

Kincardine & Mearns Area Committee Report 5 June 2018

Reference No: APP/2018/0658

Full Planning Permission for Change of Use from Shop (Class 1) to Flat (Sui Generis) at Harbour Hut, 96 High Street, Stonehaven, Aberdeenshire, AB39 2JQ

Applicant: Mr & Mrs R Milne, 94-96 High Street, Stonehaven, AB39 2JQ

Agent: Hyve Architects Ltd, 68-72 Evan Street, Stonehaven, AB39 2AA

Grid Ref: E:387735 N:785535
 Ward No. and Name: W18 - Stonehaven & Lower Deeside
 Application Type: Full Planning Permission
 Representations: 0
 Consultations: 4
 Relevant Proposals Map: Aberdeenshire Local Development Plan
 Designations: Stonehaven Settlement
 Complies with: No
 Development Plans:
 Main Recommendation: Refuse



NOT TO SCALE

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1. Reason for Report

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.9.1 of Part 2A List of Committee Powers and Section C.3.1e of Part 2C Planning Delegations of the Scheme of Governance as there have been valid objections from five or fewer individuals or bodies with separate postal addresses or premises, and at least two of the total number of Local Ward Members in the Ward in which the development is proposed have requested that the application be referred to the Area Committee.

Cllr Dickinson - to consider further the flood risk in this area

Cllr Agnew - further discussions in respect of Policy C4 Flooding.

- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

2. Background and Proposal

- 2.1 The application seeks approval for the change of use of an existing shop unit (Class 1) to a flat (Sui generis). The property is located on the ground floor of No 96 High Street, which is located directly adjacent to the slipway of Stonehaven harbour. This site is out with the identified town centre in the local plan, and currently operates as a retail unit, predominantly selling sweets and ice cream.
- 2.2 The building in which the property is located is listed, and consists of the shop unit, and a residential property occupying both of the 2 floors above the shop. The building is C listed, due to the buildings traditional features which are important to the status of the area as a Conservation Area.
- 2.3 The building description, as set out in the listing (1980), is of a mid-19th century traditional constructed property of 2-storey, with attic accommodation; a terraced house with shop at ground floor level.
- 2.4 The original shop had previously been converted to a flat, although the date of this conversion is unknown (post 1980), and then reverted to a shop in 2004 following a subsequent application to change the use.
- 2.5 The internal changes to the building have been considered as part of the associated Listed Building Consent application (APP/2018/0659), and are considered acceptable in the context of the fabric of the listed building.
- 2.6 The property lies on the edge but just outside of the Coastal Flood Risk Area, as mapped by SEPA. This mapping only considers coastal flooding from high tides and does not consider wave action or climate change. Significant flood events occurred in 2012 and 2014.
- 2.7 As noted, there has been several changes, over the history of this building, to the ground floor of the building largely from a shop to a flat and then back to a

shop. The most recent permission for change of use was granted in 2004, where the ground floor reverted back to retail use.

- 2.8 The applicant has referred to a similar application, AP/2016/2539 which renewed an approval for the change of use for Class 1 (shop) to a dwelling (class 9) at Jane's Design Studio a few doors towards the harbour car park from this application. The Flood and Coastal Protection Team were not consulted on that application, although should have been given the proximity to the flood risk area.
- 2.9 Several documents have been submitted in support of the application. A Design Statement outlines that the applicant would like to convert the shop back to its former use as a flat. This states that this will convert the building back to the original use of the building. Only minor maintenance is required to the exterior of the building.
- 2.10 The applicant has provided a supporting statement which relates to the internal changes to the building, and a letter of support which seeks to clarify concerns raised by the Planning Service. The applicant considers that there is no policy premise to refuse the application based on the impact of the loss of a shop unit. Furthermore the applicant considers that based on the fact that flood water has not entered the building during recent flood events (due to the use of sandbags), and since the building is outside the mapped coastal flood risk area, the property would not result in an increase in population or properties within the risk area, and as such no material increase in flood risk. The applicant states they would be happy to install concrete floors in order to mitigate any concerns raised.

3. Representations

- 3.1 No valid letters of representation have been received.

