

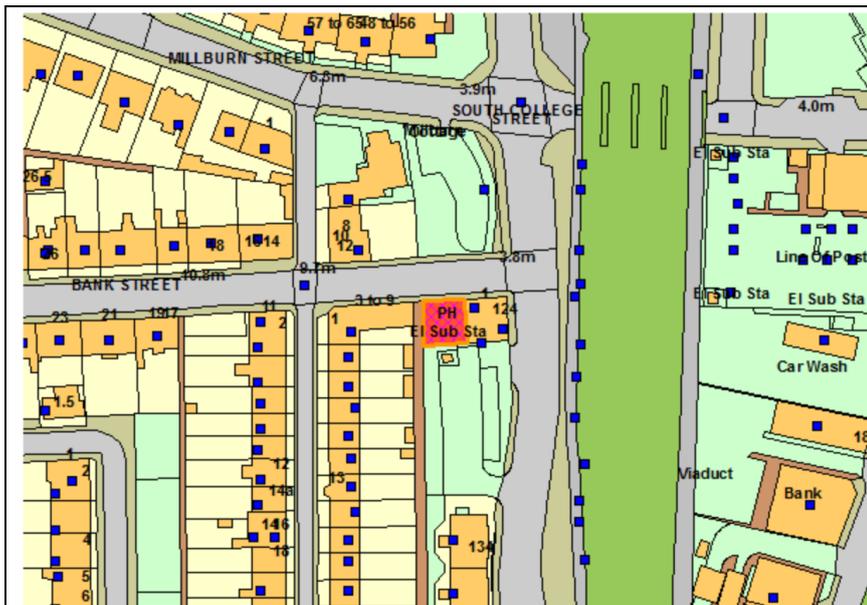


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 4 November 2021

Site Address:	1 E Bank Street, Ferryhill, Aberdeen, AB11 6LA
Application Description:	Change of use to a hot food takeaway (sui generis)
Application Ref:	210905/DPP
Application Type	Detailed Planning Permission
Application Date:	21 June 2021
Applicant:	West Coast Estates
Ward:	Torry/Ferryhill
Community Council:	Ferryhill And Ruthrieston
Case Officer:	Dineke Brasier



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RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

The application site comprises the rear part of the building formerly known as the Ferryhill Tavern/ Devanha Lounge. It consists of a modern part single/part two storey extension attached to the former Ferryhill Tavern, which now operates as a Papa Johns Pizza takeaway– a traditional granite 2.5 storey building. This part of the building – the former Devanha Lounge, is currently vacant. It has been split from the Ferryhill Tavern, and carries its own address – 1E Bank Street. It has a direct

entrance onto Bank Street to the north, has a render finish with a part timber clad upper floor extension and part flat/part mono pitched roof. Due to a change in levels along Bank Street, part of the ground floor sits below pavement level, and as a result, even though two storeys in height internally, is presented as a 1/1.5 storey building along Bank Street.

Relevant Planning History

The building formerly known as 124 South College Street – Ferryhill Tavern/Devanha Lounge has a long and complex planning history since the original public house closed. Relevant applications include the following:

- 200094/DPP – Change of use from public house (sui generis) to hot food takeaway (sui generis), alterations to shop front and installation of ventilation and extraction system – Approved on 9th July 2020 (ground floor front part of the building only) - this permission has been implemented;
- 171224/DPP – Change of use from public house (sui generis) to a restaurant and associated function room (class 3) with rear extension – Approved on 14th December 2017 (full building); and
- 160531 – Change of use of public house (sui generis) to shop (class 1), partial replacement of rear extension, installation of plant equipment to roof, and installation of new shopfront – Refused 16th June 2016 – Appeal dismissed (full building).

APPLICATION DESCRIPTION

Description of Proposal

Change of use of the former Devanha Lounge to a hot food takeaway (sui generis). Supporting documents set out this would be operated in conjunction with the existing hot food takeaway in the adjacent 124 College Street building. No external alterations are proposed, and the assessment considers the principle of the change of use only.

