



**Town and Country Planning (Scotland) Act 1997
as amended**

Appeal against refusal of

**Planning Permission for Erection of Cafe with hot food take away
and flat above, including car parking and associated works
at
Former Public Convenience, Adj. Dyce Church Hall, Victoria Street,
Dyce**

(Planning Ref: 180522/DPP)

by Aberdeen City Council ("the Council")

For Fleet Properties ("the Appellant")

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Background

An application for Planning Permission was submitted and validated on 20 April 2018 and refused by Aberdeen City Council on 29 June 2018.

The planning application sought Planning Permission for the Erection of Cafe with hot food take away and flat above, including car parking and associated works at Former Public Convenience, Adj. Dyce Church Hall, Dyce

The Appellant wishes to Appeal against the refusal of this permission.

The Decision Notice reads:

"The proposal (subject to appropriate conditions) could comply with policies H1 (Residential Areas), D1 (Quality Placemaking by Design), D2 (Landscape), T2 (Managing the Transport Impact of Development), T3 (Sustainable and Active Travel), R6 (Waste Management Requirements for New Development) and R7 (Low and Zero Carbon Building and Water Efficiency) and the associated Supplementary Guidance documents 'Transport and Accessibility' and 'Resources for New Development' of the Aberdeen Local Development Plan. Notwithstanding, the provision of a residential flat in this location fails to comply with policies B4 (Aberdeen Airport), T5 (Noise) and the relevant sections of the associated Supplementary Guidance document 'Noise' and Technical Advice Note 'Planning and Aberdeen Airport' of the Aberdeen Local Development Plan. The principle of residential development in this location is not supported due to the inability to create an adequate residential environment due to the proximity of Aberdeen International Airport, and further, to safeguard its future operation. It is accepted that the development would result in an improvement to the visual amenity of the area through the removal of a gap site, however, this could be achieved through the provision of a non-residential development which does not have the same noise sensitivities. On the basis of the above it is considered that the proposal does not accord with the provisions of the development plan, and there are no material planning considerations that are of sufficient weight to warrant approval contrary to the provisions of the plan."

Grounds of Appeal

The proposal, with the exclusion of the residential element (a first floor flat) would be supported by planning policy.

The Appeal will focus on three Issues:

- the council sale of the site
- the re-use of an empty and derelict site
- noise to existing residential properties in Dyce/Stoneywood.

1. In relation to the council sale of the site

The site was offered for sale by Aberdeen City Council Estates Team in 2011. The Sales particulars describe the surrounding properties as "*mixture of commercial and residential.*"

The Planning heading note that the subjects fall within an area zoned as "*Residential*" in the current adopted Aberdeen City Local Plan, and advised further information can be obtained by contacting the Planning & Sustainable Development Service.

See extracts below:

PLANNING

The subjects fall within an area zoned as 'Residential' in the current adopted Aberdeen City Local Plan. Further information can be obtained by contacting: Development Management, Planning & Sustainable Development, telephone (01224) 523470, e-mail: pr@aberdeencity.gov.uk

LOCATION

The subjects are located on the west side of Victoria Street, adjacent to the junction of Gladstone place in Dyce. The property is situated approximately 7 miles North West of Aberdeen city centre with close proximity to the city's airport. The surrounding properties are a mixture of commercial and residential use.

Both pieces of advice suggest that a residential function to the site would be acceptable and the Appellant purchased the site on this basis.

2. The re-use of an empty and derelict site

The former toilet block has now been demolished and the site lies empty and unused. It lies in an attractive street scene on Victoria Street, the main thoroughfare through Dyce, flanked to the south by Dyce Church Hall, a pleasant community building, with residential properties across the street to the east.

