



**NOTICE OF REVIEW
UNDER
S.43A(8)(c) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

in respect of

NON-DETERMINATION OF PLANNING APPLICATION REFERENCE 210311/DPP

for

**CHANGE OF USE FROM AND CONVERSION OF OFFICES (CLASS 4) TO FORM 16 NO. RESIDENTIAL
FLATS (SUI GENERIS), INCLUDING THE REMOVAL OF EXISTING LINK TO FORM SEPARATE
BUILDINGS, VARIOUS ALTERATIONS, THE FORMATION OF PARKING TO THE REAR AND THE
INSTALLATION OF RAILINGS TO THE FRONT**

at

**31-32 ALBYN PLACE
ABERDEEN
AB10 1YL**

STATEMENT OF REASONS

on behalf of

ALBYN CRT. LTD



1 Introduction

- 1.1 Planning application reference 210311/DPP was submitted to Aberdeen City Council on 10 March 2021 seeking planning permission for a “*change of use from and conversion of offices (class 4) to form 16 no. residential flats (sui generis), including the removal of existing link to form separate buildings, various alterations, the formation of parking to the rear and the installation of railings to the front*” at 31-32 Albyn Place, Aberdeen. The application was validated on 11 March 2021 and the statutory determination deadline would have been 10 May 2021, although the applicant agreed to the Council’s request to extend this, first to the 15 October 2021 and, subsequently, to 17 December 2021 [Documents D1a and D1b]. However, the Council has not yet issued a decision on the application and, as such, the applicant now seeks a review of the failure to determine the application within the extended time period agreed.
- 1.2 It should also be noted that, while changes to the proposed plans were made following submission of the application in response to initial feedback from the case officer (further details on which are provided in section 2 below), the revised plans were submitted on 13 December 2021, with the Council having had 2 months since then to consider these, as well as having the rest of the application documents for some considerable time before this and no changes having been made to these since they were submitted.
- 1.3 Importantly, in terms of the applicant’s right to appeal the non-determination of the application, S.43a(8)(C) of the Town and Country Planning (Scotland) Act 1997 states that the right arises if the appointed case officer:
- “...has not determined it within such period as may be prescribed by regulations or a development order or within such extended period as **may at any time be agreed** upon in writing between the applicant and the person so appointed”* [emphasis added].
- 1.4 Any such appeal must then be submitted within three months of that agreed date.
- 1.5 Within this, there is nothing to stipulate when the extended period must have been agreed (indeed, it is clear that such an agreement can be made at any time), or to otherwise preclude the making of an appeal at any time within the three month period following the end of the extended period that has been agreed. As such, the timescales in which the extended time period was agreed, revised plans were submitted, and re-notification of the application was carried out are not relevant to the applicant’s right to appeal non-determination of the application, with this being based purely on an appeal being made within three months of the end of the agreed determination period (i.e. within three months of the 17 December 2021, given that the applicant agreed to the Council’s request to extend the determination period to this date as set out above).



1.6 The above is particularly important in this case as, having received the revised plans on 13 December 2021, the Council re-notified neighbours of the application on 19 January 2022 (over a month after the plans were submitted), and re-advertised this in the press on 26 January 2022, with a site notice not placed until 28 January 2022, thus effectively extending the time required for the case officer to determine this until after the expiry date for further representations to be made as part of this process (18 February 2022). As highlighted above though, this does not preclude the applicant appealing non-determination in this time, and indeed is all the more reason for them to do so, with this compounded by the facts that:

- the revised plans reduce the scale of the development from that which was originally proposed to address feedback received from the case officer, with the changes raising no new material planning considerations as a result, and there therefore being no real need for the application to be re-notified;
- no neighbours objected to the application during the original period for representations to be made, with the only response being a letter of support from the nearest neighbour (for further details on which, see paragraph 2.8 below), in addition to which the application was also previously re-notified on 21 April 2021 with no objections received following that either, such that there would be no reason to expect that the reduced proposals would cause neighbours any concerns now;
- at the date of submitting this appeal (15 February 2022), the only representations that have been received are letters of support (further details on which are provided in paragraph 2.8 below) and, should any further representations be submitted in the remaining 3 days, these will of course be before the Local Review Body at the time they determine the appeal, with this not therefore being a reason for any further delay;
- in the course of the Council deciding to re-notify the application in January 2022, almost seven weeks passed between the date the revised plans were submitted (13 December 2021) and the date of the site notice being placed (28 January 2022), to the prejudice of the timescale for the application to be determined; and
- while the applicant could have opted not to agree to the Council's request to extend the determination deadline to 17 December 2021, and to have appealed non-determination prior to 13 January 2022 on the basis of the previously agreed date of 14 October 2021, they sought to act in good faith in terms of allowing the Council time to consider the revised plans, reflecting their desire throughout the planning application process to work with the Council to achieve a positive outcome in respect of this application. The re-notification and re-advertisement of the application in January 2022 has though introduced a further delay, as a result of which the applicant has since been advised by the case officer that the earliest a decision might realistically be expected is 11 March



2022 and, in the absence of there being anything that the applicant can do to expediate this process, this has prompted their wish to seek this review.

- 1.7 A full list of the application documents, together with relevant policy documents and other material considerations referred in this statement, is provided at Appendix One.

2 Application

2.1 The application drawings [Documents A2 to A53] should be considered in conjunction with the Design and Access Statement (parts 1, 2, and 3) [Document A59 to A61], Planning Statement [Document A62], Heritage Statement [Document A63], and Supplementary Statement [Document A64] submitted in support of the application, which together set out the design process that has been followed, the principles that have informed this, and the justification for the development now proposed. Notably, as highlighted above, a number of changes were made to the proposed development in response to feedback from the case officer after the application was submitted, with the Planning Statement, Design Statement and Heritage Statement reflecting the original scheme and full details of the changes provided in the Supplementary Statement, which was submitted to the Council with the revised drawings on 13 December 2021. In doing this, the applicant has demonstrated their willingness to be flexible and to work with the Council to deliver a high-quality residential development on the application site, with the key drivers behind the application being:

- to bring the currently vacant buildings on the site back into use in a way that makes a positive contribution to the area in which this is located, including through restoring the historic fabric of the original building at 31-32 Albyn Place, with the redevelopment of the site as a whole being necessary to deliver these works; and
- to contribute to the realisation of the Council's express aspirations to see more people living in and around the city centre as set out in the Planning Statement, the Supplementary Statement, and in section 3 below.

2.2 In summary, and as described in more detail in the supporting documents listed above, the existing buildings on the application site comprise:

- the original building at 31-32 Albyn Place, which was used as offices before being vacated in 2017 and, despite active marketing (for details of which, see paragraphs 2.1 and 2.2 of the Planning Statement) has been vacant since then, with little or no prospect of this being returned to office use in the near to medium term future due to supply of this type of office accommodation significantly exceeding demand at present (as evidenced by the vacant office audit submitted with the application [Documents A56a and A56b]) and the



condition of the building now deteriorating as a result (as illustrated in the site audit submitted with the application [Documents A54 and A55]);

- a substantial modern stock bridge extension to the rear of the original building, which is visible only from Albyn Lane; and
- link sections connecting the extension to the original building, with a courtyard area formed between the original building, these link sections, and the main body of the extension.

2.3 The remainder of the application site is largely laid in tar macadam for use as parking.

2.4 Against this starting point of the existing built development on the site, this application seeks to convert the existing buildings to 16 flats, with the retention of existing landscaping to the front of the building and minimal physical interventions as follows:

- restoration of the historic fabric of the original building, using traditional methods;
- removal of the modern link section between the original building and the extension, thus revealing more of the rear of the original building;
- recladding the extension with granite cladding to improve the appearance of this;
- adding a stairwell to the rear of the existing building to replace the existing stairwell (which is located in the link section which is to be removed in the interest of improving the visual appearance of the site as a whole as set out above), the design of which has been amended since the application was submitted to make it more transparent in appearance as set out in the Supplementary Statement, in addition to which it should be noted that this would be located on part of the original building of which there are currently no public views, and which would continue to be obscured from view by the existing extension; and
- creation of new garden areas and landscaping to the rear along with car parking, bicycle storage, and bin storage for residents of the proposed flats.