4. Consultations

- 4.1 **Infrastructure Services (Roads Development)** has commented that there is no dedicated parking for the existing shop, which requires more car parking spaces than a flat, and there is no issue, therefore they have no objection to the change of use (to a use requiring less spaces).
- 4.2 **Infrastructure Services (Flood Risk and Coastal Protection Team)** have objected to the development, as although the site is marginally outside the coastal flood plain identified in the SEPA Coastal Flood Map, these extents do not allow for either storm surge or wave action which are key forms of flood risk in this area. The change of use of the property would increase the risk to life, resulting from the usage of the property for residential purposes.
- 4.3 **Infrastructure Services (Business Development)** outline the location of the site is popular with tourists, and tourism is one of the key sectors for the local economy. The loss of the retail unit would affect the overall tourism offering in this part of Stonehaven. However, consideration must be given to the viability of the business, and if unprofitable it would be unreasonable to expect the business to continue trading.

- 4.4 **Business Services (Developer Obligations)** confirm the application does not require any developer contributions.

5. Relevant Planning Policies

5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

5.2 Aberdeen City and Shire Strategic Development Plan 2014

The purpose of this Plan is to set a clear direction for the future development of the North East. It promotes a spatial strategy. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

5.3 Aberdeenshire Local Development Plan 2017

Policy P3: Infill and Householder developments within settlements
Policy HE1: Protecting Historic buildings sites and monuments
Policy HE2: Protecting historic and cultural areas
Policy C4: Flooding

6. Discussion

- 6.1 This application is purely for the change of use of the existing shop unit to a residential unit, internal works are covered by a listed building consent application. The key planning issues are whether this change of use would have any impact on the listed building, whether there would be any impact on character or amenity of the area and the Conservation Area, whether the resultant flat would have sufficient amenity as a residential property, and whether there are any specific technical issues that preclude the change of use.

Historic Character

- 6.2 Policy HE1 seeks to protect historic properties from development that would negatively effect their character or integrity. Contrary to the Design Statement, the original and historic use of the property was a shop, and the preference would be to retain this function. The change of use back from a flat to retail in 2004 was a positive one, in terms of restoring the original form and function of the ground floor unit of the building. However, the applicant is intending to retain the existing shop frontage (other than removal of the fascia signage), and the previous use of the property as a flat does demonstrate how this part of the building had successfully functioned as flat previously, resulting in the impact on the historic character of the building not being significant enough to warrant refusing the development on these grounds.
- 6.3 Policy P3 'Infill and Householder developments within settlements' states that changes of use may be acceptable within settlements where they respect the scale, density and character of its surrounding area and will not erode the character or amenity of the surrounding area.
- 6.4 The proposed unit is located on the frontage of the harbour at Stonehaven which is a key tourist attraction and features a number of complimentary commercial operations largely focused on food and drink. The provision of a shop unit (albeit one which also services as a café) provides an important role in contributing to the vitality of the harbour area as a tourist attraction. This importance in terms of the role of this area in the wider vitality and vibrancy of the wider town is acknowledged in the response by Business Development, who consider that it would be preferable to maintain this unit as a commercial premises. The Planning Service agree that the loss of a business would have a detrimental effect on the amenity of the area as a tourist destination and it would also limit, to an extent, the levels of economic activity in the immediate area.
- 6.5 The policy position in relation to change of use of existing retail units does not specifically protect retail units outwith the town centre, and any decision must be based on the significance of the erosion of the character and public amenity of the area, as considered under Policy P3. In this case, whilst the Planning Service consider that the proposal would have an effect on the amenity of the area by virtue of the loss of a commercial property, the use as a residence would not be out of character with the wider diverse uses of the Harbour Area, or the character and setting of the Conservation Area as required under Policy HE2: Conservation Areas. There is not significant

enough policy strength for retention of commercial uses outside the town centre to warrant a refusal of the proposal on these grounds alone.

- 6.6 In respect of the suitability of the property for a flat, there has been previous use of the property as a residence, and Roads Development consider that levels of parking required for the change of use would be less than that of the existing use, therefore have no concern in this regard. Whilst the layout of the property and lack of garden area suit a retail unit better than a residential unit, given the context of the area, and notwithstanding the consideration of flooding to follow, the property would have an acceptable level of amenity as a flat in its own right.

