

KEY INFORMATION**Ward** Lochee**Proposal**

Change of use from vacant public house to 3 retail units to include convenience shop, salon and shell retail unit.

Address

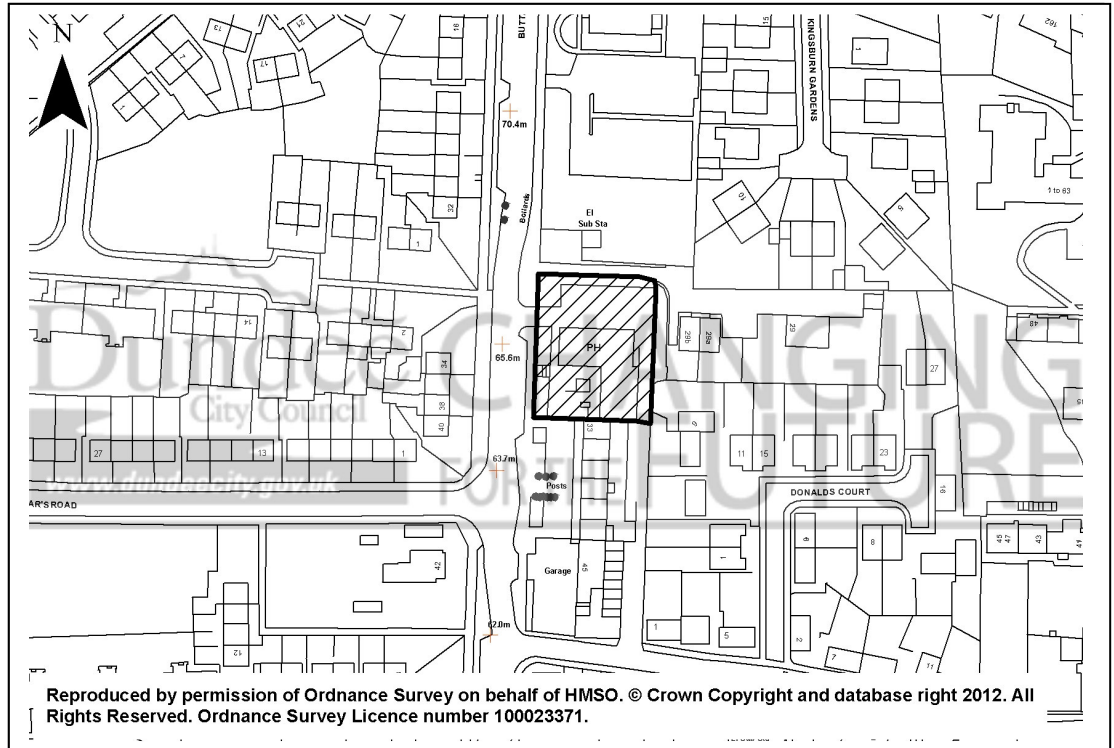
31 Buttars Loan
Dundee
DD2 4PE

Applicant

United Real Estate
246 Flemington Street
Springburn
Glasgow G21 4BY

Agent

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Registered 12 April 2012**Case Officer** B Knox

Conversion of Buttars Loan Pub to Shops

The change of use from vacant public house to 3 retail units to include convenience shop, salon and shell retail unit is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The application is in accordance with the terms of the Development Plan and there are material considerations to support approval. The application is therefore recommended for approval.

SUMMARY OF REPORT

- The application proposes the change of use of a vacant public house to 3 retail units. The applicant has indicated that it is to include a convenience store, salon and one further retail unit for which there is no specified occupier at this time.
- In total 4 letters of objection from 2 sources was received and one petition has been received. The concerns raised include those in relation to failure to comply with Policy and the impact upon existing businesses.
- Policy 1 (Vibrant and Sustainable Communities), Policy 45 (Location of New Retail Developments) and Policy 42 (Local Shopping) are relevant to the determination of the application.
- The proposals are considered to be in compliance with Policy 1 of the Dundee Local Plan Review 2005. The application fails to fully comply with the requirements of Policy 45 but is offered support in the Local Plan by virtue of Policy 42.
- Policy 45 of the Local Plan provides the general approach to the formation of new retailing within the city. Policy 42 is the Policy specific to circumstances where there are proposals to enhance existing shopping parades and as such is directly targeted towards the circumstances of the current application. As Policy 42 is targeted towards the current circumstances of the application proposals it is considered to override the general aims of the sequential test as set out in Policy 45 of the Local Plan.
- It is therefore concluded, in this instance, that the application is in accordance with the terms of the Development Plan.
- It is considered that there are material considerations to support approval of the application.

