

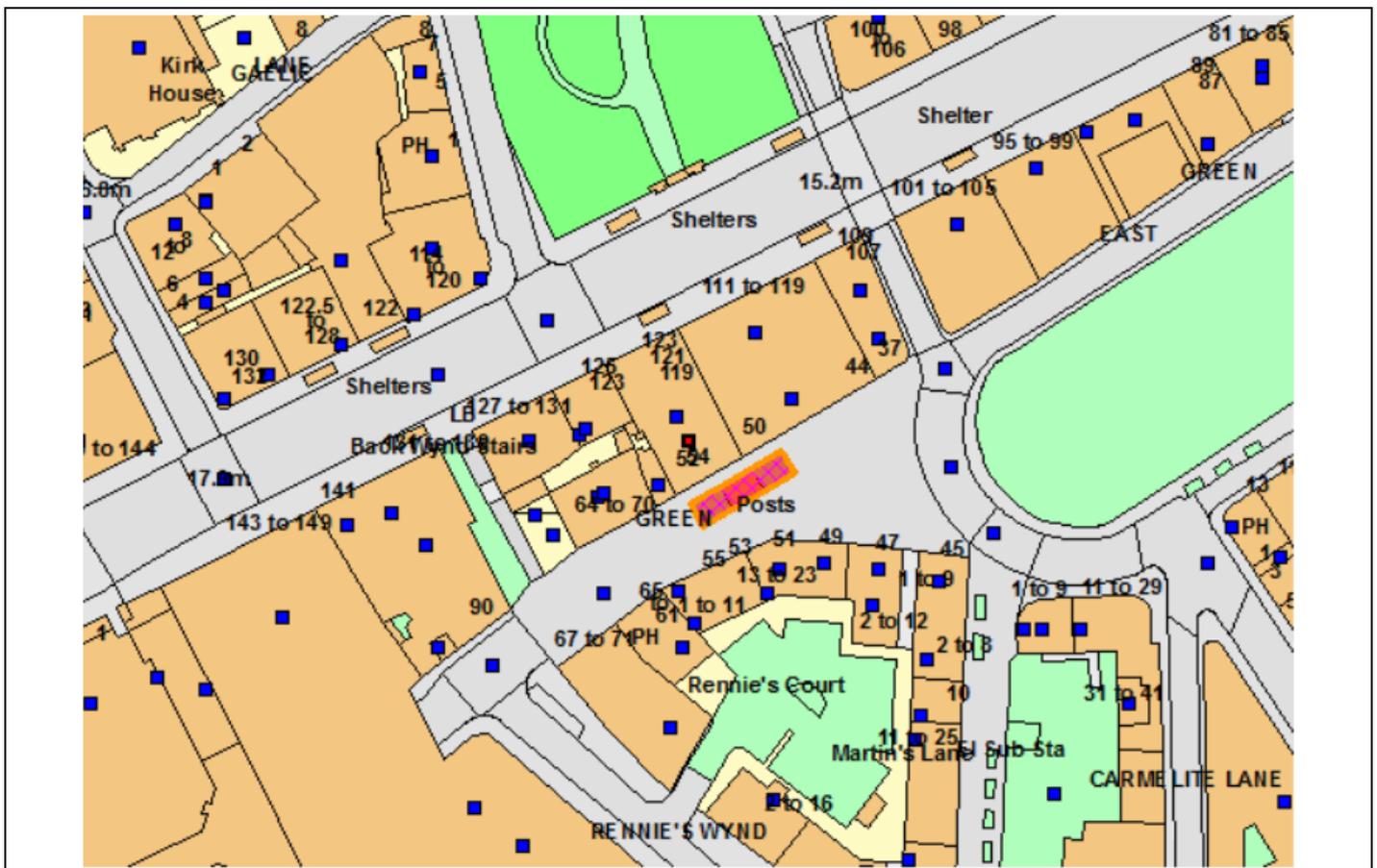


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 29 June 2023

<b>Site Address:</b>	52 The Green, Aberdeen, AB11 6PE
<b>Application Description:</b>	Erection of timber glazed pavilion for an outdoor seating area (retrospective)
<b>Application Ref:</b>	230437/DPP
<b>Application Type</b>	Detailed Planning Permission
<b>Application Date:</b>	17 April 2023
<b>Applicant:</b>	Mr Steven Bothwell
<b>Ward:</b>	George Street/Harbour
<b>Community Council:</b>	City Centre
<b>Case Officer:</b>	Alex Ferguson



