

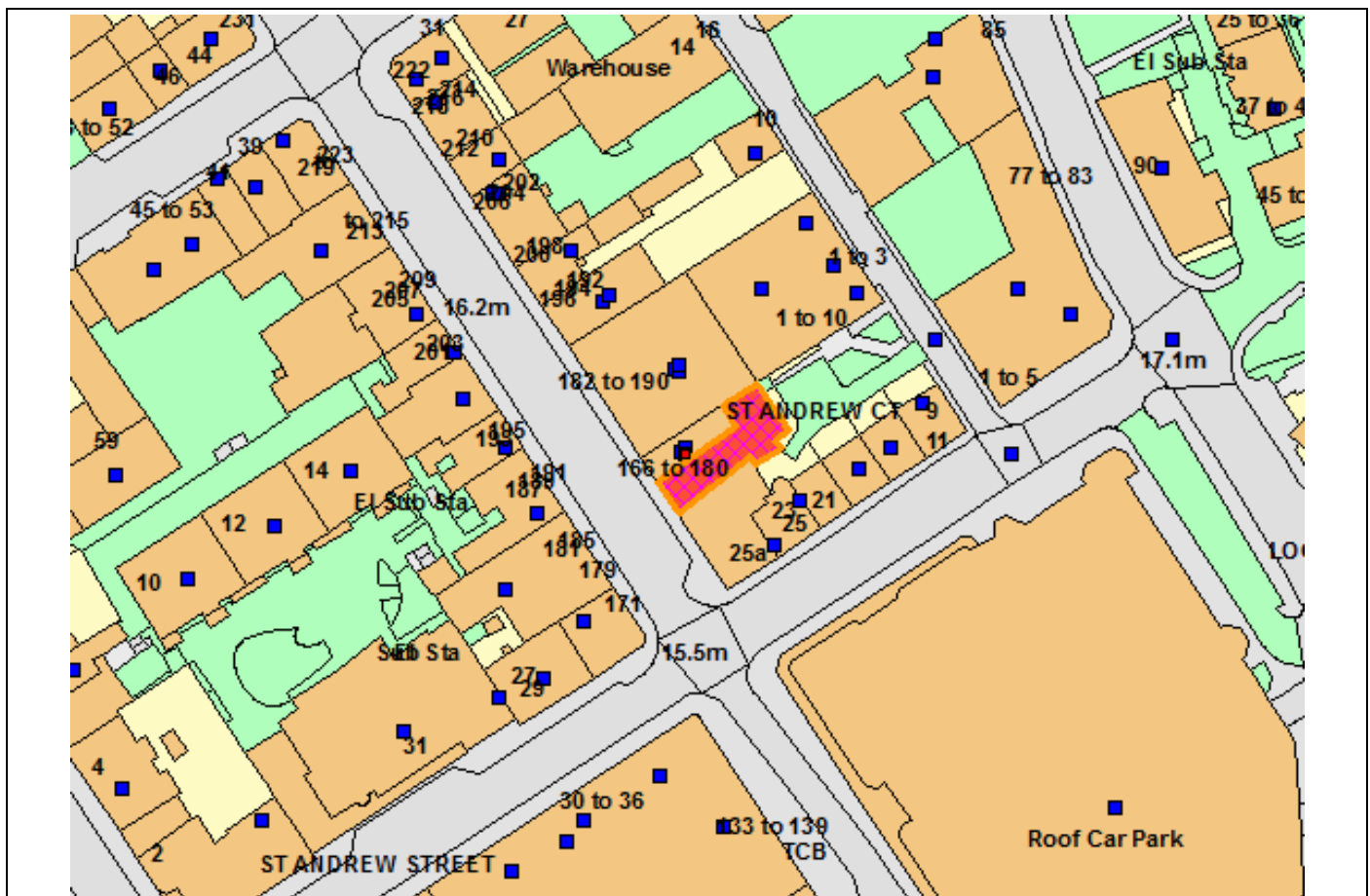


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 2 November 2023

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| Site Address: | Ladbroke Racing Ltd, 178 George Street, Aberdeen, AB25 1BS |
| Application Description: | Change of use from betting shop to adult gaming centre (sui generis) |
| Application Ref: | 230972/DPP |
| Application Type | Detailed Planning Permission |
| Application Date: | 8 August 2023 |
| Applicant: | Merkur Slots (UK) Ltd |
| Ward: | George Street/Harbour |
| Community Council: | George Street |
| Case Officer: | Alex Ferguson |



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RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The application site comprises a vacant betting shop premises situated at ground floor level of a 2½ storey mid-terraced building on the eastern side of George Street, just to the north of its junction with St Andrew Street. The building contains three commercial units at ground floor level (the application property, a Class 3 unit [Greggs], and a barber's). The application property has a modern, predominantly glazed shopfront and was last in use as a Ladbrokes betting shop but has lain vacant for approximately 4 years. The site lies within the City Centre and within a Mixed Use Area, both as defined in the Aberdeen Local Development Plan 2023.

