

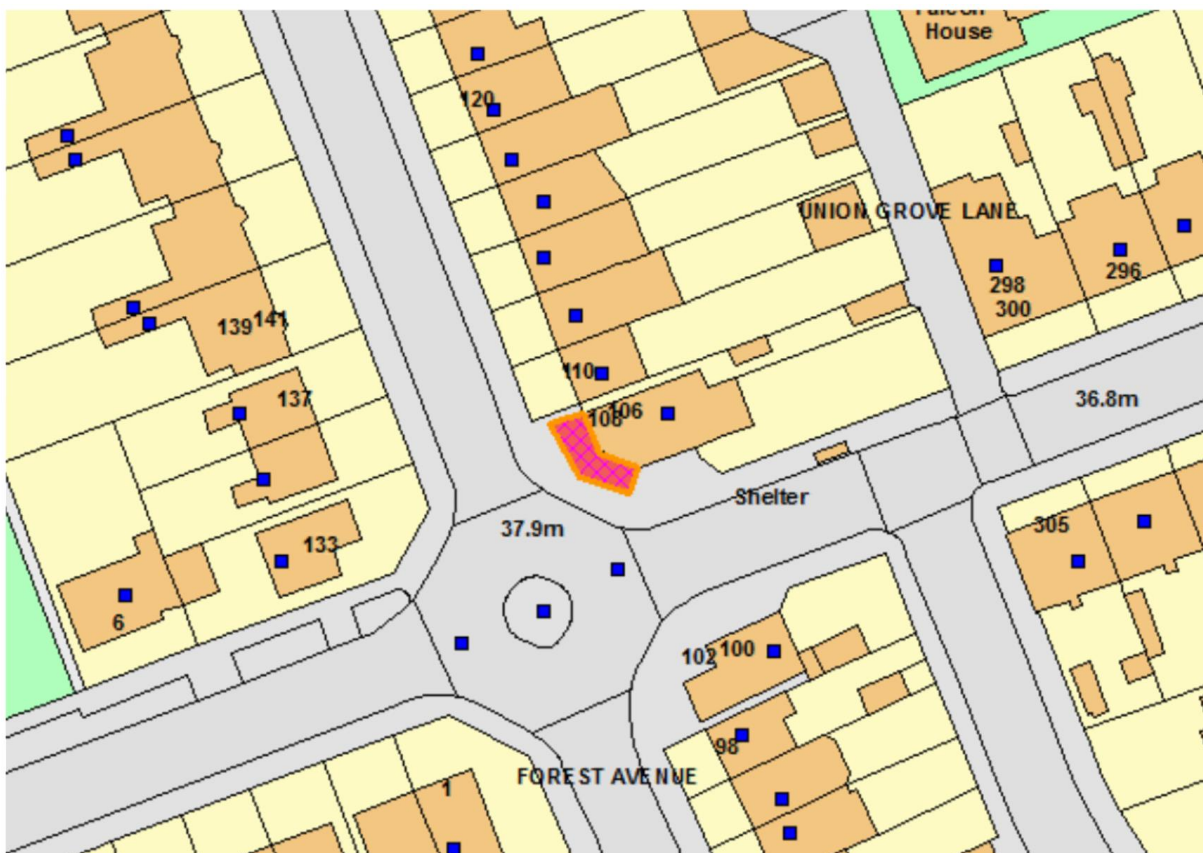


## Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 17 March 2022

Site Address:	106 - 108 Forest Avenue, Aberdeen, AB15 4UP,
Application Description:	Change of use from pavement and installation of raised decking to form an outdoor seating area with access ramp (retrospective)
Application Ref:	220015/DPP
Application Type	Detailed Planning Permission
Application Date:	10 January 2022
Applicant:	Rendezvous   Nargile
Ward:	Hazlehead/Queen's Cross/Countesswells
Community Council:	Queen's Cross and Harlaw
Case Officer:	Gavin Evans



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### **RECOMMENDATION**

Approve Conditionally

## **APPLICATION BACKGROUND**

### **Site Description**

This application pertains to an area of hardstanding at the frontage of 'Rendezvous@Nargile', a restaurant (Class 3 use) within a traditional 1 ½ storey granite building, located on the north-eastern corner of the junction at Forest Avenue and Union Grove/Cromwell Road. Surrounding land use is principally residential, and the built form is characterised by traditional granite buildings with slate roofs, although it is noted that there are various building types. These include detached bungalows on Cromwell Road, 2 ½ storey flatted blocks on Union Grove and both terraced and semi-detached dwellings on the closest sections of Forest Avenue.

