

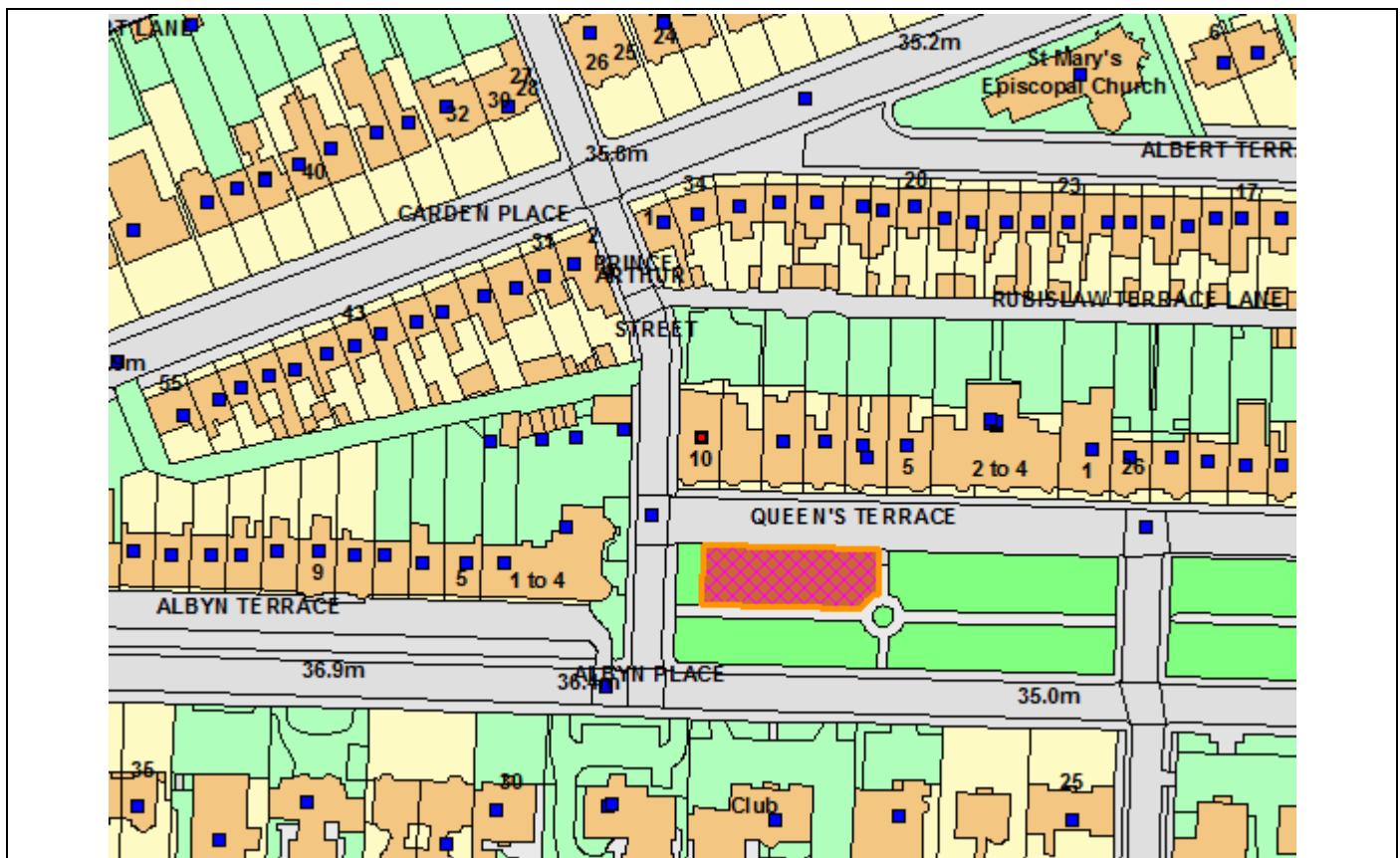


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 29 June 2023

<b>Site Address:</b>	Land Opposite 10 Queen's Terrace, Aberdeen, AB10 1XL
<b>Application Description:</b>	Change of use from amenity land to temporary outdoor seating area for public house including erection of marquee with bar, adjacent storage container, and associated al fresco areas
<b>Application Ref:</b>	230407/DPP
<b>Application Type</b>	Detailed Planning Permission
<b>Application Date:</b>	31 March 2023
<b>Applicant:</b>	McGinty Group
<b>Ward:</b>	Hazlehead/Queen's Cross/Countesswells
<b>Community Council:</b>	Queen's Cross And Harlaw
<b>Case Officer:</b>	Roy Brown



© Crown Copyright. Aberdeen City Council. Licence Number: 100023401 - 2018

## RECOMMENDATION

Refuse

## **APPLICATION BACKGROUND**

### **Site Description**

The application site comprises a c.690sqm area of ground in the northeast quadrant of Queen's Terrace Gardens, which is a public park bounded by Queen's Terrace and Rubislaw Terrace to the north and Albyn Place to the south. The application site area is largely laid to grass, with mature trees to the north and west.