Relevant Planning History

201625/DPP – Detailed planning permission was approved conditionally in March 2021 for the change of use of 181A Union Street from a shop to an adult gaming centre (Merkur Slots). This has now taken place, with the centre in use.

APPLICATION DESCRIPTION

Description of Proposal

Detailed planning permission is sought for the change of use of the application property from a betting shop to an adult gaming centre. Both the existing and proposed uses are sui generis (i.e. not falling within any defined use class). The gaming centre would host low-stake gambling machines, such as slot machines, for use by over-18's. The applicant proposes to operate the use 24 hours a day, 7 days a week.

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=RZ0XLWBZM6B00>

- Noise Impact Assessment (Archo Consulting, 7th August 2023 – Ref: PR2001_145_FINAL)
- Cover Letter
- Appendices 1 – 6 (Including Summary, Appeal Decisions and Merkur Brochure)

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because the George Street Community Council have objected to the application.

CONSULTATIONS

ACC - Roads Development Management Team – No objection. The site lies within the city centre and within Controlled Parking Zone (CPZ) G. The site would be accessible given the city centre location, with access to the existing adopted footpath network and public transport. No car parking

is proposed, nor is any required due to the accessible city centre location.

ACC - Environmental Health – No objection, subject to the implementation of the mitigation measures detailed in the applicant's Noise Impact Assessment report, including:

- The separating floor between the premises and the property (receptor) above shall (as a minimum) meet the specification and associated sound reduction criteria detailed in Appendix D.
- During fitout, mechanical and electrical (M&E) structures affixed to the underside of the floor shall be checked to ensure they are secure and not likely to come loose causing holes and any new M&E penetrations shall be fully sealed up with mortar so flanking paths do not occur.
- Perimeter seals shall be installed around the frame of the external door and at the bottom to prevent unnecessary sound transmission to the outside. The door shall also incorporate an automatic closer system.
- The provisions in the Operational Management Plan (Appendix E) shall be adhered to throughout the lifetime of the development.

George Street Community Council – Object. The Community Council fears that the 24-hour nature of the proposal would attract or increase the antisocial behaviour at night and in the early hours of the morning on George Street, a main route out of the city centre. People standing smoking in doorways has been a major source of conflict since the smoking ban was put in place and again increases antisocial behaviour and noise. The unrestricted, non-stop nature of 24-hour access combined with the addictive nature of the gaming machines in a location very close to none of Aberdeen's poorest areas will not help George Street.

REPRESENTATIONS

Two representations were received, both objecting to the application. The matters raised in the objections can be summarised as follows:

- The proposed adult gaming centre would adversely affect residential amenity due to noise emissions and its proposed 24-hour operation;
- Residents' sleep is already disturbed by the voices of people walking home from pubs and clubs in the early morning hours and the proposed use would exacerbate existing issues;
- The noise emissions from humans during the night-time periods also disturbs seagulls nesting nearby, further exacerbating noise issues;
- Smokers already congregate in the recessed doorway of 172 George Street (serving residential flats above). It is probable that some customers of the proposed use would also utilise the doorway as a smoking shelter, to the detriment of amenity;
- The concerns in relation to noise emissions impacting on amenity would not be as significant if the opening hours of the proposed use were to be restricted to daytime hours (i.e. 9am to 9pm);
- The application is contrary to paragraph (c) of Policy 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 in relation to such uses in disadvantaged areas, and also potentially to paragraph (g) in relation to the proximity of residential properties in city centres to amusement arcades and other commercial uses.

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.