DESCRIPTION OF PROPOSAL

The application proposes the change of use of a vacant public house to 3 retail units. The applicant has indicated that it is to include a convenience store, salon and one further retail unit for which there is no specified occupier at this time. It is therefore the case that all three of the proposed units would fall into Class 1 of the Use Classes Order 1997.

The largest of the three proposed units would measure approximately 188 m² and this would be the convenience store. The second largest retail unit would measure approximately 92m² and the proposed salon would measure approximately 26m².

Each of the proposed units would take access from the raised terrace area that exists to the front of the public house and can be accessed via a set of stairs to Buttars Loan or a ramp to the north of the site.

As part of the proposals for the change of use it is also proposed to make alterations to the frontages of the property. The whole building is to be given a grey render finish and new entrances to be created for each of the new units. The existing brick is to be retained and cleaned to remove the graffiti that is currently present.

SITE DESCRIPTION

The application site is located on the east side of Buttars Loan and takes the form of a vacant building that was most recently in use as a public house. From the dilapidated condition of the building it is clear that it has lain vacant for some time.

It is situated in a small shopping parade comprised of a small food store, hot food takeaway and bookmakers. The property benefits from a car park to the north side of the building which takes access from Buttars Loan. There is a pedestrian access to the front (west) of the building by means of a small stair and a ramp to the north of this. Both of these lead to a raised terrace area directly in front of the building.

There are residential properties to the west side of Buttars Loan across the from the application site. There are

also residential properties above some of the shops in the shopping parade adjacent to the application site.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan 2005

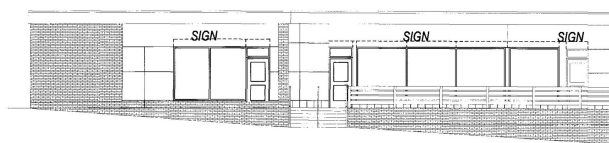
The following policies are of relevance:

Policy 1: Vibrant and Sustainable Communities.

Policy 42: Local Shopping.



WEST ELEVATION (view from raised deck)



WEST ELEVATION (view from Street)

Policy 45: Location of New Retail Developments - this Policy advises that The City Centre and District Centres will be the locations of first choice for new or expanded retail developments not already identified in the Local Plan. Proposals for retail developments outwith these locations will only be acceptable where it can be established a specific set of criteria can be fulfilled.

Scottish Planning Policies, Planning Advice Notes and Circulars

The Scottish Planning Policy document is the statement of the Scottish Government's policy on nationally important land use planning matters. This document contains specific subject policies in relation to retailing that is relevant to this application.

Non Statutory Statements of Council Policy

There are no statements of relevance.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

There have been various applications associated with the former public house. The most significant of which:

06/00268/FUL - Formation of beer garden with 1.8m timber slatted fence, umbrellas and external awning - Refused 23 May 2006.

PUBLIC PARTICIPATION

The Statutory Neighbour Notification procedure was carried out.

In total 4 letters of objection from 2 sources was received and one petition has been received. The petition contained a total of 186 valid signatories including residents from the surrounding area and further afield across the city.

The valid material planning concerns can be summarised as falling into the following:

- The proposal fails to comply with Policy 45 of the Dundee Local Plan Review in terms of site availability, impact upon existing centres and that there is no deficiency in shopping provision in this area.
- Policy 1 promotes vibrant communities with a range of services close at hand. There are existing shops and facilities close at hand. The new proposal should not be allowed to undermine the local community infrastructure which these shops provide.
- Existing businesses are struggling and if the development is approved it will have a severe negative impact on the existing nearby shops.
- It will encourage more youths to congregate, leading to an increase in graffiti.

- There is no unmet retail demand in the area.

Other concerns including commercial competition issues, capacity of drainage system and ongoing issues of damp caused by the application property were raised but cannot be taken into consideration in the determination of the application.

One of the objectors provided further comments after reviewing the terms of the supporting information submitted by the applicant's agent. The relevance of Policy 45 and Policy 1 was again mentioned as being important considerations and these issues have already been listed above. The response also went on to mention that there is no feedback from the agents as to the marketing information and what interest in the site there had been.

