

## Planning Development Management Committee

CHESTER HOTEL, 59-63 QUEEN'S ROAD,  
ABERDEEN

VARIATION OF CONDITION 11 ATTACHED TO  
APPLICATION REF NO. P121555 TO ALLOW  
USE OF REAR ACCESS GATES.

For: The Chester Hotel

Application Type : Section 42 Variation

Application Ref. : P151997

Application Date: 24/12/2015

Officer: Matthew Easton

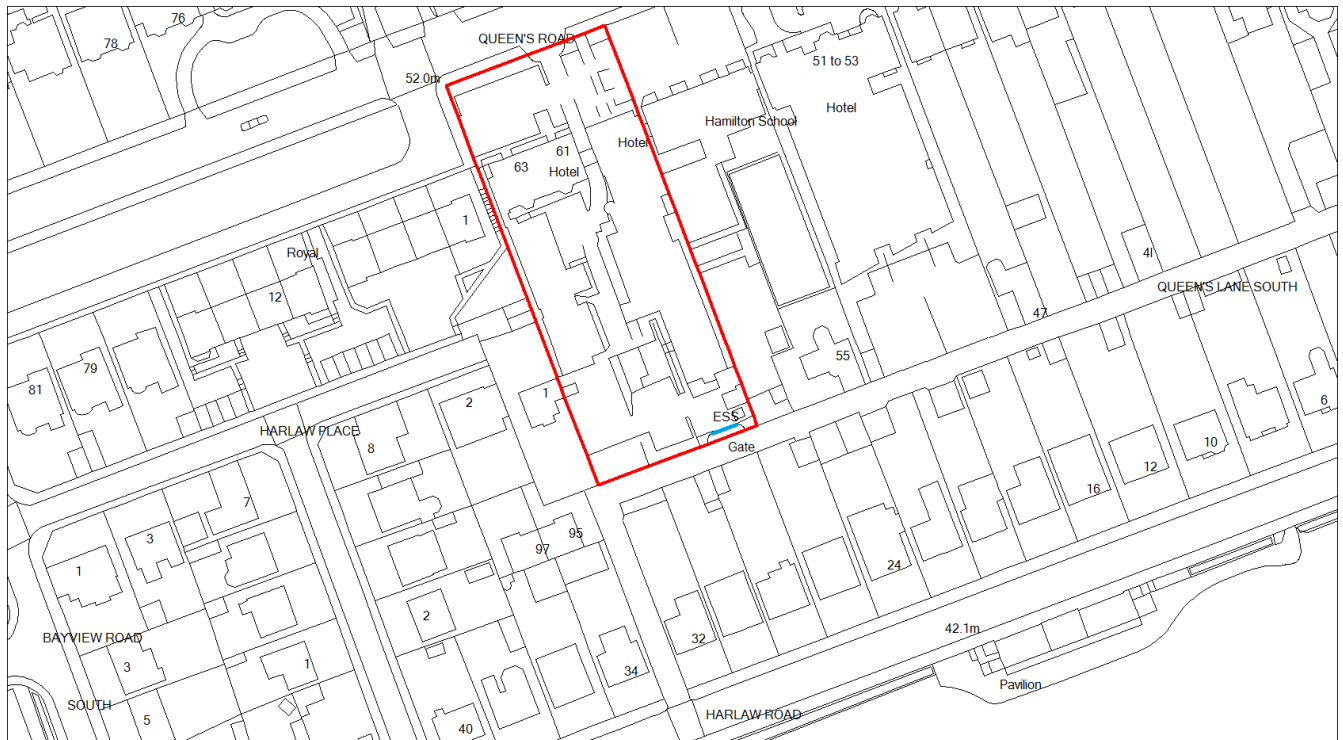
Ward : Hazlehead/Ashley/Queens Cross(M  
Greig/J Stewart/R Thomson/J Corall)

Advert :

Advertised on:

Committee Date: 17/03/2016

Community Council : Comments



**RECOMMENDATION: Refuse**

## DESCRIPTION

The 'Chester Hotel' is located on the south side of Queen's Road, between its junctions with Bayview Road and Queen's Gate. The hotel provides 54 bedrooms, a restaurant, private dining rooms, lounge bar and conference & function facilities for up to 350 guests.

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 house 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 are residential properties fronting on to Harlaw Road and to the immediate east is the now vacant former Hamilton School.

The specific area which this application relates is the 5m wide vehicular gate between the site and Queen's Lane South.

## RELEVANT HISTORY

- Planning permission (96/1957) for change of use from residential at 61-63 Queen's Road to hotel, bar and restaurant was approved in January 1997.
- Planning permission (A0/0272) for alterations and an extension to the hotel was approved in August 2000.
- Planning permission (A5/2137) for a four suite extension to the hotel was approved in April 2006.
- Planning permission (P121555) for redevelopment of the hotel to create the Chester Hotel was approved in February 2013.