It is never desirable to a community to have a site lie empty and derelict; it quickly detracts from the remainder of the community. There were more letters of support than objection to this application. Support for this proposal was seen from Dyce and Stoneywood Community Council who noted support for, in particular

- *"the redevelopment of an eyesore derelict site....."*
- *enhanced amenity in Dyce re provision of informal dining facilities....."*

Other members of the public in support of the application, noted

- *"Dyce needs more places like this...."*
- *much needed asset to Dyce community...."*

- *great for the community.....*
- *Dyce is falling back in attractiveness against Ellon etc....."*

Whilst there were some concerns about the busy road and traffic congestion, the councils Road Service did not object to the application, noting sufficient parking and space for refuse collection.

The site is not only accessible by car, but also has direct access to a network of public footpaths connecting to the residential and commercial areas in Dyce. Victoria Street is served by regular bus services into Aberdeen and northwards to Oldmeldrum-Banff-Elgin, as well as Dyce Railway station which lies only 350m from the site. Further, National Cycle Route 1 is within 350m of the site, thereby showing a number of means of sustainable transport open to this enterprise.

Dyce has limited cafe facilities at present; with its own population, together with the number of people working at this side of Dyce, and the passing traffic on the A947/Victoria Street, this makes a good, sustainable location for such a use. At present cafe facilities are limited to the Asda cafe (within the supermarket), The Marriott Hotel on Overton Circle, and slightly further afield, the Marks & Spencer cafe at Stoneywood.

In considering the mixed use application, the Council noted that the principle of further residential development in a residential area was accepted. In terms of the context, density and pattern of development, this was deemed acceptable, in compliance with Policy H1 of the ALDP. In relation to design, scale and massing, was considered generally compatible with the surrounding area and accords with Policy D1, and

"would have a positive impact on the visual amenity of the area....."

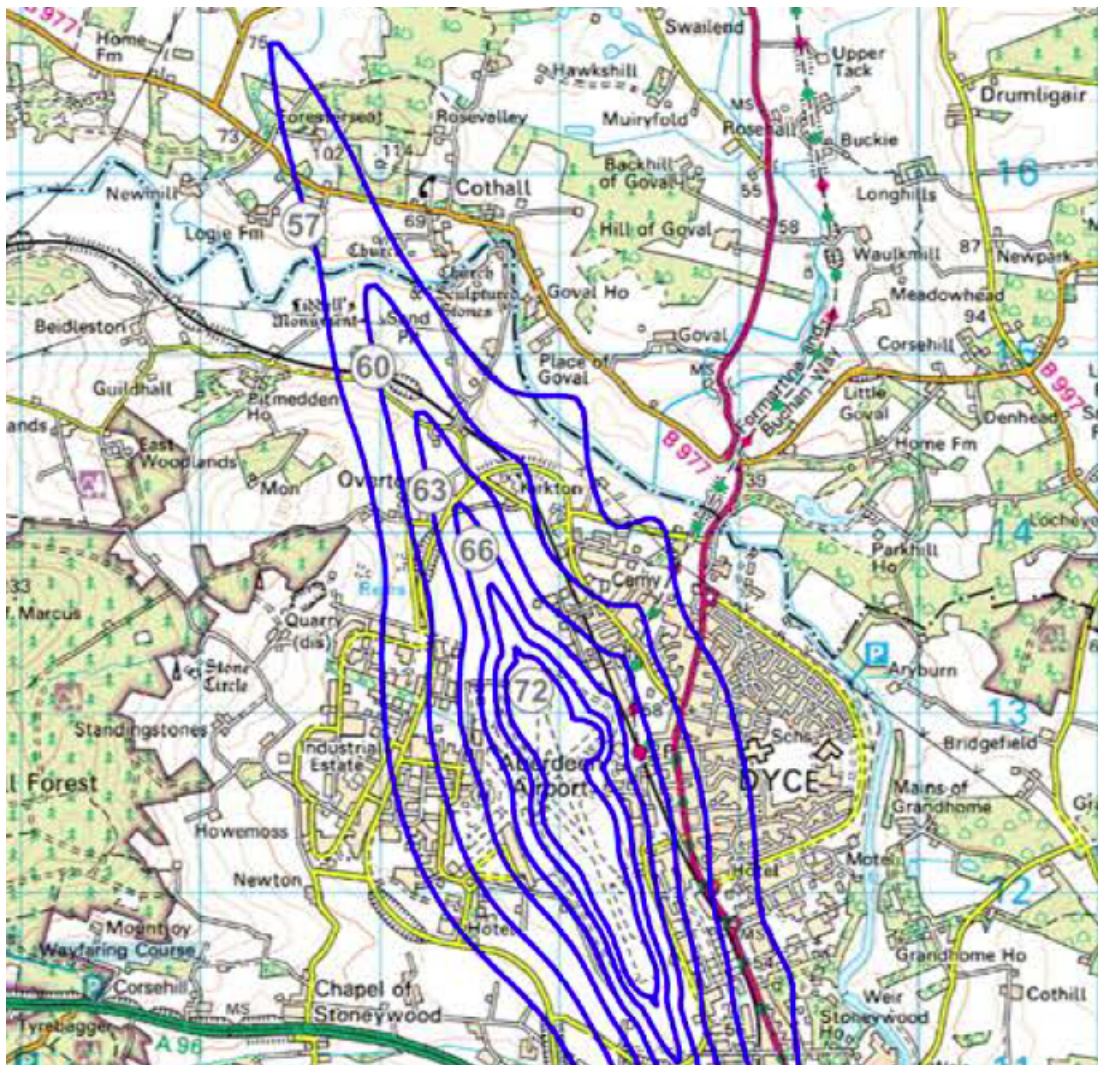
Finally, in relation to technical matters such as parking, road safety, sustainable travel, waste management and building and water efficiency, these matters are satisfactorily addressed. The application fails due to the insertion of the flatted residential element, necessary to provide an income stream to the ground floor business. The Appellant would argue that the incorporation of features such as acoustic materials including plasterboards, insulations, glazing etc. will mitigate the perceived noise nuisance.