Flood Risk

- 6.7 The proposal sits on the edge of the 5m contour which typically marks the still water coastal flood risk area, this mapping does not account for storm surges caused by wave action. The applicant identifies the Planning Service has approved other changes of use in the recent past (APP/2016/2539) which was for renewal of a permission to convert Jane's Design Studio to a flat. It is unfortunate that the Councils Flood Prevention Team were not consulted on that application. Despite this inconsistency from the previous omission, which is unfortunate, flooding is a relevant consideration in this area and for this application.
- 6.8 Policy C4: Flooding states that development will not normally be permitted if within a medium to high flood risk area. Scottish Planning Policy states that the planning system should take a precautionary approach to flood risk from all sources, including coastal flooding taking account of the predicted effects of climate change. When considering flooding avoidance, authorities should consider the nature of the proposed use of the land.
- 6.9 The applicant states they do not believe the property is at risk of flooding as it is outside the flood risk area, and water did not enter into the property during the recent flood events, due to the use of sandbags. They consider that concrete floors could be installed, however this would not reduce the risk to human life. It is acknowledged that this location does receive protection from the worst effects of waves due to the harbour wall, however the flood risk mapping is highly indicative and does not take account wave action or storm surges or climate change. The applicant has chosen not to undertake a Flood Risk Assessment to verify their view that the property is not at risk.
- 6.10 Whilst this is an existing building, in a historic area, and the property has so far avoided any significant water ingress, there is a significant probability of the property being effected by flooding, and this flood risk will only increase due to increasing sea levels. The current use of the property as a shop means that, in terms of flood risk, there is a lower risk to human life than in the event the property was utilised as a residence – this is largely due to the hours of use for retail, compared to overnight residential use and the lack of ability to see the danger, or quickly react to it through the night. On the basis of increased risk to life, the Flood and Coastal Protection Team object to the change of use. The Planning Service concur with the view of the Flood and

Coast Protection Team that it is highly probable that the property would be subject to flooding.

- 6.11 The Planning system does seek to ensure existing properties are utilised as far as possible where there are constraints and issues such as flood risk; abandonment and avoiding utilising buildings in “at risk” areas is not to be encouraged, in particular where this relates to historical settings or a listed building, and this can form a material consideration in a change of use application. However, the applicant has not suggested or evidenced that shop unit is unviable or that there is no market demand for someone else to take on the property and run it as a successful retail unit, capitalising on the significant tourist footfall drawn to the Stonehaven Harbour area, and therefore there is no reason to believe that the property would become unoccupied as a result of not granting permission for the change of use to a flat.

Conclusion

- 6.12 Whilst the Planning Service recognise the previous use of the property as a residence, the planning system is about ensuring long term sustainability of land uses and promoting sustainable economic activity, and in this case the material considerations relevant to the application point to the conclusion that, on balance, the best planning use of this property remains as a shop both in terms of the amenity of the area and limiting the effects of future flood events on the residential population, i.e. minimising the risk to life from flooding.
- 6.13 As the proposal would increase the risk to life of the occupants of the proposed flat, the Planning Service considers the proposal cannot be supported on the grounds the proposal is considered contrary to Policy C4 Flooding of the Aberdeenshire Local Development Plan 2017, and material to this conclusion is that there is an existing viable use which does not present the same level of risk.

7. Area Implications

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

8. Implications and Risk

- 8.1 An equality impact assessment is not required because [state reasons using the guidance provided by the Equalities team] and does not have a differential impact on any of the protected characteristics.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.

9. Sustainability Implications

- 9.1 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

10. Departures, Notifications and Referrals

10.1 Strategic Development Plan Departures

None

10.2 Local Development Plan Departures

Policy C4: Flooding

- 10.3 The application is a Departure from the valid Local Development Plan and has been advertised. Any representations received have been circulated as part of the agenda and taken into account in recommending a decision. The period for receiving representations has expired.

11. Recommendation

11.1 **REFUSE Full Planning Permission for the following reasons:-**

01. The proposed change, from the existing viable use to a residential use, would increase the risk to life of the occupants of the proposed flat due to the flood risk, and the proposal is contrary to Policy C4 Flooding of the Aberdeenshire Local Development Plan 2017.

Stephen Archer
Director of Infrastructure Services
Author of Report: James Wheater
Report Date: 23 May 2018