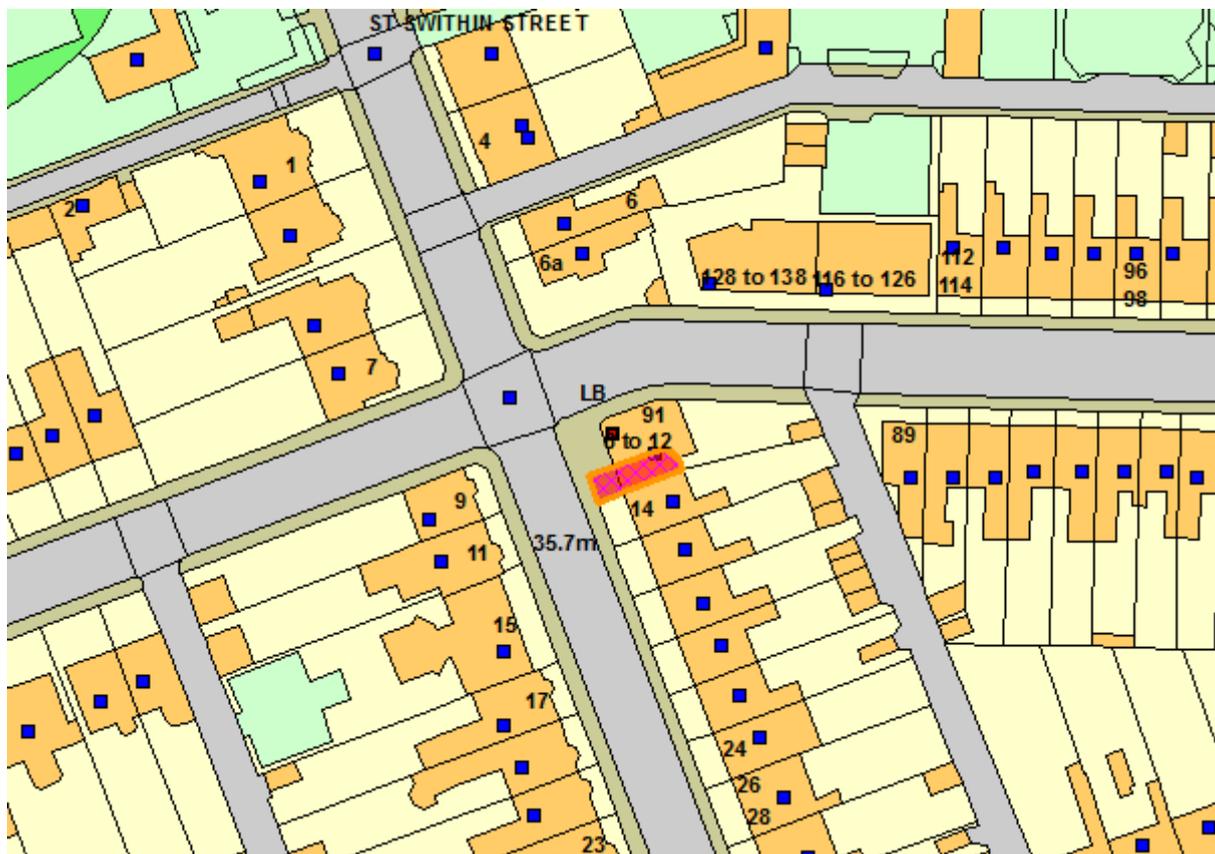


# Planning Development Management Committee Detailed Planning Permission

**160883:** Change of use from pavement to outdoor seating area at 12 St Swithin Street, Aberdeen, Aberdeen City, AB10 6XD

For: Wine Raks Ltd

Application Date:	25 July 2016
Officer:	Alex Ferguson
Ward:	Hazlehead/Ashley/Queens Cross
Community Council:	Queen's Cross and Harlaw
Advertisement:	Conservation Area
Advertised Date:	17 August 2016



Location Plan

**RECOMMENDATION: Approve Conditionally**

**SITE DESCRIPTION**

## **APPLICATION REF: 160883**

This application relates to the pavement area outside a ground floor café unit located on the east side of St Swithin Street, close to its junction with Stanley Street. The street forms part of the wider Albyn Place/Rubislaw Conservation Area. The site is bound to the north by 'Wineraks', an off-licence and to the south by a residential dwelling and its front garden. Residential flats are also located directly above the premises, accessed via a communal entrance door between the café and the off-licence. The character of the area is predominantly residential with St Swithin Street providing a busy north/south thoroughfare with several other local amenities and community facilities located on and immediately adjacent to, the street. The pavement on the eastern side of the street immediately in front of the café and the off licence to the north is wider than usual at 7m in width.

