

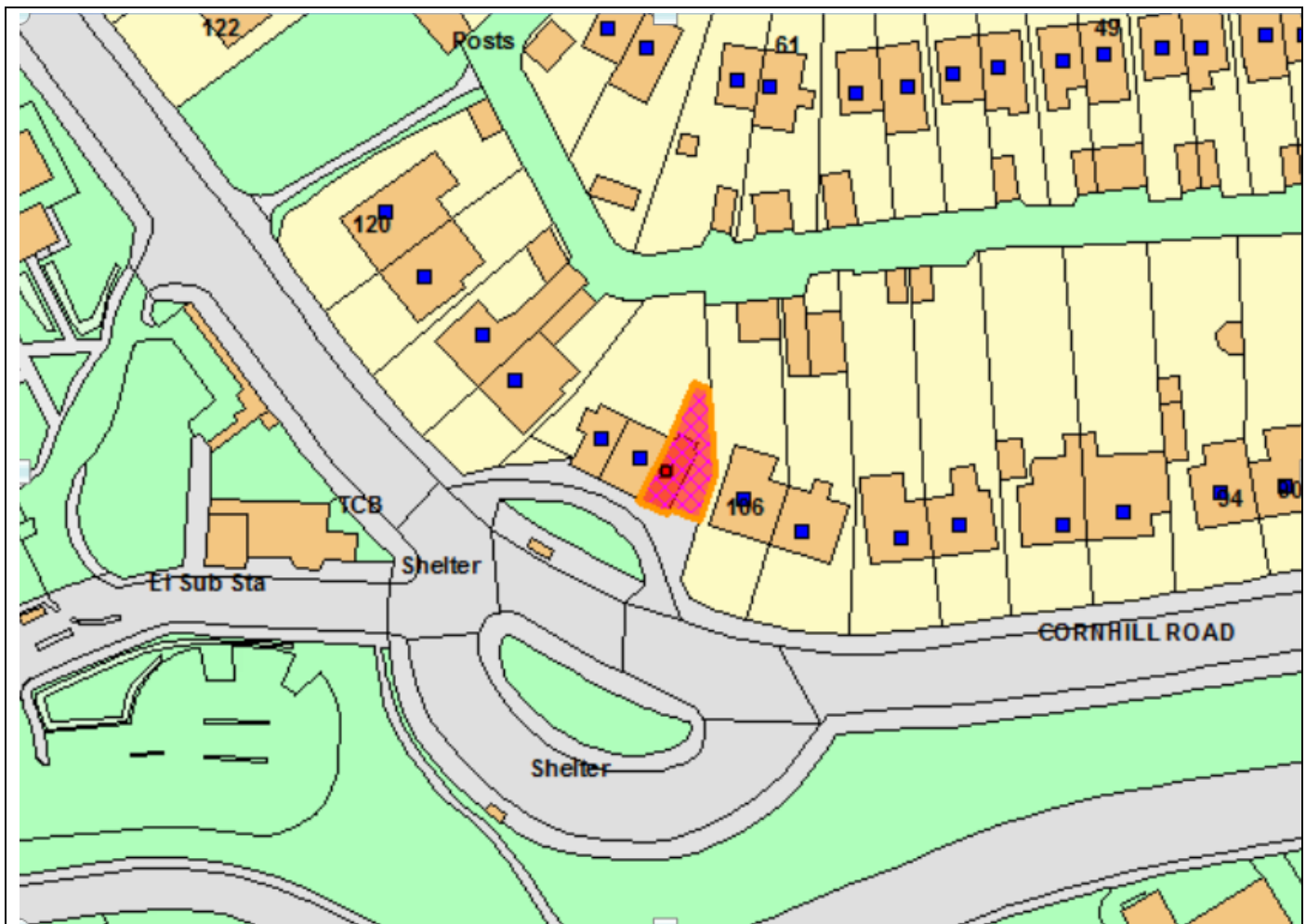


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date: 19 September 2024**

<b>Site Address:</b>	108 Cornhill Road, Aberdeen, AB25 2EH
<b>Application Description:</b>	Change of use from class 3 to mixed use class 3 (food and drink) and hot food take-away (sui generis) and installation of roof-mounted extract flue (part retrospective)
<b>Application Ref:</b>	240664/DPP
<b>Application Type</b>	Detailed Planning Permission
<b>Application Date:</b>	30 May 2024
<b>Applicant:</b>	Granma's Kitchen
<b>Ward:</b>	Mid Stocket/Rosemount
<b>Community Council:</b>	Rosemount And Mile End