### **Relevant Planning History**

There are no earlier planning applications of relevance.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Planning permission is sought for the change of use of this area of hardstanding/footway at the frontage of the property and the installation of raised timber decking to form an outdoor seating area with access ramp. The decking is currently in situ, with the works carried out around August 2020. Planning permission has been sought retrospectively, and on a permanent basis.

The area of decking is located at the Forest Avenue face of the building, before partially returning around the corner. It measures approximately 14m wide and projects between 4 and 4.8m from the face of the building, with a total footprint of circa 54sqm.

The proposed decking is formed in treated, unfinished timber and provides a level surface directly outside the restaurant, enclosed by balustrades of between 1.3m and 1.5m above the prevailing ground level, formed in the same horizontal timber cladding and incorporating raised planters. These contain various plants and flowers which appear to provide some greenery to soften its appearance year-round. The structure also includes a ramp to facilitate disabled access at its northern end and a stepped access point at its south-eastern end, along with associated handrails and anti-slip tape.

### **Amendments**

None.

### **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=R5HTCLBZJHR00>

- Plans and elevations as existing and as proposed
- Photographs of decking in situ

## **Reason for Referral to Committee**

The application has been referred to the Planning Development Management Committee because the local Queen's Cross and Harlaw Community Council has stated its objection to the application and the recommendation is for approval.

## **CONSULTATIONS**

**ACC - Roads Development Management Team** – No objection. Consider that the proposals do not hinder pedestrian movement on the footway, and are within the applicants' red line boundary (i.e. under the applicants' control).

Note that the proposals have been discussed with ACC's Traffic Management Team, who have no concerns. It is highlighted that a pavement café permit and other permissions may be required separately (e.g. building warrant).

**ACC - Environmental Health** – No objection. Recommend that conditions are applied in order to prohibit: (1) amplified music, use of microphones/speakers or other forms of music entertainment within the proposed seating area; and (2) use outwith the hours from 10.00am to 10.00pm.

**Queen's Cross And Harlaw Community Council** – Objects to the proposal, stating that the temporary wooden structure is not in keeping with the surrounding area and its granite buildings. Notes that the Community Council has no objection to use of the area within the applicants' property boundary for outdoor seating as has occurred in the past.

## **REPRESENTATIONS**

A total of 41 valid and timeously made representations have been received in relation to this application (5 objections and 36 in support). The matters raised can be summarised as follows:

### Objections

- The raised wooden decking detracts from the appearance of these buildings and the wider streetscape. Specifically, the decking would spoil the symmetry between this building and the Rendezvous gallery on the opposite corner and obscure much of the building's frontage.
- The timber used in its construction is not sympathetic to its surroundings, where granite is the dominant material.
- The decking sits just outside the Great Western Road and Albyn Place and Rubislaw Conservation Areas, and is prominently visible in views of and from both.
- If planning permission is granted retrospectively it will set a precedent for others to seek permission to erect decking and other structures prominently in front of their buildings and expect that permission to be granted.
- Argues that changes to Covid restrictions mean that outdoor areas such as this are not required as permanent features, noting that similar businesses have mostly removed their structures.
- Argues that use of the outdoor area could be achieved less intrusively via tables and chairs on the pavement, as has been done in the past at the premises. Notes that the decking does not enlarge the area previously available for outdoor use nor allow for increased availability.
- Contends that the nature and size of the decking suggests it was always intended to be a permanent feature.

- Wheelchair access is welcome, however there are much less obtrusive solutions to that issue.
- The proposed decking, though of a small scale, is of a type which would cumulatively detract from the city's granite heritage if replicated and should be resisted. Conflict with policy D5 (Aberdeen's Granite Heritage) is highlighted.
- The proposals would fail to accord with policy D1 (Quality Placemaking by Design) of the ALDP, as the proposal is not designed with due consideration for its context and fails to make a positive contribution to its setting.
- Queries the presence of existing cycle racks which, when in use, further encroach on the useable area of footway.
- Highlights potential for noise nuisance to affect nearby residents, contrary to policy T5 (Noise).
- Suggests conflict with policies H1 (Residential Areas) and NC3 (West End Shops and Cafes) due to anticipated impact on amenity.
- Suggests that the licence for this premises does not impose any limit on the number of patrons occupying this outdoor space. It was later confirmed to the respondent that the licence states a maximum of 52 patrons.
- Concern that consumption of food and drink outside may attract vermin or birds.
- Ownership of this outside area is queried.
- Alleges that during construction workers were unmasked and did not maintain safe distance from passing pedestrians.
- Concern that this structure was in use for circa 18 months without planning permission having been obtained.

