

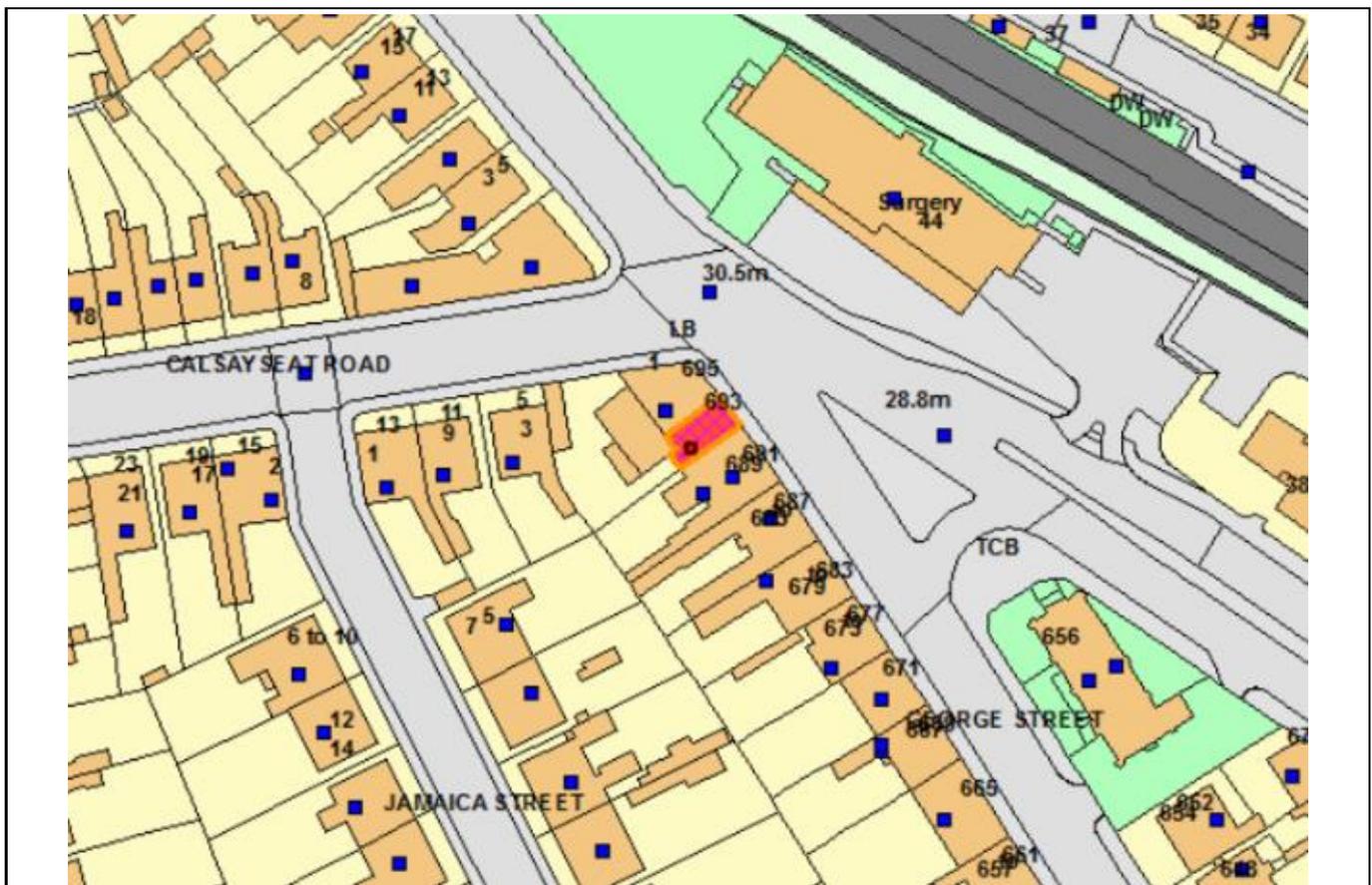


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 14 March 2024

<b>Site Address:</b>	693 George Street, Aberdeen, AB25 3XP
<b>Application Description:</b>	Change of use from class 1A (shops, financial professional and other services) to hot-food takeaway (sui generis) and installation of kitchen extract vent to rear elevation (part-retrospective)
<b>Application Ref:</b>	231018/DPP
<b>Application Type</b>	Detailed Planning Permission
<b>Application Date:</b>	7 September 2023
<b>Applicant:</b>	Nemzblendz Limited
<b>Ward:</b>	George Street/Harbour
<b>Community Council:</b>	George Street
<b>Case Officer:</b>	Alex Ferguson