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## **RECOMMENDATION**

Approve Conditionally

## **APPLICATION BACKGROUND**

### **Site Description**

The site is a single storey cafe unit (Granma's Kitchen) within a small parade of commercial units located on an inset road, opposite Aberdeen Royal Infirmary (ARI). The floor space is 46m<sup>2</sup> and access is via the frontage onto the inset road. The menu indicates that take-away sales from the premises are currently limited to hot drinks. There are three shops within the parade, with the application premises being the most easterly. The central unit (110 Cornhill Road) is occupied by a cafe (Sugar and Creme), which is operated in conjunction with no.108. The westmost unit (112 Cornhill Road) is occupied by a hot food take-away (Ruby Chinese & Thai Carry Out) which operates until 11pm. It has an external metal extract duct mounted centrally on its flat roof. This projects around 1.5m above the roof.

On either side of the commercial units are 1½ storey dwellinghouses, with the ARI complex to the south across Cornhill Road. Although there are bus stops close to the site on Cornhill Road, at the access to ARI, there are currently no associated bus services / routes.

### **Relevant Planning History**

Application Number	Proposal	Decision Date
120456	Change of use from Class 1 (Shop) to Class 3 (Coffee shop)	14.06.2012 Status: Approved Conditionally

The following conditions were imposed on the above planning permission:

*“(1) that no frying shall be carried out on the premises unless written approval for a variation has been obtained from the planning authority - in order to prevent the creation of nuisance by the release of cooking odours.*

*“(2) that the premises shall not be open for business outwith the hours of 0700 and 2000 on any day of the week - in order to protect the existing residential amenity of the neighbourhood.”*

Planning permission was granted in 2017 for change of use of the adjacent retail unit (no.110) to class 3 (Food and Drink) use (ref. 171238) subject to the following condition:

*“1. For the avoidance of doubt, cooking and/or re-heating operations shall be restricted to the use of a microwave, waffle machine, crepe machine, and coffee machine, unless otherwise approved in writing by the Planning Authority, via a further application to amend this condition.*

*Reason: In the interest of neighbouring uses general amenity and public amenity.”*

Both of the above permissions have been implemented.

A planning enforcement file (ref. ENF240017) was opened in February 2024 following receipt of complaint in relation to the sale of hot food for consumption off the application premises. Submission of a retrospective planning application was requested in relation to regularisation of such activity.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Change of use of the premises to a mixed use café and hot food take-away. The kitchen / storage area would be retained at the rear of the building and public counter located facing the frontage. The proposed operating hours are 07.00-16.00 on weekdays and 07.00- 20.00 at weekends.

An external flue would be formed on the rear part of the building roof. This would project around 1.1m above the existing flat roof. It would be located 8m from the adjacent house at 106 Cornhill Road at its closest point. A bin store would be created at the rear of the building, enclosed by a 1.5m high timber slatted fence.

### **Amendments**

The proposal has been amended to relocate the waste storage area to the rear of the building and provide associated screening such that it would be better screened from adjacent housing.

### **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=SE8JHLBZG5000>

- Supporting Statement
- Noise and Odour Impact Assessment

### **Reason for Referral to Committee**

The application has been referred to the Planning Development Management Committee because in excess of 5 objections have been received, there is objection from the local Community Council and the recommendation is approval.

## **CONSULTATIONS**

**ACC - Environmental Health** – No objection. Accept the proposed noise and odour mitigation measures set out in the supporting technical report. Recommend operating time restrictions to protect residential amenity. Request that food deliveries and refuse uplifts shall not take place outside of 07:00 to 19:00 (Monday to Saturday) and 10:00 to 16:00 hours (Sunday).

**ACC - Roads Development Management Team** – No objection. Welcome the proposed cycle parking. Request that a condition is imposed requiring the installation of a dropped kerb (footway crossing) on the footway adjacent to the site.

**ACC - Waste and Recycling** – No objection. Request that a condition is imposed requiring waste and recycling bin storage on site.

**Scottish Water** – No objection.

**Rosemount and Mile End Community Council** – Object on the following grounds:

- Road safety/ traffic generation.
- Noise / odour disturbance to residents and consequent contravention of Policies 23 (Health and Safety) and 27 (City, Town, Local and Commercial Centres) of National Planning

Framework 4 (NPF4), Policies H1 (Residential Areas) and WB3 (Noise) of the Aberdeen Local Development Plan and the Council's Aberdeen Planning Guidance on Harmony of Uses.