### Support

- General unspecified support and praise for this longstanding restaurant.
- Highlight importance of supporting local businesses.
- Stresses the importance of outdoor spaces in reducing COVID-related risks and supporting mental wellbeing.
- Support for promotion of a 'cafe culture' in Aberdeen which has flourished recently.
- Proposal utilises a well-considered and tasteful design which incorporates flowers/greenery.
- Includes provision for disabled access/pushchairs.
- Notes that this area of pavement is particularly wide and can readily accommodate the proposed outdoor seating area without presenting an impediment to pedestrian movement.
- Notes that the seating area is safely enclosed through its design.
- Contends that this restaurant is not open late into the evening and there has been no issue with noise or amenity impact.
- Some respondents highlight a number of cafes on St Swithin Street and bars on Queen's Road which have contributed positively to their surroundings.
- Express the view that this enhances the facilities/dining offering available locally.

## **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.

## **Development Plan**

### Strategic Development Plan

The current Strategic Development Plan for Aberdeen City and Shire was approved by Scottish Ministers in September 2020 and forms the strategic component of the Development Plan. No issues of strategic or cross boundary significance have been identified.

### Local Development Plan

Section 16 (1)(a)(ii) of the Town and Country Planning (Scotland) Act 1997 requires that, where there is a current local development plan, a proposed local development plan must be submitted to Scottish Ministers within 5 years after the date on which the current plan was approved. From 21 January 2022, the extant local development plan will be beyond this 5-year period. The Proposed Aberdeen Local Development Plan 2020 has been submitted to the Planning & Environmental Appeals Division at the Scottish Government in July 2021. The formal examination in public of the Proposed Local Development Plan 2020 has commenced with reporters appointed. Material consideration will be given to the Proposed Local Development Plan 2020, in the context of the progress of its examination, in the assessment of planning applications.

Given the extant local development plan is beyond its five-year review period consideration, where relevant, should be given to paragraph 33 of the Scottish Planning Policy (2014) which states: "Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

The following policies are relevant –

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

### **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 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. In this instance the applicable policies are not subject to material change that would alter the recommendation of this report.

### **Other Material Considerations**

- Chief Planner's Letters
  - 29<sup>th</sup> May 2020 – Coronavirus (COVID-19): Planning procedures
  - 2<sup>nd</sup> July 2020 - Coronavirus (COVID-19): planning – use of outdoors spaces and 'the 28 day rule'
  - Stakeholder updates in Dec 2020, March 2021 and November 2021

## **EVALUATION**

### **Principle of Development**

The application site is located within an area that the Aberdeen Local Development Plan (ALDP) identifies as a H1 Residential Area, where policy H1 is applicable. Policy H1 supports new residential development subject to specified criteria, but also provides for non-residential uses where either (1) the proposed use is considered complementary to residential use or (2) it can be demonstrated that there would be no conflict with, or any nuisance to, existing residential amenity.

### **Residential Amenity and Noise**

The presence of local shops and other facilities such as restaurants and cafes can complement residential use by offering convenience for local residents and reducing the need to travel to access such shops and services. This must be balanced against any potential environmental impacts such as noise or odour. In this instance the proposal relates to an existing restaurant which, according to representations received, has previously utilised the area in question for outdoor dining on an ad-hoc basis through the siting of chairs and tables as and when the weather allows. With that in mind, it appears that the existing restaurant has been able to co-exist alongside residential properties without any notable conflict arising. The decking occupies an area of approximately 54sqm at the frontage of the property, facing directly towards the roundabout and returning around the Forest Avenue face of the building. Whilst there is a residential dwelling immediately to the north (110 Forest Avenue), the corner location of the site is such that Forest Avenue and Union Grove offer a degree of separation from other near neighbours. The closest property on the west side of Forest Avenue lies approximately 27m away, with approximately 21m separating the decking and 102 Forest Avenue, which lies on the opposite side of Union Grove. This degree of separation to residential properties serves to mitigate the potential for significant impact on amenity.

Consultation with the Council's Environmental Health Service has not identified any concerns about unacceptable noise levels, subject to restrictions on hours of use and prohibition on amplified music or live performance. Such matters can be satisfactorily controlled through the use of planning conditions. In this regard, the proposals are considered to cause no conflict with, nor any nuisance to, the enjoyment of existing residential amenity, and demonstrate their accordance with policy H1 (Residential Areas) of the Aberdeen Local Development Plan (ALDP).