### **RELEVANT HISTORY**

**P151514** – Planning permission was approved conditionally in November 2015 for the change of use of the Class 1 (retail) unit to a Class 3 (Food & Drink) café. Several conditions were attached to the planning consent. These include:

- No cooking or deep fat/shallow frying to take place on the premises;
- Service deliveries/uptifts only to occur between 7am and 7pm Monday to Saturday or 10am to 4pm on Sundays; and
- That the outdoor area to the front of the premises shall not be used for outdoor seating.

### **DESCRIPTION OF PROPOSAL**

Planning permission is sought for the change of use of the pavement in front of, and adjacent to, the café at 12 St Swithin Street to an area for outdoor seating. Although it was originally proposed to have seating occupying the full extent of the widened area of pavement outside the café, following discussions with the applicant, the proposals have been revised to reduce the area for outdoor seating by half. The amended proposal would see outdoor seating restricted to the first 2.5m of pavement when measured from the front of the café, extending the full width of the café frontage, as well in front of the adjacent 'Wineraks' off licence, which is under the same ownership. A 1.5m high privacy screen was originally proposed as part of the application however, following the reduction in the seating area, the privacy screen has been omitted from the proposals.

### **SUPPORTING DOCUMENTS**

All drawings can be viewed on the Council's website at [www.publicaccess.aberdeencity.gov.uk](http://www.publicaccess.aberdeencity.gov.uk).

### **REASON FOR REFERRAL TO COMMITTEE**

A total of 23 letters of objection to the application have been received. Therefore, in accordance with the Council's Scheme of Delegation, the application has been referred to the Planning Committee for determination.

## CONSULTATIONS

Consultee	Date of Comments	Comments Made
ACC - Environmental Health	8 August 2016	<p>The proposed layout drawing indicates 16 tables* and associated seating. To protect the amenity of residential premises near to the proposed location from noise it is advised that no amplified music is permitted in the outdoor area and that the outdoor area is not used after 2200 Hours.</p> <p>*The above comments were made prior to the amendments reduce the scale of the proposals.</p>
ACC - Roads Development Management Team	12 August 2016	<p>Consultation has been carried out with the street occupation team and no concerns have been raised. There is no objection to this application.</p>

## REPRESENTATIONS

A total of 23 letters of representation were received, all of which object to the application, although it should be noted that the scope of the proposals has been amended significantly since the application was originally submitted, advertised and neighbours notified. The objections to the application can be summarised as follows:

- Some neighbours were not notified of the application when they were for the previous application for the change of use in 2015;
- Outdoor seating was not permitted as part of the assessment of the change of use application for the premises in 2015;
- The café may be cooking food on the premises, contrary to a condition of the 2015 consent and outdoor seating has already been installed without consent;
- The outdoor seating area would have implications for the availability of on-street car parking for residents;
- The outdoor seating area would have a detrimental impact on the residential character and amenity of the area;
- The proposed privacy screen would be uncharacteristic of the area;
- Loss of privacy;
- Noise emissions from the seating area, particularly at night, until 10pm;
- There would be a detrimental impact on road and pedestrian safety, with the seating in close proximity to a junction;

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- No details have been provided of the proposed seating, screening, heating or cover of the area – and such street furniture is unlikely to be in keeping with the conservation area;
- The proposed outdoor seating area would exacerbate damage to an existing street tree caused by cycles and dogs being tied to it;
- The outdoor seating area could be used by customers of the adjacent off-license, setting a precedent for similar developments;
- The outdoor seating area would be excessively large and would accommodate 32 customers; and
- There would be an increase in the potential for smoking, littering, crime, anti-social behaviour and illegal parking.