## **REPRESENTATIONS**

A total of 13 objections have been received raising the following matters:

- Adverse impact on residential amenity due to increased generation of odours / cooking smells, noise, refuse / litter and potential late night operation of the premises.
- Residential amenity is already impacted by odour, noise and litter associated with the operation of the existing hot food take-away. Adverse impact on enjoyment of adjacent private garden ground.
- Alleged deficiencies / inadequacy of the submitted noise and odour impact report and supporting statement
- Traffic and car parking generation and associated road safety risks, including pavement parking and home delivery service
- Obstruction of vehicle access to adjacent houses
- Need for provision of cycle parking
- Absence of bus services on Cornhill Road
- Overconcentration of hot food shops and conflict with related ACC guidance regarding Harmony of Uses
- Alleged unauthorised take-away / sale of drink and food for consumption off the premises and operation of food delivery service from the premises.
- Conflict with carbon emissions reduction objectives due to increased traffic.
- Conflict with Scottish Government healthy eating guidance: "Healthier Future: Scotland's Diet & Healthy Weight Delivery Plan"
- Adverse impact on mental health and wellbeing of adjacent residents due to existing and anticipated increased noise/ litter and stress related to aggressive drivers.
- Alleged removal of bollards on the footway adjacent to the frontage of the premises
- The rear garden of the premises is allegedly an eyesore and could accommodate commercial waste bins.
- Existing road safety and traffic management concerns on Cornhill Road, including need for 20 mph limit and cycling on pavement.

## **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)

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 3 (Biodiversity)
- Policy 12 (Zero Waste)
- Policy 13 (Sustainable Transport)
- Policy 14 (Design, Quality and Place)
- Policy 15 (Local Living and 20 Minute Neighbourhoods)
- Policy 23 (Health and Safety)
- Policy 27 (City, Town, Local and Commercial Centres)

### Aberdeen Local Development Plan 2023 (ALDP)

The following ALDP policies are relevant:

- Policy H1 (Residential Areas)
- Policy T2 (Sustainable Transport)
- Policy T3 (Parking)
- Policy WB1 (Healthy Developments)
- Policy WB2 (Air Quality)
- Policy WB3 (Noise)
- Policy VC3 (Network of Centres)
- Policy VC9 (Out of Centre Proposals)
- Policy VC10 (Local Shop Units)
- Policy NE3 (Our Natural Heritage)
- Policy D1 (Quality Placemaking)
- Policy R5 (Waste Management Requirements for New Development)

## **Aberdeen Planning Guidance (APG)**

- Hierarchy of Centres
- Harmony of Uses
- Air Quality
- Noise
- Transport & Accessibility
- Waste Management Requirements for New Developments

## **Other National Policy and Guidance**

- Local living and 20 minute neighbourhoods: planning guidance:

<https://www.gov.scot/publications/scottish-government-planning-guidance-local-living-20-minute-neighbourhoods/>

The above guidance, is intended to assist and support planning authorities, communities, businesses, and others who have key roles in helping to deliver local living. It was published in April 2024 and states that:

*“Local living provides people with the opportunity to meet the majority of their daily needs within a reasonable distance of their home. It is centred on supporting people to ‘live well locally’.... “Development proposals should be designed with consideration of the impacts on local living overall and take action to address negative impacts that may otherwise happen. To assist this, development proposers should be prepared to demonstrate how local living can be supported, how proposals respond to context including the existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area. NPF4 Policy 15 also sets out a list of considerations to help establish this, but it is recognised that their relevance will vary between applications and contexts.”*

### **Other Material Considerations**

- [A Healthier Future - Scotland’s Diet & Healthy Weight Delivery Plan](#)

Action 2.12 of the above, published in 2018, prior to NPF4, states that :

*“As part of its forthcoming review of Scottish Planning Policy, the Scottish Government will take into account its commissioned research, to be published this summer, on the relationship between the food environment and the planning system, including how food outlets near schools can be better controlled.”*

- [Draft Aberdeen Planning Guidance: Health Impact Assessments:](#)

*“Although planning is rarely sufficient on its own to change behaviour and to promote good health, it is necessary in terms of creating the environment that supports people in making healthy choices (such as physical activity, healthy eating and drinking) and that makes those choices easier.”*

### **EVALUATION**

#### **Principle of Development**

The expansion of activity of an existing authorised café located within a residential area accords with the objectives of NPF4 policy 15 and associated local living guidance as it would provide a supporting service for nearby residents and the adjacent hospital. There is good connectivity with related uses in the wider urban area and convenient access from nearby residential premises, such that there is no conflict with NPF4 policy 13. The compatibility of the proposal with protection of existing residential amenity, ALDP policy H1 and Harmony of Uses APG is addressed below.

