

Planning Development Management Committee

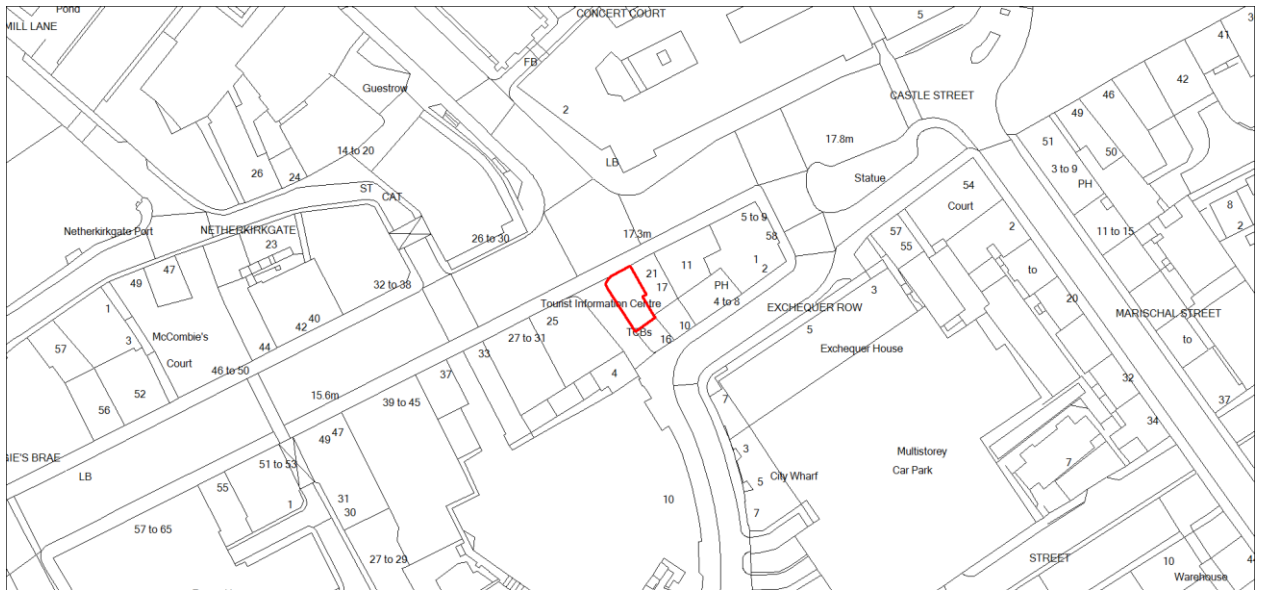
21 UNION STREET, ABERDEEN

CHANGE OF USE FROM CLASS 1 RETAIL TO
HOT FOOD TAKE-AWAY (SUI GENERIS) AND
INSTALLATION OF FLUE

For: Mr Cemal Kuccuk

Application Type : Detailed Planning Permission
Application Ref. : P140273
Application Date: 07/03/2014
Officer: Gavin Clark
Ward : George Street/Harbour (A May/J Morrison/N Morrison)

Advert : Section 34 -Proj. Pub. Concern
Advertised on: 19/03/2014
Committee Date: 19 June 2014
Community Council : No response received



RECOMMENDATION: Refuse

DESCRIPTION

The application site is a vacant class 1 (Shop) unit formerly occupied by Footlocker. The site is located on the eastern end of Union Street, opposite the Town House and situated on the ground floor of a five-storey terrace. The building was designed by the renowned architect Archibald Simpson and constructed over time to create the 'Union Buildings'. Formally Category 'A' listed, the building was re-classified by Historic Scotland in 2007 to Category 'B'. The site is also located within the Union Street Conservation Area.

The unit is located on the western corner of the building, adjoining a class 1 newsagent to the east. The west elevation faces a pedestrian link, which separates Union Street and Exchequer Row. The upper floors of the building are currently being converted into serviced apartments. On the ground floor there are two vacant public houses, "The Athenaeum" facing onto Union Street and the "Henry's Bar" facing Exchequer Row. The basement is currently unoccupied, but is licenced as an entertainment venue / nightclub formerly known as "Snafu".

RELEVANT HISTORY

There is no relevant application history, relating to the unit, however, an application seeking planning permission (Ref: 130946) for the change of use/conversion of the first to fourth floors of the Union Buildings to form 40 serviced apartments, including the replacement of windows and associated dormer windows and rooflights was approved by the Planning Development Management Committee on the 26th September 2013. A further application (Ref: 131611) which sought permission for a further five serviced apartments, was thereafter approved by the Planning Development Management Committee on the 14th January 2014.

PROPOSAL

The application seeks planning permission to allow for a change of use from a shop, which falls within Class 1 of the Town and Country Planning (Use Classes Order) 1997, to a hot-food takeaway, which is considered a sui-generis use not falling within any class within the same order. The proposal also includes the reopening of an existing boarded up window on the western ground floor elevation, to allow for the installation of a ventilation flue outlet. No other external alterations are proposed to the property.