## PROPOSAL

The application is submitted under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and seeks a modification to condition 11 of planning permission P121555. Condition 11 currently states –

*"(11) that the access gate from Queen's Lane South shall only be used by service vehicles and otherwise shall remain closed and locked at all other times. No customer or public access (vehicular or pedestrian) shall be permitted unless the planning authority has given written consent for a variation - in order to limit the potential for unauthorised parking on Queen's Lane South."*

The applicant proposes modifying the condition to state –

*"(11) that the access gate from Queen's Lane South shall be accessible for use by all vehicles and shall remain unlocked at all times - in order to facilitate safe*

*entry for emergency vehicles and allow improved access and egress for delivery and other vehicles as part of a managed traffic plan."*

No managed traffic plan has however been submitted by the applicant.

## **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=151997>. 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 because the community council for the area have objected to the application and more than six objections have been received. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

## **CONSULTATIONS**

**Roads Development Management –**

**Environmental Health –** No observations.

**Communities, Housing and Infrastructure (Flooding) –** No response received.

**Queen's Cross and Harlaw Community Council –** Strongly object to the application. The restrictions were attached to protect and preserve what used to be a quiet residential area.

The Chester Hotel suggests the main concerns previously were purely the parking restriction problem, but the Community Council's reading of planning permission P121555 is that it was also to restrict noise. The application does not mention this.

After assessing the parking survey one might surmise that after 7pm on Friday and Saturday evening there are cars touring about trying to get a space. These cars will undoubtedly end-up parked somewhere close-by possibly in Queen's Lane South.

Opening the gate at all times to all vehicles is bound to create much more noise and traffic for residents later in the evening, especially on Friday and Saturday. The Community Council calls on the Council to start protecting the interests of the residents of what used to be a quiet residential area. People living in this area feel surrounded by commercial noisy interests and are getting no protection from the planning authority.

## **REPRESENTATIONS**

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

1. Previous uncontrolled use of the gate has resulted in indiscriminate parking blocking gates.
2. The lane is not suitable for the current level of traffic and additional traffic would result in road safety issues.
3. Object to the matter being presented to the Planning Committee.
4. There are already issues with delivery vehicles finding it difficult to manoeuvre in the lane, altering the condition would cause more problems.
5. Allow anyone to use the gate would create more noise.

## **PLANNING POLICY**

### **Aberdeen Local Development Plan (2012)**

Policy T2 (Managing the Transport Impact of Development)

Policy BI3 (West End Office Area)

### **Proposed Aberdeen Local Development Plan (2015)**

Policy T2 (Managing the Transport Impact of Development)

Policy B3 (West End Office Area)

## **EVALUATION**

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

A restriction on the use of the rear gate has been in place since 1996 when planning permission was granted for the expansion of the former 'Belvidere Hotel' at 59 Queen's Road into 61 and 63 Queen's Road to create 'Simpsons Hotel'. The three separate accesses for each property were replaced with a single access to allow service vehicles to access the combined site. In order to prevent parking in the lane by customers a condition attached to the 1996 consent prevents public pedestrian or vehicular entrance or exit to the site into Queen's Lane South. This restriction was reaffirmed through planning permissions for the extension of the hotel in 2000, 2006 and 2012.

In support of the application the applicant maintains that the condition is an outdated legacy from a previous planning consent, locking of the gates actually leads to traffic congestion on the lane, the nearby Malmaison Hotel has a similar car park with no gates and that unlocking of the gates is unlikely to lead to any significant increase in traffic use nor parking on the lane. A parking survey has been submitted which covers one week in November/December 2015. It shows that the peak demand for parking at the hotel is on a Friday and Saturday evening when there would be one space available.

### **The Condition Itself**

As the application is made under section 42 of the Act regard should be had in first instance to the requirements of Circular 4/1998, which states that for a condition to be lawful (i.e. in essence to retain the condition) it must meet the six tests, namely being:

- Necessary;
- Relevant to planning
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

In assessing these factors each condition should have a clear and precise reason to justify its imposition and be set against specific policies of the Development Plan. In addition, conditions should not place unreasonable or unjustifiable burdens upon applicants or their successors in title.

#### Necessary

The test in this instance is whether planning permission would have been refused if that condition were not imposed. If it would not, then the condition requires precise and special justification.

#### Relevance to Planning and Development Permitted

The matter of controlling indiscriminate parking in order to protect residential amenity is considered to be a legitimate planning matter and is covered by Policy H1 (Residential Areas) of the Local Development Plan which requires new non-residential uses to demonstrate that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity. Although the hotel is zoned under BI3 (West End Office Area), the lane and adjacent residential properties are zoned as Policy H1 and therefore it is considered relevant. The revised West End Office Area Policy in the proposed plan reinforces the protection of residential amenity.

#### Relevance to Development Permitted

Unless a condition fairly and reasonably relates to the development to be permitted, it would be beyond the planning authority's power to impose it. In this instance the condition relates directly to the impact which the expansion of the hotel has on the surrounding area and is therefore considered to be relevant.

