

Planning Development Management Committee

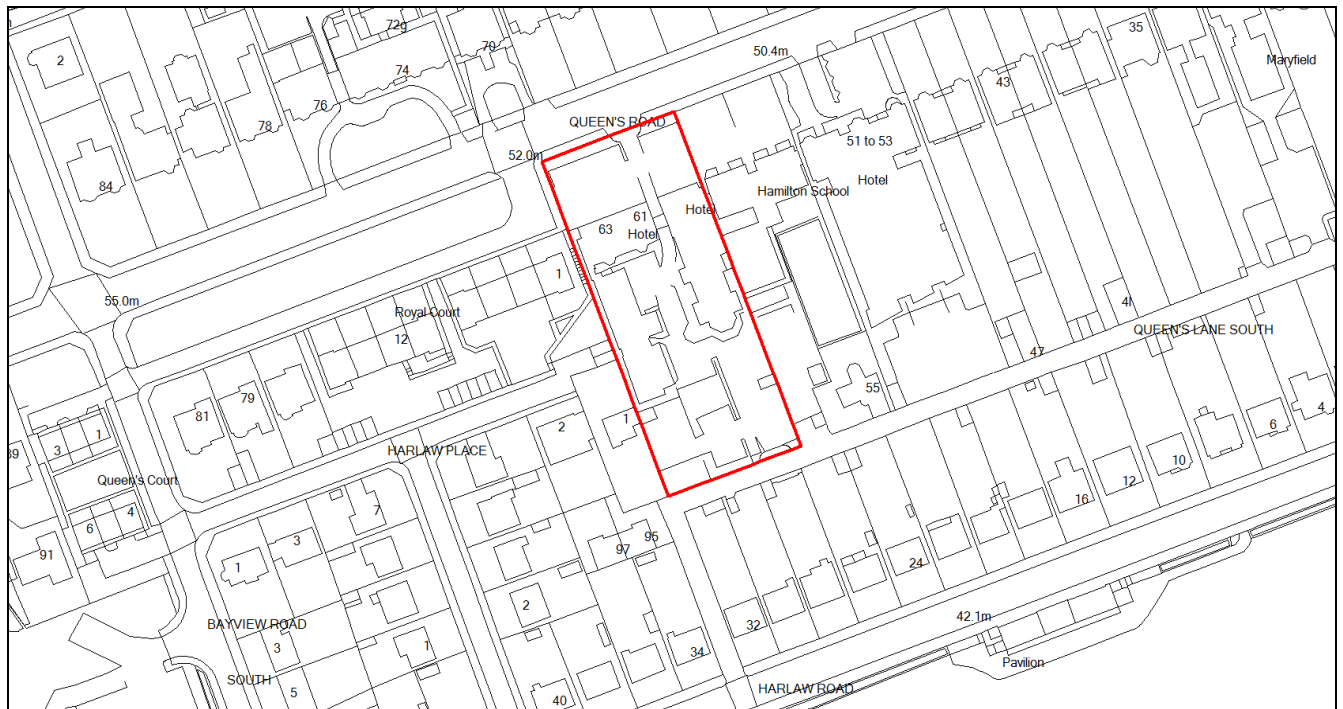
THE CHESTER HOTEL, 59 - 63 QUEENS ROAD, ABERDEEN

FORMATION OF BALCONY FOR EXTERNAL DINING AREA (RETROSPECTIVE)

For: The Chester Hotel Ltd.

Application Type : Detailed Planning Permission
Application Ref. : P140990
Application Date: 16/07/2014
Officer: Matthew Easton
Ward : Hazlehead/Ashley/Queen's Cross(M Greig/J Stewart/R Thomson/J Corall)

Advert : Can't notify neighbour(s)
Advertised on: 06/08/2014
Committee Date:
Community Council : Comments



RECOMMENDATION: Refuse and Enforce

DESCRIPTION

The site is the 'Chester Hotel' (formerly 'Simpsons Hotel Bar and Restaurant') which is located on the south side of Queen's Road, between its junctions with Bayview Road and Queen's Gate.

It comprises three separate 19th century granite villas which date from 1896 and were designed by A. Marshall McKenzie. Due to the difference in levels on the site, these buildings are two storey on the Queen's Road elevation and three storeys to the rear. The front elevations are rough-faced coursed granite ashlar with finely finished dressings.

There are modern 20th century extensions to the rear which have recently been refurbished. A further extension has also recently been completed and the hotel now provides 54 bedrooms, a restaurant, private dining rooms, lounge bar and conference & function facilities.

