

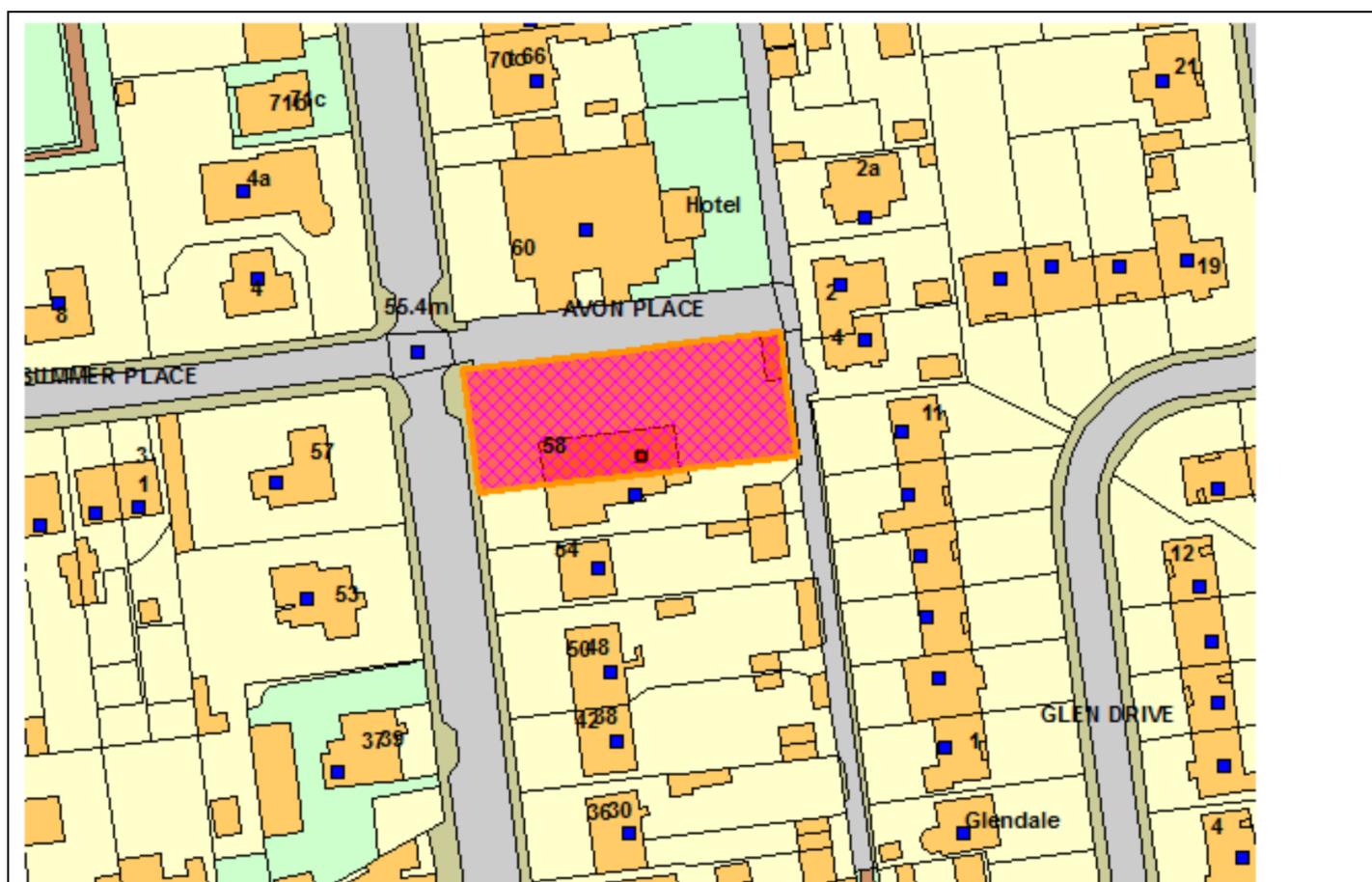


## Planning Development Management Committee

Report by Development Management Manager

**Committee Date: 3 November 2022**

Site Address:	Granville, 58 Victoria Street, Dyce, Aberdeen, AB21 7EE
Application Description:	Partial change of use of existing guest house to class 3 (food and drink) including erection of side extension and associated works
Application Ref:	220837/DPP
Application Type	Detailed Planning Permission
Application Date:	30 June 2022
Applicant:	Mr Saad Salamat
Ward:	Dyce/Bucksburn/Danestone
Community Council:	Dyce And Stoneywood
Case Officer:	Aoife Murphy



