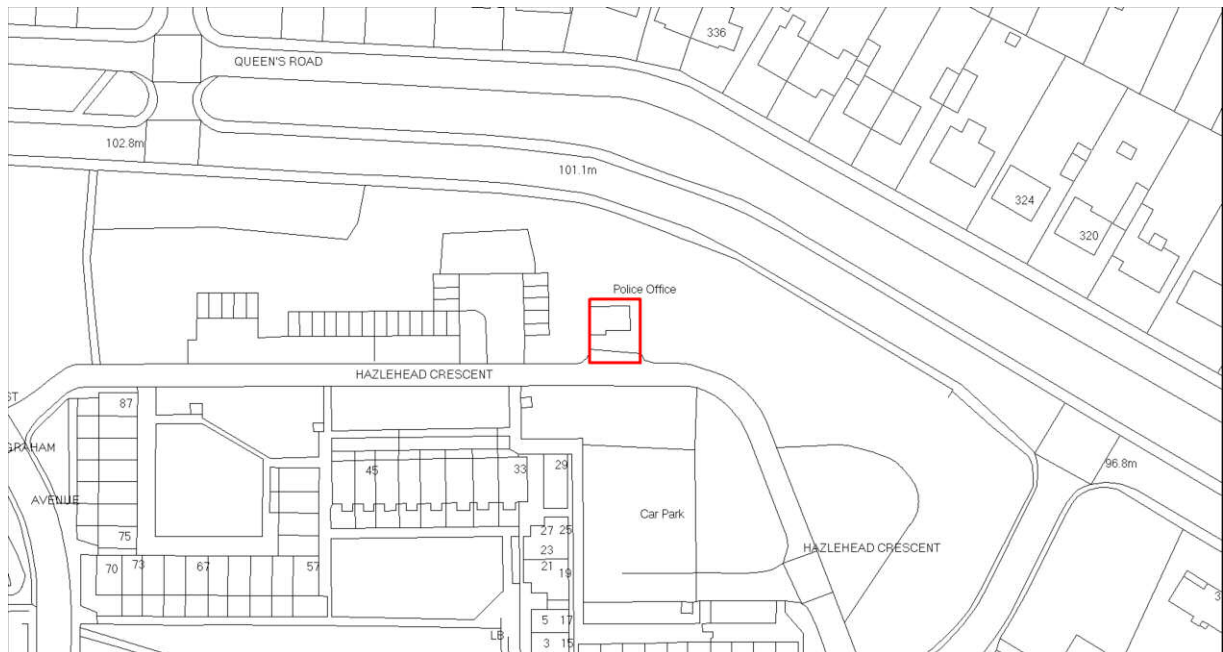
OLD POLICE STATION, HAZLEHEAD CRESCENT, ABERDEEN

SECTION 42 VARIATION OF CONDITION -  
SEEK TO VARY CONDITION NO.5 OF  
PLANNING PERMISSION FROM APPLICATION  
P111106 TO INCREASE HOURS OF  
OPERATION ON SUNDAYS FROM 8.30AM TO  
10PM "

For: Mr Graeme Herd

Application Type : Section 42 Variation  
Application Ref. : P140133  
Application Date: 31/01/2014  
Officer: Gavin Clark  
Ward : Hazlehead/Ashley/Queen's Cross(M  
Greig/J Stewart/R Thomson/J Corall)

Advert : Can't notify neighbour(s)  
Advertised on: 12/02/2014  
Committee Date: 24 April 2014  
Community Council : No response  
received



**RECOMMENDATION: Approve Subject to Conditions**

## **DESCRIPTION**

The application site is located on the northern side of Hazlehead Crescent, to the south of Queen's Road and is visible from Queen's Road. The property is surrounded by green space with numerous mature trees close to the property. The property to which this application relates is a standalone, single storey building, with a small area of car parking and grassed area. The site is located close to a main bus route. The surrounding area, particularly to the immediate south, comprises a high density residential area including terraced houses and flatted properties.