Many of the surrounding buildings are occupied by business premises, including uses within class 4, typically office as well as class 3 bar/restaurant premises, including 'No.10 Bar and Restaurant' operating from 10 Queen's Terrace, opposite the application site to the north.

The site lies within the Albyn Place and Rubislaw Conservation Area and all buildings fronting the gardens from Queen's Terrace (to the north) and Prince Arthur Street (to the west) are category B listed. The gardens themselves were set out in the 19<sup>th</sup> century as part of the wider plan for Queen's Terrace and Rubislaw Terrace and their formal layout, design and features are characteristic of its Victorian origin. They are enclosed by a combination of cast iron railings and granite balustrading, also Category B listed, including traditionally styled streetlamps and are bisected symmetrically by footpaths running centrally from north to south and east to west. There are multiple trees in the gardens, both within the application site boundary and on immediately adjoining land, the largest trees being primarily on the edges of the gardens. The ground levels within the northern part of the gardens sit approximately 1m below the street level of Queen's Terrace. Core Path 96 (Castlegate to Anderson Drive) runs from east to west through the gardens to the immediate south of the application site.

### **Relevant Planning History**

Planning application 220336/DPP was refused in June 2022 for the change of use of an area of the gardens to a temporary outdoor seating area for a public house including the erection of a marquee with a bar, an adjacent storage container, and associated alfresco areas. Whilst very similar, the current application differs in that it would also include two toilet 'pods' at the western side of the site and does not include a further outdoor seating area in the south western quadrant of the gardens.

Application 220336/DPP was refused because it was considered that it would have involved a significant proportion of the Urban Green Space of Queen's Terrace Gardens being utilised for private commercial purposes, consequently inhibiting public access to this public open space; because replacement green space provision was not proposed; and because the prominent location of the structures was considered such that they would have detracted from the parkland setting of Queen's Terrace Gardens and have adversely affected the character and appearance of the Albyn Place and Rubislaw Conservation Area. It was thus considered to not accord with the relevant policies applicable at the time of the determination.

The previous application was also assessed in the context of the since withdrawn guidance in the Scottish Government's Chief Planner's Letter of July 2020 that supported a relaxed approach to taking enforcement action against outdoor seating uses associated with bars and restaurants that were unable to run at full capacity due social distancing requirements during the Covid-19 pandemic.

Prior to the submission of that application, whilst the country was subject to Covid-19 social distancing measures, the application site was informally used as an outdoor seating area and had a marquee structure similar to the development proposed in this application. The earlier structure had already been removed and the area returned to public gardens by the time the previous planning application was determined.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Detailed Planning Permission is sought on a temporary basis, during the months of May to September in 2023, 2024 and 2025 for the change of use of the application site from amenity land to Class 3 use, the erection of a marquee structure with bar, and outdoor seating areas. The proposal would also include the installation of two toilet 'pods' (disabled accessible), a storage container and a generator at the western side of the site. The facility would be operated as an additional drinking and dining space associated with No.10 Bar and Restaurant, sited 20 metres from the application site on the opposite side of Queen's Terrace.

The aluminium-framed marquee structure would be sited in the north-western corner of the gardens, secured by concrete blocks and would have a pitched-roof design, with a clear roof and full-height uPVC framed roof panels and glazing on all sides and aluminium framed doors. It would include access ramps on its south and east sides, which would have a height of c.1.3m including the timber balustrades. The marquee structure would cover an area of c.243sqm and would be 27m long and 9m in width. It would have height of c.2.6m to eaves and a maximum ridge height of c.4.2m. The toilet 'pods' would be flat-roofed and have maximum height of c.2.3m.

Whilst it would be for licensing, rather than the planning service, to regulate the number of patrons permitted, the submitted plan indicates that the enclosed marquee space could accommodate at least 18 tables and a bar. In addition, the layout indicates that 6 picnic benches would be sited externally at the eastern end of the marquee. It is anticipated that the proposal would accommodate more than 100 seated patrons. The previous marquee had a 120 cover capacity.

### **Amendments**

The applicant has submitted additional supporting statements since the application was validated. No amendments have, however, been made to the proposals.

### **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=RSDNOYBZI5Y00>

#### Design Statement (Prepared by the applicant)

Provides a background for the proposal, the business, their previous marquee structure on the site and gives evidence of support from customers.