## PLANNING POLICY

### Scottish Planning Policy (SPP)

### Historic Environment Scotland Policy Statement (HESPS)

### Aberdeen Local Development Plan (ALDP)

- Policy D1 (Architecture and Placemaking)
- Policy H1 (Residential Areas)
- Policy D5 (Built Heritage)

### Proposed Aberdeen Local Development Plan (PALDP)

- Policy D1 (Quality Placemaking by Design)
- Policy H1 (Residential Areas)
- Policy D4 (Historic Environment)

## EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 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.

### Principle of the proposed works

The application site lies within a residential area, as zoned in the Adopted Aberdeen Local Development Plan (ALDP). Policy H1 (Residential Areas) of the Adopted ALDP states that:

*Within existing residential areas, proposals for non-residential uses will be refused unless:*

- 1. they are considered complementary to residential use; or*
- 2. it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.*

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The site also lies within the Albyn Place/Rubislaw Conservation Area and as such, any development in this area also requires to be assessed against Policy D5 (Built Heritage) of the ALDP. Policy D5 requires development within conservation areas to comply with Scottish Planning Policy and in doing so, such proposals must either preserve or enhance the character and appearance of the conservation area.

It is therefore considered that main factors in assessing the appropriateness of the proposed change of use are whether the proposed development would have a detrimental impact on the character or amenity of the residential area, or upon the character or appearance of the conservation area.

It is worth noting that this application is for the proposed change of use of the area to allow for outdoor seating and that any tables and chairs required to facilitate the outdoor seating would not be permanent fixtures and therefore do not constitute development and do not require consent. It is therefore the use of the area for seating, rather than the seating itself that requires to be assessed.

### Impact on the amenity of the area

The application site is situated within a Residential Area as zoned on the ALDP Proposals Map. The use of the premises as a café is already established and the Council's Environmental Health team was consulted on the application and did not object, although it is requested that no amplified music be permitted in the outdoor area and that the area is not used after 10pm, in order to protect the amenity of the neighbouring residential properties. The outdoor seating area can only accommodate a small number of people and it is believed that the hours of operation for the café do not extend beyond 10pm. Nevertheless, it is considered to be appropriate to restrict the hours of operation for the outdoor seating area to 8pm on any given day, given the close proximity of the proposed seating to the adjacent residential properties and in particular, the ground floor property at No. 14, which has a bay window immediately adjacent to the café. A condition has been attached in this regard, as has one removing the ability to play amplified music in the area, in the interests of preserving the existing residential amenity.

In the amended proposals, the area of outdoor seating has been reduced to two small areas outside the building, with a maximum width of 2.5m. The tables and chairs shown on the drawings are purely indicative and do not, in themselves, require consent as they would not be permanent structures. The total area of the pavement proposed to be used for seating amounts to approximately 20sqm, within which it is reasonable to expect approximately 6-8 tables could be accommodated at most, providing seating for approximately 12-16 people, which is not considered to be an excessive amount in this location.

The coffee shop nature of the property means that it is unlikely to result in significant levels of noise pollution from people using the outdoor seating area as might be expected from a similar area serving customers of a licensed premises for example, given the issues known to be associated with alcohol consumption. Furthermore, it is likely that the seating area would predominantly be used during daylight hours and in good weather so despite the opening hours, it may be that for several months of the year, the area is not used at all in the evenings.

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Whilst several objections to the application have been received, predominantly in relation to the impact of the seating area on the amenity of the area, it is worth noting that following discussions with the applicant, the amount of space for the outdoor seating area where tables and chairs can be installed has been reduced by half in order to address these concerns. Furthermore, a 1.5m high privacy screen was originally proposed to line the southern boundary of the site which bounds the front garden area of the adjacent residential property at No. 14. The screen would have prevented the overlooking of No. 14's ground floor bay window from users of the outdoor seating. However, following the reduction in the projection of the seating area, it is no longer considered that there would be the potential for any significant overlooking of the neighbouring property due to the oblique angle at which a table nearest to the bay window would sit. Although some overlooking may be possible into the bay window, no views directly into the main portion of the front room would be possible and as a result, the large privacy screen has now been removed from the proposals, which is beneficial in terms of preserving the visual appearance of the area.

Subject to the attachment of suitable conditions, it is considered that the proposed area of outdoor seating would be complementary with, and not have a significant detrimental impact upon, the existing residential amenity of the area, in accordance with Policy H1 (Residential Areas) of the Aberdeen Local Development Plan.

