

Planning Development Management Committee

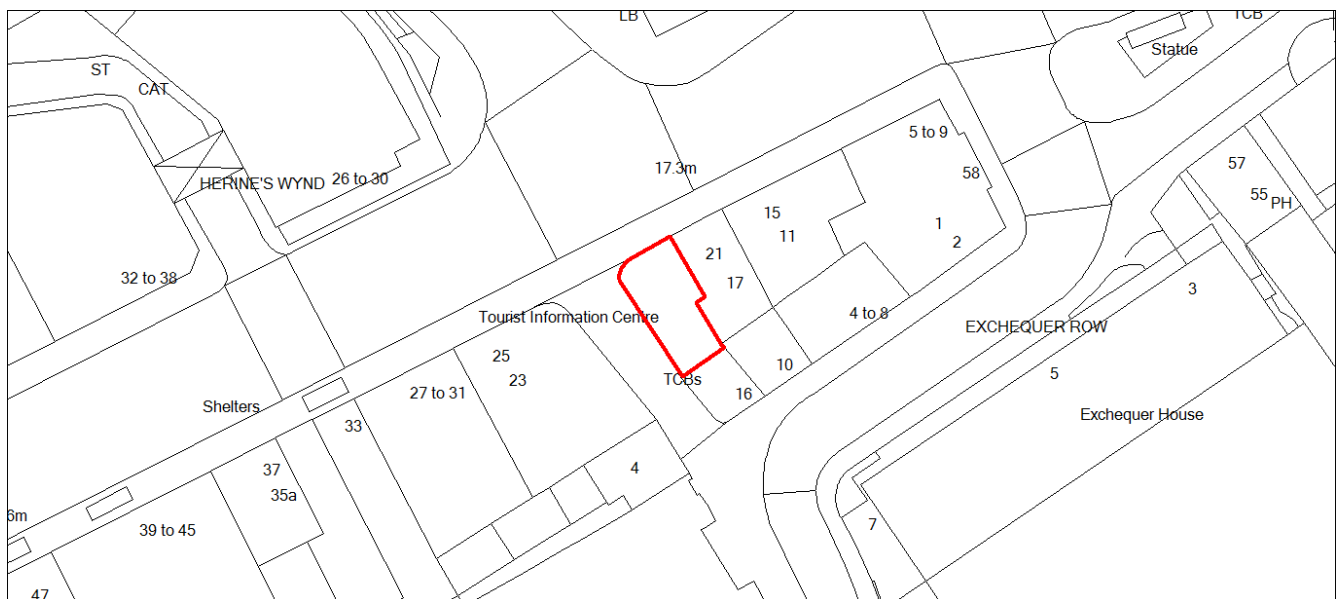
21 UNION STREET, ABERDEEN

CHANGE OF USE FROM VACANT SHOP TO
MIXED USE OF DELICATESSEN AND CAFE
AND UNBLOCK TWO BOARDED UP
WINDOWS/DOOR

For: Mr A Doganay

Application Type : Detailed Planning Permission
Application Ref. : P151160
Application Date: 14/07/2015
Officer: Hannah Readman
Ward : George Street/Harbour (A May/J
Morrison/N Morrison)

Advert : Section 60/65 - Dev aff
LB/CA
Advertised on: 29/07/2015
Committee Date: 29/10/2015
Community Council : No response
received



RECOMMENDATION:

Approve subject to conditions

DESCRIPTION

The application site is a vacant class 1 (retail) unit formerly occupied by Foot Factory. The site is located towards 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'. It is a Category 'B' listed building and 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 occupied by serviced apartments. On the ground floor there are two vacant public houses, "The Athenaeum" facing onto Union Street and "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

P140273 – Detailed planning permission for a change of use from class 1 (retail) to sui generis (hot food takeaway) and the installation of a flue was refused the benefit of planning permission at committee on the 19th June 2014 for the following reason: the proposal failed to accord with the relevant planning policies and there were no material planning considerations which would warrant approval of planning permission contrary to the provisions of the development plan.

PROPOSAL

Detailed planning permission is sought for a change of use from class 1 (retail) to a mixed use premises comprising class 1 (delicatessen) and class 3 (café).

External alterations to form a new shop front are also included as part of this application including:

- Removal of cast concrete arches and existing shop front;
- Installation of a new shop front comprising curved timber fascia, tiled stall riser, granite pilasters, new glazed windows with timber frame and transoms and timber framed & glazed entrance door;
- Unblocking of two arches on Shiprow elevation; subsequent installation of glazed panel and granite infill to one and fielded timber panelled door to the other with traditional security gates;
- Repair works to damaged stringcourse on Shiprow elevation.