Development Plan

National Planning Framework 4 (NPF4)

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 9 (Brownfield, Vacant and Derelict Land and Empty Buildings)
- Policy 13 (Sustainable Transport)
- Policy 27 (City, Town, Local and Commercial Centres)
- Policy 23 (Health and Safety)

Aberdeen Local Development Plan (2023)

The following policies are relevant –

- Policy H2 (Mixed Use Areas)
- Policy R5 (Waste Management Requirements for New Developments)
- Policy T2 (Sustainable Transport)
- Policy T3 (Parking)
- Policy VC1 (Vibrant City)
- Policy WB3 (Noise)

Interim Aberdeen Planning Guidance

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

- Harmony of Uses
- Noise

Other material considerations

- City Centre Masterplan (CCMP)

EVALUATION

City Centre Development and Mixed Use Areas

The application site lies within the City Centre and a Mixed Use Area, both as defined in the

Aberdeen Local Development Plan 2023 (ALDP) Proposals Map.

Policy 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 (NPF4) states that:

- a) *Development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported.*
- c) *Development proposals for non-retail uses will not be supported if further provision of these services will undermine the character and amenity of the area or the health and wellbeing of communities, particularly in disadvantaged areas. These uses include:*
 - i. *Hot food takeaways, including permanently sited vans;*
 - ii. *Betting offices; and*
 - iii. *High interest money lending premises.*

Policy VC1 (Vibrant City) of the ALDP states:

Proposals for new development, or expansion of existing activities, in the city centre, which support its vibrancy and vitality throughout the day and/or into the evening will be supported in principle.

Proposals will contribute towards the wider aims of the City Centre Masterplan and its vision for the city centre.

The applicant/agent must demonstrate that any adverse impacts can be mitigated and, where applicable, that suitable residential amenity is achieved or maintained.

Proposals will be considered in relation to their locality and context within the city centre.

Policy H2 (Mixed Use Areas) of the ALDP states:

Applications for development or change of use within Mixed Use Areas must take into account the existing uses and character of the surrounding area and avoid direct conflict with the adjacent land uses and amenity... where new industrial, business or commercial uses are deemed appropriate, development should not adversely affect the amenity of people living and working in the area.

The proposed change of use would see a long-term vacant commercial premises within the city centre reoccupied for a new use. The new use would therefore enhance the vitality and viability of the city centre and increase the mix of uses on George Street, in accordance with Policy 27(a) NPF4. The new use would also operate in the daytime and evening periods, in accordance with the aims of Policy VC1 of the ALDP and the City Centre Masterplan (CCMP). The re-use of a vacant commercial unit is also compliant, in principle, with the aspirations of Policy 9 (Brownfield, Vacant and Derelict Land and Empty Buildings) of NPF4.

However, whilst the conversion of the vacant commercial premises for a new use is generally acceptable in principle, Policies 27(c) of NPF4 and VC1 and H2 of the ALDP all require new development in the city centre and in a mixed use area respectively to avoid adverse impacts to the amenity of neighbouring land uses, particularly residential properties.

Noise and other impacts on amenity

Policy 23 (Health and Safety) of NPF4 and Policy WB3 (Noise) of the ALDP both state a presumption against noise generating development proposals that would have an unacceptable impact on the amenity of neighbouring, noise sensitive land uses such as housing. They also state that in cases where noise emissions are likely to occur, a Noise Impact Assessment will be required to accompany a planning application.

The applicant has submitted a Noise Impact Assessment (NIA) in support of the application which concludes that, subject to the implementation of various mitigation measures (predominantly comprising physical works to minimise the escape of noise from the premises, including meeting sound reduction criteria for noise transmissions to the above property via acoustic ceiling insulation and installing perimeter seals to external door frames), the levels of noise emitted by both machines and customers within the premises would not adversely affect the amenity of any neighbouring uses, in particular the residential flats on the first and second floors above the application property.

The Council's Environmental Health Service have reviewed the applicant's NIA and accept its findings, subject to the implementation of the recommended mitigation measures. As such, the Council considers that the risk of noise emissions from within the proposed use causing harm to the amenity of neighbouring uses would be minimal. It is thus considered that the proposed use itself would not cause any significant detriment to the amenity of any neighbouring uses in terms of noise emissions and the proposal is thus compliant with Policies 23 and WB3 of NPF4 and the ALDP respectively.

In addition to noise, the Council's Harmony of Uses Interim Aberdeen Planning Guidance states in relation to the protection of residential amenity:

The protection of the living conditions of residents in close proximity to any proposed hot food shops, liquor licensed premises, amusement centres, amusement arcades and casinos will form a major consideration in assessing applications of this nature. These uses can generate unacceptable levels of noise, vibration, odours, traffic disturbance and litter. It is therefore important that such uses are controlled or restricted to protect residential amenity.