### Impact on the character and appearance of the conservation area

The proposed area of outdoor seating would contain a relatively small number of tables and chairs which would not encroach on what could be considered to be the traditional pavement area of the street used for pedestrian access. The outdoor seating area would utilise what is otherwise an apparently unused, blank hard-surfaced area outside the café and off licence. The tables and chairs would not be permanent fixtures and a condition has been added to ensure that they would only be in situ during the operational hours of the outdoor seating area, to be restricted by condition to the hours of 8am-8pm daily.

Although a 1.5m high privacy screen was originally proposed to be installed along the southern boundary of the site as part of the application, following amendments to halve the total size and depth of seating area in the revised plans, the originally proposed privacy screen has been removed. Whilst this element of the proposals could have had a detrimental impact on the appearance of the conservation area, the screen is no longer proposed and it is not considered that the change of use would have a detrimental impact on the appearance of the conservation area.

Although a residential street, St Swithin Street is relatively heavily trafficked as a north/south vehicular route and is also characterised by some ground floor retail units and cafés on street corners, including some other premises with similar outdoor seating arrangements. It is considered that the use of the pavement area for outdoor seating for the existing café would be complementary to the existing character of the conservation area and the non-permanent street furniture would, by virtue of the small area proposed, have minimal physical impact on the appearance of the area. The street furniture required to facilitate the outdoor seating would be removed completely outwith the hours of operation and as it would not involve any permanent, fixed structures, the tables and chairs would not constitute development. It is

considered therefore, that the proposed use of the area for outdoor seating would preserve the character and appearance of the conservation area, in accordance with Scottish Planning Policy and Policy D5 (Built Heritage) of the ALDP.

#### Pedestrian/road safety

The outdoor seating area would be restricted to a strip of 2.5m in width, measured from the front elevation of the café and the adjacent off licence to the north. The seating area would be wholly contained within the 7m widened area of pavement at the corner of St Swithin Street and Stanley Street and the width of the pavement for pedestrian use would be reduced to 5m which is far in excess of the minimum pavement width required by the Council in order to facilitate safe pedestrian movement. Furthermore, a clear area would remain in front of the communal access door for the first floor level flats at No. 10 St Swithin Street, between the two areas of seating. There are no issues with the proposals in relation to pedestrian safety.

Although located near to the junction with Stanley Street, the outdoor seating area would be set well back (just shy of 5m) from the edge of the road on the east side of St Swithin Street. The Roads Development Management team has not raised any concerns in relation to the proposals affecting visibility splays at the junction or road safety in general and it is not considered that the works would have any impact on road safety.

#### Parking

The Roads Development Management Team has not raised any objection or made any comments on the original proposals in this regard and that was before the reduction in the area proposed for outdoor seating. The use of the café is already established and the outdoor seating area would likely provide space for up to an additional 16 customers, during peak times. The outdoor, uncovered nature of the seating is such that it is unlikely the area would be used frequently for many months of the year and at certain times of the day. In this predominantly residential area, the majority of customers are more likely to arrive on foot rather than by car, whilst the street is also well served by public transport (bus routes on Union Grove and Albyn Place). It is therefore considered that the relatively small increase in custom that the seating area may bring is unlikely to have a significant impact on the existing on-street car parking situation, where on-street parking controls are in place.

#### Concerns raised in letters of objection

The majority of the concerns raised in the letters of objection to the application were in relation to the impact of the outdoor seating area on the residential character and amenity of the surrounding area. Issues in this regard have been addressed in the foregoing evaluation, as have concerns in relation to parking provision, road/pedestrian safety and the impact of the proposals on the character and appearance of the conservation area. The remainder of the concerns raised can be addressed as follows:

- Noise from service and delivery vehicles – This issue was dealt with in the previous application for the change of use of the premises and a condition was attached which restricts the time of day when such deliveries/uplifts can occur. The provision of outdoor seating would not affect this.

