

Planning Development Management Committee Detailed Planning Permission

161455/DPP: Change of use of pavement area to seating area at 1
Desswood Place, Aberdeen, AB25 2EE

For: Corner Tree Café

Application Date:	11 October 2016
Officer:	Alex Ferguson
Ward:	Hazlehead/Ashley/Queens Cross
Community Council:	Queen's Cross and Harlaw
Advertisement:	Conservation Area
Advertised Date:	26 October 2016



Location Plan

RECOMMENDATION: Approve Conditionally

SITE DESCRIPTION

The proposal relates to the pavement area outside the 'Corner Tree Café', located on the southeastern corner of the junction between Desswood Place and Whitehall Road, within the Albyn Place/ Rubislaw Conservation Area. Although the surrounding area is predominantly residential, the Category 'C' listed building within which the café sits, contains residential flats at first floor level and retail units to the south and west of the café. The pavement concerned is wider than usual, at 5.2m.

RELEVANT HISTORY

P111438 – Planning permission was approved conditionally in November 2011 for the part change of use of a retail unit (Class 1) to form the café (Class 3). Several conditions were attached to the planning consent. These include:

- No cooking or frying to take place on the premises; and
- That the premises only open between 8am to 11pm on any day, in order to protect residential amenity.

The condition in relation to the removal of the ability to cook or fry food on the premises was varied slightly in 2012 (P120324) to allow use of a 4-plate electric oven.

DESCRIPTION OF PROPOSAL

It is now proposed to use a section of pavement in front of the café for outdoor seating for customers. The area concerned would be 2.685m by 5m, with a total footprint of just over 13sqm.

SUPPORTING DOCUMENTS

All drawings can be viewed on the Council's website at www.publicaccess.aberdeencity.gov.uk.

REASON FOR REFERRAL TO COMMITTEE

A total of 15 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
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ACC - Environmental Health	18 October 2016	To protect the amenity no amplified music should be permitted outwith the café premises and no use of the outdoor area should take place after 2200hrs.
ACC - Roads Development Management Team	23 November 2016	<p>No objection. A minimum of 1.5m clearance should be available for pedestrian movement on all sides of the seating area, such that there are no issues in relation to pedestrian passage/ safety.</p> <p>The development would not affect the visibility splay at the adjacent junction and would not pose any concerns in relation to road safety.</p> <p>Vehicle parking is already controlled in the area between the hours of 8am-6pm Mon-Sat and is not considered to be an issue.</p>

REPRESENTATIONS

A total of 22 letters of representation have been received – 15 objections and 7 in support of the application. The objections to the application can be summarised as follows:

- The seating would obstruct a busy pedestrian area, thus impacting detrimentally on pedestrian safety;
- The proposals would have a detrimental impact on road safety due to decreased visibility;
- The proposals would increase litter and noise emissions, thus having a detrimental impact on the residential character and amenity;
- The use of the area for outdoor seating would detract from the setting of the listed building;
- The use of parasols/umbrellas would detract from the appearance of the area and also pose a hazard to pedestrian and road safety, should they blow over in the wind;
- The proposals would exacerbate an existing lack of parking in the area;
- The change of use would increase the amount of illegal parking;
- The late use of the outdoor area to 11pm would have a detrimental impact on the character and amenity of the area;
- The seating area would allow for the overlooking of neighbouring residential properties, thus having a detrimental impact upon privacy;
- Outdoor eating would attract seagulls;

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- The applicant has already increased the internal capacity of the café, contrary to the planning approval of 2011 (P111438);
- The noise of delivery vans in the evening would impact on residential amenity;
- The odours from the cooking and outdoor consumption of food on the premises would impact on residential amenity;
- The café may get a licence for alcohol sales or 'bring your own' in future;
- The seating area could be used by people to observe and interact with children in the area, with Aberdeen Grammar School nearby;
- The proposals are contrary to elements of the Aberdeen City Council document 'Pavement Cafés on the Public Footway'
- The current use of the café is contrary to the conditions as set out in the 2011 consent in relation to noise and refuse control; and
- Café's are not appropriate in residential areas.

In addition to the letters of objection, 7 letters in support of the application were also received. The supporters of the proposals noted that:

- The seating would enhance the character and appearance of the area;
- The seating would not be a permanent fixture and would most likely only be used on good weather days in the summer months;
- The café is small and the increase in disturbance to amenity would be minimal;
- There is ample pay and display parking in close proximity to the site;
- Local businesses should be supported; and
- Food odours would be undetectable against the exhaust fumes of passing cars.