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## **RECOMMENDATION**

Approve Conditionally

## **APPLICATION BACKGROUND**

### **Site Description**

The application site comprises a commercial unit which occupies part of the ground floor level of a three storey end-terraced tenement building of traditional design, located on the western side of George Street, immediately adjacent to its junction with Powis Place and Calsayseat Road. The upper floors of the building (and the neighbouring buildings) are in residential use as flats, whilst the neighbouring property at ground floor level to the north is also in commercial use as a pharmacy. The neighbouring property to the south, beyond a communal entrance door to upper floor flats, is in use as a barbers / hair salon. The application property's authorised use is Class 1A (Shops and financial, professional and other services), with the unit having been occupied by various Class 1A uses (barbers, clothes and sporting goods shops and a hair & beauty salon) since at least 2008, prior to its unauthorised change of use to a hot-food takeaway in 2023, for which this application seeks permission retrospectively. It is noted however that the unauthorised hot-food takeaway use ceased operations upon the submission of the current planning application in September 2023. There is an enclosed communal garden area to the rear (west) of the property which is outwith the application site and is understood to be owned by, and shared between, the residents living in the upper floor flats, that are accessed from Calsayseat Road. The adjacent retail unit has a single storey rear extension that projects into the rear garden area.

### **Relevant Planning History**

None.

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

Detailed planning permission is sought, part-retrospectively, for the change of use of the ground floor level commercial premises from a hairdressers / beauty salon (Class 1A) to a hot-food takeaway (sui generis). As part of the change of use, it is also proposed to install kitchen extract equipment within the property, and for the filtered cooking fumes to be expelled from the premises via a new extract grille to be installed just above ground floor level on the rear (west) elevation of the building.

The unauthorised hot-food takeaway use commenced in mid-2023 before ceasing upon the submission of the application in September 2023, whilst the kitchen extract equipment and associated external vent grille have not yet been installed – hence the proposals are part-retrospective.

The applicant's Noise Impact Assessment states that the intended opening hours of the hot-food takeaway would be between 11am and 10pm, seven days a week.

### **Amendments**

The following amendments were made to the application following its initial submission, in agreement with the applicant:

- Noise and Odour Impact Assessments were submitted;
- A floor plan of the unit was submitted;
- Existing and proposed rear elevation drawings were submitted, along with details of the proposed kitchen extract vent grille; and

- A Marketing Statement was submitted.

## 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=RZL2KHBZMKG00>

- Noise Impact Assessment (Couper Acoustics – 23 January 2024 – Ref: 2010212314 – V1)
- Odour Impact Assessment (Couper Acoustics – 23 January 2024 – Ref: 2010212314 – V1)
- Marketing Statement (Create Studio Architecture – 28 February 2024)

## Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because the application is being recommended for approval and more than six (sixteen) representations have been received from third parties either objecting to, or raising concerns about, the proposed development.

## CONSULTATIONS

**ACC - Waste and Recycling** – No objection. Commercial waste bins would be stored within the property and collected kerbside by a commercial waste contractor.

**ACC - Roads Development Management Team** – No objection. The site lies in the inner-city boundary and within controlled parking zone W (CPZ W). Businesses in CPZ W are entitled to apply for two parking permits and the parking allocation for the proposed use does not differ from that of the previous retail use. Being within a CPZ, there are existing parking controls which would prevent and obstructive parking. There are existing public cycle parking spaces across the road. No business bins would be permitted to be stored on the public road (including the footway) outwith collection time.

**ACC - Environmental Health** – No objection, subject to the implementation of the mitigation measures recommended in the applicant's Noise and Odour Impact Assessments, including:

### Odour mitigation

- Grease baffle filters within extract canopy (providing initial grease removal/fire protection)
- An ESP 3000 electrostatic precipitator
- Carbon filtration with a 0.4 – 0.8 second residence time

### Noise mitigation

- i. The Local Extract Ventilation System (LEV) shall be installed in general accordance with the proposed Mechanical Extraction System drawing (Create Studio Architecture, Jan 2024).
- ii. The LEV shall have an intake/extract fan with equivalent (or lower) noise emissions to the Vent Axia ACM 315 fan (as detailed in Table 3 and Appendix A).
- iii. The LEV shall be fitted with a single silencer or a combination of silencers on the

atmospheric side of the fan, providing the minimum dynamic insertion loss values shown in Table 4.