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## RECOMMENDATION

Approve Conditionally

## **APPLICATION BACKGROUND**

### **Site Description**

The application site comprises an external street café area on the public road carriageway at The Green, to the front of, and associated with, the 'Café 52' restaurant (no. 52). The street café comprises a raised timber deck in three sections, to accommodate the change in ground level rising to the east, enclosed by steel railings infilled with glazed panels. The central and eastern sections of the decked area are occupied by an unauthorised single storey glazed pavilion building (the subject of this application) used to provide additional seating for the restaurant. The western section contains a timber 'shepherd's hut' structure that also facilitates further covered seating for the restaurant. Various planters containing small trees and shrubs are situated within and around the enclosed area.

The adjacent shared surface street is used intermittently as a street market. Buildings fronting The Green host a mix of uses including restaurants, retail units, public houses and residential flats, with commercial uses predominant at ground floor level. The Green is flanked on both sides by predominantly historic buildings of mixed architectural styles and ranging between 3 and 6 storeys, all within the City Centre Conservation Area.

### **Relevant Planning History**

**082325** - Planning permission for the erection of a glazed pavilion, occupying the existing external seating area, and additional land, was granted at Committee in 2009. This permission expired unimplemented.

**141504** - Retrospective planning permission for the erection of a deck, canopy and railings, to form an outdoor seating area at the site was granted unconditionally in November 2014.

**160603** – Planning permission for the erection of a temporary 'shepherd's hut' outdoor seating cabin and formation of timber cladding to the above covered seating area was granted conditionally in June 2016, for a period of 3 years (expiring November 2019).

**190203/DPP** – Planning permission for the retention of the 'shepherd's hut' outdoor seating cabin and timber cladding was granted conditionally in March 2019, for a further period of 3 years (expiring November 2022).

**221581/DPP** – Planning permission for the retention of the 'shepherd's hut' outdoor seating cabin and associated timber cladding was granted conditionally in February 2023, for a further period of 3 years (expiring February 2026).

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Detailed planning permission is sought for the retention of a currently unauthorised glazed pavilion structure that occupies the central and eastern two thirds of the existing decked outdoor seating platform on The Green, outside Café 52. The glazed pavilion is single-storey in height and is constructed with a black-painted timber frame, grey roofing felt and glazed walls. It measures 11.6m long by 4m wide and has a pitched roof with a total height of 3.15m and an eaves height of 2.5m (from ground level). The pavilion is accessed from the street via a door on its northern elevation.

## Amendments

None.

## Supporting Documents

All drawings can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RSQUQ0BZIDZ00>

## Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because more than 5 representations either objecting to, or raising concern about, the proposed development have been received.

## CONSULTATIONS

**ACC - Environmental Health** – No objection, subject to the attachment of conditions restricting the opening hours to between 10am and 10pm and prohibiting the playing of amplified music or other noise from speakers.

**ACC - Roads Development Management Team** – No objection, although the requirement for the operator to also obtain a pavement café permit for the outdoor seating structure is highlighted. In the event that any statutory undertakers require access to the road carriageway underneath the structure then the structure will have to be removed at the owner's expense.

**City Centre Community Council** – No comments received.

## REPRESENTATIONS

405 representations have been received, 397 of which are supportive of the application and 8 of which either object to, or raise concerns about, the development. The matters raised in the representations received are summarised as follows:

### Comments in support:

- The glazed pavilion is a positive facility which enhances the character and visual amenity of The Green and the wider city centre, making it alive and vibrant. Without it, The Green would become another redundant space in the city centre;
- The covered structure is of a high-quality design, much more sympathetic to the surrounding area than the many temporary marquees erected during Covid;
- There is a lack of al-fresco dining options in Aberdeen and the pavilion allows a cosmopolitan 'café culture' of outdoor seating to operate during periods of inclement weather, which should be supported;
- The structure makes The Green safer and more inviting, particularly when illuminated in the evenings;
- The associated planting enhances biodiversity;
- The Council severely underestimate the support the longstanding existing restaurant business gives to individuals in Aberdeen via the employment of staff, contributions to

charity etc;

- The local, independent business has been operating for nearly 30 years producing high-quality food and businesses like the applicant's should be supported and assisted by the Council, not threatened with the removal of external seating areas;
- The demolition of the structure is typical of small-minded and un-progressive attitudes in a governing body which has done nothing over many years to arrest the decline of Aberdeen City Centre;
- Rather than spending money demolishing the pavilion it might be an idea to spend the money on cleaning up Union Street and the surrounding buildings;
- The structure should be supported, at least on a temporary, time-limited basis (e.g. 5 years), which would allow permission to be revoked in the future should it become an eyesore;
- The outdoor seating area helps those with mental health issues and social anxiety to eat out in a safe space;
- Marquees have been allowed to be retained at other venues in Aberdeen such as the Dutch Mill;
- The Green is pedestrianised and the structure does not impinge on traffic or footfall;
- The structure does not adversely impact on the surrounding historic built environment; and
- The structure does not adversely impact on any neighbouring businesses.