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?ref=140273>

On accepting the disclaimers enter the application reference quoted on the first page of this report.

- Supporting Statement (dated 31st March 2014)

REASON FOR REFERRAL TO COMMITTEE

The application has been referred to the Planning Development Management Committee as 17 timeous letters of representation have been received. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

CONSULTATIONS

Roads Projects Team – no objection in terms of parking provision, however, they have requested the submission of details in relation to cycle storage and insertion of an advisory note to ensure that proper access arrangements for disabled and mobility impaired people are provided. The applicants would also be required to identify how refuse and delivery vehicles access / egress arrangements would be undertaken.

Environmental Health – confirm that the proposed flue / extract system appears to be adequate for the proposed operation. But require additional information in relation to the menu items eg: what types of food are proposed. These matters are discussed in greater detail in the evaluation section of this report.

Enterprise, Planning & Infrastructure (Flooding) – no observations

Community Council – no response received.

REPRESENTATIONS

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

1. The proposal does not comply with Local Plan policy; specifically Policy C2: City Centre Business Zone and Union Street and the associated Supplementary Planning Guidance on Union Street Frontages;
2. The level of Class 1 retail uses would be reduced to less than the 65% minimum level of retail required in Sector H (Market Street to Exchequer Row) as prescribed in the Local Development Plan and Supplementary Guidance;
3. Adverse impact of the development in terms of odours and noise on residential amenity; Further evidence should be submitted regarding the effectiveness of the flue system and the means of collection of waste

- generated by the proposed use; and the proposal would lead to an increase in litter rubbish, and would have an adverse effect on the character and appearance of the surrounding area;
4. Potential parking issues which may be caused by home deliveries or collection of take-away orders
 5. The hot-food take-away is not compatible for the eastern end of Union Street, such uses are more appropriate towards the western end of the street; and
 6. Concerns raised in relation to potential anti-social behaviour associated with the proposed use.

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy: states that 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. SPP also outlines that any change to a listed building should be managed to protect its special interest while enabling it to remain in active use.

Aberdeen Local Development Plan

Policy C2: City Centre Business Zone and Union Street: states that proposals for a change of use from retail (Class 1 of the Use Class Order) to other uses in the City Centre Business Zone will only be acceptable if The proposal is in Union Street it must accord with the Union Street Frontages Supplementary Planning Guidance; and

Policy D1: Architecture and Placemaking: aims to ensure 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 D5: Built Heritage: states that proposals affecting Listed Buildings or Conservation Areas will only be permitted if they comply with Scottish Planning Policy.

Policy T2: Managing the Transport Impact of Development: new developments will need to demonstrate that sufficient measures have been undertaken to minimise the traffic generated. Maximum car parking standards are set out in the Supplementary Planning Guidance on Transport and Accessibility.

Policy R6: Waste Requirements for New Developments: there should be sufficient space for the storage of residual, recyclable and compostable waste.

The proposal should accord with Supplementary Guidance on Waste Management.

Supplementary Guidance

- Transport and Accessibility
- Waste Management Requirements in New Development
- Union Street Frontages
- Harmony of Uses

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 of Development/ Union Street Frontages Supplementary Planning Guidance

Policy C2 (City Centre Business Zones and Union Street) advises that proposals for a change of use from retail to other uses, within the city centre, will only be acceptable, if amongst other things, they accord with the Union Street Frontages Supplementary Planning Guidance.

Union Street Frontages policy has existed since 1977, with the aim of maintaining an appropriate mix and location of shopping, service and commercial leisure functions on Union Street. It does this by applying minimum percentages of ground floor retail frontage that are required in individual sections of Union Street.

Proposals for a change of use away from retail (Class 1) to non-retail uses such as cafes, restaurants, hotels, leisure and financial and professional services are measured against these minimum percentages, as well as other relevant criteria. Proposals which would be considered to enhance the vitality and viability of Union Street, as a key retail location within the city centre, will be supported.

The percentage required to be maintained for each sector varies, depending on the relative desirability of maintaining retail use in that sector or alternatively encouraging a diversity of uses.

The application site is within Sector H (Market Street to Exchequer Row; 3-67 Union Street). The current level of retail frontage required at ground floor level in

this sector is 65% and at present the actual ground floor retail frontage is slightly above this. Whilst there is limited flexibility of up to 1% below the minimum required level, should planning permission be approved, Sector H would see a reduction to 61% Class 1 use; and as a result the proposal fails to accord with the above guidance. There are examples in recent years where applications have been approved contrary to the Union Street Frontages SPG, including the application for HSBC at 95-99 Union Street (Ref: 110114). However, applications such as these have provided significant improvements to the building (such as reuse of a long term vacant upper floors and stone cleaning of the building). It is not considered that sufficient mitigating material circumstances, such as alterations / improvements to the current building could be provided, or justify departing from policy to allow approval of planning permission, contrary to the provisions of the development plan.