#### Supporting Document (Prepared by the applicant)

Summarises their business, describes their previous marquee structure on the site, justifies the development in terms of the current economic environment, as well as gives evidence of support from customers.

#### Supporting Planning Document (Prepared by Brodies LLP)

Sets out the context of the site, appraises the proposal against development plan policy and material considerations and seeks to address issues raised by the Planning Service regarding the proposal.

#### Quote Regarding Re-instating Turf (Prepared by Urban Landscape + Tree Services)

A quote for re-turfing the ground once the marquee would be removed.

## **Reason for Referral to Committee**

In accordance with the Scheme of Delegation for Local Development, the application has been referred to the Planning Development Management Committee as the Appointed Officer and Chief Officer (Strategic Place Planning), following consultation with the Convener of the Planning Development Management Committee, have decided that the particular circumstances of the application are such that it should be determined by the Planning Development Management Committee.

## **CONSULTATIONS**

**ACC Environmental Services** – Objection - Environmental Services is responsible for maintaining the gardens. The previous marquee has caused a lot of damage to the ground which the team has been repairing. New planting, including trees has just been completed. The gardens are there for the public to use and enjoy. Green / garden space should not be given over to business. This is especially the case in the west end and city centre where there is very little green space for the public to enjoy.

**Roads Development Management Team** – No objection – The site is in Controlled Parking Zone P. Due to its siting, there is no scope for indiscriminate parking and the site is accessible by public transport, footways and bicycles. The only concern would be the road safety issue of having to transport food and drink across the road. However, there was a similar marquee in a similar location recently, and it does not appear to have been an issue in this relatively quiet stretch of road.

**Environmental Health Service** – No objection – This service recalls the previous structure which operated during the Covid-19 pandemic, during which time no noise complaints had been received. A noise screening assessment has been undertaken, which considered the potential noise emissions from the proposed seating area and its temporary nature. Given the noise drop off due to the distance coupled with the likely acoustic barrier effects afforded by walls and buildings between the proposed seating area and the nearest sensitive receptor, 4 Prince Arthur Street, a reasonable level of amenity should remain. However, they recommend conditions related to noise mitigation (no amplified music; no use outwith the hours of 1000 to 2200; use of a suitable noise attenuated generator) are applied to protect the amenity of neighbours from noise and reduce the risk of noise complaints.

**Queen's Cross and Harlaw Community Council** – No response received.

## **REPRESENTATIONS**

259 representations have been made timeously in respect to this application, 249 are in support and 10 are objections. The matters raised in the objections relate to the following:

- The loss of public open space. It is a public space that should be accessible to all and should not be used by a private business. The proposal would exacerbate the limited public open space provision in the area.
- The structure would detract from the conservation area and the sense of place of this street.
- The proposal would damage the gardens and it would adversely impact biodiversity. New planting has been undertaken on the site where the development would be located. It is suggested that the company should be obligated to repair the soil which has been damaged from the previous structure.
- The proposed use would conflict with and deter its use by other would-be users of the park.

- Concerns with respect to women's safety.
- Concerns with respect to potential anti-social behaviour from alcohol consumption.
- Concerns with respect to noise.
- Concerns with respect to air quality from the generator.
- The fact the previous application for such a proposal was refused on the site.
- The proposal would be during the seasons when the park is most in use.
- The precedent that this proposal would set for the loss public open space for private purposes.
- The previous marquee was in place as a temporary solution in response to the pandemic and that is no longer applicable.
- It is suggested that the marquee is installed in the car park at the rear of the site.
- The proposal conflicts with local policies on green space provision and quality placemaking
- It is queried if residents would get a rebate on council tax if this was approved (*this is not a material consideration*).

The matters raised in the representations in support relate to the following:

- Improvements to the local economy, tourism and provision of jobs.
  - The appropriate location for this use. It would improve vitality of the west end and city centre as it would bring people into an area which links the two areas. It would utilise an underused space.
  - It would not detract from, but instead enhance, the visual amenity of the gardens and the surrounding area.
  - It would not damage the gardens and other areas of the gardens would remain unaffected.
  - It would accord with green space policy as it would bring people into the space without detracting from landscape character.
  - It would enhance the amenity of the surrounding area, particularly in the summer.
  - It would not detract from the amenity of neighbouring properties, notably in terms of noise.
  - It would increase the choice of outdoor seating area in the city. Other cities support outdoor dining and drinks areas so this type of development should be supported.
  - It would accord with the aims of the City Centre Masterplan.
  - It would encourage people to be outside.
  - Other businesses have had their proposals for outdoor seating areas approved.
  - The quality of the operator. Those in support enjoyed using the previous marquee on the site.
- 
- Its accessibility by public transport methods.
  - It would increase revenue of Aberdeen City Council.
  - Disagreement with the objection regarding antisocial behaviour.
  - Concern that the park is currently used by school children.
  - The application has received a large amount of support.