#### Objections / concerns raised:

- The structure is not in keeping with the surrounding area;
- How is it possible to apply retrospectively for planning permission for something that has already been constructed? The operator of the restaurant premises should have obtained planning permission prior to installing the structure and permission should not be granted retrospectively, due to a breach of planning rules;
- If the structure is allowed to remain it would result in an inconsistent approach, with other businesses having been told to remove their temporary outdoor seating structures; and
- It is doubted that any health and safety standards have been followed.

#### Non-material considerations:

- Personal comments made in some representations in relation to the applicant and their alleged beliefs & opinions do not constitute material planning considerations and are irrelevant to the assessment of the application.

### **MATERIAL CONSIDERATIONS**

#### **Legislative Requirements**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that when 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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

#### **Development Plan**

## National Planning Framework 4 (NPF4)

National Planning Framework 4 (NPF4) is the long-term spatial strategy for Scotland and contains a comprehensive set of national planning policies that form part of the statutory development plan. The relevant provisions of NPF4 that require consideration in terms of this application are –

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 7 (Historic Assets and Places)
- Policy 14 (Design, Quality and Place)
- Policy 27 (City, Town, Local and Commercial Centres)

## Aberdeen Local Development Plan 2023 (ALDP)

The following policies are relevant –

- Policy VC1 (Vibrant City)
- Policy VC4 (City Centre and Retail Core)
- Policy D1 (Quality Placemaking)
- Policy D6 (Historic Environment)

## Other National Policy and Guidance

- Historic Environment Policy for Scotland (HEPS)

## Other Material Considerations

- City Centre Masterplan (CCMP)

## EVALUATION

### Principle of Development

Policy 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 (NPF4) states that: *‘Development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported.’*

Policy VC1 (Vibrant City) of the Aberdeen Local Development Plan 2023 (ALDP) states: *‘Proposals for new development, or expansion of existing activities, in the city centre, which support its vibrancy and vitality throughout the day and/or into the evening will be supported in principle. Proposals will contribute towards the wider aims of the City Centre Masterplan and its vision for the city centre.’*

*The applicant/agent must demonstrate that any adverse impacts can be mitigated and, where applicable, that suitable residential amenity is achieved or maintained. Proposals will be considered in relation to their locality and context within the city centre.’*

Policy VC4 (City Centre and Retail Core) of the ALDP requires development within the city centre to contribute towards the vision for the city centre as a major regional centre as expressed in the City Centre Masterplan (CCMP). It notes that the city centre is the preferred location for all retail,

office, hotel, commercial leisure, community, cultural and other significant footfall generating development, and requires all proposals to:

1. *Enhance or maintain the vitality and viability of the city centre;*
2. *Contribute to the wider aims of the City Centre Masterplan;*
3. *Make a positive contribution to footfall;*
4. *Not create overprovision and/or clustering of a particular use in the immediate vicinity which would undermine the character and amenity of the regional centre; and*
5. *Not conflict with the amenity of the neighbouring area/commercial uses. Proposals at ground floor level will also create or maintain an active street frontage which is accessible to the public from the street.*

This application seeks consent to retain the unauthorised glazed pavilion structure which has been in situ for approximately 4 years. The structure for which permission is retrospectively sought is directly associated with the existing authorised Class 3 (food & drink) use of the adjacent 'Café 52' restaurant at 52 The Green. The principle for similar development has already been established by temporary consents in 2016, 2019 and 2023 (Refs: 160603, 190203/DPP and 221581/DPP) for the installation and subsequent retention of the adjacent 'shepherd's hut' structure which also sits atop the decked area, immediately adjacent to the glazed pavilion. The decked area benefits from a permanent planning permission dating from 2014. The latest temporary consent for the shepherd's hut is due to expire in February 2026.

