

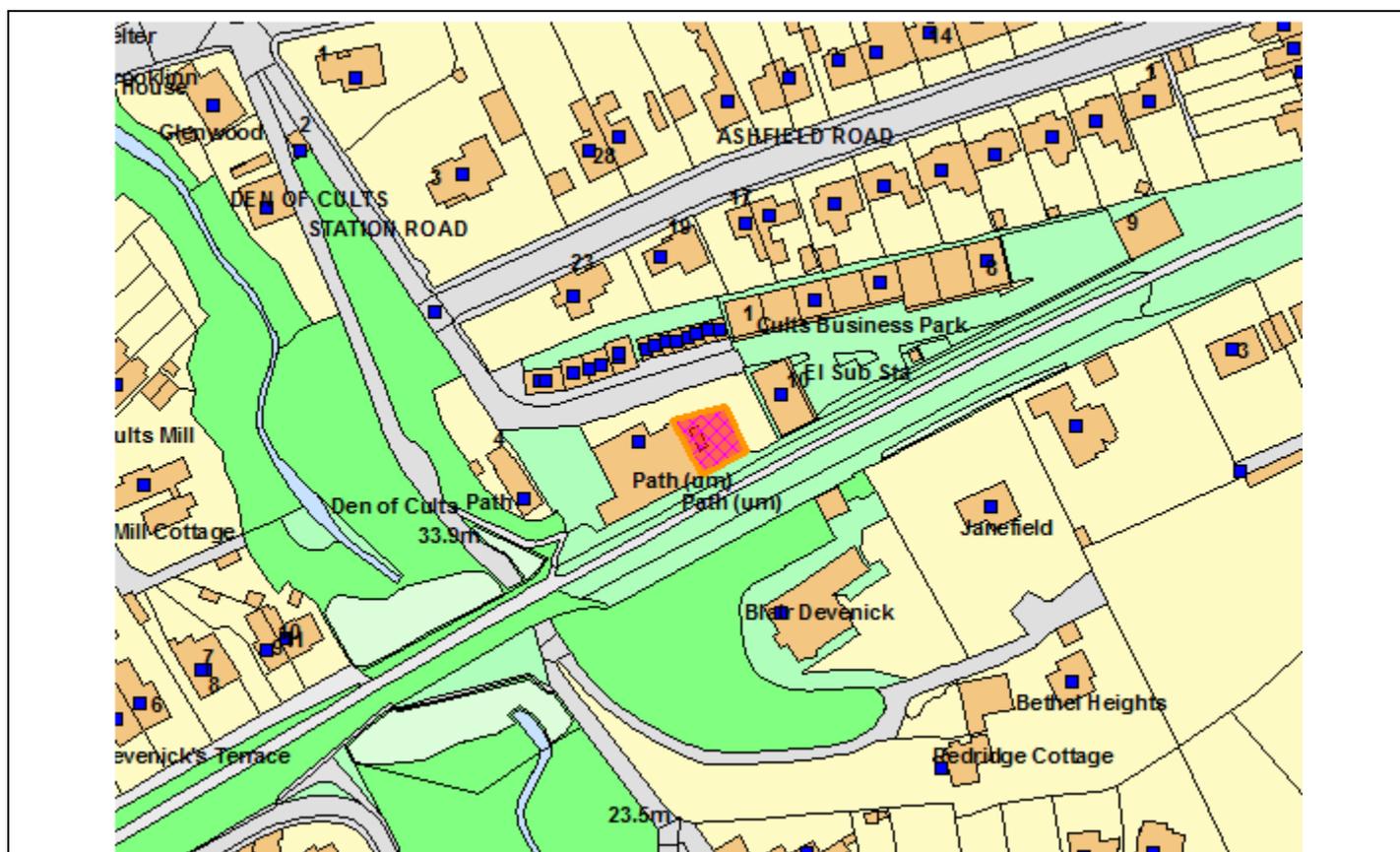


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 2nd November 2023

Site Address:	Former Cults Station, Station Road, Cults, Aberdeen, AB15 9NP
Application Description:	Retention of takeaway food kiosk and outdoor seating area with decking including change of use (temporary for 12 months)
Application Ref:	230922/DPP
Application Type	Detailed Planning Permission
Application Date:	3 August 2023
Applicant:	JJ's Food & Drink Co Ltd
Ward:	Lower Deeside
Community Council:	Cults, Bieldside and Milltimber
Case Officer:	Gavin Clark



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RECOMMENDATION

Approve Conditionally

APPLICATION BACKGROUND

Site Description

The application site, which extends to approximately 210 sqm, relates to an area of land to the immediate east of the former Cults Railway Station on the southern side of Station Road and approximately 125m to the south of North Deeside Road and currently incorporates a coffee/ food kiosk with associated facilities, including outdoor seating area.