## **RECOMMENDATION**

Approve Conditionally

## **APPLICATION BACKGROUND**

The application site lies on the east side of Victoria Street, at its junction with Avon Place. This corner site comprises a substantially extended 1½ storey traditional semi-detached property which is currently used as a guest house (Class 7). The site is fully enclosed with a low granite wall and hedge along the front boundary and a 1.5m high granite wall along both the side (north/south) and rear (east) boundaries. Within the site, a 1.5m high granite wall extends from north to south, forming a division between the front and rear gardens. Vehicular access is provided via an existing entrance off Avon Place along the northern boundary. Two outbuildings can be found to the rear of the site.

### **Relevant Planning History**

210815/DPP – Detailed Planning Permission for a partial change of use of the existing guest house to form Class 3 (food and drink) and installation of flue – Refused 5 November 2021.

210316/DPP – Detailed Planning Permission for a partial change of use of the existing guest house to form hot food takeaway (sui generis) including formation of entrance with ramp and steps – Withdrawn 17 May 2021.

110579 – Detailed Planning Permission alterations to form new window for the formation of 4 bedrooms and en-suite – Approved, 13 June 2011.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Permission is sought for a partial change of use from guest house to café (Class 3) which would consist of utilising the existing dining room to provide a seating area and servery. The existing utility will be converted into a storage area, while the kitchen would be retained and used to serve both the proposed café and the occupants of the remaining lettable rooms. The proposal would also utilise the existing flue on the north elevation. The proposal would also see the formation of an internal WC, but this does not fall part of the application.

In terms of access to the proposed café, this would be via a new extension and opening on the north elevation, which would see an entrance door looking west towards Victoria Street. The extension would have a pitched roof, would be finished in timber linings (stained) and a slate roof, measuring 3.2m by 2.3m with a height of 4.3m. This entrance would be separate to the existing entrance to the building which would be retained to provide access to the existing guest house only. In terms of pedestrian access off Victoria Street, it is now proposed to form a new access by removing a portion of the existing boundary hedge and low-lying wall, providing direct access to the proposed extension and Class 3 unit.

No other works are proposed to the existing elevations and as the works only involve part of the building, the remainder would be retained as a guest house falling within Class 7. In terms of opening hours, none have been noted within the Planning or Design Statements, however it has been agreed that the unit would cease operation at 7pm.

### **Amendments**

The following amendments have been made to this proposal:

- It is no longer proposed to utilise an existing outbuilding, located on the north elevation, for a pizza oven and the further flue which would have extended from the roof of the existing

extension up the roof plane of the existing building has also been removed from the proposal. This was not at the request of the Planning Service.

- A new pedestrian access and path, at the request of the Planning Service, is now proposed to be formed off Victoria Street to the left-hand side of the existing access. The location of this has since been amended so the proposal removes part of the existing hedge and low-lying granite wall rather than the high-level granite.
- The closing hours have been revised at the request of the Planning Service so that the Class 3 unit would cease operation at 7pm rather than 11pm as noted in the supporting information.

### **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=REA69LBZHFW00>

- Design Statement
- Noise Impact Assessment
- Odour Impact Assessment
- Planning Statement
- Amended Noise Impact Assessment – amended to remove reference to the takeaway and pizza oven
- Amended Odour Impact Assessment – amended to remove reference to the takeaway and pizza oven
- Amended Planning Statement
- Amended Design Statement

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

The application has been referred to the Planning Development Management Committee because there is an outstanding objection from the Dyce and Stoneywood Community Council, as such it falls outwith the Council's Scheme of Delegation.

### **CONSULTATIONS**

**ACC - Environmental Health** – having reviewed the Noise and Odour Impact Assessment's the Service advises that it has no objection to the development subject to conditions regarding mitigation and hours of operation and an advisory regarding an Odour Management Plan.

**ACC - Roads Development Management Team** – has advised that it has no objection to the proposal in terms of access, parking or accessibility.

**ACC - Waste and Recycling** – has no objection, but has provided general comments regarding commercial developments.

**Aberdeen International Airport** – has no objection subject to a condition relating to the submission and approval of a Bird Hazard Management Plan.

**Dyce and Stoneywood Community Council** – upon reviewing the revised proposal, the community council maintains its objection to the proposal due to tensions with Policy H1 - Residential Areas and Policy D1 - Quality Placemaking by Design.

