

## Section 42 Application to Extend the Time Period for Implementation of Planning Permission 23/00311/FULM for the Erection of Purpose Built Student Accommodation by 18 Months

### KEY INFORMATION

**Ward** Maryfield

**Address**

19-21 South Ward Road  
Dundee  
DD1 1PU

**Applicant**

Newtide Investment Limited

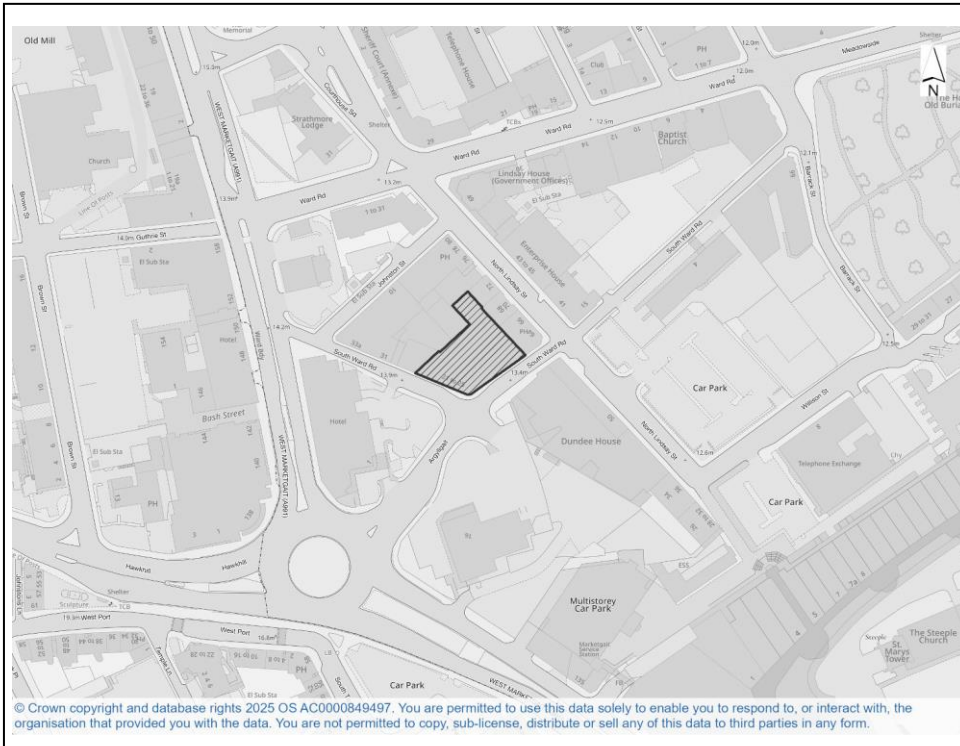
**Agent**

Varshini Gorjala  
Scott Hobbs Planning  
24A Stafford Street  
Edinburgh  
EH3 7BD

**Validated** 1 Nov 2024

**Report by Head of  
Planning & Economic  
Development**

**Contact:** Craig Swankie



### SUMMARY OF REPORT

- This is an application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 01 of planning permission 23/00311/FULM to allow a further 18 months for the erection of purpose built student accommodation to commence.
- There is an existing planning permission for the development, and the planning authority can only consider the matter of the conditions subject to which planning permission was granted.
- The planning permission expires on 13 June 2025. However, the applicant considers that development will not have commenced before this date. At this time, the developer has not discharged the planning conditions of 23/00311/FULM and is not able to lawfully commence development.
- The applicant has requested the planning permission is extended for a period of 18 months to allow planning conditions to be addressed within a reasonable timescale. It is stated that the commencement of development has been delayed whilst funding and contractors are identified. This process has been impacted by factors including increased construction costs and economic conditions. To enable the project to progress, the applicant requests more time to discharge the planning conditions and progress on site.
- The statutory neighbour notification process was undertaken. No representations were received.
- As this application relates to a condition attached to a Major Planning Application it is to be determined by the Planning Committee.
- More details can be found at [24/00712/S42 | Section 42 application to vary condition 01 of planning permission 23/00311/FULM to extend the time period for implementation of planning permission for purpose built student accommodation | 19 - 21 South Ward Road Dundee DD1 1PU](#)

### RECOMMENDATION

The application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 01 of planning permission 23/00311/FULM is in accordance with the Development Plan. It is therefore recommended that planning permission be APPROVED subject to conditions.