- The application was not advertised as a 'Bad Neighbour Development' in accordance with Schedule 3 (8) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 - Based on the reasoning as given in the foregoing evaluation, combined with the attached conditions which restrict the use of the outdoor seating area, the Council considered that the proposals would not meet the criteria of Section 8 of Schedule 3 which require the application to be advertised as such. The application was advertised for a period of 21 days in accordance with Section 65 (Publicity for applications affecting conservation areas) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- Loss of privacy for properties on the opposite side of St Swithin Street – In terms of privacy, the foregoing evaluation primarily takes into consideration the potential for overlooking of the immediately neighbouring ground floor property at No. 14 St Swithin Street. Some objections were received in relation to a potential loss of privacy for properties on the opposite side of St Swithin Street. These properties are situated approximately 20m away from the proposed area of outdoor seating and it is considered that this distance is sufficient to allay any concerns relating to the potential for the overlooking of the residential properties on the western side of the street.
- Potential increase in smoking, littering, crime, anti-social behaviour and illegal parking – These issues are covered by separate legislation outwith the control of the planning system and therefore do not constitute material planning considerations in the determination of this application.
- Some neighbours were not notified of the application, despite having been notified of the previous application for change of use in 2015 – The application site boundary for the current application is smaller than that of the 2015 application for the change of use, which included the rear garden area to the east of the building, hence the reason some neighbours were notified of the previous application and not the current one.
- Outdoor seating was refused as part of the previous application in 2015 and the circumstances have not changed – The outdoor seating area originally proposed in the 2015 application was to extend to the edge of the pedestrian footpath which would have increased the potential for overlooking into the ground floor bay window of the neighbouring property. The reduced scale of the amended proposals in the current application eradicates concerns in relation to a loss of privacy.
- The outdoor seating could be used by customers of the off licence and set a precedent for similar developments – The application is for outdoor seating associated to, and for use by, the café at 12 St Swithin Street, although some of the seating would be situated outside an obscure window which forms part of the off-licence. The use of the outdoor seating does not extend to customers of the off licence as the provision of seating for that unit would require a separate planning permission for a change of use pertaining to that property. The potential unlawful use of the café's seating area by customers

of the off-license would be covered by separate legislation outwith the control of the planning authority.

- The café may be cooking food on the premises, contrary to a condition of the 2015 consent and outdoor seating has already been installed without consent – The Council's Environmental Health team has been to visit the property and confirmed that no cooking was taking place, just the reheating of food, as allowed by the 2015 consent. Some tables and chairs were utilised in the area without consent recently, but these have now been removed.
- The proposed outdoor seating area would exacerbate damage to an existing street tree caused by cycles and dogs being tied to it – This is not a material planning consideration.

### 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 and the Reporter has now reported back. The proposed plan 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 comment by the Reporter; and
- the relevance of these matters to the application under consideration.

The Reporters response does not affect policies in a manner that is relevant to this application. In relation to this particular application proposal policies in the Proposed LDP are not materially different from those in the adopted LDP.

Approval to adopt the LDP will be sought at the Full Council meeting of 14 December 2016. The actual adoption date is likely to be around the third week in January 2017.

### **RECOMMENDATION: Approve Conditionally**

### **REASONS FOR RECOMMENDATION**

Subject to conditions restricting the hours of operation and requiring the removal of the street furniture outwith operational hours, the proposed use of the pavement for outdoor seating associated with the existing Class 3 (Food and Drink) establishment would not have a detrimental impact on either the amenity or character of the residential area, nor upon the character or appearance of the conservation area, in accordance with Scottish Planning Policy and Policies H1 (Residential Areas) and D5 (Built Heritage) of the Adopted Aberdeen Local Development Plan (ALDP). The proposed works also comply with the relevant corresponding policies of the Proposed ALDP.

## CONDITIONS

- (1) That the area of the pavement to be used for outdoor seating shall be restricted to that as shown on approved drawing 101 Rev D and that no tables or chairs shall be sited outwith this area at any time.

Reason – In order to protect the visual character and amenity of the area.

- (2) That the outdoor seating area hereby approved shall only be used between the hours of 8am and 8pm on any given day and that any tables, chairs and other street furniture for the purpose of, or associated with, facilitating outdoor seating shall be removed from the pavement outwith the hours of operation for the outdoor seating area.

Reason – In order to protect the amenity of the neighbouring residential properties and the character and appearance of the conservation area.

- (3) That no amplified music shall be played in the outdoor seating area at any time.

Reason – In order to protect the amenity of the neighbouring residential properties.