A submission in support of the application was received from Kevin Stewart MSP, however this occurred outwith the representation period.

## **MATERIAL CONSIDERATIONS**

### **Legislative Requirements**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where making any determination under the planning acts, regard is to be had to the provisions of the Development Plan; and, that any 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 requires the planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

## **Development Plan**

### National Planning Framework 4

National Planning Framework 4 (NPF4) is the long-term spatial strategy for Scotland and contains a comprehensive set of national planning policies that form part of the statutory development plan. The relevant provisions of NPF4 that require consideration in terms of this application are –

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 7 (Historic Assets and Places)
- Policy 13 (Sustainable Transport)
- Policy 14 (Design, Quality and Place)
- Policy 20 (Blue and Green Infrastructure)

### **Aberdeen Local Development Plan 2023 (ALDP)**

The following policies are relevant –

- Policy D1 (Quality Placemaking)
- Policy D6 (Historic Environment)
- Policy NE2 (Green and Blue Infrastructure)
- Policy NE5 (Trees and Woodland)
- Policy T2 (Sustainable Transport)

### **Interim Planning Guidance (APG)**

Aberdeen Planning Guidance is currently Interim Guidance. The documents hold limited weight until they are adopted by Council. The weight to be given to the Interim Planning Guidance prior to its adoption is a matter for the decision maker.

- Open Space and Green Infrastructure
- Temporary Buildings

### **Other Material Considerations**

- Albyn Place and Rubislaw Conservation Area Character Appraisal

## **EVALUATION**

### **Loss of Urban Green Space and Public Amenity**

The application site lies within an area defined by the Aberdeen Local Development Plan 2023 (ALDP) as Urban Green Space. Policy NE2 (Green and Blue Infrastructure) of the ALDP states that we will protect, support and enhance the city's Urban Green Space and that development proposals that do not achieve this will not be supported. It states that exceptions may be made when an equivalent and equally convenient and accessible area for public space is provided by the applicant

for Urban Green Space purposes. Policy 20 (Blue and Green Infrastructure) of National Planning Framework 4 (NPF4) states that development proposals that result in fragmentation or net loss of existing blue and green infrastructure will only be supported where it can be demonstrated that the proposal would not result in or exacerbate a deficit in blue or green infrastructure provision, and the overall integrity of the network will be maintained, and that the planning authority's Open Space Strategy should inform this.

One of the overarching spatial principles of NPF4, 'Local Living', sets out that improving community health and wellbeing can be achieved by ensuring people can easily access greenspace. The Qualities of Successful Places referred to in Policy 14 (Design, Quality and Place) of NPF4 seeks development to be designed for healthy and active lifestyles, through access to nature and greenspace. Paragraph 6.15 of the ALDP states that the Council's Open Space Audit and Open Space Strategy provide a strategic framework for creating, connecting and improving Aberdeen's open spaces. Good quality open space makes a vital contribution towards stronger communities and healthier lifestyles, making Aberdeen a more attractive place to live, work and invest. As such, there is a presumption in both national and local planning policy in retaining and improving open space and therefore the proposal to remove the area from the public is contrary to these aims.

In this instance, the Queen's and Rubislaw Terrace Gardens are included in the Open Space Audit 2010 and identified as a 'Public Park and Garden' and there have been minimal changes made to the site since the undertaking of that audit. The audit scored the gardens very highly (21/25), notably in terms of its sense of place and community value. The residential and commercial areas to the west of the site are identified as having a deficit of local open space provision and these gardens are the closest public gardens to substantial residential areas of the west end.

The proposed development involves the provision of a marquee structure, additional outdoor dining/drinking areas and associated works within a public garden, to be operated in conjunction with an existing bar / restaurant sited opposite. These operations would effectively create private commercial floorspace and reduce the area of the gardens that is available for its established use as a public amenity. No provision has been made for an alternative area of public open space elsewhere to compensate for the area lost, in conflict with Policies 20 of NPF4 and NE2 of the ALDP.

There would thus be an amenity impact arising from the presence of this use and its associated structures. The gardens at Queen's Terrace and Rubislaw Terrace are one of the few areas of green public open space in an otherwise urban area and, as such, they have considerable amenity value to those living locally, whilst also contributing to the setting of nearby listed buildings and the character of the conservation area. Whilst it is acknowledged that the proposal is sought on a temporary basis, the proposal would nevertheless cover, and result in the loss of, a large area of public open space during the warmest and lightest months of the year and for a period of 3 years,; notably in the summer months when it is anticipated that the usage of the park is likely at its greatest. One of the six qualities of successful places referred to in Policy 14 of NPF4 is that development should be 'healthy' whereby they support the prioritisation of women's safety and improve physical and mental health for all. Given the area of the gardens is currently of an open and accessible nature and provides a public amenity to all, that may be compromised by the proposed development.