The adjacent former station building is currently utilised as a cycle repair business operating under the consented use class of the premises, which was previously a joinery store and workshop (and is currently subject to a separate planning application 230772/DPP) to change its use from class 4 (business) to class 1A (shops and financial professional and other services) and class 3 (food and drink)), also to be considered by Committee.

To the immediate south of the site is the Deeside Way, and further south there are mature trees lining the rear curtilage of a residential property which forms part of the boundary of the Pitfodels Conservation Area (the application site is outwith the conservation area). The Station building itself is located to the immediate west of the application site, with a residential property located approximately 40m west (4 Station Road) of the site. To the north and east are a number of commercial units, the larger of which lie within Cults Business Park (to the east). Further north is a number of residential properties on Ashfield Road (approximately 28m north of the site boundary, behind the existing business units).

Relevant Planning History

Planning permission (Ref: 211587/DPP) was approved by the Planning Development Management Committee on the 17th February 2022 for the installation of takeaway food kiosk and outdoor seating area with decking including change of use (partly retrospective) (Temporary for 18 months). This permission expired on the 31st July 2023.

An application for planning permission (Ref: 230772/DPP) is currently pending consideration (and is due to be considered at this meeting of the Planning Development Management Committee) for a change of use from class 4 (business) to class 1A (shops and financial professional and other services) and class 3 (food and drink) with covered outdoor seating area including demolition of existing lean to extension and erection of single storey extension; alterations to a shop front; re-cladding; installation of doors, rooflights and roof repairs with associated car parking and other associated works. This application relates to the former station building and immediately surrounding land, including the area that is the subject of the current application.

An application for planning permission (Ref: 210140/DPP) was refused by the Planning Development Management Committee in October 2021 for a change of use to class 3 (food and drink) with outdoor seating area including alterations to a shop front; re-cladding; installation of doors, rooflights and roof repairs with associated works. This application related to the former station building and immediately surrounding land, including the area that is the subject of the current application. No appeal was submitted against this refusal. The reasons for refusal of the application were that the proposal was considered contrary to Policy H1 due to the scale of development impacting on residential amenity and contrary to Policy T3 due to the absence of a segregated footway access from North Deeside Road.

APPLICATION DESCRIPTION

Description of Proposal

The proposal seeks detailed planning permission for the retention of the existing takeaway food kiosk and outdoor seating area with decking including change of use of the land for a further period of 12 months. The submitted site plan shows the existing kiosk building, which is located in the western section of the site and which measures 6m x 2.4m with an overall height of 2.7m; the area of decking measures 2m x 2.4m and is located approximately 0.27m above ground level. Existing timber fencing bounds the site. There are also cycle stands for 15 bicycles, a bin store located to the rear of the premises and three benches with associated seating areas east of the kiosk. Gated access is also provided to the Deeside Way. A gravel area used for parking is located to the north, outwith the application site on the southern edge of Station Road.

Amendments

None

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=RyI3T7BZLVS00>

- Supporting Statement

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee as the proposal has been subject to six or more letters of objection. Subsequently, the proposal falls outwith the Scheme of Delegation.

CONSULTATIONS

ACC - Roads Development Management Team – have no objection to the application. Their response will be discussed in greater detail in the evaluation section of this report.

ACC - Environmental Health – have provided advice in relation to environmental odour controls and operational hours for the building. Their response will be discussed in greater detail in the evaluation section of this report.

ACC - Waste and Recycling – have advised of the general waste management requirements for the proposed development.

Cults, Bielside and Milltimber Community Council – no response received.

REPRESENTATIONS

A total of 12 valid and timeously made objections have been received in relation to this application. The matters raised can be summarised as follows:

1. In relation to the planning process with the application, noting that the proposals were submitted after the original planning permission expired and further concerns in relation to breaches of planning control associated with the use including hours of operation, advertisements, cooking activities and the use of CCTV.

