

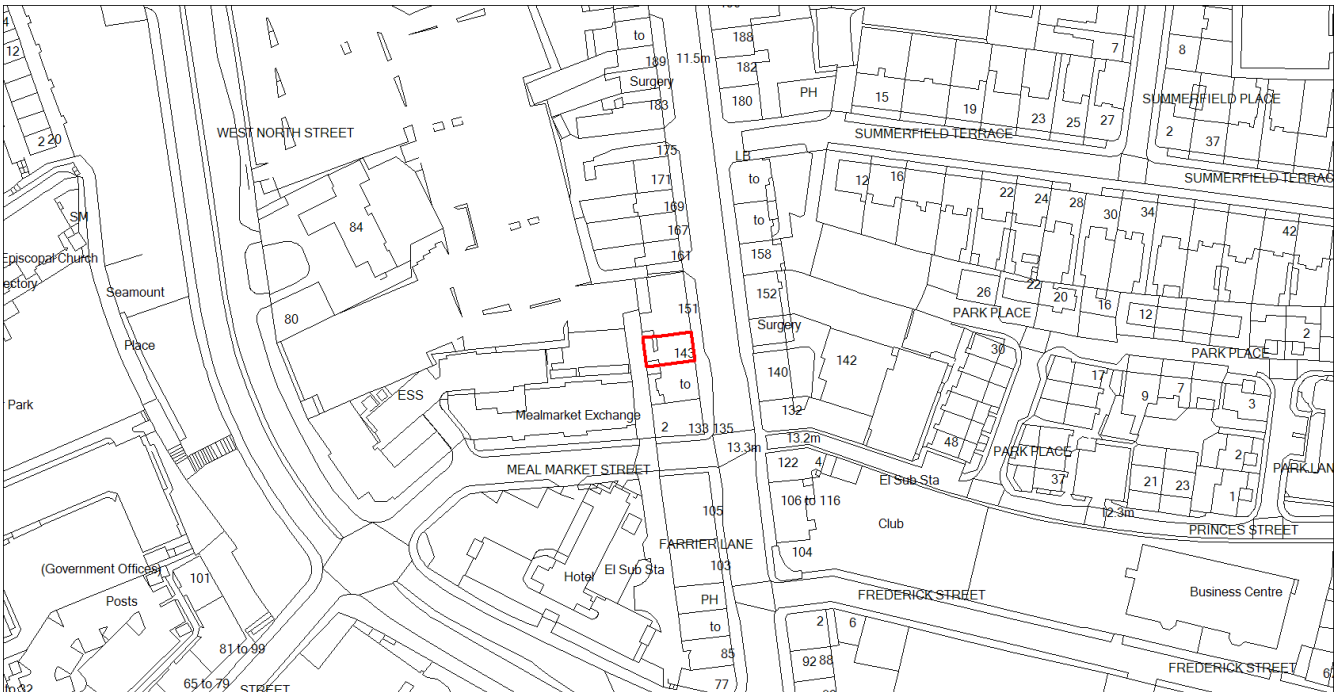
145 KING STREET, ABERDEEN

PROPOSAL TO FORM A PAVEMENT CAFE

For: Lahore Karahi Restaurant

Application Type : Detailed Planning Permission  
Application Ref. : P121087  
Application Date: 01/08/2012  
Officer: Matthew Easton  
Ward : George Street/Harbour (A May/J Morrison/N Morrison)

Advert : Section 34 -Proj. Pub.  
Concern  
Advertised on: 15/08/2012  
Committee Date: 18 April 2013  
Community Council : No response received



**RECOMMENDATION:**

**Approve subject to conditions**

## **DESCRIPTION**

The site is a 2½ storey classical mid-19<sup>th</sup> Century granite building located on the west side of King Street between its junctions with Meal Market Street and Summerfield Terrace.

Within the ground and basement levels of the building is 'Lahore Karahi', a Pakistani cuisine restaurant. The ground floor comprises the seating area and toilets whilst the kitchens and store are located within the basement level. Customers access the premises directly from King Street. The restaurant can accommodate 40 customers.

There are two residential flats within the building, one on the first floor and another on the second floor.

The pavement outside the premises is 3.37m at its narrowest.