It is intended to comment on the valid concerns in the Observations Section of the report.

CONSULTATIONS

The Head of Environmental Protection has advised that a noise condition should be applied to any grant of permission regarding noise from mechanical and electrical plant.

Furthermore, they have advised that due to the proximity to nearby residential occupiers, it would be necessary to restrict the delivery times and opening hours of the units. This could be attached as a condition to any grant of permission.

Furthermore, the Head of Environmental Protection have advised that there may be risks associated with ground gas with the property. It is intended to apply a condition to seek information as to how the applicant shall mitigate the risk associated with ground gas prior to the commencement of development in order to deal with this potential issue.

OBSERVATIONS

Statutory Requirements

Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless other material considerations indicate otherwise.

The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Dundee and Angus Structure Plan 2001-2016

The Dundee and Angus Structure Plan 2001-2016 requires the application of the sequential test to retail applications of a strategic size (defined in Town Centres and Retailing Policy 4 as being in excess of 1,000m² gross). This application seeks permission for the approval of Class 1 Uses totalling approximately 306m². Therefore, it is considered that the Policy contained in the Structure Plan in relation to out of centre retailing is not relevant in this instance.



Policy 1 (Vibrant and Sustainable Communities) - this policy promotes vibrant communities, encouraging the development of an appropriate range of services and facilities close to and within housing areas. New developments should seek to minimise any affect on the environmental qualities currently enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell.

As discussed, the nearest residential properties are located approximately 12 metres to the rear and approximately 30 metres to the front on the other side of Butters Loan.

In terms of design it is proposed to make alterations to the frontages of the property. The whole building is to be given a grey render finish and new entrances to be created for each of the

new units. The existing brick is to be retained and cleaned to remove the graffiti that is currently present. It is considered that the design will improve the appearance of the disused building and the application of render and new entrances shall update the frontage to a more modern appearance, suitable to perform a modern function.

The design of the building alterations is considered to be of acceptable quality and will enhance the area with a significant contrast from the existing situation. The materials and style proposed are considered to be suitable for the site.

In relation to the layout of the site, there are limited alterations since the existing car park shall remain in the same location due to the fact that the application is seeking change of use permission. The raised entrance area

is to remain and the main access points shall be similar to the existing situation with the exception that two further access points are to be added into the newly created units. The layout of the proposed access points is considered to be acceptable and does not raise any issues in terms of amenity for the neighbouring residents.

In relation to the potential for noise it is considered that the use of the building for Class 1 purposes would be less likely to result in amenity issues than the use of the building for public

house purposes which could still be the case without the need for planning permission. This is taking into consideration the potential for public house patrons to congregate outdoors to smoke and the fact that the opening hours would be later with a public house than retail units. The use of the property for the three Class 1 units would be less likely to result in such issues and the opening hours would be restricted to ensure they do not open beyond 10pm in the evening. In addition, it is considered to be appropriate to attach a condition to any grant of permission to ensure that deliveries to all three premises, by vehicles, shall be restricted to between 0700-2100hours from Monday to Saturday and 0900-1800hours on Sunday. It is considered that with the above conditions, the impact to nearby residential occupiers in terms of noise would be favourable when compared

with the existing public house use for the site.

In terms of smell, due to the distance to the nearest dwellings and the nature of the proposed uses, it is considered that there would be no significant impact upon the nearest residential occupiers in this regard.

In terms of parking and layout there are no changes proposed to the site. The existing access point shall remain as is existing. There are therefore no concerns in relation to this issue.

Accordingly, it is considered that the application complies with Policy 1 of the Dundee Local Plan Review 2005.

National planning policy guidance places strong emphasis on the need to protect and enhance the vitality and viability of town centres and to build on their advantages as a focus for a variety of activities. As part of this approach planning authorities should adopt a sequential approach to new shopping provision with first preference being town centres, which in Dundee's case are the city centres and District Centres.

As part of the sequential approach, Policy 45 of the Dundee Local Plan Review 2005 is relevant. The application therefore must be assessed against each of the criteria as discussed below:

a Site Availability

It must be demonstrated, in the first instance, that no suitable site is available for the development either within the city/district centres or, thereafter on the edge of these centres.