As such it is considered that the proposal fails to accord with Policy C2 (City Centre Business Zones and Union Street) in that the proposal does not comply with the Union Street Frontages Supplementary Planning Guidance.

Harmony of Uses – Supplementary Planning Guidance

Proposals for hot-food takeaways require to be given careful consideration as they raise sensitive amenity issues for neighbouring properties and land uses. The guidance advises that, on Union Street, hot food shops at ground floor level will require to comply with Union Street Frontages Guidelines and Policy C2 (City Centre Business Zone and Union Street), before a number of criteria are applied. As mentioned in the paragraphs above, the proposal does not accord with either issue, therefore the principle of a change of use could not be supported and the proposal therefore fails to accord with the Harmony of Uses Supplementary Planning Guidance.

Response to Supporting Statement

The applicants submitted a supporting statement, which advised that the premises have lain vacant since April 2013 and have been marketed for retail use since this time. The statement also provides a background to the site, analysis of planning policy, discussion of amenity issues and a conclusion.

The supporting statement has been assessed in detail, and whilst the applicant have tried to justify that the proposal accords with the development plan, and the proposal has been marketed for a period of more than one year, this does not outweigh the proposals failure to accord with the terms of the ALDP, as the proposal fails to accord with the Union Street Frontages SPG, as discussed earlier in this report.

Traffic impacts, access arrangements and car parking

The Council's Roads Projects Team has made a number of comments in relation to the application. They have confirmed that they are generally content with the application, and should planning permission be approved, conditions in relation to

cycle storage and disability access could be attached. The applicants have indicated space for refuse storage and an additional condition could be applied to ensure this is clarified/ provided. The proposal does not offend the objectives of Policy T2 (Managing the Transport Impact of Development) or the associated Supplementary Planning Guidance (Transport and Accessibility).

Environmental Health Issues/ Installation of Ventilation System

The proposal has been assessed by colleagues in Environmental Health, who advise that the proposed ventilation system appears adequate for the proposed take-away use. An appropriate condition in relation to waste pick up/ refuse storage would be inserted to ensure compliance with Policy R6 (Waste Requirements for New Developments) of the Aberdeen Local Development Plan.

The proposal includes the installation of insulation panels, and a ventilation system which would be lagged, with high performance acoustic insulation. The system would also include pre-carb filters, two carbon filters and a motor. The point of discharge would be via an existing opening (currently a boarded window) on the western elevation, adjacent to the Tourist Information Centre. The system has been assessed by colleagues in Environmental Health, who have advised of a general acceptability of the scheme.

Environmental Health have requested additional information in relation to proposed menu items, this information has not been submitted, and were councillors minded to grant permission, this information should be provided prior to granting planning permission, to ensure that adequate systems are in place prior to occupation of the premises, such information would require to be subject to consultation with Environmental Health.

In terms of the proposed flue, this would be sited in place of an existing boarded window. Were councillors minded to approve the application further consideration would have to be given to these elements of the proposal on receipt of more detailed plans, which would allow the impact on the Listed Building and Conservation Area in greater detail, this element of the proposal would also require an application for listed building consent. These details are not considered to be pertinent at this time due to the recommendation of refusal.

Issues raised in letters of representation

1. For the reasons mentioned earlier in the evaluation section of this report, the proposal is not considered to comply with local planning policy; specifically Policy C2: City Centre Business Zone and Union Street and the associated Supplementary Planning Guidance on Union Street Frontages;
2. The proposal fails to accord with the Union Street Frontages Supplementary Planning Guidance, in that the proposal, if approved, would result in 61% retail use within Sector H, below the minimum 65% threshold;

3. Environmental Health has been consulted on the application and have confirmed that the proposed system appears to be adequate for the proposed type of premises (see comment on menu items above).
4. The proposal has been assessed by colleagues in Roads, and the parking arrangements are considered acceptable. In addition, streets within the vicinity are subject to parking restrictions, and as such it would be difficult for drivers to stop and pick up deliveries.
5. Point noted, each application is assessed on its own individual merits.
6. The potential for an increase in anti-social behaviour is not a material planning consideration.

Conclusion

The proposal fails to accord with planning policy, and in this instance there are no material planning considerations which would warrant approval of planning permission contrary to the provisions of the development plan.

Should Councillor's wish to approve the application, appropriate conditions in relation to window details, cycle parking, disability access, refuse/ delivery details, as wells as conditions in relation to the ventilation system and types of food associated with the proposed use.

RECOMMENDATION

Refuse

REASONS FOR RECOMMENDATION

The proposed use fails to accord with Policy C2 (City Centre Business Zone and Union Street) of the Aberdeen Local Plan, and its associated Supplementary Planning Guidance Notes on Union Street Frontages and Harmony of Uses in that the proposal would see a reduction of class 1 uses in the Union Street area to 61%, below the recommended Sector H percentage of 65%. There are no material considerations, or significant improvements proposed to the shop frontage which would merit departing from policy.

Dr Margaret Bochel
Head of Planning and Sustainable Development