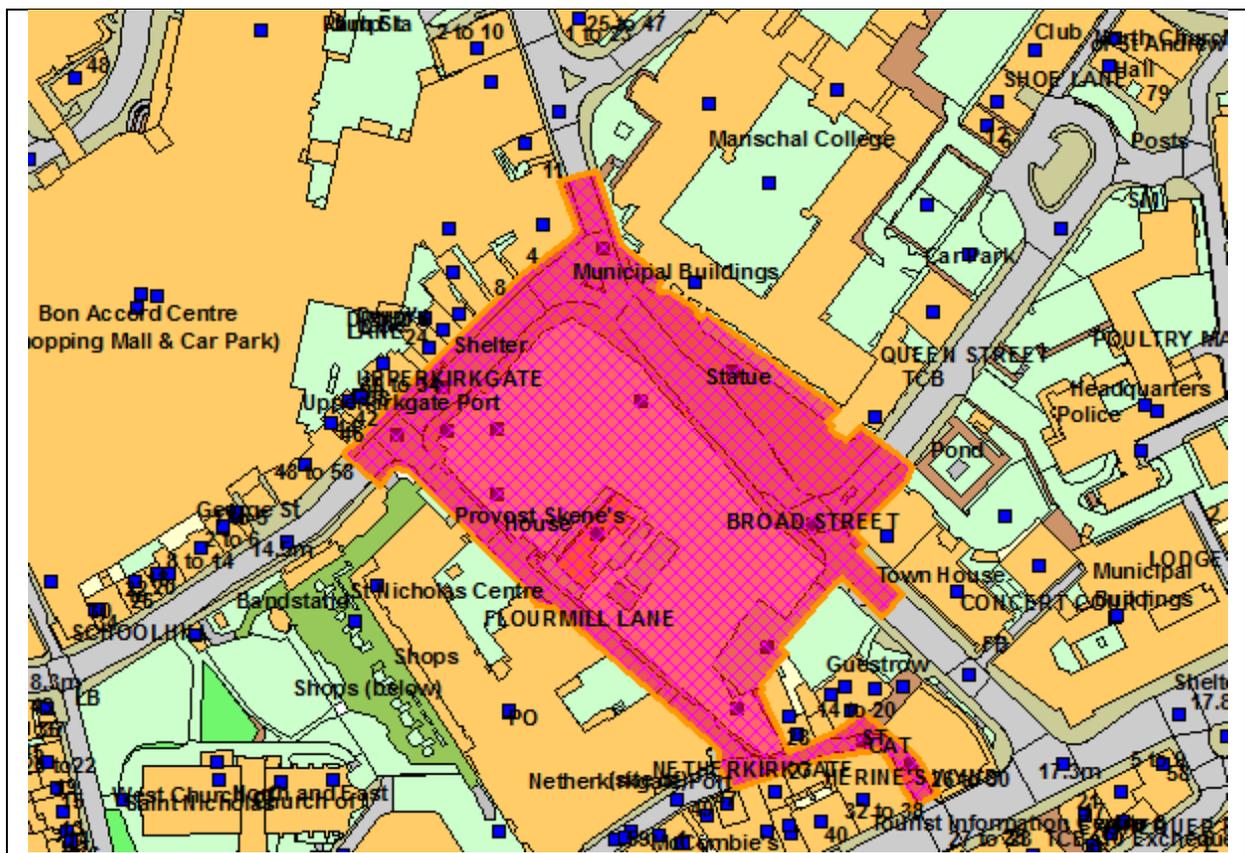


Planning Development Management Committee Section 42 (Variation to Conditions)

161065/S42: Variation of condition 21 (class of use for shops or food and drink) of P140698 to allow public house (sui generis) use at Marischal Square Development, Broad Street, Aberdeen, AB10 1AJ

For: Muse Developments Limited & All Bar One, C/o Agent

Application Date:	2 August 2016
Officer:	Gavin Evans
Ward:	George Street/Harbour
Community Council:	City Centre
Advertisement:	Schedule 3 Development (Use as licensed premises)
Advertised Date:	17.08.2016



Location Plan

RECOMMENDATION: Approve Conditionally

SITE DESCRIPTION

This application relates to the site of the former Aberdeen City Council offices at St Nicholas House, Broad Street.

