

Planning Development Management Committee

Report by Development Management Manager

24 August 2017

Site Address:	5-9 Union Street, Aberdeen, AB11 5BU,
Application Description:	Change of use of pavement to provide an external seating area outside the premises
Application Reference:	170690/DPP
Application Type	Detailed Planning Permission
Application Date:	19 June 2017
Applicant:	Brewdog Bars Ltd
Ward:	George Street/Harbour
Community Council	Castlehill And Pittodrie
Case Officer:	Robert Forbes



location plan

scale 1:1250 @ A2

red line indicates extent of application site

12.5 0 12.5 25 50
Scale Bar 1:1250

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RECOMMENDATION

Approve Unconditionally

APPLICATION BACKGROUND

Site Description

The site comprises part of the public footpath adjacent to the north (Union Street) elevation of the Athenaeum building, a category B listed building of early 19th century origin and neo-classical design. The footway is 3.6m wide and the subject area 1.6m wide, leaving a 2m wide section beyond the site boundary. The ground floor and basement of the building are used as licensed premises ('Brewdog') and the pub and its associated bottle shops are accessed (including for

disabled persons) from the Union St elevation. An associated entertainment venue/ nightclub ('Underdog') is accessed via doors on the principal (east) elevation onto Castle Street. The pub offers a range of drinks and food but currently has no external eating or drinking area.

The upper floors of the building are used as serviced apartments ('Royal Athenaeum Suites'). The closest mainstream residential property is located to the east on the upper floors of Castle St (above the 'Tilted Wig' public house). There are existing operational pavement cafes associated with the Tilted Wig, Old Blackfriars and Archibald Simpson's public houses nearby.

Relevant Planning History

Application Number	Proposal	Decision Date
131365	Formation of pavement café at 5 Castle St (Archibald Simpson)	29.11.2013 Status: Approved
141309	Formation of pavement café at 55-57 Castle St (Tilted Wig)	01.10.2014 Status: Approved
P150750	Formation of outdoor seating at 269-271 Union St (So Café)	17.02.2015 Status: Approved

APPLICATION DESCRIPTION

Description of Proposal

The creation of an outdoor seating area to be used in conjunction with the existing pub. A total of 10 tables and 40 chairs (all movable) would potentially be provided along the entire northern premises frontage (c.21m) other than where there are existing door openings, such that access and egress to the premises remains clear. The seating area would project 1.6m from the building frontage and defined by freestanding barriers, leaving a 2m width of clear footway. No permanent street furniture or fixings are proposed.

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=OR8KH4BZLGB00>.

- Planning Statement

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because an objection has been received from the local Community Council and the recommendation is for approval. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

CONSULTATIONS

ACC - City Centre Masterplan Team – Object. Consider the proposal inappropriate due to the north facing location, exposure to air pollution and restricted pavement width. Suggest an alternative location to the east, on Castle St.

ACC - Environmental Health – No objection. Consider that, although the site lies within an Air Quality Management Area (AQMA) and users could be exposed to air pollution (due to traffic emissions), the level of exposure is considered acceptable. Recommend prohibiting amplified music in the outdoor area and that it is not used after 2200 hours in order to protect the amenity of nearby residential property.

ACC - Masterplan, Design and Conservation Team – No observations.

ACC - Roads Development Management Team – No objection. Consider that the remnant 2m footway width would be acceptable and that precedent for outdoor seating in this area is established, such as at the Archibald Simpson. No objection position is subject to agreement of technical matters regulated by the Council's Street Occupation Team, i.e. that appropriate licence is granted. Note that the proposed layout doesn't meet street occupation policy requirements, with respect to a lack of solid screening / tap rail and that this may cause issues for visually impaired pedestrians. Additionally it is noted that the proposed area is not self-contained and incorporates multiple entry and exit points, onto Union Street. These arrangements may see the interaction of pedestrians using the footway and patrons entering / exiting the seating area with trays of drinks / bottles / glass / hot drinks.

Community Council – Object, for the following reasons: obstruction of the footway; creation of a safety hazard for disabled users; and poor air quality. Suggest relocation of the street café to Exchequer Row.