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=QV1T8IBZKZQ00>

Noise and Odour Impact Assessment by Grosle Environmental Services, dated 30th September 2021; and

Planning Statement by CAG Architects, dated August 2021;

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because more than six letters of objection have been received.

CONSULTATIONS

ACC - Roads Development Management Team – The site is located in the inner city in controlled parking zone V and has a GFA of 154m². The site is centrally located and has good walking and cycling links to Ferryhill and the wider city. There are bus stops with regular bus services heading in both directions within 300m on Crown Street, and within 400m on Ferryhill Road. The train station is within 800m of the application site.

The site has no off-street parking. The proposed use technically requires the same level of parking

as the existing use. However, it is noted that a takeaway is likely to see higher levels of vehicular traffic than a bar lounge / function room due to delivery drivers, customers picking up orders and deliveries. Existing on street parking is already well utilised by residents. As with the application for the hot food takeaway at 124 South College Street (now Papa Johns), RDMT has a number of concerns about a takeaway in this location, particularly a second one, which would increase the intensity of the use. Both take-aways will use Bank Street for refuse collection and deliveries, multiple times a week. Parking on Bank Street is generally at capacity and refuse service vehicles would require multiple adjacent bays to sit empty in order to service the buildings, which is deemed unlikely and an impractical servicing strategy on a road of this nature, adjacent to a busy road.

Improvement works to South College Street are planned, which would close Bank Street at the South College Street end, forming a turning head which would remove a lot of parking from this end of Bank Street. This would be a benefit for this application as service vehicles could enter Bank Street, turn and temporarily offload a lot more easily than currently.

It is noted that the applicant mentions that parking demand will be highest in the evening when *'demand for parking is lowest from other neighbouring uses'*. However, the evening is when the pizza takeaway and neighbouring residential uses will be highest, and when parking demand is at its peak.

It is further noted that the applicant states that *'the guidance [SG on Transport and Accessibility] states that the Council 'will accept or may require less parking in order to keep traffic generation within acceptable levels and ensure appropriate amenity levels.'* However, simply not providing parking is not a guarantee that a site will not generate vehicular trips.

In relation to deliveries, SG states that each hot food takeaway proposal will be assessed on a case by case basis but that it is important where possible that loading and other servicing facilities are provided on site or shared with other uses to prevent delivery vehicles queuing or using on-street location to load and unload. The proposal is contrary to this, as delivery vehicles are more than likely going to have to use on-street locations to load and unload as Bank Street is a busy (in terms of parking use) street. Large vehicles would struggle to find a regular parking spot, even if a parking permit is possessed. It is not possible to condition specific delivery vehicles. Servicing would take place three times a week from Bank Street and parking permits would be used. Utilising parking permits is not a workable solution as the parking permits would have to be given to the delivery company and ensured that specific drivers make their deliveries and, even if that were the case, it would be contingent on having one or two empty spaces (depending on the size of delivery vehicle) adjacent to one another, and that the adjacent pizza shop is not making deliveries at the same time. A lot of factors would therefore have to simultaneously work in the applicants favour for deliveries to park without causing any disruption to Bank Street. This situation would be less of an issue once the works on the South College Street corridor are completed as Bank Street would be a dead end with a turning head, permitting guaranteed space for delivery vehicles to turn and stop.

Conclusion

There are concerns with this application in the current context of the site and surrounding area. Parking, deliveries and collections are all problematic and are likely to cause issue. For this reason, Roads would be minded to recommend refusal of the application.

However, the ACC South College Street scheme would see Bank Street stopped up at South College Street, a turning head implemented, and double yellow lines installed. This will alleviate all of the Roads concerns. Discussions with the Roads Projects Team have highlighted that these works will be completed late 2022. As such, Roads Development Management would not object to this application if a condition were applied restricting the implementation of the use to after these works are completed.

ACC - Environmental Health – The Noise and Odour Assessment has been reviewed and its findings are considered acceptable. In relation to noise and odour, the proposed development is accepted provided application of the critical noise and odour mitigation measures achieving at least an equivalent effect of those measures contained within the assessment takes place. These must include:

- A. The noise and odour control measures detailed within section 6.2 and the related Appendix A (A1 to A5) – ‘Kitchen Extraction System Details’; and
- B. The proposed operating hours detailed within section 3.3.