## **REPRESENTATIONS**

Three representations have been received all objecting to the proposal. The matters raised can be summarised as follows –

- Lack of compliance with Policy H1
- Lack of parking for customers and deliveries
- Road safety
- Take away use and impacts on traffic as a result
- Potential for the sale of alcohol
- Litter
- Noise due to increased foot and road traffic and late opening
- General noise disturbances from such a use
- Health concern

## **MATERIAL CONSIDERATIONS**

### **Legislative Requirements**

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.

### **National Planning Policy and Guidance**

Scottish Planning Policy (SPP)

### **Development Plan**

#### Aberdeen City and Shire Strategic Development Plan 2020

The current Strategic Development Plan for Aberdeen City and Shire was approved by Scottish Ministers in September 2020 and forms the strategic component of the Development Plan. No issues of strategic or cross boundary significance have been identified.

#### Aberdeen Local Development Plan 2017

Section 16 (1)(a)(ii) of the Town and Country Planning (Scotland) Act 1997 requires that, where there is a current local development plan, a proposed local development plan must be submitted to Scottish Ministers within five years after the date on which the current plan was approved. From 21 January 2022, the extant local development plan will be beyond this five-year period. Therefore, where relevant, weight should be given to paragraph 33 of the Scottish Planning Policy (2014) which states: “Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration”.

The following policies are relevant –

Policy H1 - Residential Areas

Policy D1 - Quality Placemaking by Design

Policy D5 - Our Granite Heritage

Policy T2 - Managing the Transport Impact of Development

Policy T3 - Sustainable and Active Travel

Policy T5 - Noise

### **Supplementary Guidance**

Harmony of Uses

Transport and Accessibility

## **Proposed Aberdeen Local Development Plan 2020**

The Report of Examination on the Proposed Aberdeen Local Development Plan 2020 (PALDP) was received by the Council on 20 September 2022. The PALDP constitutes the Council's settled view as to the content of the final adopted ALDP and is now a material consideration in the determination of planning applications. The exact weight to be given to matters contained in the PALDP (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 following policies are relevant – Policy H1 - Residential Areas, Policy D1 - Quality Placemaking, Policy D7 - Our Granite Heritage and Policy T3 - Parking.

## **EVALUATION**

### **Principle of Development**

The site is located within the residential area of Dyce and as such requires to be assessed against Policy H1 - Residential Areas. This policy advises that proposals for non-residential uses will be refused unless they are considered complementary to residential use or it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.

While a class 3 use is proposed, the principles contained within the Harmony of Uses Supplementary Guidance are valid as it highlights the need to protect the living conditions of residents in close proximity to a development. This forms a major consideration in assessing this proposal, especially given that in general uses such as this can generate unacceptable levels of noise, vibration, odour, traffic disturbance and litter. Furthermore, noise and vibrations generated from cooking and essential extraction equipment, along with increased levels of customer movement, can cause disturbance to residents. Therefore, applications within close proximity to residential units need to be given careful consideration as they can result in significant adverse impacts on residential amenity. As such, the Planning Service must consider whether this location is the most appropriate for a development of this nature, taking into account the context of the surrounding area.

In the case of this existing context, the site lies adjacent to a Neighbourhood Centre to the west and a hotel to the north. However, the site is wholly contained within a residential area as designated by the Aberdeen Local Development Plan 2017, with several residential properties surrounding the site and building, including the adjoining property at 56 Victoria Street to the east. Additionally, and as noted above the building within the application site operates and would continue to partially operate as a guesthouse. While it is noted that a hotel is located to the north on the opposite side of Avon Place, these premises have been operating since the late 80's/early 90's and is a standalone property, as such it does not set a precedent for other similar developments in the area and this application must be considered on its own merit.

In terms of relevant planning history, the applicant has previously submitted a planning application for this property, planning reference 210815/DPP, in which detailed planning permission was sought for a partial change of use of the existing guest house to form a Class 3 (food and drink) unit. This application was refused by Aberdeen City Council following determination by Planning Development Management Committee in November 2021. It was decided at that time that the proposed Class 3 use *“would be unacceptability located within and not suited to an existing residential area whereby it would have an adverse impact on the general residential amenity of the area and specifically a significant adverse impact on the level of amenity currently enjoyed by the occupants of the adjacent property, namely 56 Victoria Street, due to the increased and significant level of activity and thus disturbance, arising from customers entering and leaving the premises, including during the evening and night time”*. What needs to be considered in respect to this

application is whether the changes to the proposal address the concerns previously outlined by the Planning Service.