2. The hours of operation, noting that if permission were to be approved, then the hours of operation should reflect similar businesses found in Cults. Concerns were also raised in relation to the impact the proposals would have on similar businesses within the area. One comment also noted that there are no similar uses with access to the Deeside Way and within a residential area.
3. Road safety, in particular the access to the site, additional traffic on the road network, delivery vehicles accessing the site and parking associated with the facility.
4. Potential for litter, odour and noise associated with the facility
5. Overdevelopment of the site and associated impacts on the residential amenity of properties found in the surrounding area, being contrary to Policy H1 of the ALDP 2023.
6. Safety associated with the adjacent platform and access to the Deeside Way.
7. The relationship to the café/ restaurant, which is also being proposed by the applicant.
8. Potential for anti-social behaviour from the outdoor seating area associated with the use.
9. Restrictions which were put in place on Cults Business Park, when it was approved in the 1990s which, amongst other things restricted operations to 8am – 8pm Monday to Friday and 8am – noon on a Saturday, and that all consented uses should fall within Class 4 (Business) of the Use Class Order.
10. The route of leasing the premises from the Council to the applicant, and whether it was leased via the correct processes.

MATERIAL CONSIDERATIONS

Legislative Requirements

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

Development Plan

National Planning Framework 4

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 12: Zero waste
- Policy 13: Sustainable transport
- Policy 14: Design, quality and place

Aberdeen Local Development Plan (2023)

The following policies are relevant –

- Policy H1: Residential Areas
- Policy WB2: Air Quality
- Policy WB3: Noise
- Policy D1: Quality Placemaking

- Policy D2: Amenity
- Policy T2: Sustainable Transport
- Policy T3: Parking
- Policy R5: Waste Management Requirements for New Development

Interim Aberdeen Planning Guidance

Aberdeen Planning Guidance is Interim Planning Guidance. The documents hold limited weight until they are adopted by the Council. The weight to be given to Interim Planning Guidance prior to its adoption is a matter for the decision maker. The following guidance is relevant –

- Transport and Accessibility
- Temporary Buildings
- Noise
- Outdoor Seating (Adopted)

EVALUATION

Principle of Development

In terms of the principle of development, the application site is located within a designated residential area where Policy H1 (Residential Areas) of the ALDP 2023 applies. H1 advises that within such areas, 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.

The Planning Authority must therefore consider the continued impact of the kiosk and associated works and whether the retention of the building/ use would be complementary to the surrounding uses, which are a mix of commercial and residential in nature, and whether it can be demonstrated that the use would have no adverse impact on residential amenity. Compliance with Policy H1 of the ALDP 2023 will be discussed further below.

Impact on Residential Amenity

A number of residential properties in the surrounding area have objected to the proposed development in terms of its impact on residential amenity. There are a number of residential properties in the surrounding area, to the north on Ashfield Road, located approximately 28m from the application site boundary, a dwellinghouse to the west at 4 Station Road, which is located beyond the existing station building at a distance of approximately 42m. It is also noted that the properties on Ashfield Road sit at a higher level than the former station area, and there are existing business uses and garages which sit between the application properties and these rear boundaries. The dwellinghouse to the south lies around 40m away, with trees and bushes on its northern boundary.

The retention of the café kiosk for a further temporary period is considered acceptable given the context of the surrounding area, which is mixed use in nature with nearby residential properties and a number of business and commercial uses in the immediate surrounds, with the immediate context being associated with the business park and the adjacent cycle repair business. The location of the site adjacent to the Deeside Way also brings a number of users to the site via that access and allows the proposal to cater for both a local and wider pool of users, with walkers and cyclists being able to utilise the facility, without the requirement to necessarily access the site via road from North Deeside Road.

It is clear that the proposals would have some impact on residential amenity, as has been highlighted in a number of the representations, although the impact is not considered to be to a significant degree that would warrant refusal of planning permission, due to the relatively small scale of the operations, along with the hours of operation (which are to be controlled via condition). The kiosk does not undertake cooking of foods on site, rather the reheating and provision of foods such as paninis and toasties, and colleagues in Environmental Health remain content with this aspect of the proposal, and if any further complaints were to be received in relation to these matters then these would be investigated under the appropriate legislation. The hours of operation as proposed remain acceptable to colleagues in Environmental Health, with a condition proposed to be applied to the permission in this regard.

Considering the above, given the nature of the proposal, subject to appropriate restrictions, the proposed cooking operations, and the hours of operation, the proposal would not have an adverse impact on residential amenity to such an extent that would warrant refusal of planning permission. The proposal is therefore considered to comply with Policy H1 (Residential Areas) and D2 (Amenity) of the ALDP 2023.