59 Queen's Road is category C listed (1984) and 61 and 63 Queen's Road are category B listed (1992). The site is within the Conservation Area 4 (Albyn Place/Rubislaw).

There are 21 parking spaces at the front of the premises. Access to the rear car park, where there is a further 26 spaces, is taken underneath the link bridge between the buildings at number 59 and 61. There is an access gate from the rear car park to Queen's Lane South which is restricted to use by service vehicles only.

The trees at the front of the site are protected by Tree Preservation Order 13. There are four large mature trees within the rear car park.

The surrounding area contains a mix of uses. To the immediate west are two storey residential properties at Royal Court, Queen's Road and the dwellinghouse at 1 Harlaw Place. To the north is 64 – 70 Queen's Road which are granite villas currently occupied by offices. To the south across Queen's Lane South is the rear of residential properties on Harlaw Road and to the immediate east is the vacant building formerly occupied by the Hamilton School.

RELEVANT HISTORY

In 2012 and 2013 several planning applications were approved for an extension and refurbishment of the hotel. It reopened in in 2014 as the 'Chester Hotel'.

- Planning permission (P121555) for a 20 bedroom and restaurant extension to the rear of the hotel was approved in February 2013. This approval featured a flat roofed area over part of the ground floor restaurant which would feature roof lights. Between the existing building and restaurant there was to be a gap.

- Planning permission (P130773) for the raising of the roof within the restaurant and other external alterations was approved by delegated powers in September 2013.
- A non-material variation to planning permission P130773 was granted in March 2014 for the area between the existing building and extension to be infilled as part of the development. This variation included the floor surfacing for a terrace over part of the flat roof but not a balustrade.
- Planning permission (P140259) for installation of granite seating and a pergola was approved by the Planning Development Management Committee in July 2014.

PROPOSAL

Detailed planning permission is sought for the installation of a roof terrace on what was to be a flat roof part of the restaurant. This application is retrospective in nature and the roof terrace was completed alongside the other redevelopment works undertaken in 2013/14.

The terrace is situated on the roof of the hotel function rooms and adjacent to the first floor restaurant and private dining rooms. It has a gross area of 154m² and a net area of 137.75m² once the areas covered by roof lights are excluded. There is a 1.1m high glass balustrade around the edges of the terrace which are not adjacent to the walls of the building, as well as around the roof lights. The floor of the terrace is finished in western red cedar boards.

As a result of the slope of the ground at the rear of the hotel, the finished floor level of the terrace varies between being 4.5m to 6.5m above ground level.

It is understood that the terrace would be used by diners, before, during and after dining. It would not however be used as part of the bar or as a standing area for outdoor drinking. A plan has been submitted which shows a seating layout which would accommodate a maximum of 50 diners. Tables would have either four, six or eight seats.

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=140990>. On accepting the disclaimer enter the application reference quoted on the first page of this report.

In support of the application a noise assessment has been submitted.

REASON FOR REFERRAL TO COMMITTEE

The application has been referred to the Planning Development Management Committee for two reasons – (i) the community council for the area has objected; and (ii) more than five objections have been received. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation

CONSULTATIONS

Roads Development Management – No observations.

Environmental Health – The use of the external balcony by customers/diners may be variable and any impact may be greater or less than the results provided. In reference to the Environmental Noise assessment by RMP dated 11 November 2014 and further information submitted there are other factors that may affect any noise impact, specifically in relation to the following:

- Background noise may be lower later in the evening compared to when background noise measurements were taken. RMP advise background may reduce 3 to 4 dB later in the evening.
- A -5dB correction for attenuation by some screening provided by the hotel and glazed balustrade may or may not provide such a level of attenuation. The balustrade is approximately waist height and may not be high enough provide sufficient attenuation even when customers are sitting. Combined with a lower background level in the evening there could be a risk that any noise may have a greater impact.
- Variability of noise created by lots of people talking. There may be peaks and tonal characteristics associated with the noise (for example: laughing, raised speech, noise of cutlery) made that gives rise to a greater noise impact.

Therefore the Environmental Health Service is unable to verify with any certainty what impact, if any, the proposed external dining area may have on the nearest noise sensitive receptors. Whilst noise control may be more of a management issue, the statutory nuisance provisions of the Environmental Protection Act 1990 may not be sufficient to allow the Environmental Health Service to address any noise from customers in the external dining area if any complaints of noise disturbance by residence are verified.

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

Queens Cross and Harlaw Community Council – Object to the application due to problems arising with the close proximity to private housing and from the proposed access from Queen's Lane South -

- A fair level of noise can be generated from activity on elevated balconies and can be carried a considerable distance. Due to the close proximity of rear gardens on Harlaw Road, the noise would cause a nuisance and loss of amenity to residents.