The building is category C listed and within the Conservation Area 2 (Union Street).

To the north of the application site is 151 King Street which is a C listed 3½ storey building containing flats. To the south is 137-141 King Street which is also C listed and a 3½ storey building containing flats.

## **RELEVANT HISTORY**

Planning permission (110294) for the use of the flat roof terrace at the rear of the building as a smoking area for restaurant customers was refused in May 2011 by the Development Management Sub Committee.

The reason for refusal was that the proposed use of the terrace as a smoking area would have failed to take into account the existing residential uses in the area by virtue of the disturbance which it would have been likely to generate by customers using the terrace and stairwell to access it. This would have been to the detriment of the existing residential amenity of the occupiers of the flats above the restaurant and the flats on either side of the building.

## **PROPOSAL**

It is proposed to use the pavement at the front of the building to place tables and chairs for use by customers. The proposed layout plan shows that there would be one table and a set of two chairs on each side of the entrance door, resulting in a total of two tables and four chairs. The street café area would be 6.8m long and 0.8m wide, which includes a gap to allow customers to enter and exit the building.

Each set of tables and chairs would be enclosed by a barrier which would be 1.8m wide and 0.83m high.

## **Supporting Documents**

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at - <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?121087>.

On accepting the disclaimer, enter the application reference quoted on the first page of this report.

## **REASON FOR REFERRAL TO SUB-COMMITTEE**

The application has been referred to the Sub-committee because the Council have an interest in the application as roads authority who maintains the pavement and the proposal is considered to be a project of public concern. Accordingly, the application falls outwith the scope of the Council's Scheme of Delegation.

## **CONSULTATIONS**

### **Roads Project Team –**

- Satisfied with the pavement width (2175mm – 2375mm) which would remain.
- Request additional barriers placed perpendicular to the footway between the front of the building and the proposed banner barriers.
- The applicant would be required to apply for consent to the roads authority for occupation of the pavement.

**Environmental Health** – No response received.

**Community Council** – No response received.

## **REPRESENTATIONS**

One letters of objection has been received from an occupant of 151 King Street. The submission highlights the following matters –

- The restaurant previously placed tables and chairs on the pavement without consent.
- There was a Hookah pipe (a type of water pipe originating from the Middle East and South Asia which is generally used for smoking flavoured tobacco) on the table which implies that people would be smoking at the door of the restaurant.

- If tables and chairs were placed outside the restaurant, there would be limited space on the pavement for pedestrians to pass.
- The restaurant is open until 11pm. If customers were outside on the street at this time it would create additional noise especially when the tables and chairs were taken inside. If they were to be left outside they would be a target for vandalism.
- The serving of food outside would exacerbate the sea gull problem on King Street, especially if tables were not cleared immediately after customers have left.

## **PLANNING POLICY**

### **National Policy and Guidance**

#### Scottish Planning Policy / Scottish Historic Environment Policy

Listed Buildings – Planning authorities are required when determining applications for planning permission or listed building consent, to have special regard to the desirability of preserving the building, its setting or any features of special architectural or historic interest which it possesses. Change to a listed building should be managed to protect its special interest while enabling it to remain in active use. The layout, design, material, scale, siting and use of any development which would affect a listed building or its setting should be appropriate to the character and appearance of the building and setting.

Conservation Areas – A proposed development that would have neutral effect on the character or appearance of a conservation area (i.e does not cause harm) should be treated as one which preserve that character or appearance. The design, materials, scale and siting of new development within a conservation area, and development outwith the conservation area that will impact upon its appearance, character or setting, should be appropriate to the character and setting of the conservation area. Planning permission should normally be refused for development, including demolition, within a conservation area that fails to preserve or enhance that character or appearance of the area.

### **Aberdeen Local Development Plan**

Policy H2 (Mixed Use Areas) – Applications for development or change of use within mixed use areas must take into account the existing uses and character of the surrounding area and avoid undue conflict with the adjacent land uses and amenity. Where new business and commercial uses are permitted, development should not adversely affect the amenity of people living or working in the area.

Policy C1 (City Centre Development – Regional Centre) – Development within the city centre must contribute towards the delivery of the vision for the city centre as a major regional centre expressed in the *City Centre Development Framework*.