Having established the principle of the use in terms of policy H1, this assessment now turns to the physical works for the erection of the decking structure, its visual impact and relationship with the surrounding streetscape.

## **Design**

D1 (Quality Placemaking by Design) requires that all development ensures a high standard of design and demonstrates a strong and distinctive sense of place. Factors such as context appraisal, architectural quality, craftsmanship, materials and landscaping are relevant considerations in assessing of design quality. In this case, the structure is formed in treated, unfinished timber. The flat deck area is enclosed by a balustrade also formed in treated, unfinished timber, laid horizontally. This balustrade measures between 1.3 and 1.5m high from the prevailing ground level and incorporates planters containing various plants and flowers. The structure also includes a ramp to facilitate disabled access, along with handrails and anti-slip tape.

The decking structure is relatively simple in its styling and its alignment is somewhat sympathetic to the building in replicating the turn in its frontage. The horizontal hit-and-miss timber cladding to its outer face helps to add texture and reduce its massing to some extent. Similarly, the incorporation of planters assists in softening the appearance of the structure, with grasses, herbs and shrubs incorporated which ensure the presence of year-round greenery. It is noted also that the height of the decking and the absence of any additional structure such as an awning, canopy or tent ensures that the frontage of the granite building is not excessively screened or obscured.

Whilst representations contend that the siting of decking in this location would detract from a symmetry between the buildings on opposite sides of Union Grove (Nargile and the Rendezvous Gallery), these buildings actually differ in their orientation and the application premises have an angled frontage which is not mirrored by any other property at this junction. Nevertheless, whilst the proposals are relatively sympathetic in styling, they are nevertheless prominently sited at the frontage of granite buildings on a relatively busy road junction. This degree of prominence and the prominence of the timber construction is such that the structure does appear somewhat out of place in relation to the surrounding built environment. On this basis, it is considered that the proposals would not demonstrate the appropriate regard for their context to warrant retention as a permanent feature, however it is considered that the degree of harm on the character and appearance of the residential area is not such that it would be unreasonable on balance to allow for a temporary consent for a period not exceeding one year. It is noted also that any visual impact associated with its presence is entirely reversible, and the structure can be readily removed and the site restored to its former condition in due course. Whilst recognising that there is conflict with policy D1 (Quality Placemaking by Design) of the ALDP, the granting of a temporary permission is considered to strike an appropriate balance between safeguarding the character of the area in the long term whilst supporting a local business in its recovery from exceptionally challenging trading circumstances.

It is noted, as highlighted in representations, that the site lies close to the boundary of two designated Conservation Areas, however the scale and prominence of the decking structure is not considered to be so great as to detract from the character or appearance of either of these. It is therefore considered that there is no conflict with policies D4 (Historic Environment) or D5 (Our Granite Heritage) of the ALDP.

## **Transportation and Accessibility issues**

The proposed outdoor seating area occupied an area of hardstanding at the front of the property, however it is noted that whilst this is generally indistinguishable from the public footway, it is actually in the applicants' ownership. The siting of the proposed decking in this location would not materially impede pedestrian movement and there remains an adequate area of footway for foot traffic. The response from ACC's Roads Development Management Team confirms this position, with no objections stated. There may be a requirement for a pavement café licence, however that process is separate from consideration of this application for planning permission and the applicants would be obliged to comply with any applicable restrictions to all consents/permits obtained. It is noted that there are cycle stands located immediately adjacent to the decking. Whilst these are mentioned in representations as if associated with the proposal, Google street

view images confirm that these have been in their present location since at least May 2014. These cycle stands remain accessible and their use is not hindered as a result of these proposals. Taking these matters into account, it is considered that there is no conflict with policies T2 (Managing the Transport Impact of Development) or T3 (Sustainable and Active Travel) of the ALDP, nor the associated 'Transport and Accessibility' Supplementary Guidance.

### **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 acceptable in terms of both Plans for the reasons previously given.

### **Matters Raised in Representations**

Comments in support of the proposal are noted. It is agreed that businesses have faced difficult trading circumstances over the last 2 years and a degree of continued flexibility would help support recovery in the short-term. Design, accessibility, noise and amenity issues are considered separately within this report, including assessment against the relevant Development Plan policies.

It is important to note that all planning applications must be considered on their individual merits, and the approval of one outdoor seating area does not mean that any or all others would be approved. Similarly, the fact that permission has been sought retrospectively does not alter the basis on which the application should be considered, other than offering a clearer reference point for any visual and amenity impacts. Some representations suggest a potential conflict with policy Suggests conflict with policies H1 (Residential Areas) and NC3 (West End Shops and Cafes), however that policy is not applicable to this application as the site lies outwith the relevant area, as defined in the ALDP.

