

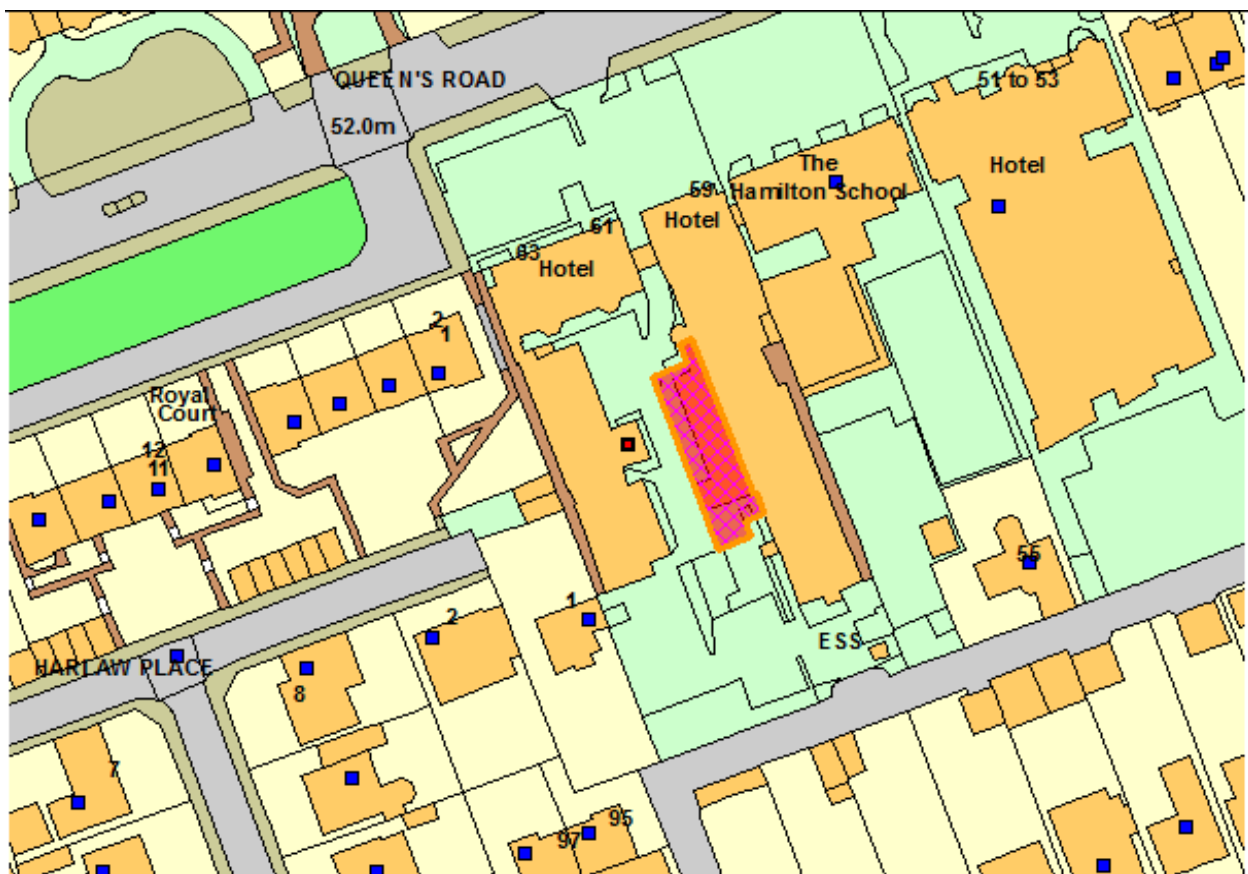


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 22 April 2021

<b>Site Address:</b>	The Chester Hotel, 59 - 63 Queen's Road, Aberdeen, AB15 4YP
<b>Application Description:</b>	Formation of external dining area at roof level, including balustrade, decking and associated works
<b>Application Ref:</b>	201454/DPP
<b>Application Type</b>	Detailed Planning Permission
<b>Application Date:</b>	25 November 2020
<b>Applicant:</b>	The Chester Hotel Ltd
<b>Ward:</b>	Hazlehead/Ashley/Queens Cross
<b>Community Council:</b>	Queen's Cross and Harlaw
<b>Case Officer:</b>	Gavin Evans



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## **RECOMMENDATION**

Refuse

## **APPLICATION BACKGROUND**

### **Site Description**

The application site forms part of the wider site operated by the Chester Hotel, which is located on the south side of Queen's Road, between its junction with Bayview Road and Queen's Gate, and lies within the Albyn Place/Rubislaw Conservation Area. The hotel spans what were originally four separate feus and incorporates four traditional granite buildings (55-63 Queen's Road) which have been the subject of extensions of varying scales and are now linked to serve as a single building in hotel use. The buildings front Queen's Road, with car parking and areas of landscaping to their frontages, including mature trees covered by a Tree Preservation Order (TPO).