Policy D5 (Built Heritage) – Proposals affecting conservation areas or listed buildings will only be permitted if they comply with Scottish Planning Policy (SPP).

## **Supplementary Guidance**

Harmony of Uses – Residential, Licensed Premises and Commercial Uses – The Council supports and encourages 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. 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.

It is important that street cafes are properly designed, administered and managed to ensure that they meet the high standards expected in Aberdeen city centre. They should not obstruct public space or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

Before agreeing to planning permission for a street café, the Council must ensure:

1. They do not constitute a hazard; there should be enough pavement width or equivalent space to accommodate the seating, tables and café operation without causing hazard to, or invade the privacy of, other adjacent legitimate uses or impede access into or egress from nearby buildings or spaces or block a desire line.
2. If the development provides shelter from the elements, it should do so without permanently altering the physical fabric of the building to which they are attached or spaces in which they are located; and
3. They do not result in or contribute to an inadequate amenity for existing residential uses. Appropriate facilities to dispose of litter should be provided, without adversely affecting the quality, amenity or cleanliness of the City Centre.

## **EVALUATION**

### **Legal Challenge to the Local Development Plan**

Tesco Stores Ltd has submitted an appeal to the Supreme Court against the decision of the Inner House of the Court of Session to refuse its application to quash the Aberdeen Local Development Plan. Tesco has been unsuccessful regarding both an interim suspension and a full appeal in front of three judges in the Inner House and the Council has received robust advice from Counsel that the reasoning of the Inner House is sound and there are strong grounds to resist the appeal.

Planning applications continue to be determined in line with the Aberdeen Local Development Plan but the appeal is a material consideration and the Council has

to take into account the basis for the legal challenge when determining applications. It should also be pointed out that the Court indicated that, even if Tesco's arguments had found favour, it would have been inclined to quash the plan only in so far as it related to Issue 64 (Allocated Sites: Woodend ... Summerhill... etc.) and that it would be disproportionate to quash the whole plan.

This evaluation has had regard to and taken into account the legal challenge. None of the policies or material considerations which apply to this application would be affected by the terms of Tesco's challenge. The recommendation would be the same if the application were to be considered in terms of the 2008 Aberdeen Local Plan.

### **Principle of Development**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) 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 Harmony of Uses supplementary guidance indicates that pavement cafes have a positive contribution to the city centre by adding vitality, colour, life and interest to the street scene. The Council therefore generally support such proposals as it assists in the aims of the City Centre Development Framework and Policy C1 (City Centre Development) of the Local Development Plan.

The site is within a mixed use area (Policy H2) where different land uses need to take into account the different uses and character of the surrounding area. In this instance the restaurant and two flats share the same building and there are residential properties on either side of the building which has the potential for conflict.

King Street is a busy street both in terms of vehicular and pedestrian traffic. Although, the introduction of the street café would introduce extra activity on the street below and adjacent to flatted properties, given the high level of existing activity and the small four person capacity of the street café, it is not considered that there would be a noticeable change to the amenity experienced by residents.

Planning permission was refused in May 2011 for a terrace at the rear of the building which would be connected to the restaurant. The situation on that occasion was different from the current proposal because unlike at the King Street side of the building, the terrace would have introduced activity into an area where there wasn't any at present, therefore diminishing the existing amenity enjoyed by residents.

That said, the street café would encourage activity which would create more prolonged activity than say a group of pedestrians simply walking past the site. For that reason it is considered reasonable to require that the tables and chairs be taken indoors each night by a certain time in order to protect adjacent residential properties from unreasonable disturbance. Given the busy nature of

King Street, but the close proximity of adjacent ground floor flats, it is considered that 8:00pm is a reasonable time for the street café to cease activity – a condition has been attached to reflect this.

The smoking of Hookah pipes (a type of water pipe originating from the Middle East and South Asia which is generally used for smoking flavoured tobacco) is not considered to be a matter which the planning authority can control.

Taking the foregoing into account it is considered that the proposal complies with Policy H2 (Mixed Use Areas) of the Local Development Plan and the Harmony of Uses Supplementary Guidance.