Broad Street runs north-west from the eastern end of Union Street, providing connection to Upperkirkgate and Gallowgate. To the west lie the Bon-Accord and St Nicholas shopping centres, with the Kirk of St Nicholas, Robert Gordon's College and Aberdeen Art Gallery beyond. On the northern side of Broad Street lies the category 'A' listed Marischal College, which was extensively renovated to act as the Council's HQ from 2011.

At the heart of the St Nicholas House site lies the category 'A' listed Provost Skene's House, originally dating from the 16th century, which is considered a rare surviving example of the early burgh architecture.

The St Nicholas House site and the adjacent St Nicholas Shopping Centre are excluded from the Union Street Conservation Area, which surrounds them on all sides. The Conservation Area incorporates the eastern side of Broad Street, the northern side of Upperkirkgate, the southern side of Upperkirkgate and the land to the west of the St Nicholas Centre. The northern side of Upperkirkgate is characterised by a series of townhouses, between 3 and 4 ½ storeys, the majority of which are listed (categories 'B' and 'C').

The former Council offices at St Nicholas House have been demolished and works are ongoing in relation the implementation of a consent granted for the mixed-use redevelopment of the site, incorporating hotel and office buildings with some retail and restaurant uses at ground floor level.

RELEVANT HISTORY

Application No.	Proposal	Decision Date
P140698	Mixed use development including office, hotel, retail, restaurant, leisure, civic space including car parking, access, landscaping, infrastructure and public realm improvements	

DESCRIPTION OF PROPOSAL

This application seeks to vary condition 21 of a consent previously granted for the redevelopment of the former St Nicholas House site. That condition stipulated that the ground-floor commercial units shown on the approved plans could be used for purposes within class 1 (shops) or class 3 (food and drink, including café, restaurant, where food is consumed on the premises), with at least 50% of the floorspace being reserved for class 1 (shops). The planning authority's stated reason for that condition was that it would be *'in the interests of securing an appropriate live and active frontage to the development, and maintaining an appropriate mix of uses which can contribute positively towards the vitality and viability of the City Centre as a first-tier retail location.'*

APPLICATION REF: 161065/S42

Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) allows for applications for the development of land without complying with conditions attached to an earlier consent. Planning authorities are obliged to consider only the question of the conditions subject to which planning permission should be granted – i.e. the planning authority has no remit to reconsider the principle of the development.

With this type of application, there are two options available:

- (i) if the planning authority considers that the permission should be granted subject to different conditions from those originally applied, then it may grant planning permission accordingly;
- (ii) if the planning authority considers that the planning permission should be granted subject to the same conditions as those originally applies, then it should refuse the application.

SUPPORTING DOCUMENTS

All drawings and supporting documents listed below can be viewed on the Council's website at www.publicaccess.aberdeencity.gov.uk.

CONSULTATIONS

Consultee	Date	Comments Made
City Centre Community Council	15.09.16	<ul style="list-style-type: none">- original condition 21 gives sufficient variety of uses;- class 3 (food and drink) provides opportunity for licenced premises.- There are a number of public houses within 5 minutes walking distance.- public house would change the tone of the retail space which is intended to be an open area for use of everyone and the inclusion of a public house could put people off using the space.- less active frontage to the retail space which will sit directly on the newly formed part pedestrianised Broad Street which is something noted in the delivery of Marischal Square in the City Centre Master Plan.- original condition 21 would be the best outcome for this developement.