3. Noise to existing properties in Dyce

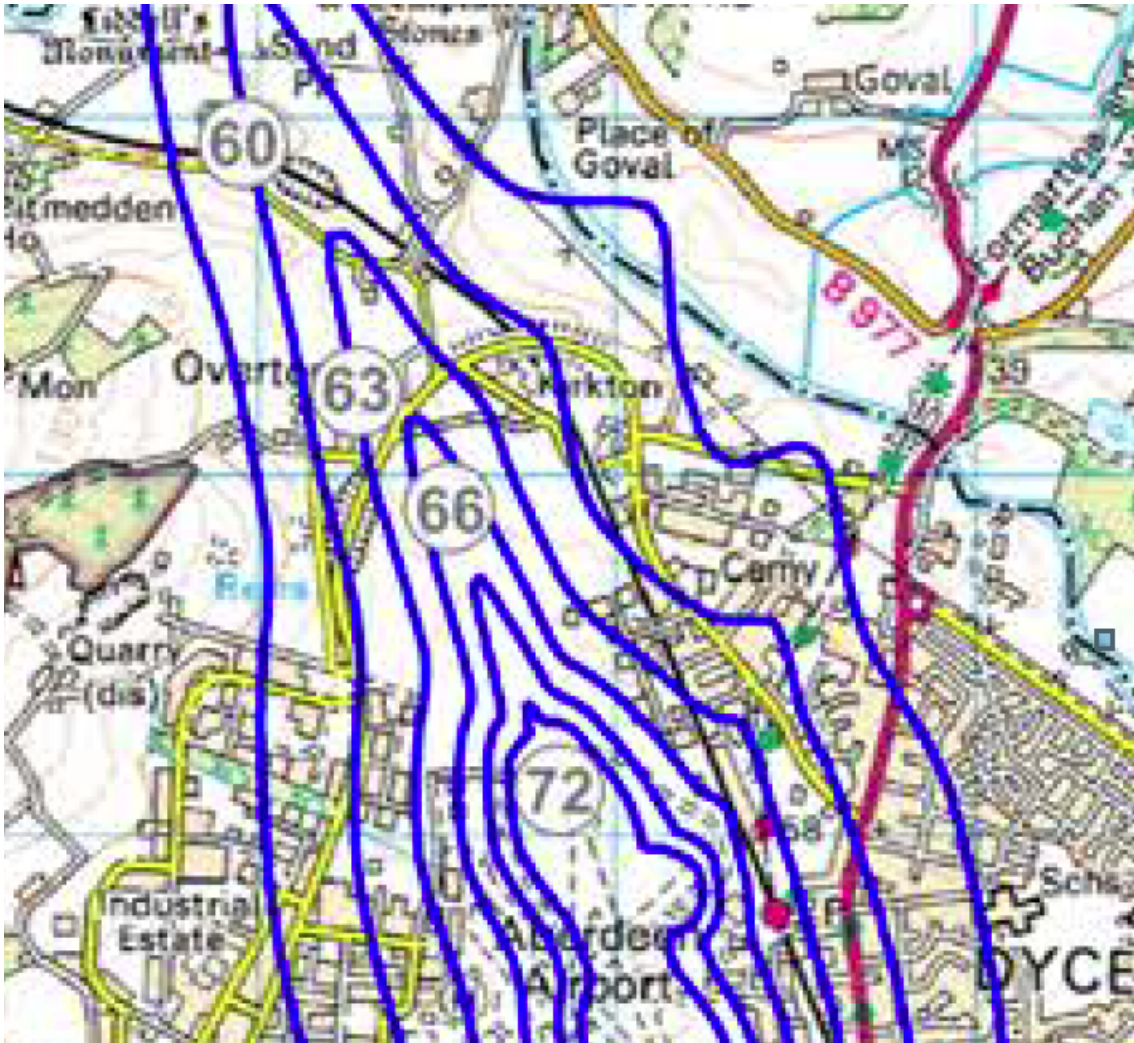
Many residential properties in Dyce lie between the 55 to 60dB contour identified in the Aberdeen Airport TAN (Technical Advice Note), which was published in September 2015. The TAN is to provide additional guidance on the interpretation of policies contained within the Aberdeen Local Development Plan 2012, the last Plan, not the extant Plan and does not carry the same weight as Supplementary Guidance.

In relation to noise, the TAN advises that communities become significantly annoyed by aircraft noise above 57dB and refers to the aircraft noise contour map (Map C), which shows these contours over Dyce, these noise contours are dated 2006. See extract below:

It is clear from the Map that many properties in Dyce lie within the 57 to 60dB contours; it covering much of Victoria Street, into Stoneywood and much of the residential area to the east of Victoria Street.



For greater detail see below:



A number of examples have been examined where planning applications have been made within the Dyce/Stoneywood area, to assess how these applications have been considered. These include:

- Flats above Tesco Express, Victoria Street, Dyce - approved May 2005 (Ref: A5/0383).
- First floor flat above Vets Surgery, Victoria Street, Dyce - approved 18/09/2009 (Ref:09-0894) - with planning condition that accommodation only to be occupied by someone working in the Vets Surgery.
- Change of Use Guest House to dwellinghouse at 201 Victoria Street, Dyce - granted 23/11/2017 (Ref: 17-1303). No Noise Impact Assessment required. When questioned about how this application was dealt with by the Appellants Agents, the Planner's response was that *"Guesthouse considered quasi-residential..... the circumstances are considerably different..."*

- Demolition of garage and erection of dwellinghouse at 188 Victoria Street, Dyce - pending. (Ref: 18-1529) At the time of writing no noise nuisance has been raised.
- Site Adjacent to 324 Stoneywood Road Bucksburn, (Ref: 161802/MSD) MSD approved 15/03/2017. PPP application (Ref: P150849 PPP), where no NIA sought, the Environmental Health Officer noted

"but recommend that suitable mitigation measures are incorporated to ensure that internal noise levels do not exceed LAeq of 45dB (day) and 35dB (night)."