REPRESENTATIONS

Two letters of objection have been received.

A local sight-impaired resident raises concern that the barriers/ footings would cause a trip hazard for pedestrians. They also consider that the extent of the seating area is excessive and unduly close to a pedestrian crossing / junction, resulting in a hazard for disabled / other users of the pavement.

Aberdeen Civic Society object due to the inadequate footway width and obstruction of pedestrian movement.

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.

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.

National Planning Policy and Guidance

Scottish Planning Policy (SPP) seeks to promote appropriate development, particularly within existing settlements. It seeks high quality development that is sympathetic to its setting and takes into consideration amenity.

SPP also sees town centres (including city centres) as a key element in the economic and social fabric of Scotland, acting as centres of employment and services for local communities and a focus for civic activity, and make an important contribution to sustainable economic growth. Town centres should be the focus for a mix of uses including retail, leisure, entertainment, recreation, cultural and community facilities, as well as homes and businesses. Retail and leisure uses are seen as fundamental to the concentration of other activities located in town centres, and planning authorities should support a diverse range of community and commercial activities in town centres (para. 52).

Aberdeen Local Development Plan (2017)

NC2: City Centre Retail Core & Union St

D4: Historic Environment

T4: Air Quality

R6: Waste Management

Supplementary Guidance and Technical Advice Notes

Harmony of Uses – Street Cafes.

This SG supports street cafes where pavements are considered wide enough.... They should not obstruct public space or create a hazard for pedestrians. Proposals for street cafes where adequate space is not provided on the public footway to allow pedestrians a straight, obvious and unobstructed route past will be refused.

Air Quality

Air Quality is a material planning consideration in the Development Management process.

This SPG provides guidance on the way in which air quality and air pollution issues will be dealt with through the planning system. It sets out the policy framework; Seeks to ensure air quality is properly considered in the planning process and highlight developments where air quality may be a material consideration; Seeks to identify development proposals that will require an air quality Assessment; Provides guidance on the process of air quality assessment; and sets out the Council's approach to the use of planning conditions and S75 agreements in respect of air quality.

Other Material Considerations

The Council's Roads Service guidance regarding Pavement Cafes on the Public footway

This guidance notes the support and encouragement for the provision of street cafes in the City Centre, as they make a positive contribution by adding vitality, colour, life and interest to the street scene. It also recognises that they can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live, and work in Aberdeen.

However such proposals require permission to use the footway as pavement cafes, such permits are granted by the City Council as the Roads Authority - under Section 59 of the Roads (Scotland) Act 1984. The guidance sets out that a clear pedestrian route of at least 2m must be maintained between the kerbline and the pavement café boundary. Where this is not possible applications will be deemed to be unsuitable and refused. Otherwise in areas of very high pedestrian flow it may be necessary to leave a clear route of greater than 2 metres in width. Notwithstanding it is also pointed out that even when these dimensions are available the local context may determine that a footway may not be suitable for such use.

Depending on the scale of the pavement café and its location, it may be necessary for an application to be accompanied by a pedestrian/disabled audit, which should be supplied by a

qualified member of the Royal Society for the Prevention of Accidents. It is also stated that the Council may refuse an application if it is felt that the location is generally unsafe for such reasons as:-

- ☐ Dangerously busy adjacent road;
- ☐ Distraction to motorists approaching nearby junctions; or
- ☐ A particularly intensive pedestrian volume at the location.

EVALUATION

Principle of Development

As an adjunct to the existing authorised use as licensed premises, within the city centre, the proposal raises no significant policy concerns in terms of appropriate uses. The principle of development of pavement cafes has long been accepted by the Council as an appropriate means of enhancing vitality and viability within the city centre and is compatible with the spatial strategy for the city centre as set out in the Local Plan (para 2.1) and in supplementary guidance. By enabling increased activity and animation at street level adjacent to the existing ground floor frontage, this proposal would enhance the vitality and viability of the retail centre and would therefore accord with the objectives of local plan policies NC2 and SPP regarding town centres.

