

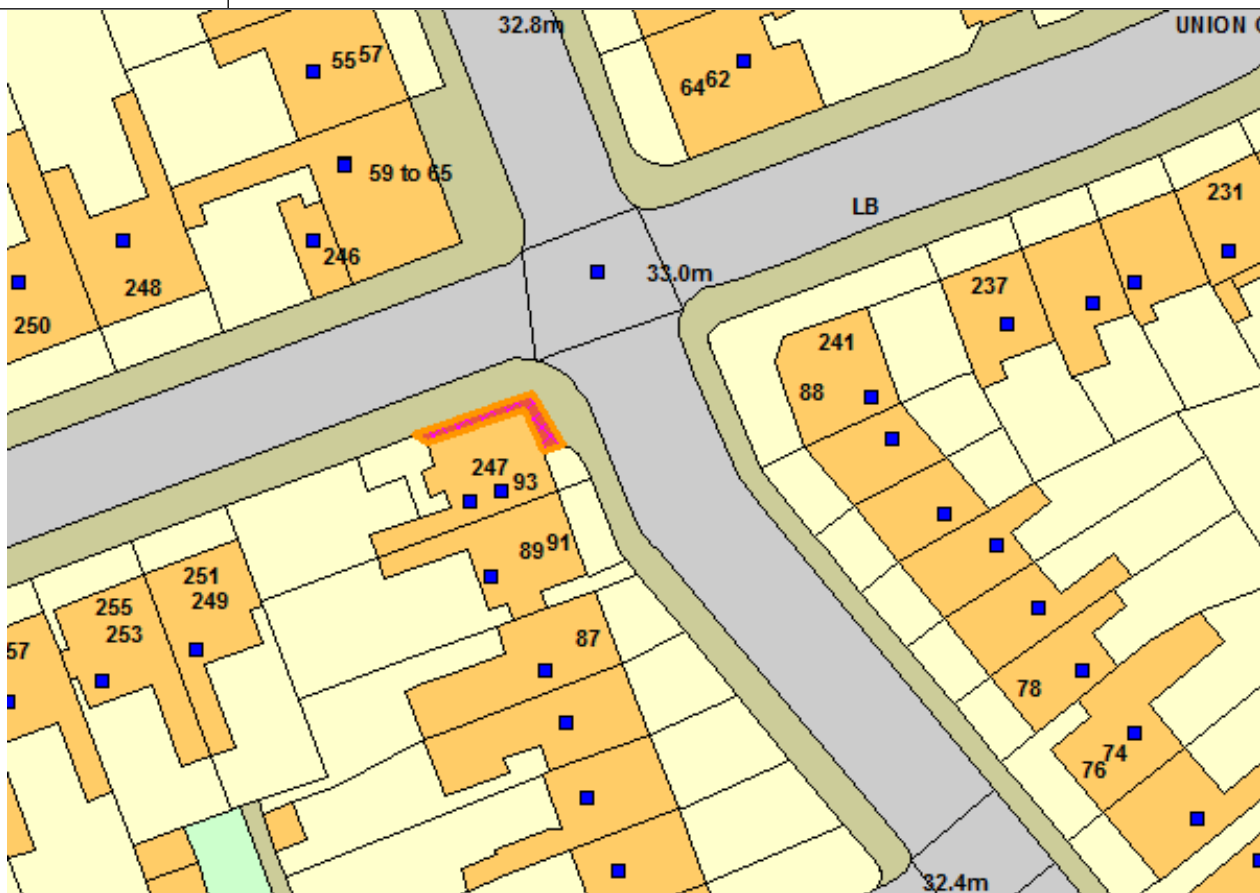


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 24 January 2019

Site Address:	245 Union Grove, Aberdeen, AB10 6SX.
Application Description:	Change of use of pavement to provide an external seating area outside the premises and installation of over window awnings
Application Ref:	181473/DPP
Application Type	Detailed Planning Permission
Application Date:	4 September 2018
Applicant:	Cafe Cognito
Ward:	Hazlehead/Ashley/Queens Cross
Community Council:	Ashley And Broomhill
Case Officer:	Sepideh Hajisoltani



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RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The proposal relates to the pavement area outside a 2 storey semi-detached property of traditional design and build located on a corner plot to the south west of the junction of Ashley Road and Union Grove. The unit is currently occupied by 'Cognito Deli' featuring a delicatessen, gin bar and multiple tables for brunch, dinner and light bites. At the time of writing, the business is currently closed. The application site is located within the Albyn Place/ Rubislaw Conservation Area. The pavement concerned is approximately 4.6m wide along Union Grove and 5.8m on Ashley Road.