#### **Residential Amenity**

Given that the nature of the proposed use involves a degree of cooking and sale of hot food for consumption off the premises, and concerns have been expressed regarding impact on adjacent residential amenity, further supporting information and amendment has been required in order to ensure compliance with the expectations of policy and avoid adverse impacts. Notwithstanding that concerns have been raised regarding use as a hot food take-away, that it not what is proposed, as the premises would operate on a mixed use basis, with limited operating hours. Although no frying is permitted, it is noted that the cafe premises already cooks hot food, primarily for consumption on

the premises, which accords with the authorised class 3 use.

As noted in certain objections, the residential amenity of existing housing in the vicinity of the site is affected to a degree by the presence of a long standing authorised hot food take-away premises at no.112, which generates odour, noise and potential late night activity (being open until 11pm). Imposition of a condition specifically restricting servicing and food delivery times, as requested by Environmental Health, would not be appropriate as there is no means of effectively monitoring or enforcing such activities. Furthermore, no conditions were imposed on the original planning permission restricting such activities. The appropriate control would be by means of a condition restricting the operating hours of the premises to prevent late night nuisance, which is proposed, and takes into account the existing operating hours of the premises. Whilst the proposed flue would be significantly closer to the house at no.106 than the existing flue associated with 112, the submitted Noise and Odour Impact Assessment demonstrates that the impact of odours and noise can be addressed by technical mitigation measures. The potential noise and odour impacts of the proposed use can be regulated by use of conditions in order to avoid any significant additional adverse impacts.

The proposal has been amended to relocate the waste storage area to the rear of the building and provide associated screening such that it would be better screened from adjacent housing.

Conditions can be imposed to ensure implementation of the proposed noise and odour control measures, restrict the operating hours of the premises and ensure provision of waste storage facilities on site in response to the concerns raised regarding impact on adjacent residential amenity and in accordance with the objectives of NPF4 Policies 12 and 23 and ALDP Policies H1, WB2, WB3, R5 and related guidance. As regards ACC Harmony of Uses APG, the relevant impacts on amenity are acceptable.

### **Retail Impact**

The site is not identified as part of any retail centre within the ALDP and related Hierarchy of Centres APG. Although not identified as a neighbourhood centre, the commercial units were originally developed as complementary / supporting facilities associated with the wider residential development (in effect a neighbourhood centre). As the proposal does not result in loss of a retail use, there would be no conflict with ALDP policy VC10. Whilst it is likely that many potential customers may be related to the nearby hospital, the proposal would have a positive impact on the vitality and viability of the centre by generation of footfall and provision of a take-away food service which supports the functioning of the wider residential area. The proposed use is appropriate to be co-located with other commercial premises. There is therefore no conflict with the objectives and intent of NPF4 policy 27 and ALDP policies VC3 and VC8.

### **Overprovision**

The site does not lie within the city centre, or a designated centre and does not affect the character and amenity of the neighbouring area / commercial uses. Subject to imposition of conditions, there would be no significant adverse impact on residential amenity. Given that there is only one hot food take-away in the vicinity, the mixed use nature of the proposal and that other cafes / food premises referred to in objection lie considerable distance from the site, the proposal does not result in an overprovision of such premises in the local area or conflict with the overprovision aspect of Harmony of Uses APG.

### **Design**

Whilst the proposed flue would be visible from Cornhill Road, it would be seen in relation to the existing larger flue associated with the hot food take away at no.112 and adjacent domestic chimneys. It would not be a prominent feature in the street scene as it would be substantially recessed from the street and the edges of the building. The bin store would be appropriately located

at the rear of the building, such that it would be screened from public view. Thus, there is no harm to the design quality of the area. The development satisfies the design quality objectives of NPF4 policy 14 and ALDP policy D1.