The surrounding area contains a mix of uses. Immediately to the west are two storey residential properties at Royal Court, Queen's Road and a dwellinghouse at 1 Harlaw Place. To the north, across Queen's Road, are numbers 64–70 Queen's Road which are granite villas in office use. To the south, across Queen's Lane South, are residential properties fronting on to Harlaw Road. The adjoining plot to the east at 49-53 Queen's Road is occupied by the Malmaison Hotel.

This application relates to an existing area of flat roof over a single-storey extension to the hotel's function room/conference space which was granted planning permission in 2018 (application ref. 171347/DPP).

### **Relevant Planning History**

- Detailed planning permission (ref. 121555) for a new block featuring 20 bedrooms and restaurant extension was approved by delegated powers in February 2013.
- Detailed planning permission (ref. 130773) for the raising of the existing restaurant roof, external alterations and a new stairwell were approved in September 2013.
- A non-material variation was granted under section 64 of the 1997 act in March 2014. The variation allowed the infilling of the gap between the new block and original building and makes mention of the roof being surfaced with a material for an 'external balcony'.
- A retrospective application for detailed planning permission (ref. 140990) was submitted in July 2014 for formation of an external terrace area ('Areas A & B'). It was due to go to Planning Committee in March 2015 with a recommendation for refusal. However, the application was withdrawn prior to the committee meeting and therefore no decision was made.
- A certificate of lawfulness (ref. 150763) was issued under delegated powers on 1<sup>st</sup> July 2015. The certificate confirms that the use of the external terrace to the south of the private dining room ('Area A') can be lawfully used for purposes reasonably relating to the authorised use of the hotel. It should be noted that the certificate did not apply to the wider area of terrace on the west side of the first floor dining area (Area B), which remains unauthorised.
- Planning permission (ref. 150765) was approved retrospectively by the Planning Development Management Committee on the 18<sup>th</sup> August 2015 for the retention of a glass balustrade around the area considered lawful (Area A) under the aforementioned certificate of lawfulness (ref. 150763).

- An application (ref. 151773) for balustrading along the west side of Area B, solely for health and safety purposes when maintaining the roof, was approved unconditionally by PDMC. That decision included an informative note that explicitly stated that the permission would not permit the use of the roof space for hotel-related purposes.
- Planning permission was granted for the erection of an enlarged function suite in March 2018, with application 171347/DPP approved by PDMC. An accompanying application for Listed Building Consent (ref. 171346/LBC) was approved under delegated powers. The construction of the enlarged function suite provided the additional area of flat roof shown as 'Area C' on the plans accompanying the current application.
- 201453/LBC Formation of external dining area at roof level, including balustrade, decking and associated works. Withdrawn in December 2020 as LBC not required.
- In August 2020 planning permission was granted for the erection of a temporary marquee structure to the Queen's Road frontage of the Chester Hotel (ref. 200649/DPP), allowing for outdoor seating at a time when use of the internal floorspace was subject to coronavirus-related restrictions.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Detailed planning permission is sought for physical alterations to allow for use of a flat-roofed area within the Chester Hotel site as an outdoor dining terrace to be used in conjunction with the existing adjacent hotel restaurant. The area in question is identified on the submitted plans and incorporates the following:

- Area B, which includes 4no roof windows in the flat roof, is covered by existing decking and is enclosed by an existing glass balustrade; and
- Area C, an area of flat roof which lies to the west of the existing balustrade described above and sits directly above the ground floor conference facility.

The proposed works would involve the installation of a new 1.1m high glass balustrade along the northern and western edge of areas B and C. A higher 1.8m glazed barrier is proposed on the southern edge to the roof, which would also return around the first 2m of the western roof edge. This higher 1.8m barrier would be supplemented by a 'dense impenetrable evergreen hedge', also of 1.8m in height. Decking would be laid to the roof of area C, to match existing decking in areas A and B.

### **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=QKAXGKBZMH400>

These include:

- Plans/Elevations/Sections
- Environmental Noise Assessment Report

- Design Statement
- Visual Screening Study

### **Reason for Referral to Committee**

The application has been referred to the Planning Development Management Committee because the number of representations stating objection to the proposal exceeds the threshold set in the Council's scheme of delegation (6 or more).