Whilst the area of ground that would be the subject of the change of use is not of significant wildlife value, the application site would be covered by development from the Spring to the Autumn, notably during the months when grass, tree and shrub growth would be greatest. There would be minimal time for the grass to recover before the winter. Aberdeen City Council's Environmental Services are responsible for maintaining this park and they have objected to the application, highlighting that the previous marquee had caused a lot of damage to the ground that has only recently been repaired. Evidence from Google Streetview dated April 2023 shows that the grass has yet to fully recover from the previous structure on the site. It is thus anticipated that the proposal would likely result in

the reduction in the amenity and useability offered by the space even during the months when the development is not in place.

Whilst it is appreciated that the proposal would likely bring more people into the gardens as patrons of the facility, it is considered that public access and the wide-ranging functions that open space offers as a public amenity would not be protected or enhanced by the formation of a large area of private commercial floorspace. For the foregoing reasons, it is considered that this development would conflict with the aims of Policies 20 of NPF4 and NE2 of the ALDP.

## **Design and Impact on the Historic Environment**

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, places a statutory duty in exercise of planning functions with respect of land in a conservation area that special attention is to be paid to the desirability of preserving or enhancing the character or appearance of that area.

Policy 7 (Historic Assets and Places) of NPF4 states that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the:

- i. architectural and historic character of the area;
- ii. existing density, built form and layout; and
- iii. context and siting, quality of design and suitable materials.

Policy D6 of the ALDP states that appropriate developments, including new features, must be designed to respect the character, appearance and setting of the historic environment and protect the special architectural or historic interest of listed buildings, conservation areas and historic gardens.

To determine the effect of the proposal on the character of the area it is necessary to assess it in the context of Policy 14 of NPF4 and Policy D1 of the ALDP. Policy 14 states that development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. D1 (Quality Placemaking) of the ALDP requires all development to ensure high standards of design, create sustainable and successful places and have a strong and distinctive sense of place which is a result of detailed contextual appraisal.

In this case, the proposal involves the siting of a large marquee structure, measuring 9m deep by 27m long, supported by an aluminium frame which is weighted down by concrete blocks, whilst the height (c.4.2m to ridge, c.2.6m to eaves) is considered to not be excessive, there would be a visual impact arising from the highly prominent roadside location, the incongruous presence of the marquee and associated items within a formal public garden in a historic urban area, including its roof structure from Queen's Terrace itself.

The gardens form a key part of the setting of the category 'B' listed Queen's Terrace, considered one of the finest in Aberdeen and they are referenced in the listing for the terrace as being 'particularly fine'. The Albyn Place and Rubislaw Conservation Area Character Appraisal, sets out that these gardens are in prominent location to the north of Albyn Place, one of the main thoroughfares into the city centre, and they contribute significantly to the character and appearance of the conservation area. As with the surrounding historic buildings, the gardens retain their historic formal layout, landscape design and features. It is noted that the quality of the terraces has always considered of particularly high standard, with the listing quoting its survey of 1879 describing the terraces as 'superior to anything of their class in the aristocratic quarter of almost any town in Scotland'.



In this context, the construction of a large modern marquee building of temporary design and appearance in this historic garden would be incongruous with and detract from the special character of the 19<sup>th</sup> century gardens, the setting of these listed buildings and the wider conservation area. Although the marquee would be screened to a certain degree from Albyn Place with mature trees and other vegetation, the marquee would have an imposing presence within the garden space and would negatively affect the views from the gardens of the terrace as well as the wider conservation area. Its siting in the northwest corner of the gardens would detract from its designed symmetrical layout, particularly where experienced along its east-west views within the central path which bisects them. The construction of the marquee in this location within the gardens would thus undermine their sense of place and how they are experienced as historic gardens.

The Temporary Buildings APG sets out principles for considering temporary buildings. It advises that such buildings should be sited to generally avoid highly visible public areas and avoid landscaped areas, especially those with established tree or shrub planting. The SG also notes that it may not always be possible to accommodate temporary buildings within conservation areas without adversely affecting its character, and in these circumstances, applications are likely to be refused. It is thus also noted that there is a conflict with the principles of this interim guidance, as Queen's Terrace Gardens represent a highly visible public area and a landscaped space with established tree and shrub planting, and furthermore because it would adversely affect the character of conservation area and the setting of listed buildings.