2.5 As set out in the Supplementary Statement, feedback from the case officer has confirmed that that residential development in this location is supported in principle and that proposed works to the original historic buildings are acceptable. The only concerns raised during their assessment of the application then related to the level of amenity that residents of the proposed flats would enjoy, and the impact that the proposed development would have on the Conservation Area in which it is located. These concerns have though also been addressed



in detail in the Supplementary Statement, in terms of which it should in particular be noted that:

- the proposed works would not materially alter the physical appearance of the existing built development on the site, such that there would be no negative impact on the streetscape or the character of the Conservation Area as a result, as illustrated on the existing and proposed streetscapes and views submitted with the application [Documents A18, A19 and A20]. Indeed, the only impact on the historic environment would be positive as a result of the removal of the link revealing more of the rear of the original building, and the carrying out of restoration works to the original building as set out in the Heritage Statement; and
- residents of all flats would benefit from a good level of amenity, with –
 - all residents having access to private external space, as well as communal garden areas,
 - all flats being dual aspect,
 - all windows looking out onto an area of landscaping,
 - all but four of the flats having at least one south facing window,
 - windows on the northern elevation of the building to the rear of the site having opaque glass, such that there would be no overlooking of the southern elevation of the original building, or of the private amenity spaces of flats within this from here, and
 - sun studies [Document A65] demonstrating that all flats as well as associated external amenity spaces would benefit from direct sunlight at some time during the day throughout the year.

2.6 The Supplementary Statement also highlights to the need to take a holistic view of the amenity which residents would enjoy, with people specifically choosing to live close to the city centre because of the amenity benefits this delivers in terms accessibility and proximity to the services, facilities and employment opportunities this has to offer, and accepting that the amenity this affords is different from that provided in a more suburban residential area. The policy support for this approach is highlighted in paragraph 3.7 below.

2.7 The proposed development would also have no impact on neighbouring residential amenity, with the building line of the dwelling to the south being more than 68m away. And it should



be noted that there have been no objections to the application from any neighbouring residents.

- 2.8 Indeed, there have been no objections to the application from any consultees or members of the public, with the only representations that have been received being letters of support from the owner of 32 Albyn Lane (the closest existing residential property) [Documents B1 and B2 and from Queens Cross and Harlaw Community Council [Document B3]. In particular, these highlight the negative visual appearance of the site at present, the extent to which this would be improved by the development proposed in terms of this application, and the potential harm that would be caused to the area as a result of the existing buildings deteriorating further if the proposed development does not go ahead. This support requires to be taken into account in favour of the application being approved.

3 Policy context

- 3.1 In determining the application, it should be remembered that the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise, with the adopted Development Plan in this case comprising the Aberdeen City and Shire Strategic Development Plan (2020) (SDP) [Document C1] and the Aberdeen Local Development Plan (2017) (ALDP) [Document C2]. The Planning Statement and Supplementary Statement together address all relevant provisions of the Development Plan and other material considerations as at the time these were submitted, demonstrating how the proposed development complies with these, and the application should be approved for the reasons given in those Statements.
- 3.2 In particular, due weight needs to be given to the benefits that the development would deliver and the local support for this, all as set out above, and which should be taken into account as material considerations in support of the application, with it being necessary to take a positive approach to development such as that proposed in terms of this application if the Council's desire to see more people living in and around the city centre is to be realised.
- 3.3 It should though be noted that there have been a number of changes to the policy context since the application was submitted, with these lending further support to the proposed development as set out below.

Proposed Aberdeen Local Development Plan (2020) (PLDP) [Document C3]

- 3.4 As part of the process of preparing the next ALDP, the PLDP was submitted to the Scottish Ministers for Examination in July 2021 and, as the settled view of the Council on the format and content of the next ALDP, this constitutes a significant material consideration in the determination of the application. Of particular relevance, the PLDP replaces the current West



End Office Area designation (which includes the application site) with a new West End Area designation, within which it is stated that the Council will encourage and promote development for a mix of uses, including residential. Proposed **Policy VC5 West End Area** then expressly states that the principle of change of use from office to residential will be supported accordingly. When due weight is given to these provisions of emerging plan, the starting point in respect of this application should therefore be that the proposed development should be encouraged and supported.

