

Planning Development Management Committee

Report by Development Management Manager

20 July 2017

Site Address:	1 Desswood Place, Aberdeen, AB25 2EE,
Application Description:	Extension of floor space in use for existing café (part change of use from retail to café)
Application Reference:	161743/DPP
Application Type	Detailed Planning Permission
Application Date:	12 December 2016
Applicant:	Corner Tree Cafe
Ward:	Hazlehead/Ashley/Queens Cross
Community Council	Queen's Cross and Harlaw
Case Officer:	Sepideh Hajisoltani



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RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The proposal relates to a category 'C' listed building, currently occupied by a café, located on the southwest of the junction between Whitehall Road and Desswood Place. The application site is located within Albyn Place/ Rubislaw Conservation Area. The surrounding area is predominantly residential with a residential flat on the upper floor of the building and retail units to the south and west of the café.

Relevant Planning 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.

161455/DPP - Detailed planning permission for a change of use of pavement area to seating area was approved conditionally in January 2017.

APPLICATION DESCRIPTION

Description of Proposal

Detailed planning permission is sought for retrospective extension of part of the internal floor space (part change of use from retail to café).

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OHVHSHBZ00D00>.

The following documents have been submitted in support of the application –

- Noise Impact Assessment

STOP THE CLOCK

The 'Stop the Clock' protocol has been applied to cover the delay in submission of the requested Noise Impact Assessment.

Reason for Referral to Committee

A total of 8 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

ACC - Roads Development Management Team – Comments received; no objection.

ACC - Environmental Health – Have advised of a general acceptance of the submitted Noise Impact Assessment and requested a condition relating to implementation of the proposed mitigations methods - No objection.

REPRESENTATIONS

A total of 8 letters of objection have been received. The objections to the application can be summarised as follows:

- 1) The proposal would have a detrimental impact on residential amenity due to current noise levels from internal activities;
- 2) The proposal would result in loss of privacy;
- 3) The proposal would result in an increase in environmental noise, smell and litter;
- 4) There should be a limit on operating hours to protect residential amenity;
- 5) The proposal would exacerbate an existing lack of parking space in the area;
- 6) The increased traffic congestion has resulted in damage to neighbours' car on a number of occasions;
- 7) The proposal has resulted in frequent illegal parking in the area;
- 8) The increase in traffic congestion would be a hazard for children on their school commute;
- 9) There is no provision for storing recycling or waste materials at the premises;
- 10) The application is retrospective;
- 11) The café that was being described as a modest development in the original change of use application with restricted menu and no cooking facilities has evolved without permission;
- 12) The application would have detrimental impact on the use of the pavement in relation to the other planning application for outdoor seating area (161743/DPP);
- 13) The size of the existing kitchen is not suitable for the proposed number of tables;
- 14) Cafes are not appropriate in residential areas and should be located elsewhere and the area should be residents only;
- 15) The café has been operating during the summer period without a licence for an outside seating area.
- 16) The décor and presentation of the cafe is tasteful;

MATERIAL CONSIDERATIONS

Legislative Requirements

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.

National Planning Policy and Guidance

Scottish Planning Policy (SPP)

Historic Environment Scotland Policy Statement (HESPS)

Aberdeen Local Development Plan 2017

- Policy H1: Residential Areas
- Policy D4: Historic Environment
- Policy T5: Noise
- Policy T2: Managing the Transport Impact of Development

OTHER RELEVANT MATERIAL CONSIDERATIONS

Supplementary Guidance - Noise

EVALUATION

Policy H1: Residential Areas

Within existing residential areas, proposals for non-residential uses will be supported only if it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of the existing residential amenity. In this instance the proposal would be an expansion of an existing

non-residential use, which has been operating in the premises for a number of years. It is considered that the proposal could have an impact on residential amenity in terms of noise, unless suitable noise mitigation measures are implemented. Based on the consultation response from the Environmental Health Team, it is considered that implementation of suitable mitigation measures can be implemented that would address this issue.

It is considered that subject to conditions the proposal would sufficiently accord with provisions of policy H1.

Policy D4: Historic Environment

The Council will protect, preserve and enhance the historic environment in line with Scottish Planning Policy, Historic Environment Scotland Policy Statement and its own Supplementary Guidance and Conservation Area Character Appraisal. The proposal is for a retrospective change of use and no physical alterations have been proposed and as such the proposal would have a neutral impact on the overall character of the Conservation Area.

It is considered that the proposal accords with provision of the policy D4.

Policy T5: Noise

Policy T5 states that there will be a presumption against noise generating developments being located close to noise sensitive developments, such as existing housing. In cases where significant exposure to noise is likely to arise from development, a Noise Impact Assessment (NIA) will be required as part of a planning application.

In this instance, there is a residential flat on the upper floor of the building. Accordingly, the Council's Environmental Health Service requested a NIA to be carried out to ascertain the likely sources and levels of noise arising within the premises. The agent has submitted a NIA which has been to the satisfaction of the Environmental Health Service. The NIA states that the impact of the proposed café will be classed as 'Negligible', however it is suggested that improving the ceiling by installing a suspended ceiling could improve any potential noise impact.