Policy 7 (Historic Assets and Places) of NPF4 states that development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. It is raised in the submitted Support Planning Statement that the development has been designed to resemble an 'orangery' that may be appropriate to such an historic environment. The Planning Service questions this given that the structure is a standard large modern marquee of temporary design and modern materials and appearance that has not been designed with due regard to the historic character of its surroundings. Furthermore, given the formalised symmetrical layout and intended public facing nature of the gardens, it is considered that an 'orangery' structure of the scale and asymmetrical siting proposed would not be reflective of the historic design, layout and character of the gardens. Whilst accepted that the structure is intended to be temporary, it is considered that this proposal has not been designed with an understanding of the context of the surrounding historic environment.

It is indeed recognised that the impact of this proposal would be reversible, and the permission is sought on a temporary basis. However, the obviously temporary appearance of the structure would be such that its installation for a prolonged on and off period over the course of 3 years would be unacceptable within the context of the Albyn Place and Rubislaw Conservation Area. Indeed, this was the position reached by the Planning Authority in the assessment and refusal of the previous application when permission was sought for lesser time period.

As such, by way of its design, scale and siting in its context, it is considered that the proposal would adversely affect the character and appearance of the Albyn Place and Rubislaw Conservation Area, and thus it would be in clear conflict with Policies 7 and 14 of NPF4; Policies D1 and D6 of the ALDP. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, places a statutory duty on the Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. This development would be contrary to the desirability of preserving and enhancing the character and appearance of the conservation area.

## **Climate Change and Biodiversity**

Policy 1 (Tackling the Climate and Nature Crises) of NPF4 requires significant weight to be given to the global climate and nature crises in the consideration of all development proposals. Policy 2 (Climate Mitigation and Adaptation) requires development proposals to be designed and sited to minimise lifecycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change. Policy 3 (Biodiversity) of NPF4 requires proposals for local development to include measures to conserve, restore and enhance biodiversity, proportionate to the nature and scale of development.

In this instance, given the temporary nature of this development and its proposed use, the proposal would not exacerbate, or be at significant risk from, the effects of climate change. The proposal would thus have no conflict with Policy 2 of NPF4.

However, no biodiversity enhancements have been included in this proposal. Whilst the area of ground that would be the subject of the change of use is not of significant wildlife value, the proposal would be covered by development from the Spring to the Autumn. It is thus anticipated that the proposal would likely result in the loss of, and damage to, the grass on the application site for as long as the permission would be in place. In considering the requirements of Policy 3 of NPF4, Policy NE5 (Trees and Woodlands) of the ALDP states that buildings and infrastructure should be sited to allow adequate space for a tree's natural development, taking into account the predicted mature height, canopy spread and future rooting environment and that, where applicable, root protection areas should be established, and protective barriers erected prior to any work commencing. The proposed structures would be located in very close proximity to existing trees, particularly the mature trees on the edges of the gardens. Although the proposal would not result in any significant excavation works and no trees are proposed to be removed, no evidence in terms of a tree survey, arboricultural impact assessment and tree protection plan has been submitted to demonstrate that the development would not result in the damage to, or inadvertent loss of trees on the site.

A tree survey, arboricultural impact assessment and tree protection plan could have been submitted with the application to address the matter but was not provided. Paragraph 4.41 of the Planning Support Statement has, however, suggested conditions to address these matters. The applicant has suggested that the rooting areas of the trees could be mulched with woodchip, grass could be left to grow longer, and wildflowers could be planted in the rooting areas to benefit biodiversity, soil structure and dissuade foot traffic. However, given a large section of the marquee would be located within the root protection areas of the surrounding trees, the mulching would have to be where the marquee would be located, and the laying of woodchip would not prevent long-term compaction within the root protection areas. As such, the solution suggested would not be effective in resolving the concerns over the impact on the trees. With respect to the damage to the lawn, the applicant has offered, at their expense, to re-instate the area using turf each year when the structure would not be in place. However, the re-laid turf would be covered again each year when the structures would be re-erected in the Spring months, questioning the potential success of this approach given the limited scope for growth over the winter.

Given Policy 1 requires significant weight to be given to the nature crisis, the proposal would not conserve, restore and enhance biodiversity, and there is no evidence to demonstrate that the proposal would not damage the trees in the area, based on the information submitted, the proposal would not accord with the aims of Policy 1 and 3 of NPF4 and NE5 of the ALDP.

## **Precedent**

The Support Planning Statement has referred to several other applications for the formation of temporary structures and the change of use of public open spaces for commercial occupation.

Reference has been made of the recent decision made by the Planning Authority to approve the installation of a marquee as a seating area in the curtilage of the Dutch Mill (Ref: 221514/DPP). It must be highlighted that that development differed very significantly in as far as that proposal was entirely within the curtilage of the Dutch Mill premises and not on public open space. The same cannot be stated of this proposal and the material considerations are different in this instance, with the development being proposed on an already valued area of public open space.