- Problems with the hotel have already been noted including protracted playing of bag-pipes and chanting conga lines at the rear of the hotel.
- Due to the elevation of the balcony, it would overlook the rear gardens of properties on Harlaw Road and result in a loss of privacy for residents.
- Whilst there is parking within the hotel ground there is a concern that over-spill parking will take place in Queen's Lane South.
- The proposed access from Queen's Lane South will inevitably attract pedestrians to the rear of the hotel, yet the lane is unsuitable for this as there are no footpaths.
- The Environmental Health Service propose restricting the use of the balcony to 10:00pm however even if it practical to enforce it would result in unacceptable noise levels for a considerable part of the day.

REPRESENTATIONS

Seven letters of objection were initially received. The objections raised relate to the following matters –

1. The use of the terrace would cause noise pollution and adversely impact upon neighbouring residential properties.
2. There would be no control over the behaviour of guests using the terrace.
3. There would be no control over the type or extent of dining undertaken on the terrace.
4. The unusual height of the terrace, which is level with or higher than many upper storeys of nearby homes, would allow noise to travel further and exacerbate any impact it would have.
5. There is nothing to prevent the area being used all day, everyday, throughout the year with the result being unrelenting noise. The use of heaters and umbrellas would allow use in all weather.
6. The size and location of the terrace results in it being neither private nor discreet – it is open to the neighbourhood.
7. The application is retrospective and this repeated practice by the hotel is not acceptable.
8. Doors to the external area would be left open and allow noise to escape.

On receipt of a noise assessment which was commissioned by the hotel, neighbours were re-notified. Three further representations were submitted from neighbours who had already submitted during the initial notification period and two additional representations were received. In summary, the issues which had not already been raised were –

9. It is unclear as to what the actual intended use of the terrace is.
10. The noise measurements do not appear to have been taken in accordance with Scottish Government guidance and conclusion of the report is unrealistic.

PLANNING POLICY

Aberdeen Local Development Plan (2012)

Policy D1 (Architecture and Place Making) – To ensure high standards of design, new development must be designed with due consideration for its context and make a positive contribution to its setting.

Policy D5 (Built Heritage) – Proposals affecting conservation areas or listed buildings will only be permitted if they comply with Scottish Planning Policy (SPP).

Policy BI3 (West End Office Area) – In this area (shown on the Proposals Map), applications for change of use for office purposes will be given favourable consideration. Applications for change of use of properties to residential use will also be encouraged, subject to a satisfactory residential environment being established and that the continued operation of existing uses is not prejudiced

National Guidance

Planning Advice Note 2/2001 (Planning and Noise) – Provides advice on the role of the planning system in helping to prevent and limit the adverse effects of noise. Information and advice on noise impact assessment methods is provided in the associated Technical Advice Note 'Assessment of Noise'.

Proposed Aberdeen Local Development Plan (2015)

Policy D1 (Quality Placemaking by Design) – All development must ensure high standards of design and have a strong and distinctive sense of place which is a result of context appraisal, detailed planning, quality architecture, craftsmanship and materials. Well considered landscaping and a range of transportation opportunities ensuring connectivity are required to be compatible with the scale and character of the developments.

Policy D4 (Historic Environment) – The Council will protect, preserve and enhance the historic environment in line with Scottish Planning Policy, SHEP, its own Supplementary Guidance and Conservation Area Character Appraisals and Management Plan. It will assess the impact of proposed development and support high quality design that respects the character, appearance and setting of the historic environment and protects the special architectural or historic interest of its listed buildings, conservation areas, archaeology, scheduled monument, historic gardens and designed landscapes.

Policy B3 – West End Office Area – In the West End Office Area (as shown on the Proposals Map) proposals for change of use to office use or the expansion of existing office use will only be acceptable provided;

- a) the size, scale and design of development proposals respect the special historic and architectural character of the area and;
- b) the design meets all of the relevant criteria set out in the Historic Environment TAN, with regards to relationship to the existing building, context and modifications to existing extensions (see also the Design Policies).

New development proposals that do not protect existing residential amenity will be refused. Proposals for change of use to residential use, or any new residential development, will be considered on their merits.

EVALUATION

Principle of Development

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.