The nearest District Centre is the Lochee District Centre, located approximately 1km away. A review of the vacant floor space in the Lochee District Centre by the Council shows that there is availability of vacant units of varying sizes, including a site in excess of the floor area of the application property which is comparable to the size of the proposal.

It is therefore considered that there are suitable sites within the nearby Lochee District Centre.

b Impact on Existing Centres

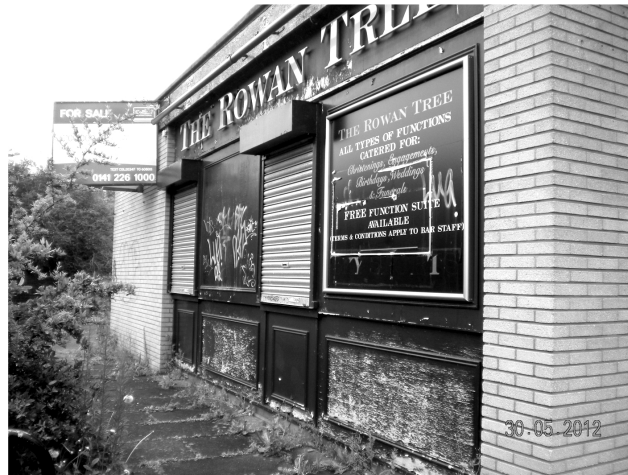
The policy requires that proposals for new out of centre retail developments do not prejudice the vitality and

viability of existing city, town or district centres.

The Council considers that there will be no impact upon the city centre in this regard. In relation to the nearby District Centre at Lochee it is considered that a proposal of this scale has the potential to have a limited impact upon the existing shopping provision. However, it is to be located at an existing shopping parade area with a range of existing shops and services and it is considered that in this instance it is unlikely that a use of the scale sought would draw trade from the Lochee District Centre such as to prejudice the vitality and viability.

c Deficiency in Shopping Provision

Another criterion of this policy is the requirement to demonstrate that the proposal would address a deficiency in shopping provision that would not be



met by new provision within or on the edge of a city, town or district centre.

The application site is adjacent to an existing shopping parade with a range of uses including a hot food takeaway and small newsagents/convenience store. There is no information to suggest that there is a particular deficiency in shopping provision in this location. The application therefore fails to meet this criterion.

d Accessible by Modes of Transport (other than by car)

There are bus stops on Butters Loan and nearby on South Road and as such it is considered that the site is accessible by bus. In addition, due to the location of the site, it is readily accessible to pedestrians as it is located in what is largely a residential area. It is therefore considered that the site would be readily accessible to other modes of transport other than the car.

e The proposal is consistent with other Local Plan Policies

The application has been found to be consistent with the other relevant Local Plan Policies.

Taking the above into consideration, the Council considers that the application fails to fully meet the terms of the sequential test as set out by Policy 45 of the Dundee Local Plan Review 2005.

The application site is located at an existing shopping parade and therefore Policy 42 of the Dundee Local Plan is relevant.

The Dundee Local Plan Review 2005 recognises that the main shopping centres are supported by a network of local shopping centres, shopping parades and corner shops etc. National planning policy guidance indicates that encouragement should be given to a wide range of facilities in smaller shopping centres. This includes making provision for suitably sized supermarkets. The Local Plan goes on to state that it is therefore appropriate to consider the scope to extend the range of existing shopping centres by considering opportunities to add new shops. The scale of such provision must be sufficient to achieve this aim but must also ensure that wider retail impact issues are avoided.

The policy states that:

At the Local Shopping Centres and shopping parades the City Council will support:

- a measures for the upgrading of existing shopping provision; and
- b where appropriate, the provision of additional shopping floor space up to a maximum of 500m² gross.

In terms of criterion (a), support is given to measures for upgrading the existing shopping provision. The proposal would provide three Class 1 units and it has been identified by the applicant that one will provide a convenience shop and one will provide a small salon. The other one has no identified end user at this time. It is considered that the increase of Class 1 uses in this parade will help to upgrade the provision in this location and will improve the range of uses and choice found within the shopping parade.

With regards to criterion (b), where appropriate, the provision of additional shopping floor space up to a maximum of 500m² gross is supported.

The largest of the three proposed units would measure approximately 188m² and this would be the convenience store. The second largest retail unit would measure approximately 92m² and the proposed salon would measure approximately 26m². The level of gross floor space sought under the terms of the current application is therefore approximately 306m². It is considered that this level of provision would be appropriate in this location where it could supplement the shopping trips of those already visiting the existing shopping parade. In line with the aims of the policy, it is considered that the scale of the proposed provision is acceptable such as to ensure that wider retail impact issues are avoided.