- iv. To reduce impact noise from worktops transferred to the first floor via the structural walls, worktops and surfaces in the preparation area should be free standing, ensuring the work surfaces are not rigidly linked to the structural wall.
- v. Tables and chairs (if any) shall be fitted with rubber feet to reduce any noise from movement and the front door shall incorporate an automatic closer system.
- vi. The existing ceiling should be inspected to ensure it is intact. Any areas of damage must be made good. The suspended ceiling with fissure tiles should not be removed and shall be lined with 100mm of mineral wool. Any damaged or missing fissure tiles must be replaced or made good.
- vii. If the ventilation canopy is to be fitted to the original ceiling it must be connected through drop rods with Masons HD acoustic resilient hanger with Unistrut. Hole penetrations should be sealed with everflex non hardening mastic.

The Environmental Health Service also recommend that a condition is applied to any permission restricting the opening hours of the takeaway to between 7am and 11pm on any given day, as noted in the Noise Impact Assessment.

**George Street Community Council** – No comments received.

## **REPRESENTATIONS**

A total of seventeen representations have been received, with sixteen either objecting to, or raising concerns about, the proposed change of use and one in support of the application. The matters raised in the representations received can be summarised as follows:

### Concerns raised:

1. Cooking odours - No kitchen extraction system has been installed and cooking odours emanating from the premises (when it was operating in mid-2023) were harming the amenity of neighbouring residential properties;
2. Waste management – There is no provision for the storage and collection of commercial food waste;
3. Use of communal rear garden area – The hot-food takeaway operator was (when operational) using the shared garden area to the rear of the building for cooking, on land over which they have no ownership / permission to use, to the detriment of amenity and health & safety;
4. Unauthorised use – The property was operational as a hot-food takeaway without first obtaining planning permission for a change of use;
5. Overprovision – There are sufficient hot-food takeaways and fast food outlets in the surrounding area;
6. Character and amenity (opening hours and noise) – The hot-food takeaway would be open late in a largely residential area where existing commercial uses close by 6pm. The new use would create noise arising from customers, kitchen equipment and delivery vehicles, to the detriment of the character and amenity of an otherwise quiet neighbourhood, particularly in the evenings;
7. Litter and vermin – There is the potential for increased litter and food waste to be left on

- the street and associated risks in relation to the presence of vermin in the area;
8. Absence of neighbour notification – Residents within neighbouring buildings advise that they did not receive any formal notification of the application;
  9. Parking – There is no car parking available, being directly adjacent to a junction, therefore the site is not suitable for use as a hot-food takeaway. The new use would also worsen existing on-street parking provision issues;
  10. Fire risk and permission from other owners – The installation of any kitchen extract equipment would need permission from other owners in the building, and would present a fire risk to the dwellings above;
  11. Alternative locations – Albyn Place or Queens Road would be more suitable locations for the proposed premises;
  12. Unacceptable precedent – There are no existing fast food / late opening commercial premises in the area at present and approval of this application would set an undesirable precedent for further such developments.
  13. Kitchen extract equipment – The proposed kitchen extraction equipment would not solve anything, with cooking odours to be expelled directly under the windows of flats above.

Comments in support:

14. The proposed use would be great for the area. The previous occupants of the unit didn't last very long but hopefully this one will.

**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 (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.

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 9 (Brownfield, Vacant and Derelict Land and Empty Buildings)
- Policy 12 (Zero Waste)
- Policy 13 (Sustainable Transport)
- Policy 14 (Design, Quality and Place)
- Policy 23 (Health and Safety)
- Policy 27 (City, Town, Local and Commercial Centres)

Aberdeen Local Development Plan 2023 (ALDP)

- Policy D1 (Quality Placemaking)

- Policy H1 (Residential Areas)
- Policy R5 (Waste Management Requirements for New Developments)
- Policy T2 (Sustainable Transport)
- Policy T3 (Parking)
- Policy VC10 (Local Shop Units)
- Policy WB3 (Noise)

### **Aberdeen Planning Guidance**

- Harmony of Uses
- Noise

### **EVALUATION**

#### **Main considerations**

Although the proposed development is assessed against all relevant policies of National Planning Framework 4 (NPF4) and the Aberdeen Local Development Plan 2023 (ALDP) in the following evaluation, the main considerations for assessment in the determination of this application are as follows:

- Has the change of use resulted in the unacceptable loss of an existing retail unit, without evidence of appropriate marketing for its continued retail use?
- Would the change of use, with the incorporation of newly proposed kitchen extraction equipment, adversely affect the amenity of neighbouring residential properties to any significant degree?
- Would the change of use to a hot-food takeaway undermine the character and amenity of the area or the health and wellbeing of the community?