Relevant Planning History

16272/DPP - planning permission for alterations to the shopfront was approved unconditionally in May 2017.

161368/ADV - Advertisement consent for installation of 4 no. fascia boards with 3D lettering, 5 no. spotlights and vinyl to windows and doors (retrospective) was approved unconditionally in April 2017.

170093/DPP - Detailed planning permission for change of use from Class 1 (Shops) to Class 3 (Food and Drink) (Retrospective) was approved conditionally in March 2017. A number of conditions were attached to the planning consent. These include a condition stating that the change of use permitted shall be solely for the internal space of the application unit and shall not cover any external space whatsoever.

170844/DPP- Detailed planning permission for change of use of garden to form outdoor seating area was refused in May 2018.

APPLICATION DESCRIPTION

Description of Proposal

Change of use of pavement to form outdoor seating area. The initial submission proposed a total of 18 chairs occupying the full extent of the pavement outside the premises to the north and east. However, following concerns raised by Roads Development Management on the proximity of the proposed seating area to the tactile paving on the public pavement next to the signalised junction crossing, the proposals were revised to reduce the area for outdoor seating (total of 6 tables and 12 chairs) so that the north east corner of the pavement would be kept free of seating at all times in the interest of pedestrian safety.

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.

The proposal also includes installation of awnings over the windows on the Union Grove frontage and over the door on the Ashley Road frontage. Details of the awnings were also revised and traditional style manually operated drop-arm awnings are now proposed instead of the initial non-traditional proposal.

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=PDJQDPBZGMM00>

Reason for Referral to Committee

A total of 16 representations expressing objection to the proposal have been received and the application is being recommended for approval. 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 – No objection. A minimum of 2.3m clearance should be between the awnings and the pavements for Council Street Cleaning Vehicles. The development does not interfere with the visibility splay of Ashley Road/ Union Grove and would not pose any concerns in relation to road safety. The proposed outdoor seating would leave 3.5m of usable footway on the Union Grove side and 2.3m on Ashley Road. The amended proposal does not encroach the tactile paving on the junction and is acceptable.

ACC - Environmental Health – Comments received in relation to restriction of outdoor seating numbers to those indicated in the relevant proposal drawing and prohibition on amplified and non-amplified music in the outdoor area and that the outdoor area is not used after 22:00 hours – No objection.

Ashley and Broomhill Community Council – No comments received.

REPRESENTATIONS

A total of 36 letters of representation have been received (20 letters of support and 16 letters of objection). It should be noted that the details of the proposals has been amended (reduction in the number of tables and chairs and changes to the design of the awnings) since the application was originally submitted, advertised and neighbours notified. The matters raised can be summarised as follows:

1. Outdoor seating is a great opportunity for Aberdeen; more outdoor options are needed similar to what is offered in Glasgow or Edinburgh;
2. The proposal would boost the local economy and would attract investment in the area;
3. The café has enhanced the neighbourhood since opening;
4. There has been a precedent set by other nearby businesses (e.g. the bakers across the road);
5. Unlike national chains, local businesses offer good local produce and should be supported;
6. The busiest period for the café would likely to be evenings when traffic is reduced;
7. The owner should be allowed to use the back garden during the day;

In additions to the letters of support, 16 letters objecting to the application were also received. The objectors to the proposal noted that:

1. The seating would have a detrimental impact on pedestrian and road safety;
2. There has been multiple occasions of vehicular accidents at the junction and the area of seating has little protection;
3. The change of use would increase the amount of illegal parking (delivery vans and taxis serving the premises) in the area;
4. The proposals would exacerbate an existing lack of parking in the area;
5. Outdoor seating would increase litter and food spillage and would attract seagulls and vermin. The bins are constantly overflowing;
6. The proposal would increase noise pollution in the area; no noise impact assessment has been provided in support of the application;

7. Loss of privacy;
8. The seating area would be used as a smoking area. Given the proximity to local schools, young children would have to pass this area;
9. Outdoor consumption of alcohol is against all medical and government advice to curb consumption of alcohol and would set a bad example;
10. Café culture is not appropriate in residential areas. The area is well served by cafes and takeaways. The proposal is unnecessary for this location and should be reserved for city centre;
11. The proposal would increase activity by 40% with 18 new seats and would be an overdevelopment of the site;
12. The proposal would have detrimental impact on the character of the conservation area;
13. The proposal would set an undesirable precedent in the area;
14. Limited provision of toilet and kitchen facilities within the premises would be further stretched;
15. The owner of the café has previously had tables outside when their planning permission has expressly forbidden this;
16. The number of planning applications for this premises is worrying;
17. The owner recently failed to meet her statutory legal requirement for food hygiene at her nearby café.

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 D1: Quality Placemaking by Design
- Policy D4: Historic Environment
- Policy NC6: Town District Neighbourhood & Commercial Centre
- Policy T2: Managing the Transport Impact of Development
- Policy T5: Noise

Supplementary Guidance and Technical Advice Notes

- Noise
- Shops and Signs
- Harmony of Uses

EVALUATION

Policy H1 Residential Areas

The application site lies within a residential area, as zoned in the Aberdeen Local Development Plan (ALDP). Policy H1 (Residential Areas) states “*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.*” Accordingly, a main factor in assessing the appropriateness of the proposed outdoor seating area is whether the proposed development would

have a detrimental impact on the character or amenity of the residential area. For the reasons set out below, the outdoor seating area is considered to be complementary to residential use and would not cause and significant nuisance to the enjoyment of the existing amenity and thus complies with the requirements of Policy H1.

Harmony of Uses Supplementary Guidance (SG)

The Harmony of Uses SG states the Council supports and encourages the provision of street cafés in areas where pavements are wide enough to accommodate them. The SG states further *“It is important that street cafes are properly designed, administered and managed to ensure that they meet the high standards expected in Aberdeen. They should not obstruct public space or create a hazard for pedestrians”*. In this case, sufficient width of pavement on both Ashley Road and Union Grove would remain and thus the principle of outdoor seating is acceptable.

The number of cafés already in the area and that such uses should be located in the city centre has been raised in the written representations. The number of cafés is not a relevant consideration unless an over-concentration leads to a significant adverse impact on amenity or undermines the primary residential function of the area. On St. Swithin Street, in addition to the application premises, there is Café Cognito, Coppa Coffee and The Hub. The next nearest café is The Long Dog Café on Claremont Street. It is not considered that these businesses represent an over-concentration in this locality; rather they contribute positively to the overall amenity of the area. Whilst the SG acknowledges the potential adverse impacts where a significant over-concentration occurs, it states that permission will be refused only where there would significant adverse impacts on residential amenity. As noted below, the proposal does not give rise to significant adverse impacts on amenity.

Policy NC6: Town District Neighbourhood & Commercial Centre

The Supplementary Guidance on Hierarchy of Centres identifies the application site as being located within the St. Swithin Street Neighbourhood Centre - a linear row of 10 units spread predominantly along the western side of St. Swithin Street/ Ashley Road with retail premises on the ground floor and residential accommodation above. Neighbourhood centres are preferred location for local retail, commercial leisure, community and cultural provision only. Policy NC6 states that the proposals for change of use will only be allowed only if:

1. The proposed alternative use makes a positive contribution to the vitality and viability of the centre;
2. The proposed alternative use will not undermine the principal function of the centre in which it is located;
3. The applicants can demonstrate a lack of demand for continued retail use of the premises (applicants may be required to demonstrate what efforts have been made to secure a new retail use);
4. The proposed use caters for a local need;
5. The proposed use retains or creates a live and attractive shop frontage;
6. The new use does not create clustering of a particular use in the immediate vicinity which would undermine the character and amenity of the centre or the well-being of communities; and
7. The alternative use does not conflict with the amenity of the neighbouring area.