This site appears to lie within the 57-60 dB contour.

- Change of Use of Previously Approved Gym to Form 5 Flats at Stoneywood Development, S2 Block B, Stoneywood Estate, Aberdeen. (Ref: 151505) - approved 5/05/2016. Environmental Health made no observations; this site appears to lie within the 57-60 dB contour.
- Demolition of hotel and erection of 68 affordable flats at Cloverleaf Hotel, Kepplehills Road, Aberdeen (Ref: 141837) approved 23/03/2016. Having been identified as within the outer margins, this matter was dealt with by Planning condition. The Planner noted

"As the proposals falls within the outer margins of airport noise contours, the Council's Environmental Health Services team have requested that a condition be placed requiring the applicant to undertake a Noise Impact Assessment."

The Environmental Health Officer noted *"As this proposal only falls within the outer margins of the airport noise contours ,I do not consider noise to be a significant issue in determination of the application. However suitable measures will need to be incorporated to allow a reasonable level of internal amenity."*

- Residential development comprising 302 flats over 4 and 5 storeys, associated infrastructure, access roads and landscaping at land at Wellheads Road, Dyce. (Ref: 181050/DPP) Pending. The Noise Impact Summary Report notes:

"The site lies within the area covered by the noise contours associated with Aberdeen International Airport (AIA); specifically straddling the 60dB LAeq and 57dB LAeq noise contours. It should however be noted that by 2040 the entire site is anticipated to lie with the 57dB LAeq noise contour due to reduced flight traffic associated with the offshore oil and gas industry."

In summary, it is apparent that a number of residential properties in Dyce and Stoneywood lie within the areas identified on the Noise Contour maps produced in 2006 and forming part of the Technical Advice Note relating to Aberdeen Airport. However, what is apparent is that planning applications have been approved since 2006, with the benefit of this information, and have been deemed to be satisfactory to either the Planning or Environmental Health Service.

It is worth noting that the contours are based on 2006 data, that Building Standard Regulations and building techniques have changed and improved in this timeframe, ensuring that properties can be made more sound proof than previously. There appears to be some ambiguity as to how planning applications are dealt with regarding noise.

Planning History

By way of background, a first application was submitted in 2016 for the "erection of shop with flat above" on the same site (Ref: 161789/DPP). This application was refused 22/02/2017 for reasons relating to landscape and noise, specifically:

- inability to provide adequate degree of outdoor residential amenity space,
- suitable on-site parking,
- inability to create an appropriate level of residential amenity, due to the need to safeguard the future operation of Aberdeen International Airport.