## **RELEVANT HISTORY**

- Detailed planning permission (Ref: P111106) was approved by full council in October 2011 for the change of use of the existing police station to form a hot food take-away (fish and chip shop). This application is currently in the process of being implemented and the current application seeks to amend condition 1 of this consent.
- Advertisement Consent (Ref: 130339) was approved in August 2013 for the erection of 1 no. illuminated sign board.
- Detailed Planning Permission (Ref: 130251) was approved in April 2013 for a proposed extension to the front (south elevation), erection of timber fenced bin store (on the western elevation) and small modifications to the fabric of the building, and glazed screens/ windows.

## **PROPOSAL**

The application seeks a variation of planning condition 5 of the original permission, which restricted the opening hours of the approved hot-food takeaway (between the hours of 8:30am and 4pm on a Sunday). This application seeks consent to use the hot food takeaway between the hours of 8:30 and 10pm on a Sunday.

The original planning application (Ref: 111106) sought permission for a change of use of existing police station to hot food takeaway (fish and chip shop).

## **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?140133>

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 Planning Development Management Committee because 17 letters of representation have been received. Accordingly, the application falls out with the scope of the Council's Scheme of Delegation.

## **CONSULTATIONS**

**Roads Projects Team** – no observations

**Environmental Health** – no observations

**Enterprise, Planning & Infrastructure (Flooding)** – no observations

**Community Council** – no response received.

## **REPRESENTATIONS**

17 letters of objection have been received. The objections raised relate to the following matters –

1. Concerns in relation to potential noise impacts as a result of extended opening hours;
2. Concerns in relation to an increase in traffic associated with the hot-food takeaway;
3. Concerns in relation to the planning application process;
4. Concerns in relation to the increase in opening hours;
5. Concerns about the proximity of the chip shop to the local primary school;
6. Concerns in relation to an increase in anti-social behaviour;
7. Concerns about an increase in litter;

The applicant provided a letter in support of the application, details of which are provided in the evaluation section of this report.

## **PLANNING POLICY**

### **Aberdeen Local Development Plan**

*Policy H1: Residential Areas:* within existing residential areas, proposals for non-residential uses will be refused unless they are considered complimentary to the residential use or it can be demonstrated that there would be no conflict with, or any nuisance to, the enjoyment of existing residential amenity.

### **Supplementary Guidance**

Harmony of Uses

## EVALUATION

Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the planning authority in determining the application only to consider the question of the condition(s) subject to which the previous planning permission should be granted. The planning authority has the option to approve the permission subject to new or amended conditions or to approve planning permission unconditionally. Alternatively the planning authority can refuse the application, which would result in the conditions on the original application remaining.

### Applicant's Supporting Statement

The applicants provided an additional supporting statement to allow the premises to operate between the hours of 8:30am and 10pm, stating that the original application satisfied development policy and that the premises could operate without harm to residential amenity. They have also advised that they have complied with all other conditions associated with the original planning application.

The current application has been submitted as a result of customer comment and also to bring the premise in line with the operating hot-food take away. Extending the opening hours on a Sunday would assist with this.

At the time of the original application, the intended operating hours were until 10pm, seven days a week. It was a matter of regret that they were not aware of the intention to include the restriction at the time of consideration of the application.

In conclusion, the supporting statement states *“that there is no evidence to suggest that the opening hours will be likely to cause nuisance to residential amenity”*, which was the reason given for the restriction, and *“there is no justification to continue to impose this onerous restriction on a Sunday opening”*.

### Principle of Development

The only consideration as part of this application is the Variation of Condition 5 to allow hours of opening of the hot-food takeaway to be extended to between the hours of 8:30am and 10pm, in line with the approved hours Monday – Saturday. Environmental Health have no objection to the increase in opening hours.

The proposed use has already been established (although the permission is yet to be implemented). The proposal would see the use extended into early and mid-evening only and it would be sited close to Queen's Road, which is a main thoroughfare into the city, with a high level of traffic and associated noise disturbance. In addition, the proposal would be located more than 25m from the nearest residential property, with a road and open space separating the building. Taking the above into account, it is considered that the extension of hours associated with the hot-food takeaway would have negligible impact on the character of the surrounding area. It is judged that the proposal complies with Policy H1 (Residential Areas) and the associated Supplementary Guidance: Harmony of Uses.