REPRESENTATIONS

None

PLANNING POLICY

Aberdeen Local Development Plan (2012)

C1: City Centre Dev. - Regional Centre

APPLICATION REF: 161065/S42

C2: City Centre Business Zone & Union Street
T2: Managing the Transport Impact of Development
D3: Sustainable and Active Travel
RT1: Sequential Approach & Retail Impact
NE9: Access and Informal Recreation

Proposed Aberdeen Local Development Plan

NC1: City Centre Dev - Regional Centre
NC2: City Centre Retail Core & Union Street
NC4: Sequential Approach and Impact
NE9: Access and Informal Recreation
T2: Managing the Transport Impact of Development
T3: Sustainable and Active Travel

Scottish Planning Policy

EVALUATION

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, regard is to be had to the provisions of the Development Plan and that determination shall be made in accordance with the plan, so far as material to the application unless material considerations indicate otherwise.

Background

The condition in question was attached to the Marischal Square consent for two main reasons: (i) in order to ensure that ground floor uses would provide sufficient active frontage to the development and also permit a degree of flexibility in the ground floor space, allowing for both retail and restaurant uses – both of which would be appropriate to a city-centre location; and (ii) in order to ensure that there would still be a degree of variety, it was stipulated that no more than 50% of the ground-floor commercial floorspace may be utilised for non-retail use. The condition is restated below, for reference:

(21) that, notwithstanding their annotation as 'retail' on the submitted drawings, none of the ground-floor commercial units hereby approved within office buildings 01 and 02 shall be used other than for uses within Use Classes 1 (shops) or 3 (food and drink) of the Use Classes (Scotland) Order 1997 unless planning permission has been granted for a change of use of the unit; and

that at least 50% of that ground-floor commercial floorspace shall be used for purposes within Use Class 1 (shops) unless otherwise agreed in writing by the planning authority

- in the interests of securing an appropriate live and active frontage to the development, and maintaining an appropriate mix of uses which can contribute positively towards the vitality and viability of the City Centre as a first-tier retail location.

At that time, the Marischal Square proposal did not involve a bar/public house use, however this should not be interpreted as meaning that such a use would be precluded, and it is for the planning authority to consider whether such a use would be appropriate in this location, based on the provisions of the Development Plan and any other material planning considerations.

Effect of the proposed variation

There is a total of 28,187sq feet of commercial floorspace at ground floor level, which has been divided into seven units. The applicants have put forward a suggested revised wording to the condition, though it is noted that it is open to the planning authority to use any other wording that it considers appropriate. That revised wording would maintain the requirement that a minimum of 50% of the commercial floorspace at ground floor level be used for purposes within Class 1 (retail) of the Use Classes Order, but would allow for the remaining floorspace (up to 50% of the total: 14,093sq ft) to be any combination of Class 3 (food and drink) or public house/bar (sui generis). The applicants' covering letter indicates that their agreed pre-let with 'All-Bar One' would involve circa 6300 sq ft being operated as a public house/bar use.

SPP states that decisions on development proposals should have regard to the context provided by the network of centres identified in the development plan and the sequential approach outlined in SPP. That sequential approach requires that uses which generate significant footfall (including retail and commercial leisure uses, offices, community and cultural facilities) should be located on a 'town centre first' basis. Paragraph 70 of SPP identifies an aim to recognise and prioritise the importance of town centres and encourage a mix of developments which support their vibrancy, vitality and viability. The application site is located within the defined City Centre in the Aberdeen Local Development Plan, and therefore the presence of a footfall-generating commercial use such as a bar/public house within that first-tier location would be consistent with the stated aim of SPP to prioritise these locations and encourage a mix of developments which contribute to their 'vibrancy, vitality and viability'.

This approach is echoed at the local level by policy C1 (City Centre Development – Regional Centre) of the Aberdeen Local Development Plan, which states that proposals for new retail, commercial, leisure and other city centre uses shall be located in accordance with the sequential approach set out in the relevant 'Hierarchy of Centres' Supplementary Guidance. Again, the status of the City Centre as the first-tier location for such footfall-generating commercial and leisure uses supports the proposed use as a public house/bar.