Albeit comprising a covered and enclosed structure, rather than open outdoor seating, the proposals allow for on-street 'external' seating associated to an existing Class 3 use, which contributes towards the 'café culture' aspired to for the city centre as encouraged by the City Centre Masterplan (CCMP). The covered external seating, facilitated by the largely transparent pavilion, enhances the vitality and viability of the city centre by enlivening and activating the public realm in The Green, both during the day and into the evening periods. The additional seating makes a positive contribution to footfall to The Green, does not result in the overprovision of a particular use and does not conflict with the amenity of the neighbouring area or commercial uses. The structure is transparent and creates/maintains an active street frontage which is accessible from the street. The proposed retention of the structure is therefore compliant with the aims and objectives of Policy 27 (City, Town, Local and Commercial Centres) of NPF4, the City Centre Masterplan and Policies VC1 (Vibrant City) and VC4 (City Centre and Retail Core) of the ALDP.

### **Tackling the Climate and Nature Crises, Climate mitigation and Biodiversity**

Policy 1 (Tackling the Climate and Nature Crises) of NPF4 requires significant weight to be given to the global climate and nature crises in the consideration of all development proposals. Policy 2 (Climate mitigation and adaptation) requires development proposals to be designed and sited to minimise lifecycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change.

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

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

the current application, several timber planters containing small trees and shrubs are placed around the perimeter of the decked structure. These make a small contribution towards localised biodiversity at The Green and it is thus considered that the proposals are acceptable in accordance with Policy 3 of NPF4.

### **Design quality and impact on the historic environment**

Policy 14 (Design, Quality and Place) of NPF4 and Policy D1 (Quality Placemaking) of the ALDP both seek to ensure that all development is of a high-quality design, appropriate for its context.

Policy 7 (Historic Assets and Places) of NPF4, Historic Environment Policy for Scotland (HEPS) and Policy D6 (Historic Environment) of the ALDP all require development in conservation areas to either preserve or enhance the character and appearance of the conservation area and for proposals to either preserve or enhance the setting of any nearby listed buildings.

The glazed pavilion is of a relatively high-quality design, being single storey in scale and predominantly glazed, which reduces the massing of the structure and ensures an active frontage to the street. The adjacent 'shepherd's hut' structure which occupies the western third of the decked area upon which the glazed pavilion sites was granted temporary consent for 3 years in 2016 and then for a further 3 years in 2019 and 2023 respectively. The consents were all time-limited due to the temporary nature of the structure. It is considered that the design, scale and siting of both the shepherd's hut and the glazed pavilion do not significantly detract from the visual amenity of the area, nor the character and appearance of the conservation area. It is, however, recognised that both structures are temporary in nature and that, over time, their condition and appearance could worsen to an extent where they may harm visual amenity, or the context of The Green could change such that the placement of structures within it becomes unacceptable. It is therefore considered that the granting of a temporary consent of 3 years for the glazed pavilion is appropriate. This would also approximately coincide with the duration of consent currently granted for the shepherd's hut and would allow the Planning Authority to review the situation again in 2026.

The retention of the glazed pavilion would ensure no adverse impact on the setting of nearby listed buildings which are somewhat separated from the site, or principally front onto Union Street and back onto The Green. Given the relatively contained nature of The Green, as a public space, there would be no adverse impact on longer distant views or the townscape.

Subject to a condition imposing a time limit of consent, it is considered that the glazed pavilion is of an appropriate design, scale and siting for its context and that it has a neutral impact on visual amenity, the character and appearance of the conservation area and the setting of any nearby listed buildings, therefore the development is compliant with Policies 7 and 14 of NPF4, HEPS and Policies D1 and D6 of the ALDP.

### **Amenity**

The structure is fully enclosed and is not situated directly below or immediately adjacent to any residential properties and it is considered that the structure has not, to-date, and would not (if retained) pose any harm to the amenity of the area. The Council's Environmental Health Service do not object to the application subject to the attachment of conditions restricting the opening hours (to between 10am and 10pm) and prohibiting the playing of amplified music or other noise from speakers.

### **Public safety**

The glazed pavilion structure is placed atop an existing raised timber deck which is itself sited on The Green – a shared surface space which is predominantly pedestrianised albeit used by commercial vehicles for servicing and deliveries. Given the decked structure atop which the glazed pavilion is placed is authorised, the pavilion itself does not pose any risk to road or pedestrian safety. The Council's Roads Development Management team do not object to the application but note that a pavement café permit is required separately to planning permission.

### **Matters raised in representations**

The majority of representations (397 of 405) submitted are supportive of the retention of the glazed pavilion structure, noting that it makes a positive contribution to The Green and the wider city centre, contributes towards café culture, is unique and of an appropriate appearance for the context, and also contributes towards the vitality and viability of the city centre.