In this instance the use of the ground floor unit as a café (Class 3 - Food and Drink) was approved under planning permission 170093/DPP. That permission limited the extent of the use to the indoor space only. It is noted that the approved Class 3 use has contributed to the vitality of the area.

The use of the pavement for this purpose would not have significant impact on the principal function of the Neighbourhood Centre. In this instance, the criteria within policy are not particularly relevant to the use of the pavement, as the unit is already in use. It is also noted that the existing small scale Class 3 use already caters for a local need and is also capable of attracting some customers from other parts of the city. It is also noted that determination of this application does not prejudice the continued operation of the Class 3 use.

In terms of impact on the amenity of the neighbouring area, it is noted that the Council's Environmental Health Team do not object to the proposal. 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 a certain times of the year, the area is not used at all. In terms of impact on privacy it is considered that the location and extent of the proposed seating area would not create an opportunity for overlooking into the neighbouring properties.

Policy D1: Quality Placemaking by Design

This policy states that all development must ensure high standards of design and will be expected to contribute towards creating successful places. The criteria used on assessing an application will be relevant to the scale, character and nature of the proposal. In this instance the proposal is for installation of awnings over the existing windows facing Union Grove and over the entrance door on Ashley Road. The proposal has been amended and the non-traditional awnings have been replaced with awnings of traditional design and manual operating method. The proposed awnings housing would be attached to the outside of the existing shopfront, immediately below the timber fascia, but due to its small size would not protrude beyond the granite pilasters or the fascia board and thus would not adversely affect the appearance of the building. They would be fully retractable in accordance with the guidance provided in the Supplementary Guidance on Shops and Signs.

Other elements of the proposal, the tables, chairs and planters, are ancillary to the use of the premises as a café and do not, in themselves, require consent as they would not be permanent structures. It is therefore the use of the area for seating, rather than the seating itself that requires consent. In this instance the identified area would provide seating for up to 12 customers, which is not considered to be excessive in this location and would not represent an over-development of the site. It is considered that the proposal accords with policy D1.

Policy D4: Historic Environment and Impact on the Character of the Conservation Area

This policy states that the Council will protect, preserve and enhance the historic environment in line with Scottish Planning Policy, HESPS and its own Supplementary Guidance and Conservation Area Character Appraisals and Management Plan. The site is located within Albyn Place/ Rubislaw Conservation Area and the proposed awnings would be highly visible from both Union Grove and Ashley Road. However, it is considered that the proposed traditional awnings and the ancillary non-permanent outdoor seating would not result in a detrimental impact on the overall character of the conservation area and would not obscure any features of architectural or historic interest or importance.

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 tables and chairs would not be permanent fixtures and a condition has been recommended to ensure that they would only be in situ during the operational hours of the outdoor seating area. 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. Therefore, the proposed would preserve the character and appearance of the conservation area, in accordance with Scottish Planning Policy and Policy D4 (Built Heritage).

Policy T2: Managing the Transport Impact of Development

The Road Development Management Team has not raised any objection to the proposal. The use of the café is already established and the outdoor seating area would provide space for a maximum of 12 customers, during peak times. That is not to say that these would be additional customers, or persons arriving by car. It is considered that the relatively small increase in custom that the seating area might bring is unlikely to have a significant impact on the existing on-street car parking situation,

where on-street parking controls are in place. If related to the Council's parking standards, the size of area for the seating (approximately 14-15sqm) would equate to only one additional parking space.