A separate Listed Building Consent and Advertisement Consent application are to be submitted should this application be approved at committee.

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=151160>

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

- Planning Statement, 2nd July 2015

REASON FOR REFERRAL TO COMMITTEE

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

CONSULTATIONS

Roads Development Management – Comments, no objection;

Environmental Health – Requested some additional information and the application of a condition; no objection;

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. This application is another way to disguise a kebab shop;
2. No details for extraction;
3. It would reduce the amount of class 1 (retail) use within that stretch of Union Street;
4. Potential for smells affecting serviced apartments above;
5. Potential for loitering youths;
6. Littering;
7. Late night disturbance;
8. Restaurants on Union Street are ruining the high street and making the City look tacky;
9. Negative impact on tourism;
10. Negative impact upon existing businesses that serve refreshments in the area;
11. Impact on historical building.

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy: Paragraph 60: advises that planning for town centres should be flexible and proactive, enabling a wide range of uses which bring people into town centres. The planning system should: apply a town centre first policy when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities; encourage a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening; ensure development plans, decision-making and monitoring support successful town centres; and consider opportunities for promoting residential use within town centres where this fits with local need and demand.

Paragraph 70: states that new development in town centres should contribute to providing a range of uses and should be of a scale which is appropriate to that centre. The impact of new development on the character and amenity of town centres, local centres and high streets will be a material consideration in decision making. The aim is to recognise and prioritise the importance town centres and encourage a mix of developments which support the vibrancy, vitality and viability. The aim should also be taken into account in decisions concerning proposals to expand or change the use of existing development.

Paragraph 94: development should assist in meeting the needs and opportunities of indigenous firms and inward investors, recognising the potential of key sectors for Scotland with particular opportunities for growth including tourism and the food and drink sector.

Aberdeen Local Development Plan

Policy C1: City Centre Development – Regional Centre: states that development within the City Centre must contribute towards the delivery of the vision for the City Centre as a major regional centre. As such the City Centre is the preferred location for retail, commercial and leisure development serving a city wide or regional market. Proposals shall be located in accordance with the sequential approach referred to in the Retailing section of the Development Plan, and in the Supplementary Guidance: Hierarchy of Retail Centres.

Policy C2: City Centre Business Zone and Union Street – the preferred location for major retail development. Proposals for change of use from retail (class 1 of the Use Classes Order) to other uses will only be acceptable if it accords with the Union Street Frontages Supplementary Guideline and if the new use contributes to enhancement of the city centre in terms of vitality; active street front and no conflict with the amenity of the area.

Policy T2 Managing the Transport Impact of Development – new developments will need to demonstrate that sufficient measures have been taken to minimise traffic generated.

Policy D1 Architecture and Placemaking – ensures that high standards of design is 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 – proposals affecting Conservation Areas or Listed Buildings will only be permitted if they comply with Scottish Planning Policy.

Policy RT1 Sequential Approach and Retail Impact – all development should be located in accordance with the hierarchy and sequential approach as set out in the policy and detailed in Supplementary Guidance: Hierarchy of Retail Centres. In all cases proposals shall not detract significantly from the vitality or viability of any first to fourth tier retail location, and shall accord with all other relevant policies.

Proposed Aberdeen Local Development Plan

The following policies substantively reiterate policies in the adopted local development plan as summarised above:

D1 – Quality Placemaking by Design (D1:Architecture and Placemaking)

D5 – Our Granite Heritage (D5: Built Heritage)

NC1 – City Centre Development – Regional Centre (Policy C1: City Centre Development – Regional Centre)

NC2 – City Centre Retail Core and Union Street (Policy C2: City Centre Business Zone and Union Street)

NC4 – Sequential Approach and Impact (Policy RT1: Sequential Approach and Retail Impact)

T2 Managing the Transport Impact of Development (Policy T2: Managing the Transport Impact of Development)

Supplementary Guidance

- Union Street Frontages
- Hierarchy of Centres
- Shop Front and Advertisement Design Guide
- Harmony of use

Other Material Considerations

- Aberdeen City Centre Masterplan Report

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

The property at 21 Union Street falls within the city centre and boasts a prominent corner location. Planning Policies C1 and C2 state that development within the city centre must contribute towards ensuring the city maintains its status as a major regional centre. Policy C2 states that proposals for change of use from retail (class 1 of the Use Classes Order) to other uses will only be acceptable if it accords with the Union Street Frontages Supplementary Guidance.