A hotel has existed at 59 Queen's Road since at least the 1960's. In the 1990s the hotel expanded into 61 and 63 Queen's Road and it became 'Simpsons Hotel, Bar and Restaurant'. The site is located within the West End office area (Policy B13 – West End Office Area) where offices and business uses are generally supported. Other commercial uses are not explicitly mentioned in the policy but given that the hotel use has been established at the site for many years and the original buildings have already been extensively extended, it is considered that small scale development associated with improving or expanding facilities at the hotel is acceptable in principle. Therefore the matters to be assessed are the scale and design of the terrace and any impact it may have on the amenity of the surrounding area

Design and Appearance

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

In the wider context of the conservation area, this section of Queen's Lane South is characterised by large extensions at the hotel itself, the former Hamilton School and the nearby Malmaison Hotel. Boundary walls and domestic garages typically define the southern side of the lane. The physical changes which have been undertaken to accommodate the roof terrace are relatively minimal, with little impact in terms of visual amenity. Despite being elevated above ground and positioned on the roof of the building, the only feature visible from ground is the

1.1m frameless glass balustrade around the outside of the terrace. Due to its transparent nature and within the context of the hotel and wider area the structure is insignificant – there is no adverse impact upon the visual amenity of the area. It is therefore considered that the character of the conservation area has been maintained in accordance with Policy D1 (Architecture and Place Making) and Policy D5 (Built Heritage).

Noise

A noise assessment carried out by qualified noise consultants has been submitted by the applicant in order to support the application and demonstrate that there would be no adverse impact upon neighbouring properties in terms of noise disturbance. The closest noise sensitive receptor in the area was identified as 1 Harlaw Place, to the immediate west of the hotel. This would be considered to have a high sensitivity to noise due to it being a residential property.

Background noise readings were taken to determine the ambient noise level in the early evening and predictions of noise levels which would be generated by 50 raised voices occurring simultaneously and distributed around the dining area used to determine the probable impact. The figures were also adjusted to take account of distance and other attenuation such as buildings. The conclusion of the report was that there would be no change in the noise experienced by nearby residents because the noise generated by those on the terrace would be 5 decibels (dB) less than ambient noise in the evening. In terms of the Scottish Government's Technical Advice Note: Assessment of Noise ("the TAN"), the magnitude of the impact would be categorised as 'no change'.

A review of the noise assessment by a second qualified noise consultant was commissioned by a neighbour who objects to the proposal. The findings of the review questioned some of the assumptions made in the applicant's assessment and found that the change in noise as a result of the terrace would have a significance categorised as either 'large' or 'very large' in terms of the TAN. The main differences between the two assessments are the number of people which it is considered would be using the terrace at any one time and the assumption that the background noise levels recorded in the early evening would be the same later on, at 23:00 for example.

Environmental Health officers reviewed the applicant's assessment and ultimately raise questions with its findings. Noise generated by those on the terrace may be variable and any impact may be greater or less than the results provided. Environmental Health have concerns that –

- background noise could be lower later in the evening (potentially 3 to 4 dB) than when readings were actually taken;
- a -5dB correction for screening provided by the glazed balustrade may not actually be achieved (the balustrade is only 1.1m in height and even with people sitting may only provide very limited attenuation); and

- that in reality there would be a variability of noise created by those using the terrace, including peaks and tonal characteristics associated with the noise such as laughing, raised speech and noise of cutlery.

Together these issues could result in the noise impact being greater than that suggested by the noise assessment. Therefore the Environmental Health Service is unable to verify with any certainty what impact, if any, the proposed external dining area may have on the nearest noise sensitive receptors. However, both Environmental Health and the applicant's noise consultant suggest that the matter is likely to be a management issue rather than a strictly noise control issue. In other words, the manner in which the terrace is used and how the activity there is managed would have a significant impact on the noise generated from it.

Whilst at ground level, intervening walls and buildings may provide some mitigation against any noise being carried towards neighbouring properties, the terrace is considerably elevated (6.5m from ground level at its highest) to the point where it is at least level with the first floor of nearby residential properties, if not higher. Queen's Lane South, which the hotel backs onto, sees little activity in the evenings and on a calm and still night, it is anticipated that noise could be carried a considerable distance and disturb residents in surrounding properties. Indeed, residents of Harlaw Road, Terrace and Place report existing disturbance from the hotel, which originates from activity at ground level. The elevated position of the terrace makes it all the more likely that noise disturbance will be experienced.

In the case of planning permission being granted, the planning authority would have no control over the actual number of people who could use the terrace or the activity which would take place there. In theory any activity which one would expect to reasonably take place within a hotel, could take place without planning permission, as long as no further physical development was undertaken. For example, activities such as outside drinking and dining, the conducting of weddings or taking of wedding photos, or smoking, could legitimately take place on the terrace, without further planning permission being required.