Upon submission of the application, the supporting information highlighted a number of changes specific to this application and also makes comment in relation to the surrounding area. The changes are noted below.

1. An entrance to the proposed unit would be relocated to the north elevation and an extension added. The existing path would then provide access to the guest house only via the existing entrance and a further path would be added which would lead patrons to the new entrance.
2. The reference to a takeaway has been removed from the supporting information.
3. The pizza oven and flue have been removed from the application.

In reference to the surrounding area, the submitted planning statement makes reference to a previous approval, 181741/DPP, Café Twenty One located on Station Road adjacent the existing railway station. Given its surrounding context, which is not comparable to the current application site, the previous decision made by the Planning Service is not relevant to this proposal and does not set a precedent for the proposed change of use. Further claims are made that there are several other uses in the area, which are in close proximity to the application site. The Planning Service do not dispute that there are other uses in the area, but some of these premises are located within designated Neighbourhood Centre while other sites, like Café Twenty One, are not comparable to the current application site and therefore cannot be used as justification for this proposal.

In order to fully assess potential conflict with, or any nuisance to, the enjoyment of existing residential amenity, Environmental Health requested the submission of an Odour and Noise Impact Assessments. This information has now been considered and reviewed by Environmental Health, the Service has advised that it finds the reports acceptable and has no objection to the proposal subject to conditions relating to mitigation as outlined in the assessments and an advisory regarding an odour management plan.

However, despite these comments, as noted above and in respect of 210815/DPP, Aberdeen City Council had significant concerns regarding the potential impact a Class 3 unit could have on the general amenity of the surrounding area. While changes, outlined above, were made to this proposal, the Planning Service were still of the opinion that such a use would result in harm to the general amenity. This was due to the fact that while it is now proposed to add an additional entrance to the north elevation, which would be the sole entrance to the proposed Class 3 unit, access to the site would still be gained via the existing path and pedestrian access off Victoria Street, meaning that there would still be an intensification of the use of the path resulting in what the Planning Service consider to be a direct impact on the adjoining property at 56 Victoria Street. Additionally, the supporting assessments state that the property is likely to be operate until 11pm, meaning that there could be potential noise disturbance late into the night, which would impact on the general amenity of the area.

To seek to address these concerns the applicant submitted a revised proposal. The amendments include a new pedestrian access and path that is now proposed, which allows direct access to the unit from Victoria Street, meaning that patrons would not need to use the existing path that runs along the mutual boundary. Further to this, the closing hours have been revised following agreement with the applicant, which would see the unit ceasing operation at 7pm rather than 11pm as noted in the supporting information.

Having assessed these changes, the Planning Service can now concede that the initial concerns have been addressed. The new access removes concerns regarding the intensification of the existing path and therefore removes concerns regarding the potential adverse impact on the

neighbouring property at 56 Victoria Street. In respect of the hours of operation, specifically the closing hours, the revision proposed would see the unit close at 7pm rather than 11pm, which removes concerns regarding potential adverse harm and noise disturbance to the amenity of both the neighbouring property and the surrounding area into the evening/night. The change of closing hours means that the proposed Class 3 use is now more akin to a café rather than a restaurant.

With regards to the opening hours, no time has been suggested by the applicant, but the Planning Service are of the opinion that opening the unit at 8am Monday to Friday and 9am Saturday and Sunday, would not result in a detrimental impact on the general amenity of the surrounding area, given that the hours would be more akin with a café and would be more associated with “normal” working hours of the general public.

While a takeaway does not form part of this proposal and the supporting information has been amended to remove reference to a takeaway, Circular 1/1998 states “*Where take-away is a minor component of the business and will not affect environmental amenity it should be treated as de minimus, i.e. as not requiring planning consent*”. In light of this, if it was deemed to be a minor component of the overall use, that has no adverse impact on the environment in terms of noise, odour etc, the takeaway use would not require consent. As such, the revision to the closing hours, which would now see a 7pm closing time, removes concerns regarding the potential for takeaway use into the evening/night. While there may be some takeaway use associated with the proposed Class 3 unit, given that this would be during “normal” working hours, means that there is unlikely to be adverse impacts on the general amenity of the surrounding area, should such use take place.

For the avoidance of doubt, in terms of the hours of operation, a condition will be utilised to ensure that the above comments are adhered to.

In respect of vibration, this is not considered to be an issue with a proposal of this nature. In relation to litter, given that the use would be Class 3, this is not considered to be an issue.