Noise and vibrations generated from cooking and essential extraction equipment in hot food shops and noise generated from music in liquor licensed premises and in amusement centres, amusement arcades or casinos, along with increased levels of customer movement, can cause disturbance to residents.

It is not usually considered acceptable to locate a hot food shop, liquor licensed premise, amusement centre, amusement arcade or casino directly adjacent or beneath residential properties.

Applications within close proximity to residential units will be refused where it is considered that there may be significant adverse impacts on residential amenity in terms of noise, vibration, odours, traffic disturbance, litter or hours of operation as a result of the proposed premises.

Although the Harmony of Uses Interim APG states that amusement centres and arcades will not usually be considered acceptable beneath residential properties, as noted above, noise emissions from within the proposed use are considered unlikely to be an issue. Furthermore, the adult gaming centre would not have a kitchen, nor would it have a liquor license. Therefore, aspects that could generally affect amenity such as odour and litter are not considered to be an issue in this instance, nor would internal noise from customers, as may be the case with licensed premises.

However, the applicant proposes to operate the gaming centre on a 24-hour, seven days a week

basis. Therefore, whilst internal noise transmission within the building to the residential properties on the upper floors may not be an issue, the proposed 24-hour operation could result in the comings and goings of customers frequenting the premises during the quieter, more sensitive early morning periods. Although the applicant's Noise Impact Assessment also includes an assessment of external noise emissions from customers in early morning periods, based on noise surveys undertaken outside six existing Merkur Slots premises in England, and considers that the level of noise made by customers outside those premises during the surveys was generally of a low-level, the Planning Service queries the relevance of the data gathered in the NIA in relation to the proposal on George Street, which is contextually different from the other sites surveyed in the NIA. The majority of the sites surveyed in England as part of the NIA would appear to be located in busier environments than George Street (typically high streets), both in terms of road traffic and other late-night uses such as public houses and hot-food takeaways, thus resulting in a higher level of ambient background noise.

Customer activities outside the premises have the potential to result in increased noise emissions from customers' voices and although the application site lies within the city centre, the section of George Street in which the application property sits is relatively quiet in the late evening and early morning periods, with the vast majority of commercial uses in the surrounding area being Class 1A (Shops and financial, professional and other services) uses which are closed in the evening periods. There is just one restaurant (Rishi's) and two hot-food takeaways on the stretch of George Street between Loch Street to the south and John Street to the north (which close by 12:30am at the latest), with no public houses, bars or nightclubs on the section of George Street containing the application site. Furthermore, due to the pedestrianised nature of the southern end of the street and the natural barrier to vehicular traffic posed by the nearby Bon-Accord Shopping Centre, George Street is also relatively quiet in the late evening and early morning hours in terms of road traffic.

As such, the Planning Service considers that the potential for noise emissions from customers arriving and departing from the proposed use on George Street could cause harm to the amenity of the residential properties in the surrounding area, despite the conclusions of the applicant's NIA. The Planning Service therefore considers that a condition restricting the opening hours of the proposed use to between 7am in the morning and 12am (midnight) on any given day is necessary and reasonable, and would not nullify the benefit of the permission.

Therefore, subject to the aforementioned condition restricting the opening hours of the proposed use to between 7am and 12am on any given day, combined with the implementation of the mitigation measures recommended in the applicant's Noise Impact Assessment, it is considered that the proposed use would not have any significant adverse impacts on the amenity of any neighbouring land uses, including existing housing, in accordance with Policies 23 and 27 of NPF4 and H2, VC1 and WB3 of the ALDP. The proposals are also generally compliant with the Council's Harmony of Uses Interim APG.

Impact on the character of the area

No external alterations to the building or the shopfront are proposed, therefore the change of use would not adversely affect the visual character or appearance of the area.