### **CONSULTATIONS**

**ACC - Roads Development Management Team** – No objection to the proposal or observations to make.

**ACC - Environmental Health** – Three iterations of the applicants' Environmental Noise Assessment have been reviewed. Advice has been provided on the methodology to be used in demonstrating noise levels throughout the day from 10am to 10pm, however that recommended methodology is not reflected in the most recent submission. On that basis, earlier comments are reiterated as follows:

The proposed development is acceptable to the Environmental Health Service subject to the following measures:

- Use restricted to dining purposes only and restricted to a maximum of 60 patrons;
- Based on the evidence provided, operating time restrictions would be required, allowing for use of the dining terrace only between 8pm and 10.10pm;
- Installation of the glazed balustrades and associated hedge planting per the latest submissions;
- Prohibition of amplified music or sound, as well as prohibition of any other form of music entertainment on the proposed rooftop dining area.

**Queen's Cross and Harlaw Community Council** – Objects to the proposal. Raise the following concerns:

- Highlights issues experienced by local residents since 2014, when the Chester Hotel first sought retrospective consent for a balcony area;
- Notes that no previous applications for a large balcony/outdoor terrace area at the Chester Hotel have been approved, and that the current proposal would accommodate more patrons than any earlier proposal;
- Draws attention to the difficulties arising from the response period being over the festive break, when it is more difficult to obtain responses from relevant Council officers;
- Expresses dissatisfaction with the scope of neighbour notification;
- Highlights policy T5 (Noise) presumption against noise generating developments being located close to noise sensitive developments, such as housing;
- Highlights requirements of policy H1 (Residential Areas) as regards protecting the character and amenity of the area and restricting non-residential uses unless they are considered complementary to residential use or it can be demonstrated that there would be no conflict with, or nuisance to, the enjoyment of existing residential amenity;
- Highlights policy D1 (Quality Placemaking by Design) commentary on avoiding unacceptable impacts on adjoining uses, including noise;
- Concludes that the proposal would not comply with the highlighted policies;
- Quotes an earlier report to the ACC Planning Development Management Committee, which

described the nearest residential property at 1 Harlaw Place as having a high sensitivity to noise;

- Notes that the submitted noise report appears to have been undertaken on the basis of a socially-distanced seating plan, but makes no assessment of capacity or impact as and when such social distancing is no longer required;
- Points to concerns previously raised by Environmental Health officers in relation to earlier balcony applications at the Chester Hotel;
- Highlights earlier planning assessment which concluded that an elevated outdoor space would not benefit from attenuation from walls etc. that would be expected at ground floor level and that the likelihood of disturbance to residential properties is higher as a result;
- Queen's Cross Community Council concurs with the Council's earlier decision to prohibit the use of this external roof space for activities associated with the hotel, on the basis that this would adversely affect nearby neighbours to an unacceptable degree;
- Expresses frustration with: the number of retrospective applications made at the Chester Hotel site; the submission and withdrawal of various supporting noise reports and the lack of supervision of patrons entering and departing the premises;
- Highlights previous noise complaints relating to the hotel use without the proposed rooftop space.

## **REPRESENTATIONS**

Forty-two letters of representation have been received in relation to this application during the representation period, all of which express objection or concern about the proposal. These representations are mainly from nearby residents and raise the following matters:

### **Principle**

- Object to the principle of an elevated external terrace being used for purposes associated with the hotel use (e.g. drinking, dining, entertainment);
- Refers members to previous decisions to refuse similar applications (for notably smaller outdoor areas) at the Chester Hotel;
- Suggests that planning permission should be refused as a matter of course given these earlier refusals and similarities with the current proposal;
- Highlights that the planning authority would have no control over the number of people using such a space or the nature of its use, so long as it remained reasonably related to the established use as a hotel;
- Contends that the proposal would increase the hotel's capacity, contrary to the applicants' assertions. This is corroborated by an application for extension to the associated premises licence;
- Highlights that planning permission has been sought on a permanent basis and therefore this additional floorspace would continue to be available to the applicants after requirements for social distancing and restrictions on indoor spaces have been removed;
- Notes that the Chester Hotel already has a large area for outdoor dining at its Queen's Road frontage, which does not significantly impact on residential premises in the way activity to the rear does;

### **Procedural**

- Incorrect address was used for notification and therefore neighbour notification was inadequate;
- No notices were issued to those residents most directly affected by the proposal, on Queen's Lane South, Harlaw Road, Harlaw Terrace, Harlaw Place or Royal Court;
- Highlights erroneous notification of the former Hamilton School, now part of the Chester Hotel premises;

- ACC should put an end to the continual re-application by the Chester Hotel for the same facility;