The Union Street Frontages Supplementary Guidance groups the street into sectors. The site falls within Sector H. In each sector the guidelines specify the minimum percentage of retail floor space required, which is measured in linear metres. Sector H requires 65% of all its units to be in retail use. The current retail use stands at 64.5%.

The approval of the current application would result in a further reduction in retail within this sector to 61% which is 4% below the stipulated threshold. It is therefore considered that the proposal is contrary to the Council's Supplementary Planning Guidance – Union Street Frontages and Policy C2 of the Aberdeen Local Development Plan. Policy RT1 advocates a sequential approach to the location of development and notes that in all cases proposals shall not detract significantly from the vitality and viability of any first to fourth tier retail location, and shall accord with all other relevant planning policies.

Although not of direct relevance to this application which is located in the City Centre, the criteria of Policy RT3 (Town, District and Neighbourhood Centres) assists in assessing proposals for changes of use away from retail. The criteria state several points that, if met, can effectively mitigate the loss of a retail use. Therefore, an alternative use to retail may be considered appropriate where:

- i) The alternative use makes a positive contribution to vitality and viability;
- ii) The alternative use will not undermine the principal retail function;
- iii) The applicant can demonstrate a lack of demand for continued retail use of the premises (marketing since the retail unit became vacant) (minimum of 6 months marketing etc.);
- iv) The proposed use caters for a local need; and
- v) The proposed use retains or creates an attractive shop frontage.

In relation to point (i) the proposal for a mixed class 1 and class 3 use would occupy a longstanding vacant unit and provide a destination to visit and spend time at rather than simply walk on by. This level of increased activity would likely have positive impact on the vitality and viability of Union Street.

In relation to point (ii) it is argued that the principal retail function of Union Street would not be undermined by the approval of this application. There would still be a sufficient number of retail units in the surrounding area and the property is located close to the St Nicholas Centre, one of the main shopping centres in Aberdeen. Furthermore, it is considered that the introduction of a class 3 element to this location could support the principle retail function by offering refreshments to shoppers and those employed within the retail core. On this basis it is considered that the proposal would not undermine the overall main retail function of Union Street.

In relation to point (iii) the agent has indicated that the property was occupied by a footwear retailer until approximately April 2013 at which point it became vacant. Photographic evidence as well as information from the agent indicates that the property has been marketed for at least 18 months with little interest in continuation of the retail use. It is therefore considered that the property has been

marketed for a sufficient period of time, with little or no interest in continuing the retail use of the property.

In relation to point (iv) the proposed use would cater for a local need, providing a location for people to purchase local and continental delicacies to take away and a dine in opportunity to the local community, shoppers and visitors. Although the sale of goods cannot lawfully be restricted to specific types, the proposed occupier has stated that they hope to serve a combination of French continental and Scottish food ranging from pastries, pre-cooked quiches and a selection of cold meats, cheeses and pre-cooked sausages to some soups prepared in an on-site urn. This use would be welcomed as it would expand choice and opportunities for purchasing and dining at this location.

In relation to point (v) the application is supported by a significant positive change to the building via the installation of a replacement shop frontage and repairs to a listed building, which accords with the Supplementary Planning Guidance: Shop Front and Advertisement Design. The changes would positively impact on the character and appearance of the listed building and Union Street conservation area, and would create an attractive unit frontage facing onto Union Street and Shiprow that is currently lacking. The existing shop front is considered to be an eyesore in this prominent location; the removal of it and subsequent improved replacement is therefore welcomed and an approach that is encouraged through the recently adopted City Centre Masterplan.

On the basis of the above it is considered that the proposal accords with the general principles of Policies C1 and RT1 of the Adopted Local Development Plan and the Hierarchy of Centres Supplementary Guidance (SG) document.

Additional material planning considerations in the determination of this application include the fact that the removal of the unit from solely class 1 use would not greatly impair the continuous retail frontage or have a major adverse impact to the retail core and that the proposal would see significant positive alterations to a category 'B' listed building, which lies within the Union Street Conservation Area. The continued use of the building would ensure its future, preventing it from remaining vacant and potentially falling into longstanding disuse and disrepair.