Whether the proposed terrace could be made acceptable by attaching planning conditions restricting its use has been considered. The conclusion was that any condition would be difficult to make precise enough to ensure it restricted activity to that which would limit noise. A condition restricting the hours of operation to particular times, whilst theoretically enforceable is unlikely to address noise disturbance occurring during the day. Due to its height and exposed nature, the use of the terrace has the potential to create disturbance during the day which would impact on the ability of neighbours to enjoy their gardens peacefully. Even if a condition could be framed in that context, it would in reality be very difficult to monitor and enforce. Ultimately, it is difficult to control the volume at which people communicate, especially in a social setting and even more so where alcohol is typically involved.

Taking into account all the noise related information submitted by the applicant and objectors and the predominately residential character of the area within which it would be situated, the conclusion is that it is likely that neighbours would be affected by noise from the terrace to an unacceptable degree. Due to the unpredictable nature of noise generated by people communicating, it is likely that if planning permission were granted, and complaints about noise were subsequently received and verified, the statutory nuisance provisions of the Environmental Protection Act 1990 may not be sufficient to allow the Environmental Health Service to address any noise from customers in the external dining area.

Other Matters Raised in Representations

- As noted in representations (issue 7), the development for which approval is sought is already in place and the application has been made retrospectively. After a previous application (P140259) for external works at the hotel was also made retrospectively, planning officers wrote to the applicant in August 2014 and made clear that the Planning Development Committee were dissatisfied that the structures had been constructed prior to planning permission being granted. Applications which are retrospective in nature create public doubt with the integrity of the planning process and should permission not be forthcoming, can ultimately result in the Council taking enforcement action and completed works being removed.
- In relation to issue 8, the doors to the external area have planning consent and the planning authority does not have control over whether they are open or not.

All other matters have been addressed in the relevant sections of the report.

Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved at the meeting of the Communities, Housing and Infrastructure Committee of 28 October 2014. It constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to public consultation through the Main Issues Report; and
- the level of objection raised in relation these matters as part of the Main Issues Report; and
- the relevance of these matters to the application under consideration

The foregoing can only be assessed on a case by case basis. In relation to this particular application the relevant policies reiterate the current policies with no substantive changes other than in Policy B3 (West End Office Area) which places more emphasis on maintaining existing residential amenity than the current policy.

Conclusion

Small scale development associated with improving or expanding facilities at the hotel is acceptable in principle in the context of Policy BI3 (West End Office Area). The physical changes which have been undertaken to accommodate the roof terrace are relatively minimal, with little impact in terms of visual amenity, it is therefore considered that the character of the conservation area has been maintained in accordance with Policy D1 (Architecture and Place Making) and Policy D5 (Built Heritage).

Any noise generated by the use of the terrace is likely to be a management issue rather than a strictly noise control issue. In other words, the manner in which the terrace is used and how the activity there is managed would have a significant impact on the noise generated from it.

The conclusion in terms of the potential for neighbours to be affected by noise is that due to the unpredictable nature of how people communicate in a social setting, it would be difficult to control any noise generated. This, in combination with the elevated and open nature of the terrace, it is likely to result in residential properties within the vicinity of the hotel being adversely affected by noise and activity on the terrace to an unacceptable degree. Therefore the application is recommended for refusal.

Enforcement

As already noted, the development for which approval is sought has already been undertaken and the terrace is in place and therefore constitutes a breach of planning control under section 123(1)(a) of the Town and Country Planning (Scotland) Act 1997.

Should the Committee resolve to refuse planning permission, authorisation is sought to initiate enforcement action to remedy the breach. An enforcement notice would be served on the hotel requiring action to be undertaken to remove the terrace. This is likely to involve the removal of the glass balustrade so that the space would fail to comply with building standards regulations if it were to be used as a terrace. It is not intended to require the removal of the terrace flooring because it is not visible from ground level and the removal of the balustrade alone should result in the terrace being unusable from a safety perspective.

RECOMMENDATION

Refuse and Enforce

REASONS FOR RECOMMENDATION

Due to the unpredictable nature of how people communicate in a social setting, it would be difficult to control any noise generated by those using the terrace. This,

in combination with the elevated and open nature of the terrace, it is likely to result in residential properties within the vicinity of the hotel (specifically but not limited to those located on Harlaw Road, Queen's Lane South, Harlaw Place and Royal Court, Queen's Road) being adversely affected by noise and activity on the terrace to an unacceptable degree. The planning authority does not consider that sufficient control could be imposed by planning conditions to mitigate this impact to an acceptable degree.

Dr Margaret Bochel

Head of Planning and Sustainable Development.