Policy T5: Noise

There will be presumption against noise generating developments. The Council's Environmental Health Team has been consulted to investigate whether or not the impact of the proposed seating area would pose a significant threat to the amenity of neighbouring residential properties. They have not objected but suggested that the hours of operation be restricted to ensure the seating area would not be in use beyond 2200 hours daily and that amplified music is not played. The first proposed restriction is considered a competent control measure to implement through use of planning condition. Furthermore, Environmental Health officers have requested that a condition should be added to ensure no amplified music is played outdoor. It is appropriate to limit the hours of operation by applying a condition to this planning application. However, it is considered to be appropriate to restrict the hours of operation for the outdoor seating area to 8.00pm on any given day, given the close proximity of the proposed seating to residential properties, in particular the residential flat on the upper floor of the building. It would not be appropriate to apply a condition preventing the playing of amplified music. This is due to the fact that such a condition would not appear to pass the tests as set out in Circular 4/1998 – The Use of Planning Conditions in Planning Permissions. In brief these are: Need; Relevance to Planning; Relevance to the Development to be Permitted; Ability to Enforce; Precision; and Reasonableness. In this case it is not considered that such a condition would be necessary, relevant to the planning permission sought, could not reasonably be monitored or enforced, or reasonable in other respects. As such it has been attached as an informative note.

Given the extent of the seating area and its location next to a busy and heavily trafficked thoroughfare and road junction, it is not considered the proposal would have a significant impact on the amenity of the nearest residential properties in terms of noise impact.

Other material planning considerations:

Pedestrian and Road Safety

The proposed area for outdoor seating area has been amended following officer's concern on the proximity of proposed furniture to the tactile paving at the junction. Accordingly, the total number of seats has been reduced from 18 to 12. A planning condition is recommended restricting the extent of the seating to the specific area identified on the drawings, to prevent it from extending beyond that area and thus ensuring that pedestrians are not impeded in using the pavement. A sufficiently wide area of pavement on both Ashley Road and Union Grove would remain and thus the proposal would not impact on pedestrian safety.

Roads Development Management has not raised any concerns with regard to road safety. The extent and location of the seating area are such that it would have no impact on vehicles (or their drivers) using the adjacent roads or the signalised junction.

Objections Raised in Representations

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

- Item 3 relating to existing problems with unauthorised parking in the area is not a relevant material planning consideration for assessment of this application. Further, there is no evidence to indicate that the provision of outdoor seating would cause indiscriminate or illegal parking in the locality.

- Item 5 relating to the impact of the proposal on litter and food spillage is not a material planning consideration. Notwithstanding, it could reasonably be expected that the operator of the café would keep the area clean and tidy.
- Item 8 relates to the potential use of the outdoor seating area for smoking which is not a material planning consideration. Further, whether or not children would pass the seating area and observe people smoking is not a material planning consideration.
- Item 9 relates to the consumption of alcohol which is covered by separate legislation outwith the control of the planning system and therefore does not constitute material planning consideration in the determination of application.
- Item 13 relates to setting a precedent. All applications require to be assessed on their individual merits against the relevant policies of the development plan and other material considerations.
- Item 14 relating to the kitchen and toilet facility is not a material planning consideration.
- Item 15 relating to the previous unauthorised use of the pavement as outdoor seating area. This matter was been raised previously with the applicant. It is not relevant to the assessment and determination of this planning application.
- Item 16 - the number of planning applications for this site is not relevant to the assessment and determination of this planning application. All applications that are submitted for any property are assessed on their individual merits.
- Item 17 relating to the food hygiene in a nearby café owned by the applicant is not relevant to this application and 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, 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, Historic Environment Scotland Policy Statement and Policies H1 (Residential Areas), D1 (Quality Placemaking by Design), D4 (Historic Environment), NC6 (Town, District, Neighbourhood & Commercial Centre), T2 (Managing the Transport Impact of Development) and T5 (Noise) of the Aberdeen Local Development Plan (ALDP), as well as its associated Supplementary Guidance. There are no material planning considerations that would warrant refusal of consent in this instance.

CONDITIONS

- 1) That the area of the pavement to be used for outdoor seating shall be restricted solely to that as shown on approved drawing (011B) and that no tables or chairs shall be sited out with this area at any time. Reason- In the interest of pedestrian safety.
- 2) That the outdoors seating area hereby approved shall only be used between the hours of 8.00am and 8.00pm 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 out with 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.

INFORMATIVE

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