Policy 45 of the Local Plan provides the general approach to the formation of new retailing within the city. Policy 42 is the Policy specific to circumstances where there are proposals to enhance existing shopping parades and as such is directly targeted towards the circumstances of the current application.

Notwithstanding the terms of Policy 45 of the Local Plan, it is considered that Policy 42 offers support to the formation of Class 1 uses in this location. As Policy 42 is targeted towards the current circumstances of the application proposals it is considered to override the general aims of the sequential test as set out in Policy 45 of the Local Plan.

It is therefore concluded, in this instance, that the application is in accordance with the terms of the Development Plan.

Other Material Considerations

a Scottish Planning Policy document

This SPP is a statement of Scottish Government policy on land use planning and contains, amongst other things, concise subject planning policies, including the implications for development planning and development management.

Town Centres and Retailing

This section advises that when determining applications for retailing a sequential approach should be adopted.

In dealing with new retail developments it advises that they should be initially assessed as to whether they are consistent with the development plan. Out-of-centre locations should only be considered when:

- all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable,
- development of the scale proposed is appropriate, and
- there will be no significant adverse effect on the vitality and viability of existing centres.

The policies of the Development Plan are considered to be in accordance with the guidance set out in SPP. The proposal has been considered against the retailing policies of the development plan where it was concluded that the proposals could not fulfil all of the requirements of the sequential test, as set out above, and it is considered that no further issues are raised in terms of SPP.

b Suitability of the Site

It is considered that there are no physical impediments (ie liable to flooding, ground instability) to the successful development of the site.

c Impact upon nearby shopping parades

As discussed, there is a small shopping parade offering a range of services adjoining the site. There is parking and it is ideally located to provide for the surrounding neighbourhood in this part of the city. The small parade is also readily accessible by public transport due to the locations of bus stops nearby. Additional Class 1 uses in the close vicinity of the parade is considered to enhance the shopping experience for those visiting the parade, contributing to the vitality of the existing parade.

d Compatibility with Existing Uses

As discussed in relation to Policy 1 of the Dundee Local Plan 2005, the use of the site for retail purposes is not considered to be significantly prejudicial to the surrounding land uses in terms of any increase in environmental matters such as dust or fumes.

e Desirability of Retaining the Existing Use

The existing use on the site is that of a public house. It is a large building and has capacity for a significant number of customers at any given time. It also benefits from a generous area for parking. It is located in close proximity to nearby residential properties. It has lain vacant for some considerable time and the applicants indicate that it has been marketed for a considerable time also. As a result of its size and status, it is an unattractive feature in the surrounding area and its disused vacant status detracts from the otherwise pleasant street scene. The building is not of special merit in terms of its existing appearance and there are other public house facilities in the vicinity. There is therefore no particular desirability to retain this building or the use on this site.

f Planning Benefits

The alterations to the building and replacement with a new use would be to the enhancement of the site and surrounding area as it would remove an unattractive, disused building. There is also the likelihood that a Class 1 use would have less potential to impact upon the nearby residential occupiers in terms of noise, particularly late at night. It is considered that the improved appearance and replacement with a more noise sensitive use would be to the benefit of the residential occupiers in the area.

g Views of the Objectors

- The proposal fails to comply with Policy 45 of the Dundee Local Plan Review in terms of site availability, impact upon existing centres and that there is no deficiency in shopping provision in this area.

This issue has been discussed and discharged fully in the assessment of the application in relation to Policy 45 where it was concluded that the application fails to fully comply with each of the criteria.

- Policy 1 promotes vibrant communities with a range of services close at hand. There are existing shops and facilities close at hand. The new proposal should not be allowed to undermine the local community infrastructure which these shops provide.

This issue has been discussed and discharged fully in the assessment of the application in relation to Policy 1 where it was concluded that the application fully complies.

- Existing businesses are struggling and if the development is approved it will have a severe negative impact on the existing nearby shops.

There is no statutory protection afforded to the shopping parades throughout the city. However, it is considered that the position of the application site at the head of an existing parade will enhance the shopping experience for those visiting the parade, contributing to the vitality of the existing parade.