#### **Principle of development - Loss of a local shop**

Policy VC10 (Local Shop Units) of the ALDP states:

*Proposals for changes of use from retail to non-retail outwith any of the centres identified in the network of centres will only be allowed if:*

- 1. the applicants/agents can demonstrate a lack of demand for continued retail use of the premises;*
- 2. the proposed new use caters for a local catchment;*
- 3. the proposed use creates or maintains an active street frontage and attractive shop frontage; and*
- 4. the alternative use does not conflict with the amenity of the neighbouring area.*

*Note – Proposals for a change of use where lack of demand is a factor should provide evidence that the property has been actively marketed for six months or more and should provide a statement(s) from letting agents explaining the reasons for the property being unsuitable for retail use.*

The change of use of the unit from Class 1A to a hot-food takeaway is assessed against each of the above criteria of Policy VC10 as follows:

1. A Marketing Statement has been submitted by the applicant. It outlines that the unit lay

vacant for a period of four months following the termination of the previous tenant's (hairdresser/beauty salon) lease in September 2022, until the applicant took on a lease for the property in January 2023. During the vacant period the owners advertised the premises via signage and in the press but there was no interest for continued retail use. Whilst the statement does not provide evidence that the property was marketed for at least six months, as generally required by Policy VC10, given the property was vacant for four months and other retail premises in the area are known to currently be vacant, the loss of the existing authorised retail use is considered to be acceptable, on balance.

2. The hot-food takeaway would serve the local surrounding area and it is envisaged that with a significant number of residential properties in the area, the majority of customers would live nearby;
3. The predominantly glazed shopfront of the unit has been retained and no alterations to it are proposed. As such, the takeaway use maintains an active street frontage and an attractive shop frontage; and
4. Subject to the implementation of the noise and odour mitigation measures recommended in the applicant's Noise and Odour Impact Assessments, and a restriction on the opening hours of the takeaway, the new use would not conflict with the amenity of the area / neighbouring uses to any significant degree. Further details of the assessment of the use on amenity are set out below in the section of the evaluation on 'Character and amenity'.

To summarise, in terms of the loss of the previous retail (Class 1A) use of the premises as required to be considered under Policy VC10, it is accepted that the property was marketed for continued retail use for a reasonable period of four months without success. It is also considered that the hot-food takeaway would serve a local catchment area and maintains an active street frontage, without causing significant harm to the amenity of neighbouring properties. The proposals are therefore generally compliant with Policy VC10 of the ALDP.

### **Principle of development – Character and amenity**

Policy 27 (City, Town, Local and Commercial Centres) of NPF4 states:

*(c) Development proposals for non-retail uses will not be supported if further provision of these services will undermine the character and amenity of the area or the health and wellbeing of communities, particularly in disadvantaged areas. These uses include:*

*i. Hot food takeaways, including permanently sited vans.*

The proposed hot-food takeaway use would likely be open during the day and evening periods (the Noise Impact Assessment advises that the intended opening hours are 11am to 10pm, seven days a week) and it would increase the range of food & drink options available to members of the public in the area surrounding the northern end of George Street.

The application site lies within an area of streets at the northern end of George Street, which is identified as being relatively deprived in relation to some indices (education, housing and crime) of the [Scottish Index of Multiple Deprivation map](#), although the area is not within the top 20% of most deprived areas in Scotland. There are two existing hot-food takeaways on George Street between its junctions with Fraser Place and Calsayseat Road. However, the two existing hot-food takeaways are situated at no's 551 and 554 George Street respectively, which is approximately 320m to the south of the application site. As such, the proposed change of use would not result in any clustering or overprovision of hot-food takeaways in the surrounding area. The change of use would not cause significant harm to the character or amenity of the area, for the reasons set out in the following section of the evaluation.

There is no substantive policy, guidance or evidence to suggest that the provision of a Caribbean hot-food takeaway would be to the significant detriment of the local community's health and wellbeing. Rather it would offer additional choice to the existing offering in the surrounding area, whilst filling an otherwise vacant commercial unit at street level.

The proposals are therefore considered to be compliant with Policy 27 of NPF4 despite some tension with the criteria set out in paragraph (c).

The application site lies in a Residential Area, as defined in the ALDP Proposals Map. Policy H1 (Residential Areas) of the ALDP states:

*'Within existing residential areas, proposals for non-residential uses will be supported if:*

- 1. they are considered complementary to residential use; or*
- 2. it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.'*