### Noise/Amenity

- Highlights conflict with Policy T5 (Noise) of the ALDP, which states a presumption against noise generating developments close to noise sensitive developments such as existing housing, and also policy H1 (Residential Areas), which states that proposals for non-residential use will be refused unless it can be demonstrated that the use would cause no conflict with or nuisance to the enjoyment of existing residential amenity;
- Highlights that assessment of noise has been undertaken on the basis of a socially-distanced layout for the space, which would appear likely to under-estimate noise levels in normal circumstances;
- Highlights that the Noise Assessment assumes doors onto the raised dining area would remain closed and therefore assumes no noise originating from the interior, which seems unreasonable and impractical;
- Contends that the proposal would result in a further loss of amenity for local residents as a result of noise impact, with the presence of children's bedrooms at the rear of Harlaw Terrace highlighted;
- Highlights past complaints to Environmental Health in relation to noise originating from the hotel and notes that residents have previously been able to hear noise from the premises from within their own homes with doors and windows closed;
- Applicants' submissions refer to the outdoor dining space being used only during clement weather, however that is the time when residents would make use of their own private gardens with an expectation of reasonable amenity;
- Loss of privacy within neighbouring gardens due to the elevation of the dining space;
- Highlights that the Visual Screening Study is fundamentally flawed in failing to present views from within 'Area C', which represents the majority of the proposed outdoor dining area, and therefore the study does not fully reflect the extent of visual impact/overlooking;
- Draws attention to the sporadic and fluctuating nature of noise from voices and, if used as a dining area, cutlery and service;
- Casts doubt on the ability of the proposed barrier to contain associated noise given the elevated position and the inability of a 1.8m wall to contain existing noise at ground level;
- Increased patronage/capacity would lead to potential increase in both use of the outdoor smoking area at the rear of the property which already affects nearby residents;
- This proposal would increase the number of unsupervised people leaving the hotel, adding to problems of anti-social behaviour and noise experienced along Queen's Lane after closure;
- The proposal may also have an adverse effect on families' health due to frequent disturbance.

### Transport/Access/Parking

- Parking for the Chester Hotel has long been inadequate, with regular overspill onto surrounding streets affecting the availability of spaces intended for resident permit holders only, and resulting in blockage of garages/driveways on Queen's Lane South and associated obstruction for emergency vehicles;
- Any potential increase in non-residential traffic along Queen's Lane South would be unacceptable to residents, given existing problems with delivery vehicles accessing the hotel via this route, which often necessitate reversing along the lane onto Forest Avenue;
- Queries where taxis or buses will wait to pick up guests/patrons.

### Other

- The proposals would have an adverse effect on the nearby residential property values.

## **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 of conservation areas.

### **National Planning Policy and Guidance**

Scottish Planning Policy (SPP)

### **Aberdeen City and Shire Strategic Development Plan (2020) (SDP)**

The Strategic Development Plan 2020 was published in August 2020. The purpose of this Plan is to set a clear direction for the future development of the City Region. It sets the strategic framework for investment in jobs, homes and infrastructure over the next 20 years and promotes a spatial strategy for the next 20 years. 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. The following general targets are identified; promoting diversified economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapting to the effects of climate change and limiting 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.

### **Aberdeen Local Development Plan (2017)**

- Policy D1 (Quality Placemaking by Design)
- Policy D4 (Historic Environment)
- Policy T2 (Managing the Transport Impact of Development)
- Policy T3 (Sustainable and Active Travel)
- Policy T5 (Noise)
- Policy B3 (West End Office Area)

### **Supplementary Guidance and Technical Advice Notes**

- Transport and Accessibility
- Noise

### **Proposed Aberdeen Local Development Plan (2020)**

The Proposed Aberdeen Local Development Plan (Proposed ALDP) was approved at the Council meeting of 2nd March 2020. A period of representation in public was undertaken from May to August 2020. The Proposed ALDP constitutes the Council's settled view as to what the final content of the next adopted ALDP should be, and is now a material consideration in the

determination of planning applications. The Aberdeen Local Development Plan 2017 will continue to be the primary document against which applications are considered. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- such matters have or have not received representations as a result of the period of representations in public for the Proposed ALDP;
- the level of representations received in relation to relevant components of the Proposed ALDP and their relevance of these matters to the application under consideration.

The foregoing can only be assessed on a case by case basis.