Outdoor Seating

Also of relevant is the adopted Aberdeen Planning Guidance (APG) in relation to Outdoor Seating. This advises that advises that *“proposals for outdoor seating should consider both the immediate and wider context in which they would be situated. As a new addition to an area, the agent of change principle will be applied whereby the applicant is responsible for ensuring their proposals would not cause unnecessary harm to the existing amenity of the surrounding area.”*

In terms of the above, it is considered that the proposed outdoor seating area would be located sufficiently distant and could be adequately controlled (via the consented hours of operation for the kiosk itself) to ensure that the proposals would have no undue adverse impact on the amenity of the surrounding area. In addition, the outdoor seating area would be visible from the existing premises, would not prevent access to neighbouring properties, would respect the amenity of the neighbouring area (as discussed elsewhere), would have suitable waste arrangements and would have no unsociable hours. The proposal is therefore considered to be in general accordance with the aforementioned APG.

Temporary Buildings

Also of relevance is the Interim Aberdeen Planning Guidance (IAPG) in relation to Temporary Buildings.

This advises that *“The Council consider that in most circumstances three years is a reasonable timescale for portable buildings given their basic nature. Should a further period be required, a new planning application would be necessary and the Council would consider that on its merits. During this assessment the Council will consider whether:*

- *the buildings have been maintained in a satisfactory condition, and;*
- *the applicant can present a justifiable case for the continued use of a temporary building rather than the erection of a permanent replacement.”*

The proposal seeks to retain the existing kiosk for a further period of 12 months. From undertaking a site visit it is clear that the building has been maintained in a satisfactory manner. The applicants have also submitted a planning application for the wider site re-development to allow a permanent mixed use development, including a café use to be operated from the main former station building,

and the temporary building would be required for a further period of 12 months to allow for this to take place (should planning permission be granted for that proposal). In this instance the Planning Service are content that the proposals can be justified for a further period and the proposals would comply with the above guidance in this respect.

The IAPG also advises that such buildings should be appropriately located away from the principal elevation, avoid the loss of parking spaces, and avoid landscaped areas. The building is located to the side of the station building, does not utilise existing parking spaces and would not be sited within a landscaped area. As a result of the above, and subject to conditions controlling the temporary nature of the building, it is considered to comply with the Interim Aberdeen Planning Guidance: Temporary Buildings.

Design and Scale

Policy 14 (Design, quality and place) of NPF 4 states that *“development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale”* and *“development proposals will be supported where they are consistent with the six qualities of successful places: healthy, connected pleasant, distinctive, sustainable, adaptable”* while Policy D1 (Quality Placemaking) of the ALDP 2023 advises that *“all development must ensure high standards of design, create sustainable and successful places”*, and also reiterates the Scottish Government’s six qualities of a successful place.

It is noted that in the assessment for the original coffee kiosk application the Planning Authority recognised that the proposal was relatively small scale when compared with the surrounding context; being seen against the backdrop of the station buildings and surrounding business uses. The building and associated structures, on the basis of a further temporary period, has been sited and design with due consideration for its context and would have no adverse impact on the character or amenity of the surrounding area, which includes a mixture of business uses as well as residential properties. The proposal is therefore considered to be in general compliance with both Policy 14 of NPF4 and with Policy D1 of the ALDP 2023.

Traffic/ Roads Impact

Policy T2 (Sustainable Transport) of the ALDP 2023 provides various guidance and seeks to *“minimise traffic generation, increase accessibility, encourage public transport and provide relevant infrastructure”* within the application site. Policy T3 (Parking) of the ALDP 2023 discusses matters such as parking within development and electric vehicle infrastructure. Policy 13 (Sustainable transport) of NPF4 provides similar guidance and advises that *“development will be supported where it has been designed in association with sustainable travel, provides direct links to local facilities, will be accessible by public transport, provide electric vehicle charge points, provide safe and convenient cycle parking and consider the needs of all users, as well as mitigate the impact of development on local transport routes”*.

The proposal has been assessed by colleagues in Roads Development Management, who have noted that the proposals are essentially a renewal of 211587/DPP. They consider the levels of both cycle and car parking on site to be acceptable (with an increase in cycle parking provision) and consider the swept path for a 7.5 tonne vehicle to be appropriate in this instance. They have confirmed they have no objection to the proposals and subsequently there would be no conflict with either Policy 13 of NPF4 or with Policies T2 and T3 of the ALDP 2023.