It is also recommended that an advisory note is attached to any planning permission for the operator to establish a written Odour Management Plan including strict adherence to the managerial controls detailed within section 6.3 and appendix E1 – ‘Maintenance and Cleaning’ to reduce the risk of malodour and statutory nuisance going forward.

ACC - Waste And Recycling – No objection. General comments provided in relation to waste collection for commercial premises.

Ferryhill And Ruthrieston Community Council – None received

REPRESENTATIONS

20 timeous letters of objection have been received, raising the following matters:

1. Refuse bins should not be stored on Bank Street for public safety;
2. The proposed South College Street works will result in Lower Bank Street becoming a cul-de-sac with a dead end and turning circle. It has been reported that available parking will be reduced by 10 spaces. Entrance to the proposed takeaway will be at the bottom of Bank Street and will surely cause congestion;
3. Existing lack of parking, worsened since Papa Johns opened;
4. Drug related problems in the area. A takeaway would further disturb the peace and quiet of the area;
5. Storage of bins in the rear lane. Access to flats in 3 and 5 Bank Street should be maintained. There is already a problem with flytipping in the lane and locating bins in the lane would perpetuate the idea that it is acceptable to dump rubbish. Who would take responsibility for keeping it free of rubbish and other items;
6. Council Waste Officers have outlined measures expected for business waste collection, including hard standing, dropped kerb, double yellow lines and infrastructure to support washing and hygiene. None of this is available in this location with the exception of the dropped kerb. However, parking is at a premium and it is not guaranteed that there would be space at the dropped kerb to get the bin on/off the pavement;
7. Adverse impact on residential amenity caused by noise (kitchen fan extracts) and odour;
8. Use of Bank Street as a loading/delivery area may see unsuitable vehicles using the road for its size;
9. Likely that this takeaway would have a noticeable impact on a main arterial route through Aberdeen – South College Street;
10. Adverse impact on property prices;

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.

Aberdeen Local Development Plan (2017)

- H1: Residential Areas
- D1: Quality Placemaking by Design
- T1: Land for Transport
- T2: Managing the Transport Impact of Development
- T5: Noise

Supplementary Guidance

Harmony of Uses; and
Transport and Accessibility

Proposed Aberdeen Local Development Plan (2020)

The Proposed Aberdeen Local Development Plan (Proposed ALDP) was approved at the Council meeting of 2 March 2020. A period of representation in public was undertaken from May to August 2020 and the Proposed ALDP has since been submitted to the Scottish Government Planning and Environmental Appeals Division for Examination in Public. 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.

- H1: Residential Areas
- D1: Quality Placemaking
- D2: Amenity
- T1: Land for Transport
- T2: Sustainable Transport
- T3: Parking
- WB3: Noise

EVALUATION

Principle of Development

The site is located in an established residential area, and policy H1 (Residential Areas) of the 2017 Aberdeen Local Development Plan (ALDP) applies. This policy sets out that non-residential development is only acceptable if:

1. The proposed use would be considered complementary to the 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.

In this case, it can be considered that a hot food takeaway would serve the existing surrounding community of Ferryhill, and as such the first criterion of H1 would be met. However, the impact of the proposal on the residential amenity of neighbouring properties requires to be assessed in detail.

This will be discussed below.

Impact on residential amenity

As set out above, the site is located in an established residential area, and there are residential properties in close proximity both to the east (above Papa Johns) and to the west (3-5 Bank Street). Supplementary Guidance on Harmony of Uses (SG) applies, and sets out criteria that need to be considered in relation to the creation of hot food takeaways within residential areas, and their potential impact on residential amenity of nearby properties. SG sets out that the creation of a hot food takeaway could have an adverse effect on noise, vibration, odour, traffic disturbance and litter, and that a concentration of a similar type of development could increase the potential conflict. The protection of the living conditions of residents living in close proximity is a key consideration in the assessment of this application.

SG further sets out that it is not usually considered acceptable to locate a hot food shop immediately adjacent or beneath residential properties. In this case, unlike for application 200094/DPP, there are no residential properties immediately above the application site. However, there are flats immediately to the east and west, above Papa Johns, and at 3 and 5 Bank Street.