Scottish Planning Policy (SPP) [Document C8]

- 3.5 Amendments made to SPP in December 2020 were quashed by the Court of Session in July 2021, such that the presumption in favour of development that contributes to sustainable development (as it now is) once again becomes elevated to a significant material consideration in cases where a development plan is more than 5 years old, as is the case in this instance with the ALDP exceeding 5 years of age on 20 January 2022. Further, the decision in *Gladman Developments Limited v The Scottish Ministers [2020] CSIH 28* [Document D2] (the Gladman case) makes it clear that, where the presumption in favour of sustainable development is a significant material consideration, planning permission should be granted unless there are any adverse impacts which '*significantly and demonstrably*' outweigh the benefits of the proposal, i.e. the balance is tilted in favour of planning permission being granted, with the assessment of whether there are any such adverse impacts being part of the equation for determining whether a development is, in overall terms, sustainable. There is though no change to the wider principles that need to be taken into account when considering whether or not a development is sustainable, an assessment of which is provided in paragraphs 4.2 to 4.7 of the Planning Statement, in light of which it is concluded that the proposed development clearly constitutes development that contributes to sustainable development as defined in SPP and should supported accordingly.
- 3.6 In particular, the proposed development would offer notable benefits in terms of responding to the current economic climate (in which there is limited demand for office space, but there is demand for accessible housing, the delivery of which is specifically supported by SPP) and, by re-purposing vacant buildings, making efficient and sustainable use of land, as also expressly supported by SPP. At the same time, no adverse impacts which would '*significantly and demonstrably*' outweigh these benefits have been identified, with regards to which the Planning Statement, Supplementary Statement and paragraphs 2.5 to 2.8 above clearly demonstrate that is the case in respect of:
- the character of the Conservation Area;
 - the amenity of existing or future residents; and



- in any other respect that would outweigh the benefits of this in terms of bringing the currently vacant buildings back into use, restoring the historic fabric of the original building, and contributing to the Council’s express aspirations to see more people living in and around the city centre, as set out in paragraph 2.1 above:

3.7 With regards to amenity of future residents specifically, it should be noted the Council’s **Supplementary Guidance: Harmony of Uses** [Document C4], expressly states that “*urban centres are lively and vibrant places and those who live there should not expect that the amenity would be comparable of that of a purely residential area*”, with the same principle applying to sites on the edge of urban centres such as that to which this application relates. And, when the level of amenity provided is assessed in this context, it is clear that residents would benefit from a good level of amenity for this location.

3.8 As the proposed development would have no adverse impacts that would outweigh the benefits of this as set out above, the application requires to be approved in line with the presumption in favour of development that contributes to sustainable development and the decision in the Gladman case accordingly.

Draft fourth National Planning Framework (NPF4) [Document C10]

3.9 The draft NPF4 was published for consultation in November 2021, with this to become part of the Development Plan when it is adopted later this year, and as such it is accordingly now a material consideration in respect of this application.

3.10 Notably, the draft sets out a National Spatial Strategy which seeks to transform the way we use our land and buildings so that every decision contributes to making Scotland a more sustainable place, including through encouraging the sustainable use of resources and circular economy approaches to development. It also seeks to deliver new homes close to local facilities, increase the density of settlements, and prioritise brownfield, vacant, and derelict land and buildings for development in the interest of safeguarding resources, reducing the need to travel unsustainably, and strengthening local living. In addition, in the north-east specifically, the draft recognises that affordability and choice of homes remains a challenge, and that there is significant potential to promote more compact growth by making better use of brownfield sites and increasing density. As the development proposed in terms of this application would be consistent with the spatial strategy of the draft NPF4 in all these regards, this also supports the application being approved

4 Assessment of the application

4.1 For the reasons given in the Planning Statement and Supplementary Statement, read in conjunction with information provided in the other documentation submitted with the



application and in this statement, it is submitted that the proposed development would deliver a high-quality residential environment which complies with all relevant policies of Development Plan and is supported by other relevant material considerations, in particular the presumption in favour of development that contributes to sustainable development set out in SPP.