### Enforceable

A condition should not be imposed if it cannot be enforced. Although difficult to gather evidence due to resource constraints, it is possible to detect an infringement. Those affected by any indiscriminate parking as a result would be in a position to report such infringements to the planning authority,

### Precise

The planning authority cannot attach a condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it. The drafting of the condition however is considered to be sufficiently clear as to what it is restricting and the circumstances in which the gate may be used.

### Reasonable In All Other Respects

A condition may be unreasonable because it is unduly restrictive or the applicant cannot possibly comply with its requirements. The hotel car park has a main access from Queen's Road which allows customer access. Therefore there is an alternative means of vehicular and pedestrian access to the site and the restriction is not unduly onerous. The applicant has control of the land and operation of the gate and therefore has the ability to comply with the condition.

In summary it is considered that the condition would meet the six tests.

### **Current Circumstances**

Since the original condition was attached in 2000 there have been several changes in circumstances.

The first is that the 'Chester Hotel' features function space which can accommodate up to 350 guests, which the previous incarnation as 'Simpson's Hotel' did not. There is therefore more likely to be peaks of high parking demand at the hotel generated by people attending events, than would have been the case when the condition was originally attached. Whilst the planning authority was satisfied at the time that sufficient parking would be available on the site, this was with the comfort that the condition would prevent any overspill into the lane on any occasions of particularly high demand. Queen's Lane South is within a controlled parking zone; however the restrictions operate between 9am and 5pm, Monday to Friday. Whilst this would discourage parking during those hours, there would be no restriction during the weekend or evenings when the peak demand for parking occurs as demonstrated by the parking survey. Resultant indiscriminate parking could lead to difficulties for vehicles manoeuvring within

the lane as well as residents accessing their garages or driveways, as has been highlighted through representations (*issue 1 and 2 in representations*).

Malmaison Hotel, a short distance away opened in 2008 and does have a customer car park which is accessed from Queen's Lane South. Unlike the Chester Hotel, there is no possibility for the Malmaison car park to be accessed from Queen's Road. The situation is therefore not comparable.

### **Matters Raised by the Community Council**

The main points raised with regards to why the condition should remain attached are covered above.

Contrary to the Community Council's understanding of the committee report for P121555 which granted consent for the redevelopment of the hotel, the condition was attached in order to avoid indiscriminate parking within the lane rather than to minimise noise, although it may achieve that indirectly (*issue 5 in representations*)

### **Matters Raised by Representations**

Matters 1, 2 and 5 have been addressed above.

- *Object to the matter being presented to the Planning Committee. (issue 3)*

All applications submitted to the planning authority, no matter what is proposed, must be determined in accordance with the Council's scheme of delegation. In this case the scheme of delegation requires the application to be referred to the Committee.

- *There are already issues with delivery vehicles finding it difficult to manoeuvre in the lane, altering the condition would cause more problems. (issue 4)*

The hotel in their submission maintain that the locking of the gates leads to traffic congestion on the lane, which would appear to be supported by representations by neighbours. Whilst this may occur on occasion, an alternative to the gate such as an automatic barrier or gate with pass code supplied to service vehicle drivers may be a more efficient method of allowing entry and exit to the site. However this application is to determine whether the gate should be locked to prevent customers from using it rather than what the method of restriction should be.

### **Other Matters**

- Although what has been applied for is a modification of the condition, the proposed re-drafting would in effect remove the requirement to have the condition. The same aim could be achieved by deleting the condition as the fact that anyone would be able to use the access does not need to be expressly stated in a condition. Therefore should committee members

consider it acceptable to remove the restriction, it would be preferable to delete the condition rather than accept the modification.

### Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015. 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 representation and are regarded as unresolved issues to be determined at the Examination; and
- the relevance of these matters to the application under consideration.

Policies and proposals which have not been subject to objection will not be considered at Examination. In such instances, they are likely to be carried forward for adoption. Such cases can be regarded as having greater material weight than those issues subject to Examination. The foregoing can only be assessed on a case by case basis. In this instance the West End Office Area Policy which covers the site has received no objections and enhances protection for residential properties in the West End, reinforcing the requirements for commercial and residential properties to respect each others amenity. All other relevant policies would reiterate policies in the existing plan.

## **RECOMMENDATION**

### **Refuse**

## **REASONS FOR RECOMMENDATION**

It considered that the condition continues to meet the six tests set out in Planning Circular 4/1998. Since the condition was originally attached in 2000, function space has been introduced which it is considered would in fact increase the potential for indiscriminate parking to occur at peak periods of parking demand at the hotel. Resultant indiscriminate parking could lead to difficulties for vehicles manoeuvring within the lane as well as residents accessing their garages or driveways, adversely affecting the free flow of traffic and residential amenity of the area. Therefore the recommendation is that the committee refuse the application to alter the condition. The condition would therefore continue to have effect.