Paragraph 60 of SPP advises that *"town centres should be flexible and proactive, enabling a wide range of uses which bring people into town centres"* and page 40 of the Aberdeen City Centre Masterplan report highlights Union Street as an opportunity to create a stronger complementary node that helps to piece together a high quality retail circuit through an enhanced experience in terms of diversity of retail and complementary uses e.g. food and drink. The proposal would bring a mixed class 1 and class 3 use into the area, which would also be seen to encourage more people onto Union Street to enjoy these premises which would be open 7 days a week. The proposed use would have a neutral impact on the character and appearance of the centre. SPP notes that viability and vitality are all material considerations in achieving healthy town centres. It is considered that

the proposal would meet and contribute to these objectives that are reflected within the Local Development Plan.

In conclusion, whilst the proposal fails to accord with Policy C2 and the associated Supplementary Guidance: Union Street Frontages, there are material planning considerations which are sufficiently compelling and have weight attributed to those concerns to justify an exception in order to support an approval of planning permission. It is considered that the proposal accords with the general principles of Policies C1 and RT1 and the Hierarchy of Centres SG. Furthermore, the proposal includes the installation of a new shop front and building repairs that would significantly enhance the character of the Conservation Area, improve the condition of the listed building and heighten the visual amenity of the city centre. It is this design approach as discussed below that outweighs the concerns raised and tips the balance in favour of an application for approval. The change of use alone would not be considered acceptable and therefore a condition has been attached to ensure that the proposed shop front is delivered prior to occupation of the unit as a mixed class 1 and class 3 use.

Design:

Policy D1 (Architecture and Placemaking) of the ALDP ensures that high standards of design are achieved. It is noted that the building is category "B" listed and lies within the Union Street Conservation Area. The proposal includes a number of alterations to the shop front including the removal of the existing cast concrete arches, new glazing and the exposure of two windows on the Shiprow elevation that are currently boarded over or blocked up and the installation of a secondary access point in one of the blocked up arches.

The proposed shop front has been subject to negotiation with the Masterplanning, Design and Conservation Team since the submission of the application. The proposal includes the installation of a replacement timber shop front, with a painted curved timber fascia board and new doors and glazing. The alterations are considered to enhance the appearance of the listed building and show a marked improvement on the shop front currently in situ. The alterations would also have a positive impact on the character and appearance of the Conservation Area, listed building and would enhance the visual amenity of the wider area. The proposal is therefore considered to be acceptable and in accordance with Scottish Planning Policy (SPP) and Policy D5 (Built Heritage). The alterations are also considered to be fully supported by the Supplementary Guidance: Shop Fronts and Advertisement Design Guide. The applicant is aware of the requirement for an application for listed building consent for the proposed works which is to be submitted should this application be supported by Committee Members, with an application for advertisement consent also required once the name of the business is finalised.

Road Safety:

Policy T2 (Managing the Transport Impact of Development) states that new development will need to demonstrate that sufficient measures have been taken to minimise traffic generated. The proposal is located on Union Street, close to a number of local transport links, in addition the Roads Projects Team have raised no concerns with regards to the proposal. The proposal therefore does not offend the general principles of the above policy.

Harmony of Uses:

The Council's Supplementary Guidance: Harmony of Uses document favours the retention and development of commercial uses within the City Centre which includes the provision of restaurants and similar uses and is also mindful of any impact upon residential amenity. Factors which could adversely affect amenity include noise, smells and litter. The application site forms part of the 'Union Building' which has other class 1 and class 3 premises occupying ground floor units and serviced apartments occupying the upper floors. Therefore, the introduction of a mixed class 1 and class 3 use would be in keeping with the existing uses and associated level of activity at ground floor level. The serviced apartments above were opened in 2014, as a complementary use to the City Centre area. The existing level of activity associated with Union Street is unlikely to noticeably change as a result of this proposal. The unit would include seating for approximately 16 covers at any one time between the proposed opening hours of 8am and 11pm. As only cold food, soup and hot drinks are to be served, there would be no anticipated issues relating to smells; a condition has been added to this application to control cooking operations and the serving of hot food. Refuse storage would be located alongside existing refuse containers on Shiprow and public bins provide opportunities for those purchasing food from the retail counter to dispose of their litter responsibly. The premises, being relatively small scale, are unlikely to produce or be associated with litter that would cause conflict with the City Centre area. A general level of noise would be expected from customers and patrons of the business but not to an extent that it would cause direct conflict with guests of the serviced apartments on the upper floors. Environmental Health Officers have assessed the proposal in detail and have raised no concerns in relation to the harmony of uses in the City Centre and subsequently no objection has been lodged.