In this case, policy VC6 (West End Area) introduces a presumption in support of applications for change of use from office to residential, but retains the current requirement for all applications to take into account existing uses and avoid undue conflict with adjacent land uses and amenity. The following policies are relevant to this proposal:

Policy VC6 - West End Area  
Policy WB3 - Noise  
Policy D1 - Quality Placemaking  
Policy D2 - Amenity  
Policy D6 - Historic Environment  
Policy T2 - Sustainable Transport  
Policy T3 – Parking

## **EVALUATION**

### **Principle of Development**

A hotel has existed at 59 Queen's Road since at least the 1960s. In the 1990s the hotel expanded into 61 and 63 Queen's Road and it became 'Simpsons Hotel, Bar and Restaurant'. The Chester Hotel is located within the West End Office Area (Policy B3) where offices and business uses are generally supported. Policy B3 continues to state that '*new development proposals that do not protect existing residential amenity will be refused*'.

In this case, the existing hotel use has been established at the site for many years, with numbers 55 and 57 (formerly in use as The Hamilton School) more recently incorporated into the Chester Hotel premises. On that basis the use of the wider Chester Hotel site is not under consideration within the scope of this assessment, which focuses specifically on the introduction of a rooftop dining area and its relationship with existing residential amenity. With that in mind, this report will consider the potential impact of the proposal on residential amenity, by way of noise, overlooking, visual impact etc.

### **Design and Appearance**

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 of conservation areas.

In this instance, whilst the various buildings comprising the Chester Hotel site are all listed (categories B and C), the works in question do not affect the historic fabric and relate exclusively to a contemporary extensions to the rear of numbers 59 and 61 Queen's Road. On that basis, it has been determined that Listed Building Consent is not required for those works.

The physical works proposed are not extensive, involving the introduction of a relatively



unobtrusive 1.1m high glass balustrade around the northern and western edges of the flat roof to the existing conference suite, along with the laying of decking. An existing 1.1m high glass balustrade enclosing area B would be removed and repurposed as part of these works, with additional balustrading designed to match. To the southern end of the proposed rooftop dining area, a 1.8m high glass balustrade would be installed, in tandem with 'dense impenetrable evergreen hedge', set within planters and also 1.8m high. Both the hedging and higher balustrade would return around the corner to the western roof edge for a 2m length. The applicants' submissions state that this is intended to provide year-round screening of the proposed dining area from the south.

The proposed physical alterations would not adversely affect the historic interest or setting of the listed buildings within the Chester Hotel site and, given their unobtrusive nature and siting to the interior of the site, are considered not to detract from the character or amenity of the wider Albyn Place & Rubislaw Conservation Area. The materials proposed are intended to match the existing balustrade and decking in this portion of the site, and are appropriate to the style and character of the contemporary conference suite extension. In this regard, it is considered that the proposal is consistent with the provisions of policies D1 (Quality Placemaking by Design) and D4 (Historic Environment) of the ALDP, in that the proposals demonstrate an understanding of context and the character, appearance and setting of the historic environment would be respected.

### **Noise**

This application is accompanied by an Environmental Noise Assessment, which has twice been revised following feedback from the Council's Environmental Health Officers. This submission has been prepared by qualified noise consultants and its methodology involved taking noise measurements at the existing outdoor dining marquees within the grounds to the rear of the Chester Hotel, which presently have a socially distanced layout with a capacity of 60 patrons, and using these noise levels as the basis for predicted noise levels from the proposed dining terrace.

The main sources of noise were identified as voices, movement of chairs and tables and noise from plates, cutlery and glasses (particularly towards closing time). The submitted noise assessment assumes that the capacity and layout of the proposed high-level dining area would be similar to the activity measured in the two marquees to the rear of 55-57 Queen's Road, and is also based on assumptions that no music would be played on the terrace and that doors to the interior of the hotel would remain closed when the terrace is in use. It has also assumed that hours of operation would be similar to other outdoor areas (closing at 10pm) and the noise consultants understood that the number of covers would be limited by the licence, which they have been advised states a maximum of 70 covers.

The report notes that the closest residential neighbour (at 1 Harlaw Place) would be screened to some extent by the presence of the existing hotel bedroom wing. The assessment undertaken assesses any exceedance of existing noise levels as being 'minor', using the definitions set out in the Scottish Government's 'Assessment of Noise' Technical Advice Note. Exceedance of existing noise level was assessed as 1.3, with the 'minor' range from 1 to 2.9. The ambient noise level predicted by this assessment would not exceed the threshold stated in the relevant British Standard for external amenity areas (e.g. rear gardens to residential properties).

As regards internal noise levels at 1 Harlaw Place, the assessment concludes that the relevant threshold of 35dB is not expected to be exceeded.

The change in noise levels experienced by the nearest properties to the south (24-26 Harlaw Road) is assessed as being 'negligible', again using the bands set out in the Scottish Government's TAN for assigning magnitudes of noise impact. Exceedance of existing noise level was assessed as 0.1, with the 'negligible' range from 0.1 to 0.9. The report concludes that the proposals are not expected to result in relevant noise thresholds for external amenity areas

(50dB<sub>LAeq</sub>) or within bedrooms and living rooms (LA<sub>eq</sub> 35dB) being exceeded.

