

Planning Development Management Committee

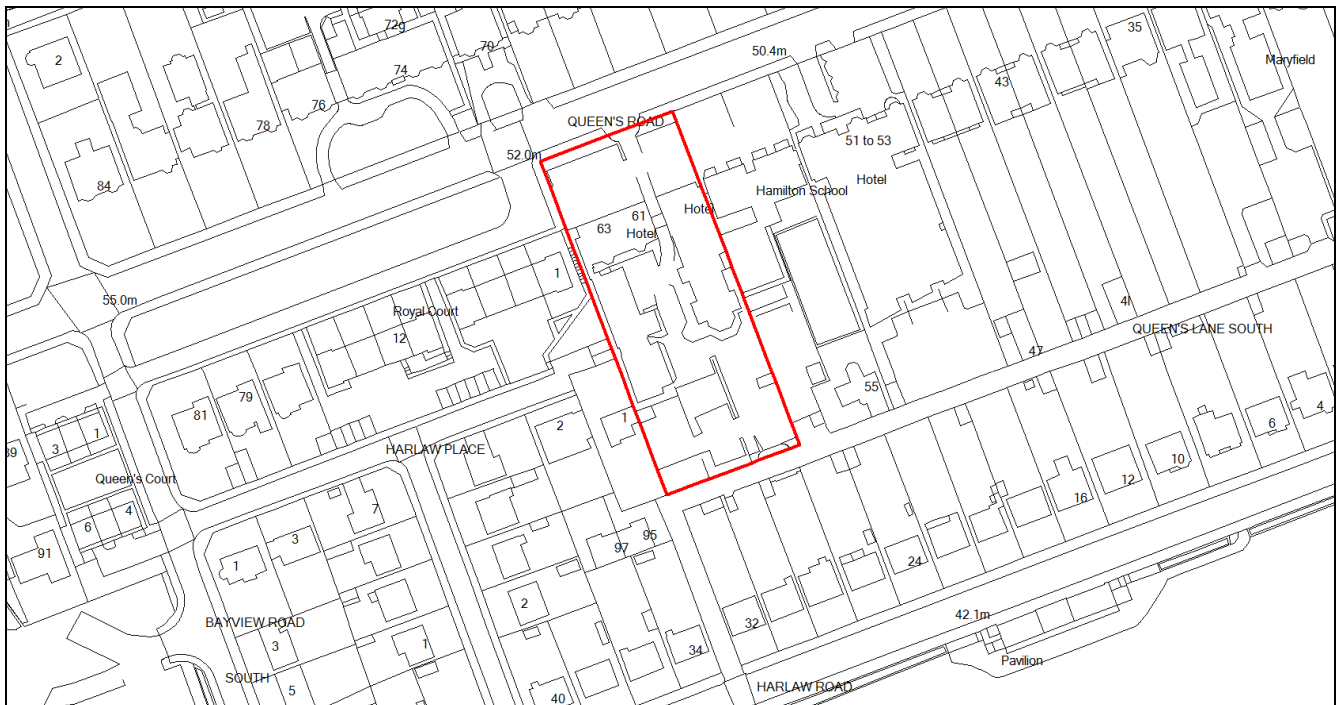
59-63 QUEEN'S ROAD, ABERDEEN

RETROSPECTIVE PLANNING PERMISSION
FOR (B) GLASS BALUSTRADE AT REAR OF
CHESTER HOTEL

For: The Chester Hotel Ltd

Application Type : Detailed Planning Permission
Application Ref. : P150765
Application Date: 12/05/2015
Officer: Matthew Easton
Ward : Hazlehead/Ashley/Queen's Cross(M
Greig/J Stewart/R Thomson/J Corall)

Advert :
Advertised on:
Committee Date: 18th August 2015
Community Council : Comments



RECOMMENDATION:

Approve Unconditionally

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 for up to 300 guests.

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

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, across Queen's Road is 64 – 70 Queen's Road which are granite villas currently used as 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 now vacant former Hamilton School.

The specific area which this application relates to is the roof terrace at the southern end of restaurant and function suite block, which extends to some 42.3m². The application site does not include the wider terrace area on the west side of this block. Heavy planters currently separate the area subject of the application from the wider terrace.

RELEVANT HISTORY

- Detailed planning permission (P121555) for a new block featuring 20 bedrooms and restaurant extension was approved by delegated powers in February 2013. Between the existing building and the new block was a gap.
- Detailed planning permission (P130773) for the raising of the existing restaurant roof, external alterations and a new stairwell were approved in September 2013. Between the building and new block was a gap which now included a spiral stair to be used as a fire escape.
- A non-material variation was granted under section 64 of the 1997 act in March 2014. The variation allowed the infilling of the gap between the new block and original building and makes mention of the roof being surfaced with a material for an 'external balcony'.