The application is accompanied by a Noise and Odour Impact Assessment (NOIA), which was assessed by colleagues in Environmental Health. This NOIA sets out that, subject to implementation of a suitable kitchen extraction system and restriction of delivery/servicing times, the proposed use would not result in unacceptable levels of noise disturbance to these neighbouring properties. The recommendations and mitigation measures proposed in the NOIA are accepted by colleagues in Environmental Health. However, the NOIA does not set out what the proposed opening hours of the hot food takeaway would be. People gathering, entering and leaving the premises late at night could result in disturbance, and this should therefore be considered. The application is also supported by a Planning Statement, which sets out that proposed opening hours would be 07:00am to 11:00pm Mondays to Sundays. These hours are similar to those conditioned for the adjoining hot food takeaway, and are thus considered acceptable and could be controlled by condition. Taken together, the proposed change of use is not considered to have an unacceptable adverse impact on the residential amenity of neighbouring properties in relation to noise and smells.

In relation to litter, the proposed site plan sets out that commercial bins would be stored in the private lane to the rear of the property. This is the same approach as currently used for the neighbouring Papa Johns takeaway. Colleagues in Waste Management have provided general guidelines for storage and collection of commercial waste, but raise no issues with the bin store as proposed. As such, this is considered acceptable.

The impact of the proposal on local highway conditions, including parking and servicing, is discussed in detail below.

Impact on local highway conditions

Parking

The site is located immediately to the west of South College Street – a major route between the city centre, the Queen Elizabeth Bridge and the south and east of the city. The site is located within a controlled parking zone, with on-street permit parking and pay and display parking bays available on both sides of Bank Street. There is no parking available on South College Street itself, although there is some informal parking to the east in relation to the business premises located in the railway arches. There are yellow double lines along the western side of South College Street and within close proximity of the various junctions. No parking spaces are available on-site.

The previous application 200094/DPP for the change of use of the front part of the Ferryhill Tavern to a hot food takeaway raised concerns in relation to parking and servicing, and colleagues in Roads Development Management raised an objection to that application.

This current application raises similar issues, and, unlike the previous application, is not supported by a parking survey. Parking in Bank Street is currently well-used, especially during the evening as it is a residential street. This is likely to coincide with the time that visits to the hot food takeaway would be at its highest. The proposed use would require the use of existing parking bays for parking for customers and delivery drivers, but also for servicing, deliveries and refuse collection. As stated above, it is likely that the highest demand for parking spaces would be at a time (late afternoon/early evening) when demand for parking spaces from surrounding residential properties would be at its highest. The applicant has stated in their Planning Statement that the business would purchase two parking permits – as would be allowed under current regulations, and use these to accommodate delivery vehicles. However, the availability of parking permits would not necessarily mean that parking bays would be available. Colleagues in Traffic Management have confirmed that there is a high level of pressure on parking spaces in Bank Street and the surrounding area, with comments in letters of objection indicating that this situation has worsened since the opening of the hot food takeaway in the former Ferryhill Tavern.

The opening of the proposed hot food takeaway would worsen this situation, and is expected to further increase pressure on the availability of existing parking spaces for residents. Due to the proximity of the spaces to the junction with South College Street, this is considered to have an adverse impact on both their residential amenity as it would become harder for residents to find a suitable parking space within close proximity to their dwelling. In addition, it is considered unlikely that customers of the hot food takeaway would circle the surrounding streets to find an available space, and that the level of indiscriminate parking, including on yellow double lines in close proximity to the junction of South College Street and Bank Street would increase, which in itself would have an adverse impact on road safety.

It is further noted that even though the SG on Transport and Accessibility sets out that the number of required parking spaces for the existing function room and the hot food takeaway would be the same, due to the nature of the use, they would be used differently. Whereas visitors to the function room would stay for a longer time, and are therefore more likely to find a legal parking space at a short walking distance from the premises, customers and delivery drivers to the hot food takeaway would only be at the building for a short period of time, and are therefore more likely to want to park in close proximity to the building.