Overall, the Planning Service are now satisfied with the proposal in terms of Policy H1, in that there would be no conflict with, or any nuisance to, the enjoyment of existing residential amenity, however, this is subject to a condition regarding opening hours as noted above.

### **External Alterations**

Policy D1 - Quality Placemaking by Design requires all development to have high standards of design and have a strong and distinctive sense of place which is a result of context appraisal.

The proposal sees the addition of an extension on the north elevation to provide access to the proposed Class 3 unit. In terms of the built form, this is considered to be a relatively small-scale development, which does not appear to overwhelm or dominate either the west or north elevations of the original building. Additionally, while the extension would be more modern in its appearance, due to the choice of materials, it does provide a direct contrast to the existing granite building separating old from new. This considered to be a more appropriate option given the location of the development and one that does not impact on the visual amenity of the surrounding area.

In respect to the new pedestrian access from Victoria Road, as mentioned this is proposed to remove the potential intensification of the existing path. The location of this access has been amended slightly so that the existing high level granite wall can be retained and only part of a hedge and low-lying granite wall would be removed. The removal of this part of the hedge and wall would not result in any impact on the visual appearance of the surrounding area and would be directly tied to the entrance to the Class 3 unit. While the relocation of the access means that the path is slightly kinked, this does not result in any great impact overall.

As such, the proposal does not result in any impact with Policy D1 - Quality Placemaking by Design or Policy D5 - Our Granite Heritage.

## **Transport Impacts**

In relation to transport impacts associated with this proposal, Roads Development Management have reviewed the proposal and notes that the applicant has indicated that the site has four existing car parking spaces. Upon review it is assumed that these spaces relate to parallel parking along the south side of Avon Place, a privately owned road and used for parking by the neighbouring premises including residential properties and the Dunavon hotel.

The associated provision of four spaces is marginally below the maximum parking requirement of six spaces outlined within the supplementary guidance for such a use and while such existing provision is also there to serve the guest house, it is noted that there is further on-street parking available within the lay-by along Victoria Street which would accommodate short term parking. It is also considered that such use would likely predominantly serve the local area, community and residents which lends itself to less reliant on private car travel to/from the proposed use. Therefore, the associated parking would be considered acceptable and allow for alternative travel to/from the proposed café.

In terms of sustainable travel, the site is served by direct access onto publicly adopted footpaths on Victoria Street which provides connectivity to the wider Dyce area. In terms of cycle access to the site this would be on-street until the connections with 'National Cycle Network – Route 1' along the old railway, referred to as Formartine and Buchan Way as well as this same route along Riverview Drive. This route provides connections directly into the City Centre and connections to other cycle infrastructure to other areas of the city. Furthermore, Victoria Street forms part of regular bus service routes in and out of the City, with bus stop provision within approximately 150m of the site. Additionally, Dyce is served by its own rail station with regular services in and out of the city and other areas surrounding Aberdeen, with the station located within 400m to the site.

It is noted that representations raise parking of both cars and delivery vehicles as a concern, however on-street parking is available on Victoria Street, where there are generally no parking restrictions. The potential issue with indiscriminate or illegal parking fall outwith the remit of the Planning system and is therefore not a material planning consideration.

Concerns regarding an increase of traffic, both vehicular and pedestrian as a result if this development have been raised, however, the development is adjacent a main road with sufficient footpaths, as such any increase in traffic and/or pedestrian movements should not impact the surrounding network and this is not a concern that was raised by the Council's Roads Development Management Team. Further concerns relating to road safety have also been raised, but again this is not a concern raised by the Roads Team.

In light of the positive response from Roads Development Management and despite concerns raised through representations, it is considered that the proposal complies with Policy T2 - Managing the Transport Impact of Development and Policy T3 - Sustainable and Active Travel.

## **Community Council Comments**

The Dyce and Stonewood Community Council has objected to this proposal due to tensions with Policy H1 - Residential Areas and Policy D1 - Quality Placemaking by Design. The proposal has been considered fully against the aforementioned policies and is considered to be acceptable for the reasons given above. The Community Council has noted that its preference would be that the existing front door is utilised, however as noted above, there was concerns that this would result in a direct impact on the amenity of the neighbouring property, which would not be considered appropriate.

## **Representations**

The following concerns have been raised through representations; all concerns not addressed above will be considered below.