### Issues raised in Letters of Representation

1. In terms of noise, Environmental Health has raised no objection to the increase in opening hours. For the reasons mentioned above it is considered that the proposal would have a minimal impact on the character and amenity of the surrounding area;
2. It is anticipated that any additional traffic generated from extending the opening hours would be relatively low and would have no significant impact on the local road network. Further, it would be reasonable to expect a significant number of customers to come from the local area, and would therefore be less likely to arrive by car. In addition, the Council's Roads Projects Team have raised no objection to the application;
3. The correct procedures, including neighbour notification/ advertisement of the application were undertaken during the determination of the application. All properties (one) within twenty metres of the property received neighbour notification;
4. The increase in opening hours between 4pm and 10:30pm on a Sunday is considered to be acceptable;
5. This issue was addressed during the determination of the original planning application. The proposed variation, which relates solely to extension of the opening hours on a Sunday, would have no impact on the local school or its pupils;
6. This is not a material planning consideration;
7. This would be controlled in accordance with the previous planning consent;

### Conclusion

In conclusion, it is considered that the proposed variation is acceptable, and in accordance with the Aberdeen Local Development Plan and its associated Supplementary Planning Guidance. In this instance there are no material planning considerations which would warrant refusal of planning permission. The proposed variation is therefore recommended for conditional approval.

### **RECOMMENDATION**

**Approve Subject to Conditions**

## **REASONS FOR RECOMMENDATION**

It is considered that the proposal to vary condition no. 5 of planning approval Ref. 111106 to allow the hot-food takeaway to trade between the hours of 8:30am and 10pm on a Sunday would not have a detrimental impact on the character or amenity of the surrounding area, or on the amenity of the adjacent residential properties. The proposal therefore accords with Policy H1 (Residential Areas) of the Aberdeen Local Development Plan and the associated Supplementary Planning Guidance: Harmony of Uses.

## **CONDITIONS**

**it is recommended that approval is granted subject to the following conditions:-**

(1) that the use hereby granted planning permission shall not take place unless any external duct work comprised in the approved scheme for filtering, extracting and dispersing cooking fumes has been finished in a colour to match the exterior of the premises or treated in accordance with such other scheme as may be submitted to and approved in writing by the planning authority - in order to preserve the visual amenity of the neighbourhood.

(2) that the use hereby granted planning permission shall not take place unless provision has been made within the application site for litter disposal and, if appropriate, recycling facilities in accordance with a scheme which has been submitted to and approved in writing by the planning authority - in order to preserve the amenity of the neighbourhood and in the interests of public health.

(3) that the building hereby granted planning permission shall not be used for the sale of hot food unless it has been adapted to provide sound attenuation against internally generated noise. Such a scheme shall ensure that the internal noise level in residential properties above and adjacent to the hot food shop is not greater than 45 dB[A] during the day and 35 dB[A] at night in each habitable room, all in accordance with details submitted to and approved in writing by the planning authority before development commences, unless the planning authority has given prior written approval for a variation - in order to preserve the amenity of the neighbourhood.

(4) that the use hereby granted planning permission shall not take place unless a scheme showing the proposed means of filtering, extracting and dispersing cooking fumes from the premises and a system of regular maintenance has been submitted to and approved in writing by the planning authority and that the said scheme has been implemented in full and is ready for operation - in order to preserve the amenity of the neighbourhood.

(5) that hot food shall not be sold from the premises other than during the hours from 8.30 am until 10.00 pm, unless the planning authority has given prior written approval for a variation - in order to preserve the amenity of the neighbourhood.

(6) that, except as the Planning Authority may otherwise agree in writing, no construction or demolition work shall take place:

- (a) outwith the hours of 7.00 am to 7.00 pm Mondays to Fridays;
- (b) outwith the hours of 9.00 am to 4.00 pm Saturdays; or
- (c) at any time on Sundays,

except (on all days) for works inaudible outwith the application site boundary. [For the avoidance of doubt, this would generally allow internal finishing work, but not the use of machinery] - in the interests of residential amenity

**Dr Margaret Bochel**  
Head of Planning and Sustainable Development