### **Public Safety**

The tables and chairs would occupy part of the pavement which is currently open to pedestrians. The supplementary guidance states that pavement cafes must not constitute a hazard and should ensure that there is enough pavement width or equivalent space to accommodate the seating, tables and café operation without causing hazard to, or invade the privacy of, other adjacent legitimate uses or impede access into or egress from nearby buildings or spaces or block a desire line.

The pavement on front of the property is 3.37m between the face of the building and the kerb at its narrowest. The tables and chairs would occupy 0.8m – 1m of pavement width, which would result in 2.17m – 2.37m remaining. The roads service have considered the proposal and advise that this would be a sufficient pavement width remaining.

A layout for the tables and chairs has been submitted which is generally acceptable, however the roads service have requested that additional barriers be placed perpendicular to the footway between the front of the building and the proposed banner barriers in order that the tables and chairs are visible to visually impaired people. However this is considered to be a matter of detail which is more properly dealt with and can be controlled through the street occupation license which the applicant must obtain from the Council as roads authority, should planning permission be granted.

In summary the proposal is considered to have taken into account the matters raised in the supplementary guidance and would therefore have no adverse impact upon public safety which would warrant refusal of planning permission.

### **Built Heritage**

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

The site is in the Union Street Conservation Area and in the vicinity of several listed buildings on King Street.

Given that the tables and chairs would be only be positioned on the pavement on an ad-hoc and temporary basis, it is considered that the character and appearance of the conservation area would be maintained. No form of shelter is proposed and therefore there would be no substantial structures such as umbrellas or similar which may have an adverse impact upon the character of the area.

Similarly the setting of nearby listed buildings, including the building at 145 King Street which the restaurant is located within, would be maintained.

Taking the foregoing into account the proposal complies with Scottish Planning Policy, Scottish Historic Environment Policy and in turn Policy D5 (Built Heritage) of the Aberdeen Local Development Plan.

### **Relevant Planning Matters Raised in Written Representations**

- Whether the restaurant previously placed tables and chairs on the pavement without consent has no bearing on the determination of this application.
- Matters of amenity related to Hookah pipes and opening hours have been addressed in the section dealing with amenity.
- The resultant pavement width has been discussed in the public safety section of this report.
- It has been suggested that the serving of food outside would exacerbate the sea gull problem on King Street, especially if tables were not cleared immediately after customers have left. Sea gull problems are not unique to King Street are not considered that this would be a planning consideration or a reason for refusal of the application. Suitable management of the pavement café would minimise the potential for such issues arising and would be a condition of the street occupation license issued by the roads authority. However, there is a large Council owned wheelie bin in close proximity to the premises available for disposal of litter.

### **RECOMMENDATION**

**Approve subject to conditions**

### **REASONS FOR RECOMMENDATION**

Although, the introduction of the street café would introduce extra activity on the street below and adjacent to flatted properties, given high level of existing activity and the small four person capacity of the street café, it is not considered that there would be a noticeable change to the amenity experienced by residents. However, in order to protect residential amenity it is considered that 8:00pm is a reasonable time for the street café to cease activity and tables and chairs to be taken indoors. Taking this and all other matters of amenity into account it is



considered that the proposal complies with Policy H2 (Mixed Use Areas) of the Local Development Plan and the Harmony of Uses supplementary guidance.

The roads service considers that would be sufficient pavement width remaining after introduction of the pavement café. A generally acceptable layout has been submitted, but matters of detail are more properly dealt with and can be controlled through the street occupation license from the roads authority which can also stipulate conditions on the management of the street café. Public safety would therefore be maintained in accordance with the requirements of the supplementary guidance.

Given that the tables and chairs would be only be positioned on the pavement on an ad-hoc and temporary nature, it is considered that the character and appearance of the conservation area and setting of listed buildings would be maintained in accordance with the legislative requirement, SPP and SHEP and Policy D5 (Built Heritage) of the Local Development Plan.

## **CONDITIONS**

**it is recommended that approval is granted subject to the following conditions:-**

(1) that the pavement café shall not be in operation and no tables, chairs or barriers shall be left outside the premises outwith the hours between 0800 and 2000, unless the planning authority has given prior written approval for a variation - in order to protect residential properties on King Street from unreasonable disturbance.

**Dr Margaret Bochel**

Head of Planning and Sustainable Development.