Pavement Café SG Compliance

The proposal would have no significant adverse effect on residential amenity or existing uses due to generation of noise, smell and litter. Whilst the street café would partially and temporarily remove a section of public space (i.e. the pavement), that is the case with any street café. Such use of public space in itself would not be reasonable grounds to refuse the application, given that the guidance supports such uses in principle. Following on from this and whilst objection has been received on public safety grounds, including obstruction of pedestrian flow and creation of a hazard for disabled users, the Council's roads officers advise that the extent of the café would not be excessive and do not consider that it would necessarily create a hazard for pedestrians (subject to compliance with technical guidance controlled by the Council's Street Occupation Team in their assessment of a street occupation license). On this basis the proposals is considered to accord with relevant supplementary planning guidance (Harmony of Uses – Street Cafes).

Public / Road Safety

Whilst it is recognised that the occupation of part of the footway would alter established existing pedestrian flow / routes, and reduce the space currently available for pedestrians / disabled users on a small section of Union Street, again this is the scenario with any pavement café and others have previously been approved (e.g. at Archibald Simpson pub and 269-271 Union Street), so that a precedent for such uses on Union Street has been established.

In this case, the footway is considered by Roads officers to be of adequate width to accommodate the proposed street café without adverse safety impact on other existing users. In addition this section of Union Street is considered to be less heavily used by pedestrians than other sections. Again Roads officers have raised no objection in relation to obstruction of the footway, the creation of a public road safety nuisance, or conflict with the use of the nearby pedestrian crossings on Castle Street / Union Street, albeit subject to compliance with technical requirements which would be applied via the licensing process. As such the detailed layout and operation of the street café is a matter that can be controlled by the Council's Street Occupation Team / Licensing and is not a matter that would require to be controlled through planning legislation. The proposal is therefore considered acceptable on road safety / transport grounds.

Health / Safety

It is considered that the health and safety concerns raised by the Council's Roads officers regarding the potential for accidents during transport of food / drinks are health and safety matters for the owner / operator of the public house to address (e.g. by collection / removal of used food and drink by staff) and are again controlled via other legislation. As such they are not relevant material planning considerations. Equally managing the pavement café service and site cleanliness / litter are issues which are addressed in the Council's design guide for pavement cafes, relating to the licencing of such cafes. These matters are considered separately from the planning process during the application for a pavement café permit and through other powers. It is therefore not necessary or appropriate to duplicate these controls by imposition of planning conditions.

Air Quality

It is noted that the site lies within an Air Quality Management Area, which has been designated due to high levels of recorded air pollution, primarily due to gaseous vehicle emissions. However, the Council's Environmental Health officers have raised no objection to the proposal on the grounds of exposure of the public to air pollution, or potential generation of increased pollution (e.g. due to smoking) and have not requested the submission of an air quality impact assessment in terms of the relevant SG / policy T4. It is noted that in other similar situations within the city centre, such assessment has not been required to be undertaken in determining similar planning applications and it is not considered that the circumstances of this case are materially different. In any event it is unclear what, if any mitigation measures would be possible to implement, other than reduction / removal of motor vehicle traffic from the adjacent street. That is a wider strategic matter for the Council to consider in relation to its obligations relating to management of the AQMA.

Although there is a degree of tension with local plan policy T4, in that there would be a level of new exposure in an area of existing poor air quality, given the above factors, it is considered that the absence of an air quality impact assessment or proposed mitigation measures does not warrant refusal of the proposal, taking a proportionate approach.

Refuse / Litter Generation

Given that the proposal results in only a marginal increase in the existing number of patrons within the premises, particularly as the street café would not likely be in place or fully occupied at all times, and given that the requirement for provision of refuse storage was addressed when the original planning permission for the pub was granted (with existing refuse containers provided on Exchequer Row at the rear of the premises) it is considered unnecessary to impose a condition requiring additional refuse provision. Given the existing refuse facilities associated with the licensed premises, it is therefore considered that the proposal accords with local plan policy R6. As discussed above managing the pavement café service and site cleanliness / litter are issues which are addressed through the street occupation licensing process. Thus it is not necessary or appropriate to duplicate these controls by imposition of planning conditions.