- 4.2 Indeed, if there were any concerns with regards to the extent to which the application complies with any element of the Development Plan (which, for the avoidance of doubt, it is submitted there should not be), the operation of the ‘tilted balance’ and the absence of any adverse impacts which *‘significantly and demonstrably’* outweigh the benefits of the proposal means that the application in any event should be approved in line with the presumption in favour of development that contributes to sustainable development and the decision in the Gladman case.
- 4.3 As the application complies with the Development Plan and is supported by relevant material considerations, with no material considerations indicating otherwise, it should be approved.

Aurora Planning Limited
15 February 2022



Appendix One: List of documents

A Planning application documents

1. Application form dated 10 March 2021

Plans

2. Location plan
3. Existing site layout
4. Existing foundations and lower ground floors
5. Existing garden and first floors
6. Existing ground and second floors
7. Existing first and top floors
8. Existing roof layout
9. Existing gross internal areas
10. Existing elevations 1
11. Existing elevations 2
12. Existing elevations 3
13. Existing elevations 4
14. Existing site sections
15. Floor plans – demolition
16. Existing elevations – demolition
17. Site layout - demolition
18. Existing/proposed streetscape – Albyn Place
19. Existing/proposed streetscape – Albyn Lane
20. Existing/proposed views
21. Proposed site/block plan
22. Proposed site plan – part 1
23. Proposed site plan – part 2
24. Proposed site plan – part 3
25. Proposed site plan – part 4
26. Proposed site plan – part 5
27. Proposed LG layout – Albyn Place
28. Proposed GF layout – Albyn Place
29. Proposed FF layout – Albyn Place
30. Proposed GF layout – rear
31. Proposed FF layout – rear
32. Proposed SF layout – rear
33. Proposed roof plan
34. Floor areas schedule
35. Floor areas schedule – key
36. Proposed green spaces
37. Proposed elevations 1
38. Proposed elevations 2
39. Proposed elevations 3
40. Proposed elevations 4



41. Proposed elevations 5
42. Proposed elevations 6
43. Railing details
44. Access bit store and cycle store details
45. Proposed site sections
46. Proposed section – Albyn Place
47. Proposed section – rear
48. Proposed building section 1
49. Proposed building section 2
50. Proposed building section 3
51. Proposed building section 4
52. Proposed building section 5
53. Proposed building section 6

Other supporting documents

54. Site audit part 1
55. Site audit part 2
56. Vacant office audit and site inspection
57. Transport Statement
58. Foul and surface water drainage strategy
59. Design and Access Statement – Part 1
60. Design and Access Statement – Part 2
61. Design and Access Statement – Part 3
62. Planning Statement
63. Heritage Statement
64. Supplementary Planning Statement
65. Sun studies

B Representations

- 1 Letter of support from Tracey Leferve
- 2 Further letter of support from Tracey Leferve
- 3 Letter of support from the Community Council

C Policy documents

- 1 Aberdeen City and Shire Strategic Development Plan (2020)
- 2 Aberdeen Local Development Plan (2017)
- 3 Proposed Aberdeen Local Development Plan (2020)
- 4 Supplementary Guidance: Harmony of Uses
- 5 Supplementary Guidance: Transport and Accessibility
- 6 Supplementary Guidance: Resources for new development
- 7 Technical Advice Note on Development Along Lanes
- 8 Technical Advice Note on Materials
- 9 Scottish Planning Policy 2014
- 10 Draft National Planning Framework 4



- 11 Scottish Government Draft Advice on Net Economic Benefit and Planning
- 12 Aberdeen City Council Local Housing Strategy
- 13 Aberdeen City and Aberdeenshire Housing Land Audit 2020
- 14 Aberdeen City and Shire Employment Land Audit 2018/2019

D Other documents

- 1 Emails confirming extension of determination deadline
- 2 Gladman Developments Limited v The Scottish Ministers [2020] CSIH 28
- 3 Albyn Place and Rubislaw Conservation Area Character Appraisal and Management Plan