Waste

Policy 12 (Waste) of NPF4 advises that *“development proposals will seek to reduce, reuse, or recycle materials in line with the waste hierarchy.”* Policy R5 (Waste Management Requirements for New Developments) of the ALDP 2023 advises *“all new developments should have sufficient space for the storage of general waste, recyclable materials and compostable wastes where appropriate”*.

The Supporting Statement indicates that waste facilities are enclosed to the rear of the kiosk, with one waste collection every two weeks from the roadside adjacent to the yard area, with swept path having been submitted to demonstrate how vehicles can access and exit the site. The proposals have been reviewed by colleagues in both Waste and Roads Development Management, who have raised no objections to the current arrangements. Subsequently, there is no conflict with either Policy 12 of NPF4 or with Policy R5 of the ALDP 2023.

Noise

Policy WB3 (Noise) of the ALDP 2023 advises that *“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 proposals and associated supporting information has been assessed by colleagues in Environmental Health. As with the previous application they have noted that the premises does not have a suitable commercial Local Extract Ventilation (LEV) system, which is considered necessary for removal and capture of cooking emissions to control odour and for food hygiene purposes and as a result the premises are not considered suitable for unrestricted cooking activities due to the risk of an adverse odour impact on neighbouring residential properties. Based on the information contained within section 5.4 of the Design Statement colleagues in Environmental Health are satisfied with the provision of a suitably worded condition to restrict cooking activities which are more likely to give rise to odour emissions.

They have also noted that the Design Statement includes details of the hours of operation, which they also consider to be appropriate for the site. Opening hours are proposed to be seasonal, with the following proposed and considered to be acceptable: 08:00 to 19:00 Monday – Thursday, and 08:00 to 20:00 Friday to Sunday (April to September) and 08:00 to 17:00 Monday – Saturday and 09:00 to 17:00 on a Sunday (October to March). This is understood to be in line with the licence granted for the site, along with the hours granted under 211857/DPP.

Colleagues in Environmental Health have raised no objection to the application and as a result the proposed development would comply with Policies WB2 (Air Quality) and WB3 (Noise) of the ALDP 2023.

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) of NPF4 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. Policy 3 (Biodiversity) of NPF4 requires proposals for local development to include measures to conserve, restore and enhance biodiversity, proportionate to the nature and scale of development.

The proposed development, which relates the retention of a catering kiosk for a further temporary period of 12 months, is sufficiently small-scale such that it would not make any material difference to the global climate and nature crises nor to climate mitigation and adaptation, nor are there any opportunities to minimise greenhouse gas emissions given the nature of the proposals. Therefore the proposals are compliant with Policies 1 and 2 of NPF4. The proposed development would be small-scale and does not offer the opportunity for any biodiversity gain (which will be discussed in further detail in the associated planning application for the wider site) and the proposals are thus considered to be acceptable, despite some minor tension with Policy 3 of NPF4.

Matters Raised in Representation

1. In relation to the planning process with the application, noting that the proposals were submitted after the original planning permission expired and further concerns in relation to breaches of planning control associated with the use including hours of operation, advertisements, cooking activities and the use of CCTV. *Response: the timing of the submission of the application was unfortunate, and the submission of the application took a number of reminders from the Planning Service to the applicant. That being said, correct procedures have been followed in this instance. It should also be noted that a number of potential breaches of planning control have been investigated on site (both by Planning and Environmental Health), with either no breaches found or the breach of planning control rectified.*
2. In relation to the hours of operation, noting that if permission were to be approved, then the hours of operation should reflect similar businesses found in Cults. Concerns were also raised in relation to the impact the proposals would have on similar businesses within the area. One comment also noted that there are no similar uses with access to the Deeside Way and within a residential area. *Response: the proposed hours of operation are in line with the previous approval on site and were considered to be acceptable to colleagues in Environmental Health. The impact on similar uses in the surrounding area is not considered to be significant and the fact that the proposal is the only such use on the Deeside Way is noted.*
3. In relation to road safety, in particular the access to the site, additional traffic on the road network, delivery vehicles accessing the site and parking associated with the facility. *Response: colleagues in Roads Development Management have raised no objection to this element of the proposal, with swept path analysis submitted and appropriate levels of parking provided within the curtilage of the site.*
4. With regards to litter, odour and noise associated with the facility. *Response: a Litter Management Plan was previously conditioned on site, and it is the intention of the Planning Authority to retain this condition for the duration of the planning permission.*
5. In relation to overdevelopment of the site and associated impacts on the residential amenity of properties found in the surrounding area, being contrary to Policy H1 of the ALDP 2023. *Response: the Planning Authority have considered the impact on residential amenity in the above evaluation and do not consider the impacts to be contrary to the aims and aspirations of the ALDP 2023.*
6. In relation to safety associated with the adjacent platform and access to the Deeside Way. *Response: the platform is outwith this site, but it is noted that safe access can be taken onto the Deeside Way to the west of the application site and station building.*