Residential Amenity

Given the significant distance between the proposed street café and existing residential property, the presence of other licensed premises and street cafes in the area, the absence of objection from Environmental Health and the heavily trafficked (noisy) nature of Union Street, it is considered that there would be no significant / demonstrable adverse impact on existing residential amenity. The floors above the bar are used as serviced apartments, rather than mainstream flats, and are likely to be occupied on a short term basis, so that less stringent standards of amenity can be expected. It is noted that these flats have secondary glazing to provide noise attenuation to occupants, reflective of their positioning on Union Street. Control of the hours of operation of the pavement café is a matter which is considered separately by the Council through licensing and the pavement café permit application processes, and so does not require duplication by planning control. Given its restricted size and the absence of external

electrical supply, it is considered highly unlikely that the cafe would generate amplified music (e.g. as a performance space). In any event, separate controls exist in relation to noise nuisance. Noise generated by existing motor traffic on the street (potentially in the night) is likely to be of greater disamenity to occupants of nearby flats than the proposed café. It is therefore considered that imposition of a condition restricting amplified music is not reasonable in this case.

Conservation / Listed Building / Visual Impact

As no external alterations to the building or permanent fixtures (such as canopies) are proposed and the use is likely to be seasonal / transient, it is considered that there would be no significant or permanent effect on the character of the conservation area / setting of the listed building, or on visual amenity in general, all such that character would be preserved. The proposal therefore satisfies policy D4.

Roads' Pavement Café Guidance

As regards compliance with the Council's technical guidance regarding Pavement Cafes, the specific planning issues of relevance are assessed above. The weight to be afforded to this guidance in determining the planning application is considered to be limited given that it does not form part of the development plan and is not specifically referenced in the Development Plan or the Council's planning guidance regarding Street Cafes. This proposal involves no physical alterations to the building or significant or permanent visual impact or structures which require planning permission (the movable barriers, tables and chairs in themselves are not development). There would be adequate pavement width, no unacceptable creation of a hazard to other users, no impeding of access into / egress from nearby buildings and no insurmountable litter issues. The assessment of compliance with such guidance is a matter that is dealt with by the Council's Street Occupation Team through separate consent process. It is therefore not necessary or appropriate to duplicate these controls by imposition of planning conditions.

Alternative Locations

The applicant does not consider that it would be feasible to relocate the street café to an alternative position (e.g. to the east on Castle Street or south on Exchequer Row) that would provide a better amenity for users, as suggested by consultees/ objectors. However, due to the limited footway widths at those locations such alternatives are not feasible. To address these limitations no physical alterations to the existing public realm / street layout are currently proposed by the Council, such that a street café could be accommodated (e.g. widening of footways / reduction of vehicle carriageway widths on Exchequer Row or Castle St). As such it would therefore be unreasonable to refuse permission on the basis that there are other alternatives.

RECOMMENDATION

Approve Unconditionally

REASON FOR RECOMMENDATION

The proposal relates directly to the use of the existing adjacent premises. It would enhance the vitality and viability of the retail centre and would therefore accord with the objectives of local plan policies NC2 and SPP regarding town centres. There would be no adverse impact on residential amenity, road safety, or on the character of the conservation area / setting of the listed building.

ADVISORY NOTES FOR APPLICANT

As well as the Council's Planning Service, the Council's Licensing Committee has responsibility for granting licenses. Proposals for street cafes must also adhere to other regulations from the Council's Roads Department.

Permissions to use the footway for pavement cafes are granted by the issue of permits by the City Council as the Roads Authority under Section 59 of the Roads (Scotland) Act 1984. Tables and chairs placed on the Footpath without this permission are an illegal obstruction and the Council will take enforcement action in such cases. The applicant is required to contact the Street Occupation Unit on (01224) 522427 with regards to this matter, such that an appropriate permit is in place prior to the establishment of the hereby approved street cafe.