Servicing

The Planning Statement sets out that delivery/servicing vehicles, including refuse collection vehicles, would use existing parking bays. However, as set out above, there are serious concerns in relation to this approach as existing parking bays are extremely well-used, and generally at capacity. Even with a parking permit, it is expected that delivery vehicles would often struggle to find a suitable parking place that would not result in an obstruction to Bank Street. Due to their size, it is expected that most delivery vehicles would require at least one or two parking spaces (depending on the size of the delivery vehicle), and that the existing Papa Johns would not have a delivery in process. It is only when these factors work together that any deliveries/servicing of the proposed unit would not lead to any disruption in Bank Street. However, due to the high use of the parking spaces in this area, this is not considered an acceptable solution, and it is considered that deliveries/servicing of the unit could result in double parking and blocking of part of Bank Street in close proximity to its junction with South College Street. On this basis, colleagues in Roads Development Management raise significant concerns and recommend refusal of the application at the present time.

A further consideration is the appeal decision following the refusal of planning application 160531 for this site and the adjacent building. This application was for a change of use of the full building to a convenience store, but similarly raised issues in relation to parking and servicing. The Reporter in her decision letter stated that *'I consider that, because of the lack of off-street parking and the*

likelihood that service deliveries would disturb nearby residents there would be a significant detrimental impact on those living locally...'. She continued by stating that 'the proposal does not comply with local development plan policy T2 because of the lack of parking and with policy H1 because of the conflict with residential amenity.' Although this current proposal is for a hot food takeaway and not a convenience store, this appeal decision is a material consideration and should be given weight in any decision, given it could create similar issues especially in relation to parking and the impact on residential amenity caused by a loss of parking for residents, and the potential impact of double parking and blocking of Bank Street by delivery vehicles on road safety.

Improvements to South College Street

Policy T1 (Land for Transport) sets out that land has been safeguarded for a number of strategic transport projects, including South College Street Improvements. Even though the application site itself is not included in the land safeguarded to facilitate this scheme, the stretch of Bank Street from its junction with South College Street roughly up to the front door of 3 Bank Street is included. A recent consultation provided details of the proposed scheme for the South College Street Improvement works. In the area subject of this application, the proposed drawings show that the junction from Bank Street onto South College Street would be closed, with a turning head created in the area of rough ground opposite the application property.

In their comments, colleagues from Roads Development Management reflected that upon completion of the proposed scheme, a number of issues set out above, especially in relation to deliveries/servicing of the unit could potentially be overcome as delivery/servicing vehicles could pull into the turning head for the duration of their delivery without blocking the road. This would be considered sufficient to remove their primary concern in relation to this application subject to a condition setting out that the use could not be implemented prior to completion of the proposed South College Street improvement works.

In relation to this proposed condition, Scottish Government Circular 4/1998: The Use of Planning Conditions in Planning Permissions sets out that all planning conditions should meet six tests. They should be:

1. Necessary;
2. Relevant to Planning;
3. Relevant to the development to be permitted;
4. Enforceable;
5. Precise; and
6. Reasonable in all other respects.

In this case, the works discussed above have not yet started. Colleagues in Roads Projects Team have confirmed that current timescales for completion of the works is expected to be Autumn 2022. Given a planning permission is only valid for a period of three years, and, given that the South College Street Improvement Works have not yet commenced and that this target date of Autumn 2022 thus includes an element of uncertainty, use of a 'Grampian' style condition as outlined above could result in a permission that could not be implemented for the majority of its lifetime. This would be considered unreasonable, and this proposed condition would thus not meet all six tests as set out above. It is therefore considered that, even though the proposed improvement works would overcome some of the concerns set out above, it would be premature to give these proposed works significant material weight. As such, it is considered that the application should be determined on the basis of the current situation, and that the objection from Roads Development Management is maintained.

Conclusion

The proposed change of use, relative to the existing road layout and parking situation, is considered to have a detrimental impact on local highway conditions, especially in relation to parking, servicing and deliveries to and from the unit, and would be contrary to requirements of policies T2 (Managing

the Transport Impact of Development) and SG on Transport and Accessibility. The increased pressure on existing parking spaces caused by the proposed use would have a detrimental impact on the residential amenity of residents of nearby residential properties, and would thus be contrary to policy H1 (Residential Areas).