- A retrospective application for detailed planning permission (P140990) was submitted to the planning authority in July 2014 for formation of an external terrace area (including both the area subject of this application and the wider terrace). The application was to be submitted to the March 2015 Planning Development Management Committee meeting and was recommended for refusal on the basis that 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, was likely to result in residential properties within the vicinity being adversely affected by noise and activity on the terrace to an unacceptable degree.

The application however was withdrawn prior to the committee meeting and therefore no decision was made.

- An enforcement notice was served on 23rd April 2015 requiring the hotel to cease use of the external terrace (including both the area subject of this application and the wider terrace) for all commercial activities and uses including but not limited to dining, drinking, entertainment and charitable events. The notice also required that within six months the terrace was restored to its original condition unless planning consent had been received.

The notice was due to take effect on 29th May 2015 however it was withdrawn on 25th May 2015 after receipt of the application for certificate of lawfulness noted below.

- An application for certificate of lawfulness (P150763) was issued under delegated powers on 1st July 2015. The certificate confirms that the use of the external terrace to the south of the private dining room (the area which the balustrade subject of this current application would enclose), can be used for dining and hospitality as part of the ancillary use of the hotel. This was on the basis that despite that the drawings approved for the non-material variation in March 2014 not being entirely clear, that when the various plans were considered together, on the balance of probability the applicant's intention was to form a roof terrace at the location shown on the plan submitted. Therefore, with the applicant having the option of appealing a refusal of the application, the planning authority were in the position whereby the only reasonable option was to issue the certificate.

It should be noted that the certificate does not apply to the wider area of terrace on the west side of the first floor dining area, which remains unauthorised.

PROPOSAL

Detailed planning permission is sought for the erection of a 1.1m high glass balustrade around the roof terrace situated at the southern end of the restaurant and function suite block. The balustrade would extend across the terrace for

3.7m from the gable of the building to the edge of the terrace. This particular area is currently occupied by heavy planters which separate the area subject of the application from the wider terrace. The remainder of the balustrade is already in place and extends some 9m along the edge of the terrace between it and the roof of the most recent extension to the hotel. The area which would be enclosed measures approximately 9.0m x 4.7m and extends to some 42.3m².

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=150765>. 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 Planning Development Management Committee for two reasons (i) Queen's Cross and Harlaw Community Council have 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 – No observations.

Communities, Housing and Infrastructure (Flooding) – No observations.

Queens Cross and Harlaw Community Council –

- The Community Council strongly object to this application to allow an external terrace to be used for any purpose. The hotel has shown on several occasions that they have no interest in, or take heed of the fact that their hotel is situated in a quiet residential area. Neighbours have already been subjected to the noise emanating for this hotel not only from the use of this balcony they retrospectively want to utilise lawfully but also the larger balcony (see 150764) which they intermittently retrospectively apply for permission to use then withdrawn the application (twice!).
- The applicant also uses this confusing tactics of building facilities (such as an external Pergola), then using these facilities (noisily) and then retrospectively apply for permission.
- Having appointed an Events Manager this Hotel is obviously pushing as hard as possible to get as many expansions to the Hotels area and facilities as possible and more frequently than not go ahead with the

expansion and then apply for permission. The neighbours have for example been subjected to a fire work display (the hotel did inform the neighbours previously this time), but all houses in the area were very surprised at the very loud explosions which frightened pets in a large surrounding area.

- Neighbours are frequently subjected to late night noise from clients who have been drinking and celebrating. Also the Hotel was also allowed permission to play music e.g. bagpipes outside but the Council limited the hours this could be done. Unfortunately this does not take account of the long practice time a piper will use much to the disappointment of neighbours trying to enjoy their own garden areas. Bagpipes can be very noisy.
- It is understood that although Chester Hotel has withdrawn planning application 150764 for the larger balcony area, some discussions are going on to finally decide what, if any, balustrade should surround the area that was subject to a Council enforcement order. We would strongly suggest that no edging of any sort is allowed round this roof area as all that will happen is that the Chester Hotel will (as usual) take advantage of the area and neighbours will find clients from the hotel will use it as an area they can drink and make noise, as they have in the past.
- The Community Council has advised neighbours to keep a log of any noisy events and especially the use of the larger balcony area for any drinking as it is understood this would be breaking the law.

REPRESENTATIONS

Ten letters of representation have been received, nine objecting to the proposal and one taking a neutral position. The representations are from six different households in the immediate surrounding area. The following matters are raised -

1. Granting consent for this balustrade would eventually result in consent being granted for the large balustrade.
2. The use of the roof terrace which the balustrade is relevant to the determination of the application.
3. Why has the work been completed without planning permission? Retrospective approval of the application would encourage further unauthorised work in the future.
4. Property values may be affected by the development.
5. There was a failure to carry out neighbour notification and as a result some neighbours were unaware of the application.

6. The proposal would result in unacceptable noise from those using the terrace within a residential area.
7. The terrace would reduce privacy within nearby residential properties.
8. Since the conversion of the hotel has taken place, there has been no reason to complain about noise or invasion of privacy. It is also hoped that normal noise levels experienced by living close to the city centre are not exacerbated by this application.