Matters raised in representations:

The 17 letters of objection raised similar concerns. Comments in relation to smells, littering, noise and subsequent impact on the serviced apartments have been addressed in the 'harmony of uses' section above and found to be negligible. This application is specifically for a mixed use premises selling and serving cold food, soup and drinks and does not involve any elements of a kebab shop which would be classed as a hot food takeaway. A further change of use to a hot food takeaway would require planning permission as this is a 'sui generis' use and therefore the Local Planning Authority would retain an element of control over the units use. The previous application for a hot food takeaway was made

by a different applicant and was refused as it was contrary to policy and there were no material considerations which justified an approval otherwise. This application is materially different to the previous application and is therefore assessed on its own merits. There are several vents proposed within the stall riser as detailed on the shop front drawings, there is no requirement for extraction within the proposed premises as it will not be creating odours. The loss of the retail unit would be contrary to policy for the reasons aforementioned at the start of this report. However, it is reasoned that the regeneration of an empty unit and installation of new shop front outweighs the loss of a retail unit and the principle function of the City Centre would remain. The condition and character of the listed building would be substantially improved as a result of this application being supported and a condition has been added to ensure that the proposed works are completed prior to the occupation as a mixed use deli/café. It is pressed that the impact on tourism would be a positive one, both in the provision of an additional refreshment facility and visual enhancement of a prominent corner location. Although not a material planning consideration, it should be noted that there are no other French and Scottish style delis/café's in the immediate area that would be threatened as a result of this proposal being supported. On the contrary, it would provide additional competition to boost food offerings in the City Centre.

It should be noted that several of the letters came from outwith Aberdeen City, notably Edinburgh, Glasgow and Dunblane.

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, policies *D1 – Quality Placemaking by Design*, *D5 – Our Granite Heritage*, *T2 - Managing the Transport Impact of Development*, *NC1 – City Centre Development – Regional Centre*, *NC2 – City Centre Retail Core and Union Street* and *NC4 – Sequential Approach and Impact* substantively reiterate the guidance given from policies in the adopted Local Development Plan.

RECOMMENDATION

Approve subject to conditions

REASONS FOR RECOMMENDATION

The proposed replacement shop front and change of use would make a positive contribution to the vitality and viability of Union Street and would not undermine its principal retail function. It has been sufficiently demonstrated that there is a lack of demand for the existing retail unit and high demand for occupation of the unit as a mixed use premises comprising class 1 (delicatessen) and class 3 (cafe) uses. The proposed usage and associated new shop front would create an attractive and active street frontage that would make a positive contribution to the character of the Union Street Conservation Area and enhance the appearance of the listed building. The application therefore complies with Scottish Planning Policy, Adopted Local Development Plan Policies D1: Architecture and Placemaking, D5: Built Heritage, C1: City Centre Development – Regional Centre, RT1: Sequential Approach and Retail Impact and T2: Managing the Transport Impact of Development, the equivalent policies in the Proposed Local Development Plan, the Council's Supplementary Guidance Documents: Hierarchy of Centres, Shop Front and Advertisement Design Guide and Harmony of Uses and the Aberdeen City Centre Masterplan Report.

CONDITIONS

- (1) that the mixed use (class 1 and class 3) hereby granted permission shall not be implemented until the approved shop front scheme as demonstrated in drawings 9955 02 A, 9955 03 A and 9955 04 A, has been fully constructed.

Reason: in the interests of enhancing the character of the Conservation Area, the appearance of the listed building and protecting the retail core, in line with the aims of Scottish Planning Policy, Policy RT1 of the Local Development Plan and the Aberdeen City Centre Masterplan Report.

- (2) that all glazing within the shop front hereby granted permission shall remain transparent at all times.

Reason: in order to retain a live and attractive street frontage within the Conservation Area and to comply with the aims of Policy RT1 of the Local Development Plan.

- (3) that no cooking/frying operations or hot food preparation shall be carried out on the premises other than the use of a soup urn and re-heating of pre-cooked produce by means of a microwave oven.

Reason: In order to prevent the creation of nuisance by the release of odours, in the interests of preserving the amenity of the area and to comply with Policy C2 of the Local Development Plan.

(4) Notwithstanding the approved drawings no works shall take place until full details of the proposed works including 1:20 scale joinery profiles and cross sections of the windows and doors have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.

Reason: As insufficient information has been submitted, to ensure the satisfactory preservation of this listed building and to comply with Policy D1 of the Local Development Plan.