- Lack of compliance with Policy H1 - *addressed above under “Principle of Development”*.
- Lack of parking for customers and deliveries - *addressed above under “Transport Impacts”*.
- Road safety - *addressed above under “Transport Impacts”*.
- Take away use and impacts on traffic as a result - *addressed above under “Principle of Development”*.
- Potential for the sale of alcohol - *not a material planning consideration*.
- Litter - *addressed above under “Principle of Development”*.
- Noise due to increased foot and road traffic and late opening - *addressed above under “Principle of Development”*.
- General noise disturbances from such a use - *addressed above under “Principle of Development”*.
- Health concern - *the Planning Service have taken into account the duties it has in relation to equalities in its assessment and determination of the proposal. While relevant to the consideration of this application in that the representation highlights concerns relating to sleep and anxiety issues that may be exacerbated by potential noise disturbances, it is considered that the changes made to this proposal, which see the hours of operation amended so that the unit closes earlier, results in a proposal that no longer raises such concerns with the Planning Service. Additionally, the relocation of the entrance and path away from the adjoining property means that there would be no intensification of the existing access and therefore a limited impact as a result of the development. As such, the Service is satisfied that the proposal meets the requirements of the relevant policies and is therefore acceptable.*

## **Equalities Impact Assessment**

An impact assessment is not required because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.

## **Proposed Aberdeen Local Development Plan**

The Report of Examination does not affect policies in a manner that is relevant to this application. The relevant PALDP policies substantively reiterate those in the adopted ALDP and therefore the proposal is acceptable in terms of both plans for the reasons previously given.

## **RECOMMENDATION**

Approve Conditionally

## **REASON FOR RECOMMENDATION**

The proposal is considered acceptable when assessed against the relevant policies, in that there would be no adverse impact on or harm caused to the residential amenity of the surrounding area, due to suitable conditions that would ensure the implementation of noise and odour mitigation measures and the restriction of the hours of operation. Additionally, the proposed extension and new access do not result impact the visual appearance of the existing building or the surrounding area and there would be no noted impact on traffic or parking in the immediate area. As such, the proposal is considered compliant with Policy H1 - Residential Areas, Policy D1 - Quality Placemaking by Design, Policy D5 - Our Granite Heritage, Policy T2 - Managing the Transport Impact of Development, Policy T3 - Sustainable and Active Travel and Policy T5 - Noise of the Aberdeen Local Development Plan 2017, its associated Supplementary Guidance, Harmony of Uses and Transport and Accessibility and the relevant policies of the Proposed Aberdeen Local Development Plan 2020.

## **CONDITIONS**

### **1. DURATION OF CONSENT**

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. HOURS OF OPERATION**

The use hereby approved shall not operate outwith the hours of 08:00am and 07:00pm Monday to Friday; and 09:00am and 07:00pm Saturday and Sunday.

Reason: In order to ensure that the development would not result in undue loss of amenity for surrounding properties.

### **3. NOISE**

That the use hereby approved shall not be brought into use unless the noise mitigation measures set out in the approved Noise Impact Assessment (prepared by Couper Acoustics, Ref: 17720212313 – V3, dated July 2022) have been installed. Once installed the mitigation measures shall be retained in perpetuity, unless otherwise agreed in writing with the planning authority.

Reason: In order to ensure the existing levels of amenity are not impacted upon.

### **4. ODOUR**

That the use hereby approved shall not be brought into use unless the odour mitigation measures set out in the approved Odour Impact Assessment (prepared by Couper Acoustics, Ref: 1720212313 – V3, dated July 2022) have been installed. Once installed the mitigation measures shall be retained in perpetuity, unless otherwise agreed in writing with the planning authority.

Reason: In order to ensure the existing levels of amenity are not impacted upon.

### **5. ACCESS**

That the use hereby approved shall not be brought into use unless the existing internal doorway providing access to this unit from the guest house has been built up, as shown on drawing reference 3501 – 2/07 B, and the new pedestrian access along the western boundary and the associated path, as shown on drawings references 3501 – 2/02 Rev C and 3501 – 2/09 Rev C, have been formed and are fully operational. Once completed the works shall be retained in perpetuity.

For the avoidance of doubt the existing entrance to the guest house shall not be used for the purposes of accessing the Class 3 unit hereby approved.

Reason: In order to ensure the existing levels of amenity are not impacted upon.

## **ADVISORY NOTES FOR APPLICANT**

### **Odour Management Plan**

It is recommended that the operator to establish a written Odour Management Plan including cleaning and maintenance procedures for the plant corresponding with manufacturer's instructions and extent of use, to reduce risk of malodour and statutory nuisance going forward.