The application site is also located within the City Centre Business Zone (CCBZ) in the ALDP, with policy C2 (City Centre Business Zone and Union Street) applicable. Policy C2 sets out measures to restrict proposals for change of use from existing class 1 (retail) uses to any other use class within the defined CCBZ unless it can be demonstrated that there is a lack of demand for continued retail use of the premises. Policy C2 also states that any alternative use(s) must enhance or adequately maintain daytime vitality and provide an active street frontage; and should not conflict with the amenity of the neighbouring area.

It should be noted that this proposal does not involve a change in the use of an established retail premises, and therefore the first test of policy C2, relating to demonstrating a lack of continued demand, is not applicable in this instance. The proposed use is likely to make a strong contribution to the vitality of the City Centre as a leisure destination, and would provide an appropriately active frontage to the ground floor of the Marischal Square development both during daytime and into the evenings, which is not generally achieved to the same extent with retail use.

In terms of its relationship with the amenity of the area, the Council's 'Harmony of Uses' Supplementary Guidance recognises that licensed premises can raise sensitive amenity issues when sited close to residential properties. It is noted, however, that the commercial units of this development are not located in a building which contains residential uses within upper floors. Broad Street is characterised by a strong civic presence, with the Council's Marischal College offices and the adjacent Town House dominating its eastern side. There is not a strong residential presence in the surrounding area, with the closest flats understood to be those within upper floors on Netherkirkgate and Upperkirkgate. It is noted also that the Kirkgate Bar (Upperkirkgate), Illicit Still (Guestrow address – frontage to Broad Street) and Ye Olde Frigate (Netherkirkgate) bars are located on the ground floor of those streets, in close proximity to those existing residential uses. The Council's 'Harmony of Uses' supplementary guidance states that licensed premises within the City Centre Business Zone (but not on Union Street itself) require in the first instance to comply with the City Centre Business Zone policy, which has been discussed above. Where that policy allows, permission may be granted for a liquor licensed premises provided none of the upper floors of the application property or adjacent properties are in residential use and/or *'the amenity of other existing housing, sites zoned for housing, or identified as suitable for housing in the Local Development Plan, would not be adversely affected by such proposals'*. In this instance there would be a clear separation from any existing residential uses. There are no nearby allocations for new housing which would be materially affected by the proposal, and on that basis it is considered that the proposal would not result in any material conflict with the amenity of the neighbouring area, as required by policy C2 of the ALDP.

Matters Raised by Community Council

- *We feel the original condition 21 gives sufficient variety of uses.*
- *class 3 (food and drink) would provide enough opportunity for licenced premises.*
- *We would like to note that we feel the original condition 21 statement would be the best outcome for this development.*

This proposal should not be assessed as a comparison between two options, but on its own merits relative to the aims of the Development Plan and the relevant policies and guidance – the planning authority is not selecting a favoured option, but assessing a different proposal. In this case the mix of uses and appropriateness of a bar/public house use has been addressed above. Whilst restaurants may indeed be licensed to serve alcohol through separate licensing regulation, the current consent would not allow for bar operators to have any presence within the development. Again, the appropriateness of this use is considered earlier in this report.

APPLICATION REF: 161065/S42

- *There are a number of public houses within 5 minutes walking distance.*

The presence of other bar uses in the surrounding area is noted, however these are not closely grouped in a manner that is considered to represent a threat to amenity. As discussed, the use is consistent with a city centre location and given the nature of office uses at upper floor level, it is not considered that there would be any materially increased impact on the amenity afforded to existing residential premises, which are themselves relatively distant from the site.

- *The use of public house on this development would change the tone of the retail space which is intended to be an open area for use of everyone and the inclusion of a public house could put people off using the space;*

As noted earlier in this report, bar uses are supported in principle within the City Centre, subject to consideration of their relationship to residential uses. The proposed use is of a type that is recognised as making a positive contribution to the vitality and viability of city centres and, subject to appropriate management by the operators, there is no evidence to suggest that this use would prejudice the use of the public spaces within the development.