### **Health Impact**

It is noted that the premises does not lie within a disadvantaged area. Given the mixed nature of the proposed use and existing class 3 use, it would have no substantive effect on community health and wellbeing as the existing and proposed uses have similar health effects. Thus there is no tension with NPF4 policy 27 part c) i.

Given the existing authorised use of the premises as a café it would be unreasonable and inappropriate to require the submission of a health impact assessment regarding the proposed use. As ACC guidance regarding Health Impact Assessment is a draft document currently subject to public consultation, it has limited weight as a material consideration. Any tension with ALDP policy WB1 therefore does not warrant refusal in this instance.

### **Road Safety / Parking**

Given the existing authorised use of the premises as a café, the proposed mixed use would have a marginal effect in terms of traffic generation and no traffic impact assessment is required. Whilst residents have concerns regarding inappropriate driver behaviour, reversing of vehicles onto the public road and obstructive parking on the footway / inset road, those concerns are not shared by ACC Roads Service. There would be no obstruction of driveways or loss of access to nearby houses.

It is noted that there are existing parking controls (double yellow lines) on the adjacent public road. As the proposal does not result in increased car parking provision there is no conflict with ALDP policy T3. ACC Roads Service accept the level of parking proposed and do not request that a condition be imposed in relation to introduction of bollards on the public footway in order to prevent vehicle parking on site. Google Streetview imagery from 2008 demonstrates that the matter of parking of vehicles on the land within the site, and associated overrunning of the footway / kerb, is a long standing issue which predates the use of the premises as a café. The proposal does not involve the formation of additional vehicle parking spaces within the site or in adjacent land. It would not therefore be reasonable or proportionate to require this matter to be addressed by this planning application, as separate powers exist in relation to formation of footway crossings. An advisory note is proposed in relation to that matter. As the proposal results in a reduction of car parking on site, there would be a public safety betterment due to the reduction of reversing of vehicles across the footway.

The proposed cycle parking on site accords with the objectives of NPF4 policy 13, ALDP policy T3 and related APG and represents a betterment relative to the existing situation as there is currently no such parking. The provision of cycle parking and encouragement of electric bike parking on site associated with the use would help to address concerns regarding carbon emissions by potentially displacing existing car trips. The intended use of part of the area at the side of the building for e bike parking associated with the use is also welcome as that would help to reduce traffic concerns regarding reversing and potential car travel associated with ancillary deliveries.

The alleged removal of bollards on the footway adjacent to the frontage of the premises, the need for 20 mph speed limit on Cornhill Road and pavement cycling are matters which are outwith the scope of this planning application. Separate powers exist in relation to investigation and control of traffic management in the area.

### **Climate / Nature Crises**

Notwithstanding the expectations of NPF4 policies 1 and 3 and ALDP Policy NE3, given that no



physical development is proposed, other than minor external works, it would be unreasonable to require the development to address biodiversity or climate change matters. Any such policy tension therefore does not warrant refusal in this instance.

### **Other Matters Raised in Objection**

General concerns relating to impact on residential amenity and traffic / road safety are addressed above. It is accepted that there are no bus services on Cornhill Road, but the absence of such does not warrant refusal.

It is noted that the revised technical noise and odour assessment provided has been assessed by the relevant specialist and found not to be deficient.

The proposal has been amended to include waste bin storage within the rear garden as suggested. The matter of maintenance of the rear garden of the premises is not relevant to consideration of the current application.

Whilst several objections refer to residential amenity being already impacted by the operation of the nearby hot food take-away, that is an existing situation. It is outwith the scope and competency of this application to address impacts associated with a premises which is not under the control of the applicant.

As the premises menu states that certain food elements associated with cooked breakfasts are fried (e.g. eggs), it is apparent that there has been a technical breach of condition 1 of planning approval 120456. However, such a breach has only recently been brought to the attention of the Planning Authority. The relatively minor nature of the breach is not considered to warrant enforcement action. Implementation of the control measures recommended in the proposed planning conditions would address any potential adverse impacts relating to the undertaking of frying on site.

Scotland's Diet & Healthy Weight Delivery Plan has very limited weight as a material consideration in this case as it was published prior to NPF4 and is a strategic document which is not specifically focused on land-use planning.

The alleged mental health impacts associated with the existing use are not a material planning consideration. Given the mitigation measures proposed as set out in the conditions and the mixed nature of the use, the alleged mental health impact of the operation of the proposed use does not warrant refusal.