#### Impact on character of the area

Although the area surrounding the application site is zoned as residential in the ALDP Proposals Map, the context of the northern end of George Street is somewhat mixed, with the application property forming one in a row of seven commercial units at the ground floor level of multiple terraced tenement blocks on a 45m stretch of George Street immediately to the south of Calsayseat Road. Additionally, the four storey Calsayseat Medical Group building occupies a prominent position on the opposite side of Powis Place to the northeast. The road junction immediately adjacent to the application site sees George Street join Powis Place, Powis Terrace and Calsayseat Road, and has a large volume of vehicular traffic throughout the day. As a result, the character of the area in the immediate vicinity of the application site is one of a mix of uses, with a significant amount of activity and background noise due to passing road traffic. Therefore whilst there are a significant number of residential properties in the surrounding area, including flats above the application premises, the character of the area is more busy, noisy and vibrant than that of a typical residential street. Given the existing level of activity and associated background noise, the proposed use of the existing commercial unit as a hot-food takeaway (proposed to be open until 10pm) would not have any significant impact on the character of the area. No external alterations to the property are proposed with the exception of the installation of a relatively small kitchen extract vent grille to the rear elevation, therefore the physical external works would also not harm the character of the area.

#### Impact on amenity

Policy 23 (Health and Safety) (e) of NPF4 states:

- e) Development proposals that are likely to raise unacceptable noise issues will not be supported. The agent of change principle applies to noise sensitive development. A Noise Impact Assessment may be required where the nature of the proposal or its location suggests that significant effects are likely.*

Policy WB3 (Noise) of the ALDP states a presumption against noise generating developments, as identified by a Noise Impact Assessment, being located close to noise sensitive developments such as housing, unless suitable mitigation measures are in place to reduce the impact of noise.

The Council's 'Harmony of Uses' Aberdeen Planning Guidance (APG) highlights hot food shops as having the potential to harm amenity, particularly where located below residential flats, due to noise and odour emissions, late opening hours, traffic disturbance and litter.

The applicant has submitted an Odour Impact Assessment (OIA) as part of the application which acknowledges that, without any mitigation, the cooking operations of the unit would pose a very high risk of harm to the amenity of neighbouring (upstairs) residential properties in relation to cooking odours. However, in line with the mitigation measures recommended in the OIA, it is proposed to filter and discharge cooking odours from the hot-food takeaway's kitchen via a new local extract ventilation (LEV) system to be installed internally, which would then be discharged from an extract vent grille to be installed on the building's rear elevation, just above ground floor level.

The applicant has also submitted a Noise Impact Assessment which includes recommended mitigation measures applicable to the LEV equipment and associated internal works, in order to ensure that the amenity of the upper floor flats would not be adversely affected by noise emissions.

The noise and odour assessments have been reviewed by the Council's Environmental Health Service who are satisfied that, subject to a local extract ventilation system being installed prior to the use commencing (or recommencing, given it was operational in 2023), in accordance with the mitigation measures and technical specifications set out in the Noise and Odour Impact Assessments, the proposed development would not adversely affect the amenity of the neighbouring residents in terms of either noise or odour emissions.

Although the implementation of the noise and odour mitigation measures will be sufficient to ensure that the impacts of noise and cooking odours from within the unit on residential amenity will be adequately mitigated, it is noted that hot-food takeaways can result in additional noise emissions from customers (both internal and external) and delivery drivers, particularly in the evening periods which may otherwise be quieter than during the day. As such, in order to minimise the risk of external noise emissions from customers, delivery drivers and other associated activity to impact on the amenity of the flats above, it is recommended that a condition is attached restricting the opening hours of the premises to between 8am and 10pm on any given day, thus prohibiting the use from operating during the quieter, more sensitive late evening and early morning periods.

The applicant's Noise Impact Assessment states proposed opening hours of 11am to 10pm, whilst the Environmental Health Service recommend prohibiting the use between 11pm and 7am. The Planning Service considers that the ambient activity and background noise at the site is likely to be significantly reduced by 10pm to the extent that permitting the use to open until 11pm could cause harm to amenity. A slightly reduced period of opening hours until 10pm, as proposed by the applicant, is therefore considered necessary. 7am is considered by the Planning Service to be relatively early for opening, therefore a restriction of the opening hours to between 8am and 10pm on any given day is considered to be reasonable, proportionate and necessary given the context of the area.

In relation to traffic disturbance, the application site lies within a Controlled Parking Zone and there are double yellow lines immediately in front of the premises on George Street. As a result, the potential for lawful parking by customers or delivery drivers to adversely affect on-street parking supply or road safety is minimal and any unlawful parking in the area would be dealt with under separate legislation if any occurs. Given the site lies in a predominantly residential area, it is anticipated that most customers would likely access the property on foot, thereby not introducing any significant parking issues. Should any customers wish to park in the area whilst

collecting food, there is some pay and display on-street parking available for non-permit holders on Calsayseat Road, as well as permit-only parking which is available to non-permit holders outwith the hours of 8am to 6pm Monday to Saturday. Any parking required for customers would be short-stay only and would not be likely to have any significant impact on local parking supply. In relation to the potential for increased litter, bins would be provided within the unit but beyond the application site any litter dropped by customers would be controlled by separate legislation and cannot be controlled through the planning process.