7. In relation to the café/ restaurant, which is also being proposed by the applicant. *Response: not relevant to the determination of this application.*
8. Anti-social behaviour from the outdoor seating area associated with the use. *Response: not a material planning consideration.*
9. In relation to restrictions which were put in place on Cults Business Park, when it was approved in the 1990s which, amongst other things restricted operations to 8am – 8pm Monday to Friday and 8am – noon on a Saturday, and that all consented uses should fall within Class 4 (Business) of the Use Class Order. *Response: the planning permission was granted in the 1990s and relates to the adjacent business park. It is not considered to be of direct relevance to the determination of this application.*
10. Concerns were raised in regards to the route of leasing the premises from the Council to the applicant, and whether it was leased via the correct processes. *Response: this is not a material planning consideration.*

RECOMMENDATION

Approve Conditionally

REASON FOR RECOMMENDATION

The retention of the takeaway food kiosk and outdoor seating area use for a further period of 12 months is considered to be an acceptable form of development, which is not considered to have an adverse impact on the character and amenity of the surrounding area. The building has been designed with due consideration for its context and is located in an accessible location, with an acceptable access, parking area and cycle parking facilities provided to the satisfaction of colleagues in Roads Development Management. The building is considered to be of a temporary nature and a related temporary permission is considered appropriate. The proposal is considered to comply with Policies 1: Tackling the climate and nature crises, 2: Climate mitigation and adaptation, 3: Biodiversity, 12: Zero waste, 13: Sustainable transport and 14: Design, quality of National Planning Framework 4 and with Policies H1: Residential Areas, WB2: Air Quality, WB3: Noise, D1: Quality Placemaking, T2: Sustainable Transport, T3: Parking and R5: Waste Management Requirements for New Development of the Aberdeen Local Development Plan 2023 and the adopted Aberdeen Planning Guidance: Outdoor Seating.

CONDITIONS

(01) TEMPORARY PERMISSION

That planning permission is hereby granted for a temporary period only and shall cease to have effect on 1st November 2024 (the 'cessation date'). Prior to the cessation date, the application site shall be cleared of all works and development approved under the terms of this permission (including any subsequent ancillary works, infrastructure, fixtures, fittings and any temporary developments permitted under Class 14 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) and reinstated in accordance with the agreed restoration scheme submitted to and approved in writing by the Planning Service under the terms of Condition 2 of this permission.

Reason: To enable the impact of the temporary development on the amenity of the surrounding area to be reviewed and to ensure the appropriate restoration of the site.

(02) SITE CLEARANCE

That at least two months prior to the cessation date of 1st November 2024, full details of a scheme for the restoration of the application site shall be submitted to and approved in writing by the Planning Service. Prior to the cessation of this permission the site shall be restored in accordance with the approved restoration scheme.

Reason: To ensure the timeous and appropriate restoration of the site following the expiry of this temporary permission, in the interests of the visual amenity of the area.

(03) COOKING ACTIVITIES - RESTRICTION

That no cooking or frying operations (including but not limited to: deep fat frying, shallow frying, oven cooking, boiling, stewing, grilling, or broiling) shall be carried out on the premises.

Reason: in order to protect the amenity of neighbouring uses from cooking odours.

(04) LITTER MANAGEMENT PLAN - COMPLIANCE

That the proposals hereby granted planning permission shall be undertaken in accordance with the details outlined in the Litter Management Plan (Section 5.8 of the approved Supporting Statement Ref: 230922-01 dated 28th July 2023).

Reason - In order to ensure suitable waste storage and collection arrangements are in place, including appropriate facilities for customers and to protect public health and the amenity of the area.

(05) HOURS OF OPERATION

That the use hereby approved shall not operate outwith the hours of 08:00 to 19:00 Monday – Thursday, 08:00 to 20:00 Friday to Sunday (April to September) and 08:00 to 17:00 Monday – Saturday and 09:00 to 17:00 on a Sunday (October to March).

Reason: In order to preserve the amenity of neighbouring properties.