The matters raised in the eight representations received objecting to the development can be addressed as follows:

- *How is it possible to apply retrospectively for planning permission for something that has already been constructed? The operator of the restaurant premises should have obtained planning permission prior to installing the structure and permission should not be granted retrospectively, due to a breach of planning rules*

Response: Whilst erecting structures that require planning permission prior to obtaining consent is a breach of planning control, planning permission can be applied for retrospectively and undertaking works without permission does not automatically mean that such works will be refused if and when planning permission is applied for. Each application requires to be assessed on its planning merits, assessed against relevant planning policy and guidance at the time of the application.

- *If the structure is allowed to remain it would be result in an inconsistent approach, with other businesses having been told to remove their temporary outdoor seating structures*

Response: Each planning application is assessed on its own merits, based on the proposed development and the site-specific context. Some other outdoor seating structures have been removed or refused planning permission elsewhere in the city centre but others have been approved where acceptable and compliant with planning policy and associated guidance.

- *It is doubted that any health and safety standards have been followed.*

Response: Health & safety matters related to the construction of buildings are not material planning considerations and are instead dealt with via the building warrant process, where a warrant is required.

### **DECISION**

Approve Conditionally

### **REASON FOR DECISION**

The glazed pavilion structure is directly associated with an existing Class 3 (food & drink) use and its retention for a temporary period would facilitate covered outdoor seating which would enhance

the vitality and viability of the city centre, in accordance with Policy 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 (NPF4), the City Centre Masterplan and Policy VC1 (Vibrant City) of the Aberdeen Local Development Plan 2023 (ALDP). The proposed development would be of a sufficiently small scale and nature such that it would not directly affect the global climate and nature crises, nor climate mitigation and adaptation. It is therefore considered that the development does not conflict with Policies 1 (Tackling the Climate and Nature Crises) or 2 (Climate Mitigation and Adaptation) of National Planning Framework 4 (NPF4). The scale and nature of the proposals do not provide significant opportunities for any on-site biodiversity gain but, nevertheless, there is some associated adjacent planting which contributes to localised biodiversity, therefore the proposals are acceptable in accordance with Policy 3 (Biodiversity) of NPF4. The additional external seating makes a positive contribution to footfall to The Green, does not result in the overprovision of a particular use and does not conflict with the amenity of the neighbouring area or commercial uses. The structure is transparent and creates/maintains an active street frontage which is accessible from the street, therefore the development is compliant with Policy VC4 (City Centre and Retail Core) of the ALDP. Subject to a temporary period of approval, it is considered that the structure has a neutral impact on both visual amenity and on the character and appearance of the conservation area, in accordance with Policies 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of NPF4, Historic Environment Policy for Scotland (HEPS) and Policies D1 (Quality Placemaking) and D6 (Historic Environment) of the ALDP.

## **CONDITIONS**

### **(1) DURATION OF PERMISSION**

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

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

### **(2) TIME LIMITED CONSENT**

The temporary building hereby granted planning permission shall not remain on the site after a 3-year period expiring on 30/06/2026.

Reason: The character and siting of the structure is not such as to warrant its retention on a permanent basis – in the interests of preserving visual amenity and the character and appearance of the conservation area.

### **(3) OPENING HOURS & PROHIBITION OF AMPLIFIED MUSIC**

The hereby approved temporary building shall only be used between the hours of 10am and 10pm on any given day and no amplified music or other such noise generated by speakers shall be played within the structure.

Reason: In order to preserve the amenity of the area in relation to noise emissions.

## **ADVISORY NOTES FOR APPLICANT**

### **(1) PAVEMENT CAFÉ PERMIT**

Permissions to use the footway / road carriageway for pavement cafés are granted by the issue of

permits by the City Council as Roads Authority under Section 59 of the Roads (Scotland) Act 1984. This development requires a pavement café permit. Pavement café permits can be applied for via the Council's website at: [www.aberdeencity.gov.uk/services/services-business/licences-and-permits/pavement-cafe-permit-application](http://www.aberdeencity.gov.uk/services/services-business/licences-and-permits/pavement-cafe-permit-application)

## **(2) STATUTORY UNDERTAKER ACCESS**

Statutory undertakers requiring to undertake works on utilities or roads maintenance may require the removal of the hut and associated decked structure to enable such works to proceed. The removal of the structures in order to obtain access would be undertaken at the owner's expense.