Therefore, subject to the implementation of the mitigation measures listed in the applicant's Noise and Odour Impact Assessments, and a restriction on the opening hours, it is considered that the proposed use would not adversely affect the amenity of any neighbouring uses to any significant degree. The proposed development is therefore acceptable in accordance with Policies 23 and 27 of NPF4, Policies H1 and WB3 of the ALDP and the guidance set out in the Harmony of Uses APG.

### **Re-use of vacant premises**

Policy 9 (Brownfield, Vacant and Derelict Land and Empty Buildings) of NPF4 states that development proposals for the reuse of existing buildings will be supported, taking into account their suitability for conversion to other uses. The reuse of the previously vacant unit is therefore compliant with the aims of Policy 9 of NPF4, subject to the proposed use otherwise being suitable for the context.

### **Design quality**

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.

The only works proposed to the exterior of the building comprise the installation of a square (450mm x 450mm) metal louvred extract grille on the rear elevation of the building, just above ground floor level. The grille would be the termination point for the expulsion of cooking odours from the kitchen, which would be filtered internally via the new local ventilation extraction system.

The proposed extract grille would be of a small scale and would be discreetly sited on the building's rear elevation, such that it would not significantly affect the external appearance of the building and would not be visible from any public viewpoints. It is thus considered that the proposed extract vent grille would be of an appropriate design quality for the context of the host building and the surrounding context, and it is thus compliant with Policy 14 of NPF4 and Policy D1 of the ALDP.

### **Transport and accessibility**

Policy 13 (Sustainable Transport) of NPF4 and Policy T2 (Sustainable Transport) of the ALDP seek to ensure that all new development would be accessible by sustainable and active modes of transport, minimising the need for private vehicle trips. Policy T3 (Parking) of the ALDP states that zero and low car developments will be supported in inner city locations where the application site is accessible via sustainable and active modes of travel.

The application site lies in a highly accessible location outwith, but not a significant distance from, the city centre. The site is accessible by foot, bicycle and public transport. No dedicated car parking is proposed and none is feasible but given the accessible nature of the site and the intended use, none is required. With a significant number of residential properties within walking

distance of the application site, it is anticipated that a large proportion of customers accessing the property to purchase food would do so sustainably (on foot).

The application has been subject to consultation with the Council's Roads Development Management team (RDM), who have raised no objection, therefore the proposed use is considered to be acceptable, in accordance with Policies 13 of NPF4 and T2 and T3 of the ALDP.

### **Waste management**

Policy 12 (Zero Waste) of NPF4 and Policy R5 (Waste Management Requirements in New Development) of the ALDP both require sufficient space to be provided within new developments for the adequate storage and collection of any waste generated by the development. The applicant proposes to store commercial food waste bins within the property which would then be presented kerbside on George Street for collection by a commercial waste contractor on a weekly basis. The internal storage of commercial waste would therefore not pose any concerns in relation to residential amenity, visual amenity or pedestrian safety. There would be sufficient and appropriate space for the storage and collection of waste generated by the proposed use, in accordance with Policy 12 of NPF4 and Policy R5 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 proposed change of use is small-scale and the nature of the development is such that it does not offer any opportunities for on-site biodiversity gain, nor would any biodiversity gain be proportionate to the nature and scale of the intended works. It is thus considered that the proposals are acceptable despite some minor tension with Policy 3 of NPF4.

### **Matters raised in representations**

Matters 1, 2, 5, 6, 7, 9 and 13 summarised in the representations above have been addressed in the foregoing evaluation. The remaining matters raised that are not addressed above, are addressed as follows:

3. *Use of communal rear garden area – The hot-food takeaway operator was (when operational) using the shared garden area to the rear of the building for cooking, on land over which they have no ownership / permission to use, to the detriment of amenity and health & safety.*

Response: The communal garden area to the rear of the property is not included within the application site, therefore any cooking or other activities associated to the use of the hot-food takeaway that may take place in the garden area would not be permitted by the

planning permission. If and when such activities may occur, they could be subject to formal enforcement action by the Council's Environmental Health Service and the planning authority. The use of land not owned by the applicant may also constitute a civil matter between the various parties involved.

- 4. Unauthorised use – The property was operational as a hot-food takeaway without first obtaining planning permission for a change of use.*

Response: The unauthorised use of the premises as a hot-food takeaway prior to the submission of the application is not a material consideration in the determination of this application. The earlier breach of planning control has been rectified through the cessation of use and submission of this application.