PLANNING POLICY

Scottish Planning Policy (SPP)

Historic Environment Scotland Policy Statement (HESPS)

Aberdeen Local Development Plan (ALDP)

- Policy H1 (Residential Areas)
- Policy D5 (Built Heritage)

Proposed Aberdeen Local Development Plan (PALDP)

- 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

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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 the proposed works

Being located within a residential area, as zoned in the Adopted Aberdeen Local Development Plan (ALDP), Policy H1 (Residential Areas) is relevant and 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.*

The location is also within the Albyn Place/ Rubislaw Conservation Area and the adjacent building is Category 'C' listed. As such, any development in this area also requires to be assessed against Policy D5 (Built Heritage) of the ALDP, which requires developments 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 the 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, the character or appearance of the conservation area, or on the setting of the adjacent listed building.

Impact on the amenity of the area

Although within a Residential Area, as zoned on the ALDP Proposals Map, the use of the premises has previously received consent and is established. The Council's Environmental Health Team do not object, although requested that no amplified music be permitted in the outdoor area and that the proposed outdoor seating area is not used after 10pm, all in order to protect the amenity of the neighbouring residential properties from noise impact.

The outdoor seating area can only accommodate a small number of people and the hours of operation for the café are restricted so that they do not extend beyond 11pm, by a condition of the original consent. 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, those at first floor level directly above the café. Internal noise from the café is likely to be better contained within the premises than that from an external seating area and it is considered that 8pm would be a reasonable time for the use of the external seating area to cease on any given day, due to the impact its use beyond that time could have on the evening time amenity of the neighbouring residential properties. A condition is recommended in this regard,

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as is one removing the ability to play amplified music externally, all in the interests of preserving the existing residential amenity.

The total area of the pavement proposed to be used for seating amounts to approximately 13sqm, within which it is reasonable to expect approximately 6 small tables could be accommodated, providing seating for a maximum of approximately 12-15 people, which is not considered to be an excessive amount.

The 'coffee shop' nature of the café 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. Furthermore, it is likely that the seating area would predominantly be used during daylight hours and in good weather so despite the maximum opening hours and seating capacity, it may be that for several months of the year, the area is not used at all in the evenings, or at other times below the maximum capacity and opening hours.

The outdoor seating area would not allow for any significant overlooking of residential properties, with the nearest ground floor windows of nearby dwellings either situated at an extremely acute angle (No. 7 Desswood Place to the west) or a sufficiently large distance away (the properties on Whitehall Road to the north and east (over 20m away). Whilst some front gardens may be overlooked, they would not be immediately adjacent to the seating and given their small, already public nature fronting the street, are not likely to be adversely impacted upon beyond the existing situation. The installation of outdoor seating would therefore not have any significant impact on the existing level of residential privacy or amenity.

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 outdoor seating is limited and would be sited on a section of wide pavement, with sufficient clearance for pedestrian passage remaining available. Additionally the tables, chairs and any enclosures would not be permanent fixtures and a condition has been added to ensure that these items 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 situated in a residential area, the Corner Tree Café sits on the corner of a 4-way junction, a vehicular crossroads characterised as a node of ground floor non-residential premises. It is considered that the use of the pavement area for outdoor seating would be complementary to the existing café use 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 outwith the hours of operation and the tables, chairs and enclosures required would be relatively small scale and not have an adverse impact on the appearance of the conservation area. It is acknowledged that the installation of other items which do not constitute development, such as parasols

and heaters, could be relatively large in scale and impact upon the appearance of the area. A condition is therefore recommended which removes the ability to place such items within the outdoor seating area. 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.

Impact on the setting of the adjacent listed building

The café occupies the ground floor of a Category 'C' Listed building and although the proposed outdoor seating area would not physically impact on the listed building, it is required to assess the impact the change of use would have on its setting. As with the foregoing assessment of the proposals', impact on the character and appearance of the conservation area, it is considered that the ancillary seating area would be sufficiently small-scale so as to ensure that the likely amount of street furniture would be minimal and would not have a detrimental impact on the setting of the listed building. Equally the use of the pavement area for outdoor seating would not obscure any significant features of architectural or historical importance and would not impact on the way the building is viewed, thus preserving its setting, in accordance with SPP, HESPS and Policy D5 of the ALDP.