As regard the alleged food take-away and home delivery services operating from the premises it is noted that no conditions were imposed on the planning permission for class 3 use which precludes such activities and thus no breach exists. Google Streetview imagery indicates that an element of take-away service has been provided from the cafe premises since at least 2014.

### **RECOMMENDATION**

Approve Conditionally

### **REASON FOR RECOMMENDATION**

The proposed expansion of activity of an existing authorised café located within an accessible residential area accords with the objectives of Policy 13 (Sustainable Transport) and Policy 15 (Local Living and 20 Minute Neighbourhoods) within National Planning Framework 4 (NPF4) and associated National Planning Guidance regarding local living as it would provide a supporting

service for nearby residents and the adjacent hospital. Subject to imposition of conditions to regulate the use and its potential adverse impacts on amenity, there would be no conflict with NPF4 Policy 12 (Zero Waste) and Policy 23 (Health and Safety) and ALDP Policy H1 (Residential Areas), Policy WB2 (Air Quality), Policy WB3 (Noise) and Policy R5 (Waste Management Requirements for New Development) within the Aberdeen Local Development Plan 2023 (ALDP) and related guidance. There is no conflict with the objectives and intent of NPF4 Policy 27 (City, Town, Local and Commercial Centres) and ALDP Policy VC3 (Network of Centres), Policy VC9 (Out of Centre Proposals) and Policy VC10 (Local Shop Units). As the proposal does not result in increased car parking provision and appropriate cycle parking is proposed, there is no conflict with ALDP policy T3. The development satisfies the design quality objectives of NPF4 Policy 14 (Design, Quality and Place) and ALDP Policy D1 (Quality Placemaking). Any conflict with NPF4 Policy 1 (Tackling the Climate and Nature Crises) and Policy 3 (Biodiversity) and ALDP Policy NE3 (Our Natural Heritage) and Policy WB1 (Healthy Developments) does not warrant refusal. As regards ACC Harmony of Uses Aberdeen Planning Guidance, the relevant impacts on amenity are acceptable. The traffic and road safety and other concerns raised in objection do not warrant refusal. A condition is imposed to accord with the intent of NPF4 Policy 13 and ALDP Policy T2 (Sustainable Transport) and Policy T3 (Parking).

## **CONDITIONS**

### **(01) 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.

### **(02) NOISE AND ODOUR MITIGATION**

The use hereby approved shall not take place unless the noise and odour mitigation measures specified in section 6.2 of the revised noise and odour impact assessment dated 20/06/24 (ref. 1191212314 – V1) have been implemented in full, unless otherwise agreed in writing by the Planning Authority. The approved class 3 use shall not take place unless photographic evidence of implementation of the requisite physical measures to be installed on site has been provided to the Planning Authority.

Reason – In order to preserve the amenity of adjacent residential premises by reason of the generation of noise and odours.

### **(03) WASTE AND RECYCLING STORAGE**

The use hereby approved shall not take place unless the proposed bin store, associated screen fencing, refuse / recycling storage and drainage facilities as specified on drawing no. L(00)07 B hereby approved have been implemented in full, unless otherwise agreed in writing by the Planning Authority. The approved use shall not take place unless photographic evidence of implementation of the requisite physical measures to be installed on site has been provided to the Planning Authority.

Reason – In order to ensure waste storage on site, preserve the amenity of the area and ensure that the bins are suitably screened from the adjacent public road.

### **(04) CYCLE PARKING**

The use hereby approved shall not take place unless the proposed cycle stands as specified on drawing no. L(00)07 B hereby approved have been implemented in full, unless otherwise agreed in writing by the Planning Authority. The approved use shall not take place unless photographic evidence of implementation of the requisite physical measures to be installed on site has been provided to the Planning Authority.

Reason – In the interest of sustainable transport and reduction of vehicle traffic.

**(05) OPERATING HOURS RESTRICTION**

The use hereby approved shall not operate outwith the hours from 07.00 – 20.00 on any day of the week.

Reason – In order to preserve the amenity of adjacent residential premises by reason of the generation of late night noise / disturbance.

**ADVISORY NOTES FOR APPLICANT**

01. Footway Crossing

The applicant is advised to apply to the Council's Roads Service via the link below in relation to the need for dropped kerb to allow vehicles to cross the pavement at the site frontage:

<https://www.aberdeencity.gov.uk/services/roads-transport-and-parking/apply-dropped-kerb-or-driveway>