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

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 BI3 – West End Office Area) as zoned by the Aberdeen Local Development Plan, where offices and business uses are generally supported. Other commercial uses are not explicitly mentioned in Policy BI3 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.

The particular area which the balustrade encloses benefits from a certificate of lawfulness (P140990) which confirms that its use as an external terrace is lawful. Irrespective of whether a balustrade or any other form of enclosure is present, this lawful use exists and would allow any activity which one would expect to reasonably take place within a hotel, to take place. For example, activities such as outside drinking, dining or smoking, could legitimately take place on the terrace. Therefore, the only matter which can be taken into account is the balustrade as a physical structure.

In view of the lawful use of this particular area, it is reasonable for that area to be enclosed by some means in order to provide a safe environment for those using the terrace. In addition, the new section of balustrade which is not already present would contain those on the terrace and prevent them from straying onto the wider terrace which is unauthorised.

The concerns of residents with potential noise and privacy are noted, however due to the use of the terrace being lawful they cannot be taken into account in determining this application (*issues 2 and 6 in representations*). Nonetheless,

being mindful of the concerns over potential noise and accepting that it is not a material planning consideration in determining this application, planning officers asked the hotel owner to investigate whether the balustrade could be increased in height to 2m so that it would better contain any noise which does potentially occur. Whilst receptive to the idea, the hotel owner has advised that for structural reasons it was determined that without significant alterations to that part of the building to introduce a stronger structure there would not be enough strength to tolerate the significant wind loads being imposed on a 2m high balustrade. Therefore the hotel has chosen to proceed with the 1.1m high balustrade, which is unlikely to contain any noise which does potentially occur. Notwithstanding, the area in question is substantially smaller than the wider terrace area which was previously recommended for refusal. As a result it would be capable of accommodating significantly less people than the wider terrace would and therefore the potential for disturbance is less. Furthermore the area is enclosed on the north side by the gable of the first floor dining area which the terrace is accessed from, the east side by a stairwell block and to a certain extent to the south by the roof of the most recent hotel extension. Therefore it is relatively enclosed compared to the wider terrace which it is understood has been used intermittently over the past year.

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.

Whilst ideally the roof would not be festooned with clutter, as indicated earlier, it is not unreasonable for a balustrade to be provided in order to enclose the terrace. The roof of the hotel block to the south hides the vast majority of the balustrade. The section that is visible from the surroundings is, due to its transparent nature and position within the context of the hotel and wider area, an insignificant feature. There would be no adverse impact upon the visual amenity of the area and the character of the conservation area would be maintained in accordance with Policy D1 (Architecture and Place Making) and Policy D5 (Built Heritage).

Other Matters Raised in Representations

- The Community Council raise various concerns with the management of the hotel and manner in which development at the hotel has been undertaken. Both these matters are largely outwith the control of the planning authority. The management of the hotel is not a planning matter unless planning control is breached in which case any issues raised would be investigated. Whilst perhaps frustrating, an applicant is entitled to submit a planning application and later withdraw it should they wish.

- Concern is raised that the application has been submitted retrospectively (*issue 1 and 3 in representations and Community Council representation*) 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. Therefore, whilst there is the ability for an application for planning permission to be made retrospectively for works constructed or carried out before the date of an application, this is a route which planning officers would strongly discourage. Applications made retrospectively for development are treated in the same manner as those made normally. The recommendation of approval for this application has no bearing on any future considerations in respect to the wider terrace area, which is currently subject of an enforcement instruction from Committee.
- The implications on the value of surrounding properties is a common matter raised with proposed developments however it is not a material planning consideration (*issue 4 in representations*).
- There was an issue with the printing of the initial neighbour notification notices and therefore they were re-issued the next day, checked before they were sent out and found to have printed normally (*issue 5 in representations*). None have been returned so if not received it can only be assumed they were delivered incorrectly by the Royal Mail. Representations on the application from other neighbours were received which would seem to suggest that the issue was isolated to particular notices and one other unrelated application which has been identified.

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 to 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 proposed policies reiterate the current policies.

RECOMMENDATION

Approve Unconditionally

REASONS FOR RECOMMENDATION

The particular area which the balustrade encloses benefits from a certificate of lawfulness (P140990) which confirms that its use as an external terrace is lawful. Irrespective of whether a balustrade or any other form of enclosure is present, this lawful use exists and would allow any activity which one would expect to reasonably take place within a hotel, to take place. It is reasonable for that area to be enclosed by some means in order to provide a safe environment for those using the terrace. In addition, the new section of balustrade which is not already present would contain those on the terrace and prevent them from straying onto the wider terrace which is unauthorised.

The section that is visible from the surroundings is, due to its transparent nature and position within the context of the hotel and wider area, an insignificant feature. There would be no adverse impact upon the visual amenity of the area and the character of the conservation area would be maintained in accordance with Policy D1 (Architecture and Place Making) and Policy D5 (Built Heritage).