- *We do not feel that this variation would provide a suitably active frontage to the retail space which will sit directly on the newly formed part pedestrianised Broad Street which is something noted in the delivery of Marischal Square in the City Centre Master Plan*

The issue of live frontage to the development is assessed earlier in this report.

Proposed Aberdeen Local Development Plan

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015 and the Reporter has now reported back. The proposed plan constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to comment by the Reporter; and
- the relevance of these matters to the application under consideration.

The Reporter's response does not affect policies in a manner that is relevant to this application. In relation to this particular application proposal policies in the Proposed LDP are not materially different from those in the adopted LDP, with the site retaining its opportunity site designation, and remaining part of the City Centre Retail Core – equivalent to its current City Centre Business Zone status, where equivalent policies would apply. The City Centre remains a first-tier location, and the sequential approach remains applicable to development likely to generate significant footfall.

Approval to adopt the LDP will be sought at the Full Council meeting of 14 December 2016. The actual adoption date is likely to be around the third week in January 2017.

Conclusion

In summary, the introduction of a bar/public house use within the City Centre is supported in principle by both SPP and the Aberdeen Local Development Plan. Such leisure uses make a meaningful contribution to the vibrancy, vitality and viability of the City Centre as a first-tier location in the city's hierarchy of centres, and in this regard the proposal is consistent with the sequential test set out in the ALDP. An appropriately active frontage would be presented, and the proposed alteration of Condition 21 would provide for the same proportion of the commercial floorspace to be given over to uses within class 1 (retail). The potential for adverse impact on residential uses is limited, as there are no residential premises within the same buildings, and the nearest residential premises are at a sufficient distance from the development to ensure that adverse impact is unlikely. Taking these matters into account, it is considered that the proposal is consistent with the relevant provisions of the Development Plan. The concerns raised by the City Centre Community Council are noted, and have been considered in this report, but have not been found to be of sufficient weight to warrant determination other than in accordance with the Development Plan.

On that basis, it is recommended that this application be approved, subject to the conditions set out below. These include the revised wording for the condition in question (now condition 20, below), relating to the composition of ground floor commercial floorspace. Other conditions previously attached to the original grant of planning permission (P140698) require to be restated, though minor changes have been made in order that the applicants are not obliged to resubmit previously agreed materials. In such instances, conditions have been altered to require implementation of the consent in accordance with the details so agreed.

RECOMMENDATION: Approve Conditionally

REASONS FOR RECOMMENDATION

1. The proposal would not involve change of use away from an existing class 1 (retail) use, and therefore the first part of policy C2 (City Centre Business Zone and Union Street) is of limited relevance. The introduction of a public house/bar use, given the extensively glazed form of the building, is likely to make a positive contribution to the daytime vitality of the City Centre, and would certainly provide an active street frontage to the development, consistent with policy C2 (City Centre Business Zone and Union Street) of the Aberdeen Local Development Plan (ALDP).
2. The proposed variation to condition 21 of consent P140698 would allow for a public house/bar use to be introduced in a City Centre location, where there are no residential flats within the same building. The character of the surrounding area is largely civic and commercial, and it is not considered that there would be any significant impact on existing residential uses. For these reasons, the proposal is considered to be consistent with the Council's adopted 'Harmony of Uses' Supplementary Guidance.

3. The proposed use is leisure-related and would generate a degree of pedestrian footfall. It is therefore of a type which is appropriate for location within the City Centre, which is defined as the first-tier location for such uses in the sequential approach set out in the ALDP. This 'town centre first' approach is consistent with policy C1 (City Centre Development – Regional Centre) of the ALDP, as well as Scottish Planning Policy's relevant provisions relating to the prioritization of town centres and the encouragement of a mix of developments to support their vibrancy, vitality and viability.