Reference has been made to the inclusion of the commercial pavilions in Union Terrace Gardens as well as the cafes in Duthie and Hazlehead Parks. It must be highlighted that those parks are all of a significantly larger scale than this open space and the facilities referenced are sited either within existing buildings or as part of a wider redevelopment project. With respect to the redesign of Union Terrace Gardens, the features were an intended part of the proposal as a City Centre Masterplan project. The same cannot be said of this proposal, which would comprise the installation of temporary structures on a prolonged basis in formal gardens.

Those examples are therefore materially different to this proposal. Unlike those, however, it is recognised that there are other Class 3 uses on Queen's Terrace and Rubislaw Terrace opposite the gardens. Whilst every application is considered on its own merits, the grant of planning permission for this development could result in a situation which would make it very difficult to resist similar proposals for the change of use of the gardens to accommodate such uses in the future. Such a situation could cumulatively result in the reduction of the open space, exacerbating the issues that have been set out in this evaluation.

## **Noise**

Whilst Queen's Terrace Gardens and Rubislaw Terrace Gardens are identified as Urban Green Space, the surrounding area is zoned within Policy VC6 (West End Area) of the ALDP. The majority of nearby buildings are in office/business use, although the Environmental Health Service notes that the closest residential property is understood to be on Prince Arthur Street. It is noted that the gardens are enclosed by roads on all sides, which adds a degree of separation from residences. The Environmental Health Service has expressed no objection to the proposals on noise grounds, subject to the use of appropriately worded planning conditions to prohibit amplified music or live performance, restricting use outwith the hours between 10am and 10pm and the use of a noise attenuated generator. In this regard, it is considered the proposal would not cause any conflict with, nor any nuisance to, the enjoyment of existing residential amenity, and demonstrate their accordance with Policy WB3 (Noise) of the ALDP. It is furthermore noted from the Planning Supporting Document that there is no intention to play amplified music or other forms of music entertainment within the marquee.

## **Transportation and Accessibility**

The proposed outdoor seating area would not serve to hinder vehicular or pedestrian movement. No additional car parking spaces are provided to support the additional floorspace, however the Roads Development Management Team are satisfied that this is not required given its accessible city centre location. Taking these matters into account, it is considered that there is no conflict with Policy T2 (Sustainable Transport) of the ALDP.

## **Local Living Requirements**

Policy 15 (Local Living and 20 Minute Neighbourhoods) states that development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. 20 minute neighbourhoods are defined within NPF4 as 'a method of achieving connected and often compact neighbourhoods designed in such a way that people can meet the majority of their daily needs within

a reasonable distance of their home preferably by sustainable and active travel methods.’ This policy notes the importance of having local access to parks, green streets and spaces.

In evaluating this proposal against Policy 15, on the one hand, it is acknowledged that the application site is in an accessible inner-city location in the West End Area near the city centre and the development would provide a food and drink use in a marquee with outdoor seating for those living and working in the wider area, as well as provide the opportunity for local employment. However, there are many other existing Class 3 and licensed premises which are accessible from the surrounding residential and commercial area serving similar needs, that can also take advantage of the nearby public gardens for informal sitting out areas. Unlike those other food and drink uses, this proposal would result in the reduction of local open space in an area that is identified as having a deficit of local open space provision. As such, on balance, it is considered that the disbenefits from the loss of open space would outweigh the increase in availability of food and drink use on this particular site, and subsequently it would not meet the overall aims of Policy 15 of NPF4.

### **Community Wealth Building Context**

Policy 25 (Community Wealth Building) of NPF4 states that:

‘Development proposals which contribute to local or regional community wealth building strategies and are consistent with local economic priorities will be supported. This could include for example improving community resilience and reducing inequalities; increasing spending within communities; ensuring the use of local supply chains and services; local job creation; supporting community led proposals, including creation of new local firms and enabling community led ownership of buildings and assets.’

Community wealth building is defined in NPF4 as ‘A people-centred approach to local economic development, which redirects wealth back into the local economy, and places control and benefits into the hands of local people.’

It is understood that this proposal does not relate to any existing defined community wealth building strategy set by Aberdeen City Council. It is acknowledged that this development would increase economic activity locally, it has the potential increase footfall in the area as well as support local job creation which would align with the themes of this policy. However, these benefits are outweighed by the matter of the privatisation of a valued area of open space at the expense of the wider public.