Pedestrian/road safety

The outdoor seating area would be restricted to a strip of 2.685m in depth, measured from the front elevation of the café and wholly contained within the 5.2m widened area of pavement at the corner of Desswood Place and Whitehall Road. Although the width of the pavement for pedestrian use would be reduced to 2.5m, this is far in excess of the minimum pavement width of 1.5m required by the Council in order to facilitate safe pedestrian movement. At the northwestern corner of the seating area, a minimum clearance of 1.75m would remain between the proposed street furniture and an existing adjacent lamp post. A condition is recommended which would restrict the area of seating to that applied for, thus retaining a clearance in excess of the minimum 1.5m. Regardless, the Council's as Roads Authority has powers, under separate legislation, to require the removal of any items obstructing pedestrian access over adopted footpaths. Therefore, it is considered that there are no issues with the proposals in relation to pedestrian safety.

Although located near to the junction with Whitehall Road, the outdoor seating area would be set well back (2.5m) from the edge of the road on the southern side of Desswood Place. This corner of the junction is car-free due to the presence of double-yellow lines. 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 to the proposals in this regard. The use of the café is already established and the outdoor seating area would likely provide space for a maximum of 15 customers, during peak times. That is not to say that these would be additional customers, or persons arriving by car. 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 or at certain times of

the day. In this predominantly residential area, the majority of customers are perhaps more likely to arrive on foot rather than by car. 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 and the adjacent listed building. 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 conditional control.
- 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.
- Non-compliance with the Council's 'Pavement Cafés on the Public Footway' guidance – This document contains guidance for people/ businesses applying for a permit from the Council as Roads Authority for consent to use the footway. This document is not supplementary planning guidance and non-compliance with the guidance set out within it does not render the proposals unacceptable from a planning perspective. The proposals are considered acceptable on their individual merits, as assessed above.
- The use of parasols/ umbrellas would detract from the appearance of the area and also pose a hazard to pedestrian and road safety, should they blow over in the wind – A condition has been recommended which would remove the ability of the applicant to install parasols/umbrellas and other items of street furniture apart from tables/chairs and an enclosure. This would help to preserve the appearance of the conservation area. The impact of such items on public safety is covered by separate legislation outwith the control of the planning authority.
- Outdoor eating would attract seagulls – This is not a material planning consideration.
- The applicant has already increased the internal capacity of the café, contrary to the planning approval of 2011 (P111438) – This matter has been raised with the applicant by the Council and a planning application has recently been submitted for the increase in internal capacity (161743/DPP). The application

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has yet to be determined, although its outcome (and the unauthorised expansion) has no bearing on the assessment of the current application.

- The odours from the cooking and outdoor consumption of food on the premises would impact on residential amenity – This application is for outdoor seating only and the preparation/cooking of food on the premises is thus not a consideration. In relation to odours from the consumption of food outdoors, it is considered that this would likely be minimal and not have any significant impact on residential amenity.
- The café may get a licence for alcohol sales or ‘bring your own’ in future – At present, the café does not have a licence to sell alcohol. The applicant would need to apply for an alcohol licence if they wished to do so in future and this process is separate from the planning application process. The application cannot be assessed based on what may happen in the future and at present there would be no issues related to alcohol consumption.
- The current use of the café is contrary to the conditions as set out in the 2011 consent in relation to noise and refuse control – The alleged failure to comply with conditions of the 2011 consent is an enforcement matter in relation to application P111438 and is not a material consideration in the assessment of the current application. Details of the alleged breach of planning conditions have been passed on to the Council’s Planning Enforcement Team for investigation.

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 Reporter’s 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 was given by the Full Council at their 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 or the setting of the adjacent listed building, 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 16/11/01A and shall only allow the placement of tables, seats and form of enclosure and for no other street furniture (i.e. heaters and umbrellas/awnings).

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

- (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.

ADVISORY NOTES

A minimum 1.5m footway clearance must be maintained around the seating area at all times. The Council's Street Occupations Team have the power to remove any items placed on the pavement which would obstruct pedestrian movement.

In addition to planning permission, the applicant will also require a Pavement Café permit, which can be obtained from the Council's Street Occupations Team. In this regard, the applicant should contact Kevin Abercrombie on 01224 523 886.

It is likely that any advertisement of the premises incorporated onto fabric or other

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enclosures used to demarcate the seating area will require advertisement consent. Prior to the installation of any such advertisements, the applicant should check with the Council as planning authority to ascertain whether consent is required. If so, the applicant will need to first obtain advertisement consent before displaying the advertisements.