CONDITIONS

(1) That no part of the development hereby approved shall be occupied or brought into use until such time as a 'service vehicles only' zone and associated resurfacing have been implemented around the junction of Flourmill Lane, Netherkirkgate, the development car park entrance and the exit out onto Broad Street, in accordance with a drawing submitted to and approved in writing by the planning authority, in consultation with the Council's Roads Development Management Team - in the interests of pedestrian safety and the free flow of traffic.

(2) That the development hereby granted planning permission shall not be occupied unless the cycle storage facilities as shown on the approved drawings, or others subsequently approved in writing by the planning authority, have been provided - in the interests of encouraging more sustainable modes of travel.

(3) That no part of the development hereby approved shall be occupied or brought into use until such time as a scheme for the allocation of car parking to respective uses based on their floorspace has been submitted to and agreed in writing by the planning authority, in consultation with the Council's Roads Development Management Team - in order to ensure that each occupying use has access to an appropriate level of car parking and compliance with the Council's 'Transport and Accessibility' supplementary guidance is maintained.

(4) That hotel and office uses shall not be brought into use until such time as an individual Travel Plan for each occupier has been submitted to and approved in writing by the planning authority, based on the Travel Plan Framework: Issue 2, dated 08/09/14 and including a Travel Pack for employees and (for the Hotel) guests.

Retail and restaurant units may not be occupied until such time as a Travel Pack, submitted to and approved in writing by the planning authority, has been produced and distributed to staff, based on that produced for hotel staff - in order to encourage sustainable travel.

(5) That the approved works shall be carried out in full accordance with the agreed dust management plan (Morgan Sindall Dust Management Plan – Rev 3) unless otherwise agreed in writing by the planning authority - in order to mitigate adverse air quality impacts arising during construction

(6) Development shall not be undertaken other than in accordance with the written scheme of investigation prepared by Cameron Archaeology, dated 25th January 2015, or any other such scheme as has been submitted by the applicant and approved by the Planning Authority for this purpose. The programme of archaeological work will include all necessary post- excavation and publication work - in the interests of protecting items of historical importance as may exist within the application site.

(7) That the approved works shall be undertaken in full accordance with the approved Construction Method Statement (Morgan Sindall Construction Method Statement: rev 1) unless otherwise agreed in writing with the Planning Authority - In order to minimise the impacts of necessary construction works on the environment.

(8) That no building within the development shall be occupied unless the development has been carried out in full accordance with the detailed scheme of materials and finishes approved in writing by the planning authority (Drawings PL-019 Rev D; PL-020 Rev C; PL021 Rev C; and PL-022 Rev F - or any other such scheme as may be agreed for this purpose) in the interests of visual amenity and preserving both the setting of adjacent listed buildings and the character of the Union Street Conservation Area.

(9) that no buildings within the development shall be occupied unless a Waste Management Plan, including details of arrangements for the segregation, storage, collection and management of hotel, commercial and business waste, have been submitted to, and approved in writing by, the planning authority, and thereafter has been implemented in full - in order to ensure compliance with policy R6 (Waste Management Requirements for New Development) of the Aberdeen Local Development Plan.

(10) that no buildings within the development hereby approved shall be occupied unless the recommended measures specified within the Atelier Ten Sustainability and Low Carbon Development Statement, dated 27/3/13 (or any other such report as has been approved in writing by the planning authority for this purpose) for the reduction of carbon emissions have been implemented in full – to ensure that this development complies with requirements for reductions in carbon emissions specified in the City Council's relevant published Supplementary Guidance document, 'Low and Zero Carbon Buildings'.

(11) that no buildings within the development hereby approved shall be occupied unless the scheme of drainage shown in the submitted Drainage Impact Assessment, drawing ref 95814/2001-A, or any other such scheme as has been submitted to and approved in writing by the planning authority prior to development commencing, has been implemented in full - in order to ensure surface water is appropriately managed.

(12) that no part of the development hereby granted planning permission shall be occupied unless details of suitable filtrated extraction systems, with any terminal point at the highest part of the building have been submitted to and approved in writing by the planning authority and that the said scheme has been implemented in

APPLICATION REF: 161065/S42

full and is ready for operation - in order to avoid adverse impact arising from the release of odours.