Comments relating to the licence applicable to the premises are noted, however members are reminded that their consideration of this application extends only as far as its planning merits. In the event that planning permission is granted, it will be the proprietors' responsibility to ensure that they comply with the terms and restrictions of all consents and permits required. It should be noted that the planning permission sought concerns land use and the addition of the decking structure, but would not impose any upper limit on the number of patrons, which is a matter for the licensing process. It is considered that the proposed outdoor seating area is unlikely to result in any issues in terms of attracting vermin or birds provided that tables are routinely cleared. There is no evidence to suggest that this would not take place as part of the usual running of the business, nor are we aware of this having been an issue whilst the decking has been in situ. Ownership of land is generally not a material consideration, as planning permission can be sought regardless of ownership, however the applicants have in making this application certified that they are the sole owners of the land in question. Matter relating to construction workers' alleged failure to comply with covid restrictions are not a material consideration in the assessment of this application.

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

Issues relating to design, materials and context have been considered within the body of this report. It is noted that the Community Council has no objection in principle to outdoor seating to the front of the premises.

### **Other Material Considerations**

The Scottish Government's Chief Planner has previously written to all planning authorities to set out that the planning system has a role in supporting covid recovery by supporting businesses which have sought to diversify or adjust the way in which they operate to suit changing circumstances. Whilst not intended to be exhaustive, these do specifically highlight that the intended approach would provide support for the hospitality industry to provide outdoor seating. The most recent update from the Chief Planner advised that this broad approach of relaxing



control should continue where reasonable and appropriate to support the national response to COVID-19, noting an aim to withdraw this guidance supporting relaxation of planning control at the end of September 2022. In this case, the applicants have expressly sought planning permission ahead of that anticipated change in national advice. It is recognised that the proposed siting of this structure does not involve physical alterations to the building itself and appears to be entirely reversible, therefore any compromising effects on the character and appearance of building or the wider residential area can, subject to restrictions on any grant of planning permission, be entirely temporary and readily undone on removal of the structure. On balance, it is felt that a temporary permission for one year is the most appropriate course of action to support business recovery in the short term whilst also safeguarding residential amenity and design quality in the longer term.

### **Heads of Terms of any Legal Agreement**

n/a.

### **Time Limit Direction**

n/a.

### **RECOMMENDATION**

Approve Conditionally

### **REASON FOR RECOMMENDATION**

The proposals relate to an existing restaurant (Class 3) use within a predominantly residential area. The use of an outdoor area to the front of the property is not, in principle, considered to be incompatible with residential use. The proposed structure, whilst being of size, design and siting which would be not wholly sympathetic to the surrounding streetscape, is acceptable on a strictly temporary basis as a means of supporting business during the transitional period following necessary but protracted restrictions on normal trading. It is not anticipated that there would be any adverse impact on residential amenity by way of noise nuisance, subject to restrictions on amplified music and hours of operation which can be adequately controlled via planning conditions. The proposal is considered to accord with the provisions of policy H1 (Residential Areas) of the Aberdeen Local Development Plan (ALDP).

It is recognised that there are conflicts with policy D1 (Quality Placemaking by Design), however it is considered that the impacts are tolerable on a short-term and temporary basis, and that removal of the structure can be secured by appropriately worded planning conditions.

### **CONDITIONS**

#### **1. Timescale for removal**

The structure hereby approved shall be wholly removed from the site by 17<sup>th</sup> March 2023.

Reason: To ensure timely removal of a structure which has been assessed as being acceptable only on a temporary basis due to its design, materials and resultant adverse impact on the character and appearance of the surrounding area.

#### **2. Hours of use**

The structure hereby approved shall not be made available for use by patrons outwith the hours of 10.00am-10.00pm.

Reason: in the interests of safeguarding residential amenity by restricting use at unsociable hours.

**3. Amplified music**

The outdoor seating area hereby approved shall not be utilised for the performance of live or amplified music, nor the use of microphones/speakers.

Reason: in the interests of protecting residential amenity from potential noise nuisance.

**ADVISORY NOTES FOR APPLICANT**

1. Attention is drawn to the consultation response provided by ACC's Roads Development Management Team, which notes that other permissions such as a pavement café permit and/or building warrant may be required in addition to planning permission. Further information on café permits can be found at:

<https://www.aberdeencity.gov.uk/services/business-and-licensing/licences-and-permits/pavement-cafe-permit-application>)