Environmental Health colleagues, in the most recent consultation response, have advised that the scope of the assessment undertaken was not sufficient to support the applicants' desired hours of operation from 10am to 10pm. Further guidance on an appropriate methodology was provided, but is not reflected in the most recent noise submission.

In that context, Environmental Health colleagues advise that the proposal can be considered acceptable only if several restrictions were to be imposed on the operation of the dining terrace. These include: a restriction to a maximum of 60 patrons for dining use only; use being permitted only between 8pm and 10.10pm (based on the period within which noise was measured at the existing marquees); installation of the balustrades barriers shown in submissions; and the prohibition of amplified music, amplified sound (e.g. microphones) or other music entertainment.

Whilst these restrictions would be offer comfort in terms of mitigating predicted noise impact, it is for the planning authority to consider whether these matters could be competently controlled through the use of planning conditions. A requirement to implement the proposed barriers/balustrades is straightforward and installation prior to first use could be achieved. Restrictions on amplified music are not uncommon in outdoor bar/restaurant uses, and it is considered that this also could be prohibited through use of a condition. A restriction on the number of patrons using the dining terrace is however not considered to be enforceable. Such matters would not ordinarily be controlled by the planning authority through use of conditions as this approach would not meet the six tests for planning conditions set out in Scottish Government Circular 4/1998: *The Use of Conditions in Planning Permissions*. It is recognised that the noise submissions indicate that the existing licence states an upper limit of 70 covers, however it cannot be assumed that this would remain the case as the proprietors could seek to vary the terms of that licence, outwith the control of the planning authority. In addition, it is not considered that planning conditions could reasonably be used to limit the rooftop space to use for exclusively dining purposes, given the effect of the overarching lawful hotel use which would provide for any activity that might reasonably be expected to take place within a hotel.

As regards restricting the use of the dining terrace to the hours between 8pm and 10.10pm, it is noted that Scottish Government Circular 4/1998: *The Use of Conditions in Planning Permissions* advises that conditions may be unreasonable on the basis of being unduly restrictive. Whilst there may be good planning reasons for such a restriction, such conditions should not be imposed if the restriction would '*effectively nullify the benefit of the permission*', and if it appears that permission could be given only subject to conditions that would be likely to be held unreasonable by the courts, Circular 4/1998 advises that planning permission should be refused altogether.

In addition to these matters, it is recognised that the submitted noise report assumes that doors to the restaurant would remain closed, which may be practically difficult to ensure during busy service periods, suggesting potential for noise emanating from within the restaurant to affect noise levels externally. These doors are already present at first floor level, however it is recognised that extending the operational footprint outdoors onto the roof space would give rise to increased use associated with service and patrons' arrival and departure. Ultimately, it is difficult to control the volume at which people communicate, especially in a social setting and even more so where alcohol is typically involved.

Taking account of the above, it is considered that the submitted noise assessments give some indication that noise levels experienced at the closest neighbouring residential properties would not be excessive, however the information contained in the noise assessments is not sufficient to support the hours of operation sought by the applicants and the proposal cannot be made acceptable through the use of reasonable planning conditions. Furthermore, it is understood that the true capacity of the dining terrace has not been reflected in the noise submissions, as the first

iteration of this indicated a socially-distanced layout which is unlikely to be a permanent requirement. In this respect, it is considered that there remains some conflict with policy T5 (Noise) due to the limitations of the supporting evidence.

### **Privacy / Overlooking**

As noted above, a 1.1m high glass balustrade encloses the north and western edges of the roof, with a higher 1.8m glazed balustrade and accompanying screen hedging demarking the south edge of the roof. In the submitted 'Design Statement', the applicants contend that views to the east are blocked by the presence of the first floor restaurant and escape stair tower, and similarly that views to the west are blocked by the roofs of the hotel's bedroom wing.