- 8. Absence of neighbour notification – Residents within neighbouring buildings advise that they did not receive any formal notification of the application.*

Response: Paper neighbour notifications were posted to all of the properties noted in the list of notified neighbours (all properties within 20m of the application site) on the Council's website, both on the 8<sup>th</sup> of September 2023 and again on the 9<sup>th</sup> of February 2024. The Planning Authority has complied with the neighbour notification requirements. Whilst unfortunate, any difficulties with the delivery of the neighbour notifications are outwith the control of the planning authority.

- 10. Fire risk and permission from other owners – The installation of any kitchen extract equipment would need permission from other owners in the building, and would present a fire risk to the dwellings above.*

Response: Perceived fire risk from the installation of kitchen apparatus and associated extract equipment is not a material planning consideration. The LEV works may require a building warrant, in which case fire risk may be assessed through that process. Ownership and permissions from owners are not material planning considerations but nevertheless, all of the kitchen extract equipment would be sited within the unit, with the exception of the extract vent grille to the rear, which would also be at ground floor level.

- 11. Alternative locations – Albyn Place or Queens Road would be more suitable locations for the proposed premises.*

Response: Each application must be assessed on its merits and based on the site-specific circumstances. There is no sequential test for hot-food takeaway applications, therefore alternative locations do not require to be considered as part of this application.

- 12. Unacceptable precedent – There are no existing fast food / late opening commercial premises in the area at present and approval of this application would set an undesirable precedent for further such developments.*

Response: Each application is assessed on its own merits. At present the nearest hot-food takeaways are situated approximately 320m to the south of the application site. Should there be any future applications for further takeaways near the application site then the specific circumstances of those applications would be reviewed based on the policy and site context at that time.

## **RECOMMENDATION**

Approve Conditionally

## **REASON FOR RECOMMENDATION**

The applicant has satisfactorily demonstrated, on balance, that there was a lack of demand for continued retail use of the premises, that the proposed use would serve a local catchment, would maintain an active street frontage and would not adversely affect the amenity of the area, generally in accordance with Policy VC10 (Local Shops) of the Aberdeen Local Development Plan 2023 (ALDP).

Although located in a residential area, there are a mix of uses and there is a significant level of activity immediately adjacent to the application site resulting from the heavily trafficked nature of the adjacent road junction. The proposed hot-food takeaway would not result in the overprovision or clustering of takeaways in the area, would provide wider choice for customers, would preserve the character of the area and, subject to the implementation of noise and odour mitigation measures via condition, the use would not adversely affect the amenity of any neighbouring properties to any significant degree. The proposed change of use is therefore acceptable in accordance with Policies 23 (Health and Safety) and 27 (City, Town, Local and Commercial Centres) of National Planning Framework 4 (NPF4), Policies H1 (Residential Areas) and WB3 (Noise) of the ALDP and the Council's Aberdeen Planning Guidance on Harmony of Uses.

The proposed kitchen extract vent would be discreetly scaled and sited on the building's rear elevation and the external works would be of an appropriate design for the context, in accordance with Policy 14 (Design, Quality and Place) of NPF4 and Policy D1 (Quality Placemaking) of the ALDP. The proposed development would have sufficient means for the adequate storage and collection of any waste and recyclables generated, in accordance with Policy 12 (Zero Waste) of NPF4 and Policy R5 (Waste Management Requirements for New Development) of the ALDP. The application site lies in a sustainably accessible location, would likely serve a local catchment area and could be accessed via sustainable and active modes of travel, in accordance with Policies 13 (Sustainable Transport) of NPF4, T2 (Sustainable Transport) and T3 (Parking) of the ALDP.

The proposed development, comprising the change of use of an existing property, 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 proposed development is compliant with Policies 1 (Tackling the Climate and Nature Crises) and 2 (Climate Mitigation and Adaptation) of NPF4. There is no opportunity to enhance on-site biodiversity, therefore the proposals are acceptable, despite some minor tension with Policy 3 (Biodiversity) of NPF4.

## **CONDITIONS**

### (1) ODOUR MITIGATION

The hereby approved use shall not operate unless the critical odour mitigation measures achieving at least an equivalent effect of the measures listed in the approved Odour Impact Assessment (Couper Acoustics – 23 January 2024 - Ref: 2010212314 -V1) have been implemented in full. The mitigation measures shall include (but are not limited to) the installation of:

- Grease baffle filters within extract canopy (providing initial grease removal/fire protection);
- An ESP 3000 electrostatic precipitator;
- Carbon filtration with a 0.4 – 0.8 second residence time.

Reason: In order to protect the amenity of neighbouring residential properties from cooking odour emissions.

