

Report of Handling Detailed Planning Permission

170175/DPP: Erection of enclosure and area of external seating for café at 12 St Swithin Street, Aberdeen, AB10 6XD,

For: Mrs Samina Tariq

Application Date:	27 February 2017
Officer:	Linda Speers
Ward:	Hazlehead/Ashley/Queens Cross
Community Council:	Queen's Cross And Harlaw
Advertisement:	Conservation Area – S60/65
Advertised Date:	08.03.2017

RECOMMENDATION: Refuse

SITE DESCRIPTION

This application relates to an area of external seating associated with a ground floor café unit located on the east side of St Swithin Street, close to its junction with Stanley Street. The extent and location of the existing outdoor seating area is conditioned by a previous planning application P160883; thus ensuring the visual character and amenity of the area is protected. Residential flats are also located directly above the premises, accessed via a communal entrance door between the café and the off-licence. The street forms part of the wider Albyn Place/Rubislaw Conservation Area. 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.

DESCRIPTION OF PROPOSAL

Planning permission is sought to form an enclosure and an area of external seating associated with the existing café unit. The enclosed area would be offset 4.8m from the front of the café and occupies a sole area of 5.6m wide and 2.3m deep adjacent to the front gardens of neighbouring property No.14 St Swithin Street on the south side of the site. The proposed external seating would be positioned within this new area and in addition to the conditioned and designated area allowed for seating under application P160883. While the proposed plans do not indicate that the existing areas of external seating are to be used it's possible for both permissions to be implemented should approval be granted. The enclosure would be constructed as a screen in timber (MDF) linings with a paint finish in a dark grey colour. The height of the proposed structure would be 900mm from pavement level. The screen would also include signage on the west street facing elevation in the form of individual lettering. The matter of signage would be dealt with under application 170174/ADV.

RELEVANT HISTORY

170174/ADV – Advertisement Consent required for Installation of lighting to illuminate existing fascia sign with non-illuminated signage on enclosure. Decision pending.

P160883 – Planning Permission for change of use from pavement to outdoor seating area. The application was approved conditionally by the Planning Development Management Committee on 28.10.2016. The conditions include:

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

P151514 – Planning permission for change of use from a hairdresser to a coffee shop including a hot and cold food takeaway. The application was approved conditionally on 13.11.2015. The conditions 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.

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=OLTNS5BZJ4A00>

CONSULTATIONS

Consultee	Date of Comments	Summary of Comments
ACC - Roads Development Management Team	07.03.2017	No Objections
ACC - Environmental Health	09.03.2017	No Observations

REPRESENTATIONS

3 letters of representation have been received all of which object to the application. The matters raised can be summarised as follows:-

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- Enclosing the pavement with a relatively high fence affects the character of the area and spatial quality of the streetscape.
- The residential area is affected by the number of cafes within the street and is having the following negative impact for residents:
 - Littering from take-aways
 - Increased vermin
 - Parking Issues
 - Impede and blocking public pavement areas (bikes, prams etc.)

In addition the objections highlight the following concerns:

- The applicant has not notified all the affected parties.
- The outcome of the previous planning application P160883 was not made known to those who objected.

PLANNING POLICY

Scottish Planning Policy (SPP)

Historic Environment Scotland Policy Statement (HESPS)

Aberdeen Local Development Plan 2017 (ALDP)

- 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.

The application site is located within a Conservation Area and also an area zoned for residential in the ALDP and relates to an existing established café and associated external seating. The proposal seeks permission to erect a timber enclosure and extend the area of external seating. The application must examine if the proposed development would have a detrimental impact on the character or amenity of the residential area (Policy H1) or upon the character or appearance of the conservation area (Policy D4) and it would also need to be acceptable in terms of design, appearance and location (Policy D1).

The application site immediately borders 2 residential dwellings; No.10 St Swithin Street which is a flatted development directly above the premises and No. 14 St Swithin Street a 2.5-storey terrace dwelling with large bay window lies to the south of the site. The enclosure and associated seating area would project a total of 4.8m from the front building line. This additional area of external seating is positioned further away from the building and would increase the ability to overlook these

adjoining residential dwellings. Both the flat at first floor level and the terrace property have a number of large windows fronting the street and the level of privacy currently experienced by the residents occupying the dwellings is likely to be breached by members of the public sitting and using the café facility within the proposed enclosure. The café can currently utilise up to 8 tables directly outside their premises which includes the adjacent off-licence which is within the same ownership; the proposal includes a further 5 tables giving a total capacity for 26 individuals. This is considered excessive given the establishment is a small café and unprecedented for this residential location. The applicant may choose not to facilitate the maximum capacity for external seating; nonetheless the planning authority is required to examine the overall impact. While it's acknowledged that the outdoor seating is not useable all year round and weather permitted the impact on the residential amenity is still considered significant. Policy H1 states that within existing residential areas, proposals for non-residential uses that conflict with, or cause any nuisance to, the enjoyment of existing residential amenity should be refused. In this case the position of the seating within the enclosure is considered to have an adverse impact on the privacy of the existing dwellings and warrants a refusal of the application.