Proposed Aberdeen Local Development Plan

In relation to this particular application, the policies in the Proposed Aberdeen Local Development Plan 2020 (PALDP) substantively reiterate those in the adopted Local Development Plan and the proposal is not acceptable in terms of both Plans for the reasons previously given.

Policy D2 (Amenity) and T3 (Parking) are new policies. Policy D2 is aimed at safeguarding residential amenity. As set out above, the impact of the proposal on availability of parking spaces for existing residents is considered to have an adverse impact on their residential amenity, and the proposal would thus not comply with this policy.

Policy T3 (Parking) is aimed at ensuring sufficient parking is provided for development proposals. Again, for the reasons given above, it is considered that this proposal does not comply with this policy.

Matters raised in letters of objection

1. Refuse bins should not be stored on Bank Street for public safety – *It is proposed to have a bin storage area to the rear of the building, and thus not in the public realm;*
2. The proposed South College Street works will result in Lower Bank Street becoming a cul-de-sac with a dead end and turning circle. It has been reported that available parking will be reduced by 10 spaces. Entrance to the proposed takeaway will be at the bottom of Bank Street and will surely cause congestion – *This has been discussed in the evaluation above;*
3. Existing lack of parking, worsened since Papa Johns opened – *This has been discussed in the evaluation above;*
4. Drug related problems in the area. A takeaway would further disturb the peace and quiet of the area – *Drug related problems are not a material planning consideration, whilst the impact of the proposal on the residential amenity of residents has been discussed above;*
5. Storage of bins in the rear lane. Access to flats in 3 and 5 Bank Street should be maintained. There is already a problem with flytipping in the lane and locating bins in the lane would perpetuate the idea that it is acceptable to dump rubbish. Who would take responsibility for keeping it free of rubbish and other items – *This would be a civil matter between all users/owners of the lane;*
6. Council Waste Officers have outlined measures expected for business waste collection, including hard standing, dropped kerb, double yellow lines and infrastructure to support washing and hygiene. None of this is available in this location with the exception of the dropped kerb. However, parking is at a premium and it is not guaranteed that there would be space at the dropped kerb to get the bin on/off the pavement – *The consultation response from Waste Services sets out that commercial bin collection can be undertaken by various companies and is not restricted to the Council. As such, even though the listed is desirable, it might not be essential;*
7. Adverse impact on residential amenity caused by noise (kitchen fan extracts) and odour – *This has been discussed in the evaluation above;*
8. Use of Bank Street as a loading/delivery area may see unsuitable vehicles using the road for its size - *This has been discussed in the evaluation above;*

9. Likely that this takeaway would have a noticeable impact on a main arterial route through Aberdeen – South College Street - *This has been discussed in the evaluation above;*
10. Adverse impact on property prices – *This is not a material planning consideration.*

Suggested potential conditions

The proposal is recommended for refusal, however, if the Planning Committee is minded to approve, then the following conditions would be suggested:

1. Control on opening hours;
2. Installation of mitigation measures in relation to noise and odour controls as set out in the submitted Noise and Odour Impact Assessment.

RECOMMENDATION

Refuse

REASON FOR RECOMMENDATION

1. The proposed change of use, relative to the existing road layout and parking situation is considered to have a detrimental impact on local highway conditions on Bank Street and its junction with South College Street – a main thoroughfare, especially in relation to parking, servicing and deliveries to and from the unit. The increased pressure on existing parking spaces by visitors, delivery drivers and delivery/servicing vehicles would reduce capacity for parking for existing residents living in nearby properties, thus resulting in a detrimental impact on their residential amenity.

The proposal is thus considered to be contrary to policies T2 (Managing the Transport Impact of Development) and H1 (Residential Areas) of the 2017 Aberdeen Local Development Plan; policies T2 (Managing the Transport Impact of Development); T3 (Parking); H1 (Residential Areas) and D2 (Amenity) of the 2020 Proposed Local Development Plan and Supplementary Guidance: Transport and Accessibility.