Site description

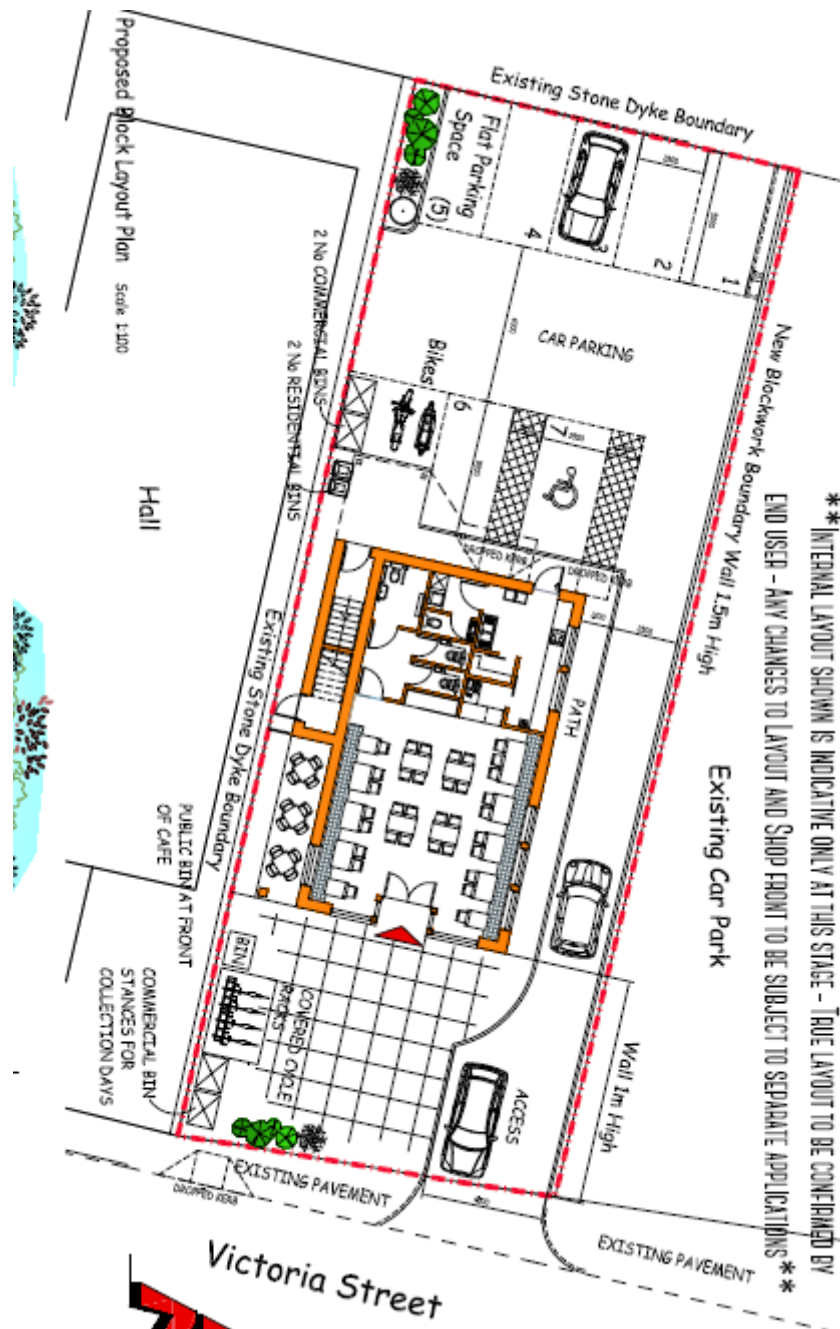
The appeal site measures 0.05 ha, as noted in the sales particulars and comprises a now derelict site, the former public toilets having been demolished. Dyce Church Hall lies directly to the south, with another derelict site to the north, thought to be owned by Aberdeen City Council but used as an informal public car park for the Church, Church Hall and general public. It is an informal use of the site, the ground is not surfaced and neither are there any road markings. Victoria Street lies directly to the east with residential properties across the street. The wider surrounding area is a mix of residential, retail and commercial uses.

The site is on a busy street where residential amenity would be anticipated as less than ideal due to car movements and general activity. However, this should not detract from the sustainable location of the site and by making best use of land, this site provides an excellent opportunity for a small redevelopment.

Proposed development

The appeal seeks planning permission for redevelopment of the site to create a new building comprising a ground floor cafe and/or hot food takeaway with one bed flat on the first floor, with car parking to the rear. The issue of outdoor amenity space to

the first floor flat was resolved by the creation of a first floor balcony/sitting out area, located to the rear (west). See Site layout below:



Access is taken directly from Victoria Street, via a double width access, which leads to the rear of the property; here 7 parking spaces are provided, including 1 disabled space and dedicated space for the flat occupant, together with bike parking as well as covered cycle storage to the front of the property. The main pedestrian access is to the front (east) of the site on to the street frontage providing a welcoming and attractive front elevation, see below:



All technical consultations proved satisfactory, with the exception of the Environmental Health Service who requested a Noise Impact Assessment (NIA) and an assessment of odour control for the proposed cafe/hot food takeaway.