The design of the enclosure on a whole is considered mediocre; the MDF linings are not considered a high quality material and the proposal lacks any detail with regard to the fitting and stability of this permanent structure. Policy D1 states "*that all development must ensure high standards of design and have a strong and distinctive sense of place which is a result of context appraisal, detailed planning, quality architecture, craftsmanship and materials*". While the dark grey colour of the linings would correspond to the existing fascia boards; the window frames and door are an unrelated colours and the overall appearance of the shop front lacks distinctiveness; the addition of the enclosure is questionable. While the location of the enclosure would not physically impede on the existing pavement area of the street used for pedestrian access; the proposed location directly impacts the seating arrangement which has been highlighted as having a negative impact on the adjoining uses. The design, appearance and location of the enclosure are inadequate and inappropriate for this particular area. The proposals are contrary to Policy D1 as they fail to comply with successful placemaking.

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. Within this Conservation Area outdoor seating and enclosures associated with eateries are not uncommon where the proposal has been well designed and is of suitable scale and siting. In this instance the principle of such an enclosure would unlikely have a detrimental impact on the visual character of the conservation area however not withstanding this; the overall impact of the entire external seating area is considered overwhelming and fails to comply with said policies for reasons identified within the above evaluation. Therefore the proposal would not enhance the character of the conservation and does not accord with SPP, HESPS and subsequently Policy D4 (Historic Environment) of the ALDP.

It should be noted that previous planning applications (P151514 and P160883) also addressed applications for outdoor seating areas. The 2015 application included seating to the edge of the pedestrian footpath which would have increased the potential for overlooking of the neighbouring property thus this element of the

application was denied. In turn the 2016 application eradicated concerns in relation to a loss of privacy by restricting the size and location of seating area and is controlled via an appropriately worded planning condition. On the basis of the above, and following on from the evaluation under policy and guidance, it is considered that the current proposal does not provide anything unique or different from past applications to warrant approval of the application.

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 existing cafés on St Swithin Street on the residential area. These points are not relevant to current proposal and an already established café. Other concerns were in relation to the impact of the outdoor seating area on the character and amenity of the surrounding area. Issues in this regard have been addressed in the foregoing evaluation.

Other concerns raised can be addressed as follows:

- *The applicant has not notified all the affected parties.*

Firstly, it should be noted that the responsibility for neighbour notification does not lie with the applicant. Planning authorities are required to notify those with an interest in "neighbouring land" of a planning application. The term "neighbouring land" is defined as "an area or plot of land which, or part of which, is conterminous with or within 20 metres of the boundary of the land for which the development is proposed." The boundary of the site is identified on the Location Plan by a 'red line'. A single notice must be sent to the "Owner, Lessee or Occupier" at the address of the neighbouring land. The authority notified all the neighbours within the 20 metre requirement based on the red boundary line shown on the applicant's site location plan for application 170175/DPP.

- *The outcome of the previous planning application P160883 was not made known to those who objected.*

The application P160883 was approved conditionally by planning committee on the 27 October 2016. Minutes from the committee can be found on the Aberdeen City Council website:

<https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=348&MId=3875&Ver=4> .

It is standard procedure to notify those that submit a letter of representation the final decision made by the council in writing or by email. In this particular case and a number of other applications around this time the standard procedure was implicated by new software which meant for a short period those whom made representation were not notified of the outcome as standard. This matter has now been addressed.

The approved drawings and decision documents for P160883 can be found online on the Planning section of the Aberdeen City Council Website <https://publicaccess.aberdeencity.gov.uk/online-applications/search.do?action=simple&searchType=Application>

Aberdeen Local Development Plan 2017 – Legal Challenge

Combined Corp BVI Ltd has lodged an appeal against the adoption of the Aberdeen Local Development Plan 2017. The appellant seeks to quash that part of the Plan which incorporates the recommendations made by the Reporter in relation to Issue 11 – Allocated Sites and General Area Strategy; Deeside and Issue 12 – Alternative Sites; Deeside.

The remainder of the proposals and policies in the Local Development Plan 2017 are not subject to legal challenge and therefore, with the exception of the sites affected by Issue 11 and 12, planning applications can continue to be determined in accordance with the adopted Local Development Plan 2017.

RECOMMENDATION: Refuse

REASONS FOR RECOMMENDATION

1. The proposal is contrary to Policy H1 of the Aberdeen Local Development Plan 2017 as the proposed enclosure and external seating area would have a negative impact on surrounding residential amenity in terms of privacy.
2. The design, appearance and location of the enclosure are inadequate and inappropriate and do not contribute to successful placemaking and fail to comply with Policy D1 of the Aberdeen Local Development Plan 2017
3. Subsequently, as this application would create an adverse impact on the immediate area; the proposals do not enhance the character of the Conservation Area and do not accord with Scottish Planning Policy, Historic Environment Scotland Policy Statement and Policy D4 (Historic Environment) of the Aberdeen Local Development Plan 2017.