Subject to the imposition of an appropriate condition on implementation of the proposed mitigation measure (in this instance being a suspended ceiling with the necessary acoustic insulation), it is considered that the retrospective proposal would sufficiently comply with policy T5 and the associated Supplementary Guidance- Noise.

Policy T2- Managing the Transport Impact of Development

Commensurate with the scale and anticipated impact, new development must demonstrate that sufficient measures have been taken to minimise traffic generated and to maximise opportunities for sustainable and active travel.

Based on the scale of development and considering the maximum parking requirements as outlined in the Aberdeen City Council's Supplementary Guidance on 'Transport and Accessibility', it is considered that the proposal will incur an increase from 1 car park per 30sqm to 1 per 12 sqm. This would require an additional 2 car parks at the application site. Due to the constraints of the site, no off-street parking is feasible or currently provided. It is noted that the site is located in the inner city, in controlled parking zone L where the Pay and Display and Residents Only areas operate Mon-Sat between 08:00-18:00 and that the road network is protected by double yellow lines. Accordingly there is no scope for indiscriminate parking when these restrictions apply.

Considering the residential nature of the surrounding area, it is considered that many customers could visit the property on foot. The site also has very good accessibility for public transport and it is considered that a shortage of two car parking spaces would not generate significant parking on-street demand in the evenings (after 18:00) or on Sundays.

It is considered that the proposal sufficiently accords with provisions of policy T2.

Concerns raised in letters of objection

Item 1 relating to the impact of the proposal on residential amenity (in terms of noise impact) is a material planning consideration and has been considered in the evaluation above.

Item 2 relates to loss of privacy which is a material planning consideration. It is considered that the proposal which is a change of use for part of the internal space of the café would have no impact on privacy or overlooking into habitable rooms of any neighbouring properties.

Item 3 & 9 relate to concerns on smell and litter. There has been no objection by the Council's Environmental Health Service to the proposal. It should be noted that the refuse storage scheme for the proposal have been addressed as a planning condition for the original change of use application (P111438). It should also be noted that littering is covered by separate legislation which is outwith the control of planning system.

Item 4 relates to the limitations on the decision for protection of residential amenity. It should be noted that the application is only relevant to part of the application unit and as a result will follow the existing operating hours of the café in accordance with the relevant condition on the original change of use application. This has been secured through a planning condition.

Item 5 & 8 relates to the impact of the proposal on parking arrangements and the proposal being a hazard to pedestrians, particularly children. There has been no objection by the Council Roads Development Management Team to the application and it is considered that the submitted proposal would raise no specific road safety issues.

Item 6 & 7 relating to illegal parking and damage to personal cars are not relevant material planning considerations for assessment of this application.

Item 10 relates to the application being retrospective. It should be noted that a retrospective application is considered in a normal way and it cannot be assumed that permission will be granted.

Item 11 & 13 refers to the history of the application site that has been covered earlier in this assessment. Two planning applications have covered the expansion of the café in form of outdoor seating area and variation of the planning condition on limitation on cooking.

Item 12 refers to the other planning application in connection with outdoor seating area which is a separate application and is not relevant to the assessment of this application.

Item 13 refers to the size of the kitchen not being suitable for the proposed number of tables. There has been no objection to the proposal by the Environmental Health Service in this regards.

Item 14 refers to the suitability of the proposed use at this location. It should be noted that this application requires to be assessed on its own merits having regard to the development plan and other relevant material considerations. As demonstrated in the evaluation above, the proposal is a part change of use for an existing café and subject to conditions the proposal complies with the development plan and as such the premises are considered suitable for the proposed use.

Item 15 refers to the outdoor seating area that has been addressed in a separate planning application (161455/DPP).

Item 16 refers to internal decoration which is not a material planning consideration.

Full regard has been given to all concerns raised in representations, but neither do they outweigh the policy position as detailed above, nor do they justify further amendments to the plans or refusal of the application.

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

Subject to conditions limiting the hours of operation and implementation of the proposed mitigation measure being a suspended ceiling with necessary acoustic insulation, the proposed retrospective part change of use complies with Local Development Policy H1- Residential Areas and Policy T5- Noise in that the proposal would have no significant detrimental impact on residential amenity. The proposal sufficiently complies with provisions of policy T2- Managing the Transport Impact of Development and it is considered it would not result in significant detrimental impact on parking arrangements in the surrounding area. The proposal also accords with provisions of Policy D4- Historic Environment and Scottish Planning Policy and Historic Environment Scotland Policy Statement and would not have an adverse impact upon the character of the Conservation Area.

CONDITIONS

- 1) That the proposed café use hereby approved shall not operate other than during the hours from 8.00 am until 11.00 pm on any day, unless the planning authority has given prior written approval for a variation.

Reason- in order to preserve the amenity of the neighbourhood.

- 2) That a scheme for implementation of the proposed mitigation measure in form of a suspended ceiling with necessary acoustic insulation shall be submitted and approved by the Council (as planning authority) and fully implemented in complete accordance with the said scheme within 4 month of this decision.

Reason- in order to safeguard the amenities of nearby occupiers.

ADVISORY NOTES FOR APPLICANT

1- For the avoidance of doubt the planning consent hereby recommended does not give or imply the granting of consent for any works to the listed building and separate applications for Listed Building Consent and Building Warrant should be submitted for implementation of the suspended ceiling.

For further advice please contact the planning authority.