- It will encourage more youths to congregate, leading to an increase in graffiti.

The use of the building for three Class 1 uses is not considered to be likely to encourage youths to congregate. The layout of the raised platform is to remain as is existing but the opening hours for the new uses will be much earlier than a public house would otherwise offer. Therefore, in this regard it is considered that the proposed uses will not lead to an increase in the number of youths that may choose to congregate in this location.

- There is no unmet retail demand in the area.

This issue has been discussed in relation to Policy 42 where it was concluded that there is policy support for the proposals.

- There is no feedback from the agents as to the marketing information and what interest in the site there had been.

It is clear from visiting the site that the property has lain vacant for some time. It is considered to be positive that the application would bring a disused dilapidated building back into active use in accordance with the terms of the Development Plan.

h Applicant's supporting statement

The applicant has provided a supporting statement which raises the following:

Do not consider that the change falls within the Policy framework of Policy 45 which is aimed at protecting City and District Centres from major new retail developments.

The proposals, while retail are for community use and the location will reuse vacant premises in an existing commercial and community hub.

The site is readily accessible to the local public and is on the local bus route.

A development of this nature will not materially affect or prejudice the vitality and viability of the City Centre or District Centres.

The re use of the long term vacant premises shall improve amenity and the environment of the surrounding area.

The above raised issues have been discussed in relation to Policy 45 and in relation to other material considerations in the report above.

The applicant's agent also raised the following as a material consideration:

It will create employment opportunities in the area.

The Council acknowledges that the creation of three Class 1 units to replace a vacant public house would lead to the requirement for employees

i Tayplan Strategic Development Plan

The Strategic Development Plan for the Tayplan area is currently with Scottish Ministers for approval. The Strategic Development Plan sets out the long term spatial strategy, vision, policies and proposals to guide development in the Tayplan area for the next 20 years. When approved by Scottish Ministers the Tayplan Strategic Development Plan will replace the Dundee & Angus Structure Plan 2001-2016. The Proposed Plan maintains the general thrust and direction of the Policies contained within the current Development Plan with regard to retail development.

It is concluded that there are material planning considerations which weigh in favour of the proposed development and are of sufficient weight to suggest that Planning Permission be granted (with conditions) in accordance with the provisions of the Development Plan.

Design

As discussed, the proposed alterations to the building are of an acceptable standard of design and appearance and will enhance the appearance of the site to the improvement of the surrounding area.

CONCLUSION

It is concluded from the foregoing that the application will not detract visually from the surrounding area and that the use proposed is acceptable given the proposed layout of the car park and provision for a large number of cars at any one time. The proposed alterations to the building are of an acceptable standard of design and appearance and will enhance the appearance of the site to the improvement of the surrounding area. The proposed change of use is contrary to parts of Policy 45 but in accordance with Policy 1 and offered support in the Plan by Policy 42. As Policy 42 is targeted towards the current specific circumstances of the application proposals it is considered to override the general aims of the sequential test as set out in Policy 45 of the Local Plan.

In light of these circumstances, it is concluded that the application complies with the terms of the Development Plan. It is considered that there are material considerations of weight such as to support approval of the application.

RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:-

- The total noise from any mechanical and electrical plant shall not exceed NR45, during daytime, and shall not exceed NR35, during night time, as measured 1 metre from the facade of any adjacent residential property. Furthermore, it shall not exceed NR25 within any adjoining residential property.

NR45 is applicable for the period 07:00 to 23:00 hours and NR35 and NR25 are applicable for 23:00 to 07:00 hours.

- Deliveries to all premises, by vehicles, shall be restricted to between 0700-2100hours from

Monday to Saturday and 0900-1800hours on Sunday.

- 3 The opening hours for the premises shall be restricted to no earlier than 0700 hours and no later than 2200 hours in the evening.
- 4 Prior to the commencement of development on site, a report shall be submitted to the Council for written approval to fully detail mitigation measures from ground gas within the property. This should include details regarding service entry points, ensuring adequate ventilation for enclosed spaces and store rooms. The measures approved shall thereafter be fully implemented prior to the first use of the building for the uses hereby approved.

Reasons

- 1 In the interests of the amenity of the nearby residential occupiers.
- 2 In the interests of the amenity of the nearby residential occupiers.
- 3 In the interests of the amenity of the nearby residential occupiers.
- 4 In order to ensure the site is fit for the purpose proposed.