## (2) NOISE MITIGATION

The hereby approved use shall not operate unless the noise mitigation measures listed in the approved Noise Impact Assessment (Couper Acoustics – 23 January 2024 - Ref: 2010212314 - V1) have been implemented in full. The mitigation measures shall include (but are not limited to):

- i. The Local Extract Ventilation System (LEV) shall be installed in general accordance with the proposed Mechanical Extraction System drawing (Create Studio Architecture, Jan 2024).
- ii. The LEV shall have an intake/extract fan with equivalent (or lower) noise emissions to the Vent Axia ACM 315 fan (as detailed in Table 3 and Appendix A).
- iii. The LEV shall be fitted with a single silencer or a combination of silencers on the atmospheric side of the fan, providing the minimum dynamic insertion loss values shown in Table 4.
- iv. To reduce impact noise from worktops transferred to the first floor via the structural walls, worktops and surfaces in the preparation area should be free standing, ensuring the work surfaces are not rigidly linked to the structural wall.
- v. Tables and chairs (if any) shall be fitted with rubber feet to reduce any noise from movement and the front door shall incorporate an automatic closer system.
- vi. The existing ceiling should be inspected to ensure it is intact. Any areas of damage must be made good. The suspended ceiling with fissure tiles should not be removed and shall be lined with 100mm of mineral wool. Any damaged or missing fissure tiles must be replaced or made good.
- vii. If the ventilation canopy is to be fitted to the original ceiling it must be connected through drop rods with Masons HD acoustic resilient hanger with Unistrut. Hole penetrations should be sealed with everflex non hardening mastic.

Reason: In order to protect the amenity of neighbouring residential properties from noise emissions.

## (3) OPENING HOURS

The hereby approved use shall only operate between the hours of 8am and 10pm on any given day.

Reason: In order to protect the amenity of neighbouring residential properties from noise emissions in the late evening and early morning periods.

## **ADVISORY NOTES FOR APPLICANT**

### **(1) USE OF REAR GARDEN AREA, OUTWITH THE APPLICATION SITE**

For the avoidance of doubt, the applicant should be aware that any cooking activities, storage of waste, or any other activities associated with the hereby approved change of use shall be restricted to the confines of the application site, which is the internal footprint of the ground floor unit at 693 George Street only, and does not include the external garden area to the rear of the building. Any cooking, waste storage or other activities in that area may be subject to formal enforcement action being taken by the planning authority in the future should they occur.

### **(2) ODOUR MANAGEMENT PLAN**

It is recommended that the operator establishes a written Odour Management Plan including cleaning and maintenance procedures for the plant corresponding with Sections 5.03 - 5.05 of the approved Odour Impact Assessment report, based on the manufacturer's instructions and extent of use, to reduce the risk of malodour and statutory nuisance going forward.

### **(3) BUSINESS WASTE INFORMATION**

- Business premises need to be provided with a bin store to allocate, within the property curtilage for the business waste and recycling bins
- Commercial waste bins cannot be stored on the street any day of the week as per Council Policy 2009 (Obstructions- Commercial Waste Bins). Infringement on the Council Policy can lead to a fine of £500 per bin as adopted by the Enterprise, Strategic Planning and Infrastructure Committee on 29th August 2013
- There are many waste contract collection providers operating in Aberdeen and each one provides different collection of waste and recycling services. For this reason, business premises need to liaise with their waste contract collection to ensure the correct management of their waste.
- Business premises have a legal Duty of Care covering all the waste they produce. This means that it is the Business premises responsibility to manage and dispose of any waste correctly.
- The Waste (Scotland) 2012 requires that all businesses from 1st January 2014 are required to separate paper, cardboard, glass, plastic and metals for recycling. Some businesses will additionally be required to separate their food waste (where food waste >5kg per week).
- General tips for site and hopefully the chosen waste collection contractor will detail this but for access, the following is needed:
  - An area of hard standing at storage and collections point(s)
  - Dropped kerb at proposed bin collection point
  - Yellow lines in front of bin collection point
  - Bin storage areas to ideally be provided with a gully and wash down facility for the interest of hygiene

For further independent guidance about waste and recycling provision, storage and collection please refer to the following document:

[http://www.lgcplus.com/Journals/3/Files/2010/7/14/ADEPTMakingspaceforwaste\\_000.pdf](http://www.lgcplus.com/Journals/3/Files/2010/7/14/ADEPTMakingspaceforwaste_000.pdf) and additional Trade Waste information can be found in the Waste Supplementary Guidance available

at <https://www.aberdeencity.gov.uk/sites/default/files/2020-07/7.1.PolicySG.ResourcesForNewDevelopmentUpdateJuly2020.pdf>