### **Other Material Considerations**

In evaluating this proposal, this assessment has balanced the positives of supporting local business, the benefits of outdoor seating areas, and the provision of recreational opportunities through creative temporary uses of Open Space. It is acknowledged that an outdoor seating area and marquee had previously operated without planning permission on the site in response to the approach to relax planning enforcement that was adopted during the Covid-19 pandemic on the operation and capacity of hospitality venues. There is, however, no justification which outweighs the harm to the public interest which arises from permitting commercial occupation of a significant proportion of a modest public garden in part of an urban area which does not enjoy the benefit of abundant public green spaces. It is considered that the proposal does not accord with the key provisions of the development plan as regards the protection of urban green space and maintaining public access to such spaces, as well as the adverse impact on the setting of the adjacent listed buildings and the character and appearance of the conservation area.

Since the determination of the previous application, the Scottish Government has introduced Permitted Development Rights allowing for the change of use of public roads adjacent to food and

drink premises to outdoor seating areas. Such an alternative proposal adjacent to No 10 would not produce the same issues as the development proposed because it would not result in the loss of open space and, furthermore, it would not require planning permission. An outdoor seating scheme rather than a marquee would, furthermore, have lesser visual impact and resultant adverse impact on the sense of place and special character of the gardens than the development proposed and could provide the benefits of outdoor eating and drinking which have been expressed in the representations in the support.

The Planning Service had presented the opportunity to the applicant to consider alternative outdoor schemes to address the conflicts with the Development Plan in this proposal. However, an alternative scheme has not been pursued.

### **Matters Raised in the Objections**

The matters raised in the objections relating to the loss of public open space for a commercial occupation, impact on open space provision, as well as the previous justification for a marquee during Covid-19 no longer being compelling have been addressed above. Likewise, as has the consideration of wildlife and biodiversity impact and the adverse impact on the historic environment. Consideration has been made of noise and the Environmental Health Service were consulted.

The concern regarding potential conflict with other users of the park and women's safety have been considered. The qualities of successful places referred to in Policy 14 of NPF4 requires development to be 'healthy' by way of supporting women's safety and improving physical and mental health. This development would change the character of the gardens as well as result in the loss of a substantial area of urban green space as a public amenity. There is, however, no information to suggest that the proposal would adversely impact women's safety. Potential antisocial behaviour which may arise from the operation of the premises is not a material planning consideration but would be regulated through licensing and the police.

With respect to the concern over impact on air quality from the generator, no adverse comments have been made by the Environmental Health Service. Whilst there would likely be some detrimental impact, the Planning Service considers that it would be relatively minor and not to a degree whereby it would be reason to refuse the application.

With respect to the question seeking the answer as to why a similar development could not be installed in the car park at the rear of the premises, it must be noted that the Planning Authority must determine the application which has been submitted. There is no evidence within the supporting information that alternative proposals have been considered, notably within the site of the premises itself.

The question as to whether residents would get a rebate on council tax if the application was approved is not a material planning consideration.

### **RECOMMENDATION**

Refuse

### **REASON FOR RECOMMENDATION**

The proposal involves a significant proportion of the Urban Green Space of Queen's Terrace Gardens being utilised for private commercial purposes, consequently inhibiting public access to this public open space. No replacement green space provision is proposed. The proposed

development is therefore contrary to Policies 14 (Design, Quality and Place) and 20 (Blue and Green Infrastructure) of National Planning Framework 4 and Policy NE2 (Green and Blue Infrastructure) of the Aberdeen Local Development Plan 2023.

In terms of the statutory duty to pay special regard to the desirability of preserving and enhancing the character and appearance of the conservation area, by way of their design, scale and siting in their context, it is considered that the proposed structures would adversely affect the setting of the adjacent listed buildings and the character and appearance of the Albyn Place and Rubislaw Conservation Area. The proposal would therefore conflict with Policies 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of National Planning Framework 4 and Policies D1 (Quality Placemaking) and D6 (Historic Environment) of the Aberdeen Local Development Plan 2023.

Based on the information that has been submitted, the proposal would not conserve, restore or enhance biodiversity and no evidence has been submitted to demonstrate that the proposal would protect the nearby trees from damage. The proposal therefore results in a tension with Policies 1 (Tackling the Climate and Nature Crises), which requires significant weight to be given to the nature crisis, and Policy 3 (Biodiversity) of National Planning Framework 4 and Policy NE5 (Trees and Woodlands) of the Aberdeen Local Development Plan 2023.

Notwithstanding that every planning application is considered on its own merits, given the presence of other Class 3 uses in the area within close proximity of the gardens, there is the potential for this development to make it difficult to resist similar proposals nearby in the area, which could result in the greater loss of open space, to the detriment of public amenity.

Thus, whilst it is recognised that this development would increase economic activity locally, has the potential to increase footfall in the area and support local job creation, significant public harm would result from the combined loss of this valued area of open space as a public amenity, its impact on the historic environment and through the biodiversity matters not being sufficiently addressed. As such, the development would conflict with overall aims of the Development Plan.