Policy 27(c) of NPF4

The application site lies within an area of streets including and surrounding George Street which is not identified as being particularly deprived on the [Scottish Index of Multiple Deprivation map](#) although the area does score poorly for crime and housing. There are no other existing amusement arcades / adult gaming centres in the immediate surrounding area, therefore the proposed change of use would not result in the overprovision or clustering of such uses. Although the adult gaming centre would offer forms of gambling to customers, which is known to have potential implications for

the health and wellbeing of communities (particularly deprived communities), the operator's model is one of machines with small maximum stakes (typically 10p to £2). Furthermore, the authorised use of the unit is as a betting shop and despite having lain vacant for 4 years, the premises could therefore be reoccupied as a betting shop without permission. Any potential harm caused to the health and wellbeing of the surrounding community as a result of the proposed use would therefore be negligible, taking into consideration the extant authorised betting shop use of the property. The proposals are therefore considered to be compliant with Policy 27 of NPF4 despite some minor tension with the criteria set out in paragraph (c).

Transport & Accessibility

Policy 13 (Sustainable Transport) of NPF4 and Policy T2 (Sustainable Transport) of the ALDP both require new developments to be accessible via sustainable and active modes of transport such as public transport, walking, wheeling and cycling. Policy T3 (Parking) of the ALDP states that the principle of zero car parking will be applied to new developments in the city centre.

The application site is located on George Street, within the city centre and within walking distance of multiple public transport routes. As such, the proposed use would be accessible via a range of different transport modes, including sustainable and active travel, and the proposed development is thus compliant with Policies T2 and T3 of the ALDP. No dedicated car parking is available to the application property, nor is any proposed, in accordance with Policy T3 of the ALDP. Nevertheless, car parking is available nearby (particularly in the Bon-Accord Centre car park) should customers wish / need to drive.

Waste Management

Policy 12 (Zero Waste) of NPF4 and Policy R5 (Waste Management Requirements for New Developments) of the ALDP both require new developments to have sufficient space for the safe and efficient storage and collection of general waste and recyclable materials generated by the proposed use.

The new use would have space within the back-of-house area in which any waste and / or recyclables generated by the use (which is likely to be minimal) could be stored and collected kerb-side by a private waste contractor when required. The proposed use is thus compliant with Policies 12 of NPF4 and R5 of the ALDP.

Tackling climate change, climate mitigation 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.

The proposed development is sufficiently small-scale such that it would not, in itself, make any direct difference to the global climate and nature crises, nor to climate mitigation and adaptation and the proposals therefore do not conflict with Policies 1 and 2 of NPF4.

Policy 3 (Biodiversity) of NPF4 requires proposals for local development *'to include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development.'* The proposed change of use is small-scale and the nature of the development is such that it does not offer any opportunities for on-site biodiversity gain, nor would any biodiversity gain be proportionate to the

nature and scale of the intended works. It is thus considered that the proposals are acceptable despite some minor tension with Policy 3 of NPF4.

Matters raised by the Community Council and in representations

The majority of the concerns raised by the George Street Community Council and in the two objections received, particularly in relation to noise emissions, the proposed 24-hour operations and the impact of the use on the health and wellbeing of a deprived community are addressed in the foregoing evaluation. The remaining matters can be addressed as follows:

Smoking and anti-social behaviour

The potential for customers of the premises to smoke or undertake anti-social behaviour outside the property, or in the doorways of neighbouring properties, is not a material consideration that can feasibly be controlled by the Planning Service and such matters are covered by separate legislation. Nevertheless, the Planning Service concurs that noise emissions from customers arriving at and departing from the premises (irrespective of their behaviour) could result in noise emissions to the detriment of residential amenity in the early morning periods. Thus the aforementioned restriction on the opening hours is recommended.

Policy 27 (g) of NPF4

Paragraph (g) of Policy 27 in NPF4 states:

Development proposals for city or town centre living will take into account the residential amenity of the proposal. This must be clearly demonstrated where the proposed development is in the same built structure as:

- i. a hot food premises, live music venue, amusement arcade/centre, casino or licensed premises (with the exception of hotels, restaurants, cafés or off licences); and/or*
- ii. there is a common or shared access with licenced premises or other use likely to be detrimental to residential amenity.*

Paragraph (g) of Policy 27 relates to proposals for city centre living only, rather than to proposals for amusement arcades and it is thus not considered to be relevant to the proposed change of use. The impact of the proposed use on residential amenity is nevertheless covered by the assessment of the proposals against other policies, including paragraph (c) of policy 27.

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

The proposed change of use would see a new commercial leisure use occupy a long-term vacant unit, which would enhance the vitality and viability of the city centre and its day and evening-time economy offering and footfall, in accordance with the aims of Policy 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 (NPF4), Policy VC1 (Vibrant City) of the Aberdeen Local Development Plan 2023 (ALDP) and the City Centre Masterplan.