(13) that all building services and fixed plant including fans, ventilation exhausts and inlets shall be designed to not exceed 40db LAeq outside nearby residential properties and an internal level of NR35 between the hours of 07.00 and 23.00 and NR25 at all other times with windows closed - in order to ensure appropriate noise levels within buildings.

(14) That no buildings within the development shall be occupied unless development has been undertaken in full accordance with the approved 1:20 construction drawings (HFM letter of 13/7/15 and accompanying drawings, refs. PL-200A, PL-201, PL-202), showing the detailing of points where there would be a change in the surface finishes (e.g. point where glazed sections of frontage meet granite-clad sections) (or any other such drawings submitted to and approved in writing by the planning authority for this purpose) - to ensure an appropriately high quality of detailing commensurate with the civic scale and setting of the proposal

(15) That no building within the development shall be brought into use or occupied until such time as the agreed lighting measures, detailed in Atelier Ten Lighting Design Report: Rev 06 (or any other such scheme as may be approved in writing by the planning authority for this purpose) have been fully implemented - in the interests of visual amenity.

(16) that the development hereby approved shall not be occupied unless the car parking areas hereby granted planning permission have been constructed, drained, laid-out and demarcated in accordance with drawing Nos. PL-003-Rev A & PL-004-Rev B of the plans hereby approved or such other drawing(s) as may subsequently be submitted and approved in writing by the planning authority. Such areas shall not thereafter be used for any other purpose other than the purpose of the parking of cars ancillary to the development and use thereby granted approval - in the interests of public safety and the free flow of traffic.

(17) That, unless otherwise agreed in writing by the planning authority, deliveries to the premises via heavy goods vehicles shall be restricted to 07.00 to 19.00 Mon-Sat and 09.00-19.00 Sun, in order to prevent any adverse impact on amenity as a result of deliveries and servicing occurring at unsociable hours.

(18) that no buildings hereby granted planning permission shall be occupied unless the areas of public open space and associated hard and soft landscaping as identified on the approved drawings (HFM drawings: (90)002-rev 17; (90)101-rev 1; (90)102-rev 1; (90)002-rev 1; (90)103-rev 1; (90)105-rev 1; (90)-107-rev 1; (90)108-rev 1; (90)109-rev 1; (90)110-rev 1; (90)111-rev 1 Ian White Associates drawings: 1986/01-rev C; 1986/02; 1986/D01-rev A; 1986/D02-rev A; 1986/D03-rev A; 1986/D04 / 05 / 06-Rev A 1986/D07 / 08-rev A) (or such other drawing as may be subsequently approved), excluding those works relating to the pedestrianisation of Broad Street, have been laid out in full and made available for use – in order that the development is given an appropriately high quality setting, reflecting its prominent city centre location.

APPLICATION REF: 161065/S42

(19) That no buildings hereby granted planning permission shall be occupied unless appropriate measures have been implemented to mitigate localised wind conditions within the development site, in accordance with the approved Wind Mitigation Report and associated appendices, submitted by HFM on 13/7/15 - in order to ensure that the environment within areas of public open space demonstrates due regard for localised wind conditions.

(20) That, notwithstanding their annotation as 'retail' on the approved drawings, none of the ground-floor commercial units hereby approved within office buildings 01 and 02 shall be used other than for uses within Use Classes 1 (shops); 3 (food and drink) or a total of 6,300 square feet of sui generis (public house) of the Use Classes (Scotland) Order 1997; and that at least 50% of the total originally consented ground-floor commercial floorspace shall be used for purposes within Use Class 1 (shops) unless otherwise agreed in writing by the planning authority - in the interests of securing an appropriate live and active frontage to the development, and maintaining an appropriate mix of uses which can contribute positively towards the vitality and viability of the City Centre as a first-tier retail location.