Development Plan Policy

Scottish Planning Policy 2014

The SPP published June 2014 provides an overview of the key components and overall aims and principles of the planning system in Scotland. In general terms the SPP advises that the planning system should enable the development of well designed, energy efficient, good quality development in sustainable locations.

Paragraph 2 states

“Planning should take a positive approach to enabling high-quality development and making efficient use of land to deliver long-term benefits for the public while protecting and enhancing natural and cultural resources.”

The SPP introduces a presumption in favour of development that contributes to sustainable development one of the guiding principles of the planning system is:

“making efficient use of existing capacities of land, buildings and infrastructure”

The SPP defines brownfield land as

“Land which has previously been developed. The term may cover vacant or derelict land; land occupied by redundant or unused building and developed land within the settlement boundary where further intensification of use is considered acceptable.”

Aberdeen City and Shire Strategic Development Plan 2014

The Aberdeen City and Shire Strategic Development Plan 2014 has developed a spatial strategy that meets the needs of business and at the same time is sustainable and takes on the challenges of climate change. The strategy also recognises the need to maintain and improve the areas communities and the services they depend on. The site lies within a Strategic Growth Area.

Aberdeen Local Development Plan 2017

The following policy is considered relevant to the determination of this appeal:

B4 - Aberdeen Airport recognises the airport as a strategic transport hub. The policy seeks

"Any proposed development must not compromise the safe operation of the airport. Matters such as the height of buildings, external lighting, landscaping, bird hazard management and impact on communication and navigation equipment will be taken into account in assessing any potential impact."

With regards residential development

"Applications for residential development in areas where aircraft noise levels are in excess of 57dB LAeq (the summer 16-hour dB LAeq measurement) as identified on the airport noise contour map will be refused, due to the inability to create an appropriate level of residential amenity, and the need to safeguard the future operation of Aberdeen International Airport. For proposed development which would be located within the remaining noise contours, applicants may be required to submit a noise assessment demonstrating that an appropriate level of residential amenity could be achieved."

Response - with regards the first issue, to ensure the safe operation of the airport is not compromised, Aberdeen International Airport, as part of the technical consultation, confirmed no objection to the development. With regards the second issue, the Appellant is confident that through the use of modern building methods, a satisfactory level of residential amenity can be achieved.

T5 - Noise, policy notes

"In cases where significant exposure to noise is likely to arise from development, a Noise Impact Assessment (NIA) will be required as part of a planning application."

The SG Noise provides advice on when a NIA might be required.

The TAN Planning and Aberdeen Airport provides additional guidance on the interpretation of policies contained within the Aberdeen Local Development Plan 2012, the last Plan, not the extant Plan and does not carry the same weight as Supplementary Guidance. In relation to noise, the TAN advises that communities become significantly annoyed by aircraft noise above 57dB and refers to the aircraft

noise contour map (Map C), which shows these contours over Dyce, these noise contours are dated 2006.

Response - The Appellant contends that many residential properties in Dyce/Stoneywood lie within the noise contours and a number of planning applications have been approved for residential development within these zones. Therefore it is clear that a satisfactory level of residential can be achieved and maintained.

Discussion

The Town & Country Planning (Scotland) Act 1997 as amended requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.

The appeal seeks planning permission for redevelopment of a redundant and derelict site to a ground floor cafe/hot food takeaway, with first floor flat. All technical consultations were satisfactory and the Planning Service found the ground floor cafe se to accord with all relevant planning policies. It is the first floor residential element, in a location close to Aberdeen International Airport that led to the refusal.

The Appellant contends that the Council in selling the site suggested in its Sales particulars that the site was appropriate for residential development and the Appellant purchased the site on this basis. Secondly, that the continued empty and derelict site detracts from the attractive and busy street scene that is Victoria Street. There was support from many in the community and especially the community council, with many noting the need for such a use in Dyce. Finally, examples are presented where residential developments have been considered appropriate.

The Appellant submits that the Appeal complies with all policies of the Scottish Government and Aberdeen City Council and as a result we would respectfully request that the appeal is upheld.