A 'Visual Screening Study' has been provided in support of the application, providing photographs from a series of points on the conference suite roof, however it is noted that all of these points lie within 'Area B', to the east of the existing balustrade. As a result, the submission fails to demonstrate the extent of any overlooking from the larger area of roofspace identified as 'Area C'. The photographs provided are shown both as existing and with a temporary stand-in barrier in place of the proposed screen hedging. It is considered that the images provided demonstrate that there would be no material loss of privacy for the residential properties to the south, on Harlaw Road, however the absence of images from the western portion of the roofspace ('Area C') means that it is difficult to establish the extent of any overlooking to the west with certainty. It is recognised that the presence of the Chester Hotel's bedroom wing immediately to the east lies between the proposed roof terrace and the closest residential properties to the west. The elevation of the roof terrace and relative height of the bedroom wing are such that any direct line of sight from Area C to the gardens of nearest westward neighbours would appear to be blocked, with the exception of 1 Harlaw Place, the rear garden of which extends further south than the bedroom wing and therefore does not appear to be wholly screened by it. The absence of photographs from 'Area C' looking westwards makes it difficult to establish the extent to which that rear garden would be overlooked. A distance of approximately 27m separates the closest parts of the proposed roof terrace and the rear garden at 1 Harlaw Place, which can be compared to the established recommendation for 18m window to window separation in new residential developments to ensure privacy. It is noted that the applicants have latterly extended the 1.8m high screen planting to return around the first 2m of the western edge to the roof. On balance, it is considered that the distance separating the elevated roof dining area from nearby gardens and the screening provided by a combination of the existing buildings and trees and the additional screening proposed to the south and western edges of the roof are likely to be sufficient to alleviate any direct loss of privacy to neighbouring properties.

As regards the windows of neighbouring buildings, the closest properties at Royal Court (fronting Queen's Road) lie approximately 25m from the closest part of the proposed external dining area, looking over the roof of the adjacent bedroom wing. Properties fronting Harlaw Road, to the south, lie at least 60m away and as noted above would benefit from the additional 1.8m screen planting enclosing the southern edge of the dining area. 95 Queen's Lane South, which sits at the dog-leg of the lane, is closer at approximately 35m, but similarly benefits from the additional screening proposed. Given the distances involved, it is not considered that there would be a direct impact on privacy within these neighbouring properties as a result of insufficient window-to-window separation. It should be noted that this assessment of privacy implications is separate from consideration for the wider amenity impact of the proposal, which is discussed separately in this report.

### **Residential Amenity**

Whilst the application site itself (along with the entirety of the wider Chester Hotel premises) lies in the West End Office Area, where policy B3 states that proposals which do not protect existing residential amenity will be refused, it is important to also note that properties south of the rear lane (Queen's Lane South) and west of the hotel site (Royal Court / Harlaw Place) are within an H1

Residential Area. This distinction is notable in that the context is not wholly one of individual residential properties within the west end office area, but the edge of that commercial area where it meets an area of predominantly residential use, where expectations of amenity and protection from noise might reasonably be higher than in an area comprising a mix of residential and commercial uses.

Whilst the submissions accompanying the application go some way towards demonstrating that there is no direct or significant loss of privacy and that noise levels experienced at the closest residential properties are unlikely to be dramatically increased, it is recognised that the very presence of an outdoor space catering for circa 70 patrons in an elevated position in relatively close proximity to residential gardens may in itself be considered intrusive. Noise and privacy impacts may not individually be at levels that present serious policy conflicts, however in this case the local context is considered to be more sensitive to the introduction of such a facility than would be the case in the city centre, for example. With this in mind, it is considered that the proposal can still be considered to pose a threat to residential amenity, without exceeding the applicable noise thresholds, as a result of the intensification in use of outdoor spaces within the Chester Hotel site, particularly to the rear of the buildings where there is greater scope for conflict between commercial operations and neighbouring residential amenity.

As noted in the 'Noise' section of this report, there are a number of factors relating to the practical operation of any outdoor dining area in this elevated position which could result in noise impact being greater than concluded in the submitted assessments. These matters largely relate to the manner in which the terrace is used and how the activity there is managed. Reports from nearby residents of historic noise disturbance relating to activities at ground level within the Chester Hotel site is relevant, as it might reasonably be expected that noise from the proposed rooftop dining area would carry further given the more open location, with less obstacles to effectively contain noise. Whilst the applicants highlight that no historic complaints have related to noise from the existing outdoor dining space, it is however recognised that this is a comparatively small area relative to the proposed rooftop dining area currently under consideration. Furthermore it is noted that, in the event that planning permission were to be granted, the planning authority would have no control over the actual number of people who could use the terrace or the activity which could take place there. In theory any activity which one would expect to reasonably take place within a hotel, could take place without planning permission, as long as no further physical development was undertaken. For example, activities such as outside drinking and dining, the conducting of weddings or taking of wedding photos, or smoking, could legitimately take place on the terrace, without further planning permission being required.

On balance, it is considered that planning conditions cannot provide sufficient control (enforceable by the Planning Service) of those activities to wholly protect against noise impacts being greater than envisaged. It is therefore concluded that the proposal has potential to harm residential amenity, and the submissions provided in support of the application are not sufficient to demonstrate that existing residential amenity would be protected, contrary to the requirements of policy B3 (West End Office Area).