Although the Council's Harmony of Uses Aberdeen Planning Guidance (APG) states that amusement arcades should not generally be sited within the same building as residential uses, the applicant's Noise Impact Assessment demonstrates that the proposed use would not directly harm the amenity of any neighbouring uses, including the above residential properties, in terms of noise emissions - subject to the implementation of appropriate mitigation measures. As such, and subject to a condition restricting the operating hours of the proposed use to protect the amenity of neighbouring properties from external noise emissions from customer arrivals and departures during the more sensitive early morning periods, the use would not have any significant detrimental impact on amenity, in accordance with Policies 23 (Health & Safety) and 27 of NPF4 and Policies VC1, H2 (Mixed Use Areas) and WB3 (Noise) of the ALDP.

The proposed adult gaming centre would not result in the overprovision or clustering of such uses in the George Street area and, taking into consideration the existing authorised betting shop use of the premises, the proposals would not harm the character of the area nor the health and wellbeing of the local community, in accordance with Policy 27(c) of NPF4.

The proposed development would have sufficient means for the adequate storage and collection of any waste and recyclables generated, in accordance with Policy 12 (Zero Waste) of NPF4 and Policy R5 (Waste Management Requirements for New Development) of the ALDP. The application site lies adjacent to the city centre and in a sustainably accessible location, in accordance with Policy 13 (Sustainable Transport) of NPF4, T2 (Sustainable Transport) and T3 (Parking) of the ALDP.

The proposed development, comprising the change of use of an existing property, is sufficiently small-scale such that it would not make any material difference to the global climate and nature crises nor to climate mitigation and adaptation, nor are there any opportunities to minimise greenhouse gas emissions given the nature of the proposals, therefore the proposed development is compliant with Policies 1 (Tackling the Climate and Nature Crises) and 2 (Climate Mitigation and Adaptation) of NPF4. There is no opportunity to enhance on-site biodiversity, therefore the proposals are acceptable, despite some minor tension with Policy 3 (Biodiversity) of NPF4.

CONDITIONS

(1) DURATION OF PERMISSION

The development to which this notice relates must be begun not later than the expiration of 3 years beginning with the date of this notice. If development has not begun at the expiration of the 3-year period, the planning permission lapses.

Reason - in accordance with section 58 (duration of planning permission) of the 1997 act.

(2) OPENING HOURS

The hereby approved use shall only operate between the hours of 7am and 12am (midnight) on any given day.

Reason: In order to preserve the amenity of neighbouring residential properties during more sensitive early morning hours.

(3) IMPLEMENTATION OF NOISE MITIGATION MEASURES

The hereby approved use shall not operate unless the noise mitigation measures recommended in the approved Noise Impact Assessment have been implemented. The mitigations measures shall include:

1. The separating floor between the premises and the property above shall (as a minimum) meet the specification and associated sound reduction criteria detailed in Appendix D;
2. During fitout, mechanical and electrical (M&E) structures affixed to the underside of the floor shall be checked to ensure they are secure and not likely to come loose causing holes and any new M&E penetrations shall be fully sealed up with mortar so flanking paths do not occur;
3. Perimeter seals shall be installed around the frame of the external door and at the bottom to prevent unnecessary sound transmission to the outside. The door shall also incorporate an automatic closer system; and
4. The provisions in the Operational Management Plan (Appendix E) shall be adhered to throughout the lifetime of the development.

Reason: In order to preserve the amenity of neighbouring residential properties in relation to noise emissions.

ADVISORY NOTES FOR APPLICANT

(1) INTERNAL ADVERTISEMENTS

The applicant is reminded of Class V of The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 with regard to advertisements located within buildings, which states:

Class V: Advertisements within Buildings

Advertisements displayed within any building and not exempted from these regulations by virtue of regulation 3(2):

- *Maximum height of letters or figures: 0.75 metres*
- *Maximum height above ground level of highest part of advertisement: 4.6 metres*
- *Other conditions:*
 - when illuminated not to incorporate any moving feature or animation*
 - Any one advertisement not to be more than 250sq centimetres in area*
 - Any group of such advertisements not to total more than one-tenth of the area of the door or window within which they are displayed*

Any advertisements placed in or behind the shopfront window of the new use that do not comply with regulation 3(2) or Class V of *The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984* will require Advertisement Consent.