### **Transport and Accessibility**

The existing hotel premises benefit from off-street car parking to both the Queen's Road frontage and to the rear, accessed via Queen's Lane South. The Council's Roads Development Management Team notes that the site is presently readily accessible and has stated no objection or further observations in relation to the proposed dining terrace. It is considered that the proposal raises no conflict with policies T2 (Managing the Transport Impact of Development) or T3 (Sustainable and Active Travel) of the ALDP.

### **Matters Raised in Representations**

Objections to the principle of the development and highlighting past refusals are noted. Earlier

decisions represent a material consideration in the planning authority's assessment, however we must also consider each different proposal on its own merits, based on the circumstances and policy context applicable at the time, and that planning authority cannot simply refuse to consider similar proposals. Matters relating to restricting capacity and the use of conditions are discussed within this report, and it is recognised that permission is sought on a permanent basis.

Neighbour notification was undertaken in accordance with the relevant legislation. Notices are not required to be issued to the properties referred to on Queen's Lane South, Harlaw Road, Harlaw Terrace or Royal Court. It is acknowledged that notice was issued to the former Hamilton School premises at 55-57 Queen's Road, which now form part of the Chester Hotel. This appears to arise from the Council's address gazetteer not yet reflecting that relatively recent change, however no disadvantage to other interested parties results.

Matters relating to noise, amenity, parking and accessibility, and compliance with the relevant policies of the ALDP are all discussed in the body of this report. As regards taxi or bus pick-up arrangements, no detail has been provided however it is stressed that the hotel is established in this location and it is likely that existing arrangements will apply.

Privacy has also been discussed within the body of this report, including the limitations of the study in failing to present views from within the area west of the existing glass balustrade ('Area C').

Respondents' reference to past complaints to ACC Environmental Health regarding noise from the Chester Hotel are noted and are relevant insofar as they provide background to the historic operation of the premises and the relationship between the existing commercial and residential uses. These do not however preclude consideration of this application on its merits.

The submitted noise reports account for noise experienced at both gardens/amenity spaces and the interior of the nearest neighbouring properties. The submitted environmental noise assessment does not apply any noise reduction factor to its assessment of noise levels based on the presence of the 1.8m barrier proposed, but merely states that some degree of reduction might reasonably be anticipated. The health impacts of any proposal can represent a material consideration, however the results of the noise assessment do not appear to suggest that the magnitude of impact would be significant or at a level to pose a threat to health.

It is noted that the increased number of covers that this proposal accommodates represents an intensification of the existing use and could correspond to some increase in the use of an existing outdoor smoking area and an increase in general comings and goings from the premises, which are highlighted by residents as existing sources of some disturbance.

The effect of any development proposal on nearby property values is not a material consideration that may be taken into account by the planning authority in coming to a decision.

### **Matters Raised by Community Council**

Points raised by the local Queen's Cross and Harlaw Community Council in relation to historic noise complaints, planning history, neighbour notification, noise impacts, privacy, applicable ALDP policies and the scope and methodology of the submitted noise assessments are discussed elsewhere within the body of this report.

Difficulties in obtaining an immediate response from Council officers over the festive break are not material to determination of this application.

### **Proposed Aberdeen Local Development Plan**

In relation to this particular application, the policies in the Proposed Aberdeen Local Development

Plan 2020 (ALDP) substantively reiterate those in the adopted Local Development Plan and the proposal. It is noted that policy VC6 (West End Area) introduces a presumption in support of applications for change of use from office to residential, but retains the current requirement for all applications to take into account existing uses and avoid undue conflict with adjacent land uses and amenity. In this regard the emerging policy context is no less focused on protecting existing residential amenity and would not suggest a different recommendation.

### **Conclusion**

Taking into account all the supporting documentation provided by the applicants, matters raised by objectors and the predominantly residential character of the area within which it would be situated, it is concluded that it has not been adequately demonstrated that existing residential amenity can be protected, and that approval of this proposal would be reliant upon a significant number of assumptions about its capacity, the operation of rooftop dining activities and alternative future use which cannot be guaranteed or adequately controlled through the imposing of planning conditions. On that basis, it is recommended that planning permission be refused for the reasons set out below.

### **RECOMMENDATION**

Refuse

### **REASON FOR RECOMMENDATION**

It is considered that the proposed rooftop dining area will adversely affect the amenity afforded to residential properties to the south and west of the hotel site. It has not been demonstrated that noise generated by the proposed use could be adequately controlled in order to safeguard residential amenity and the proposal is therefore contrary to policy B3 (West End Office Area) of the Aberdeen Local Development Plan 2017.