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## 1 DESCRIPTION OF PROPOSAL

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- 1.1 Planning permission 23/00311/FULM for the erection of purpose-built student accommodation with ancillary amenity space, associated landscaping and cycle parking was approved in December 2023. This planning permission was approved subject to conditions, including condition 01 which required development to begin within 18 months.
- 1.2 Condition 01 states: "*The development hereby permitted shall be commenced within 18 months of the date of this permission.*"
- 1.3 Since planning permission 23/00311/FULM was granted, no development has commenced. The planning agent has engaged with officers about the development since initially proposed, however demolition of the building which currently occupies the site has not been progressed and no development has commenced.
- 1.4 The applicant states whilst the developer is seeking to identify both funding and contractors to progress the development, this will not be concluded and the planning conditions addressed within the 18 month period. To allow further time for these elements to be concluded and development commenced, the applicant is seeking an amendment of condition 01.
- 1.5 This application seeks to vary the condition to allow a further 18 months for development to commence on site. It is proposed to amend the condition to read:  
  
"*The development hereby permitted shall be commenced no later than 13 December 2026.*"
- 1.6 This is the only change proposed to the planning permission. The development would be progressed in other respects as approved under 23/00311/FULM.
- 1.7 The applicant has submitted the following in support of the application;
  - Planning Statement; and
  - Student Accommodation Need and Demand Assessment.

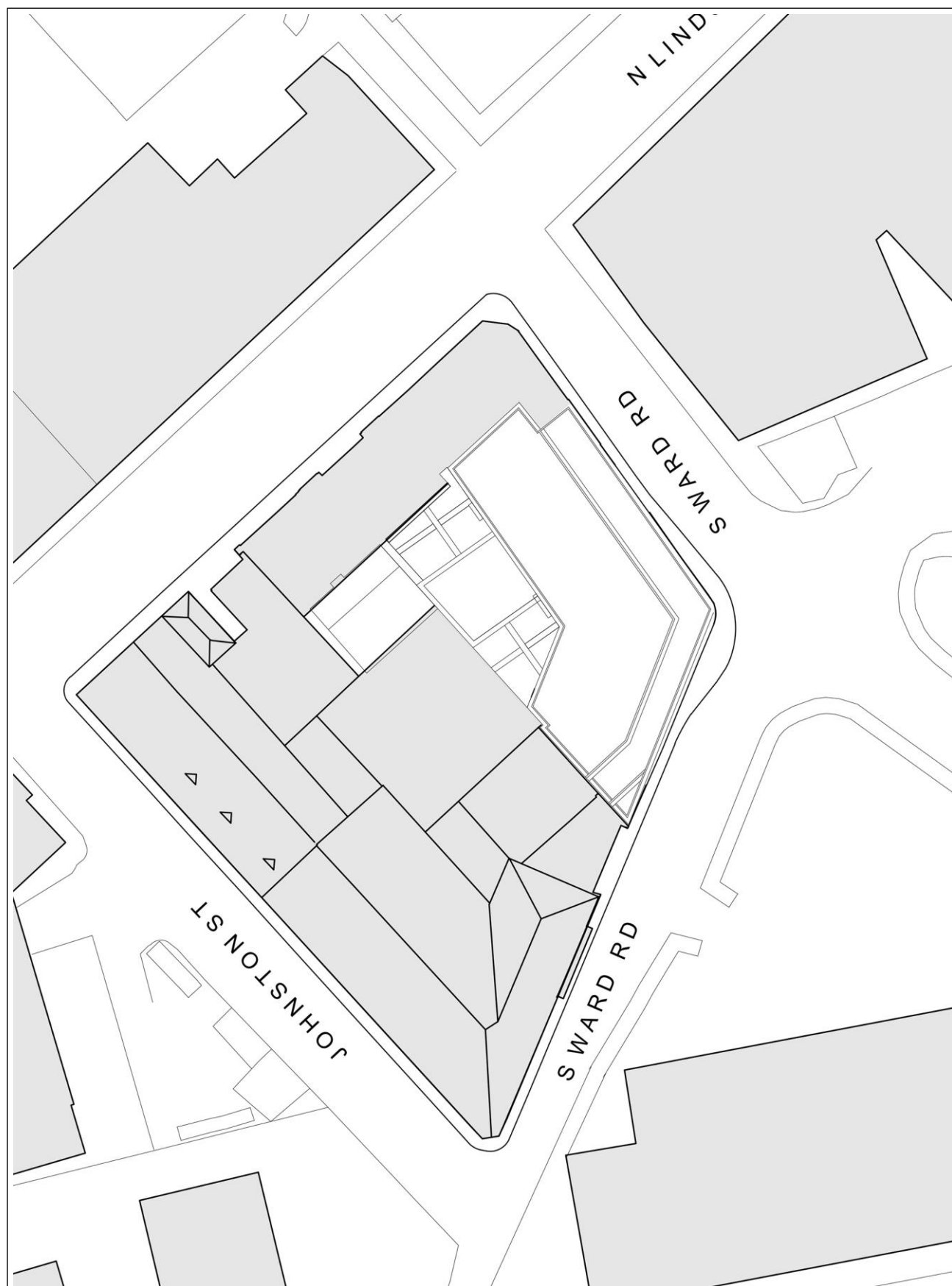


Figure 1 – Proposed Site Plan

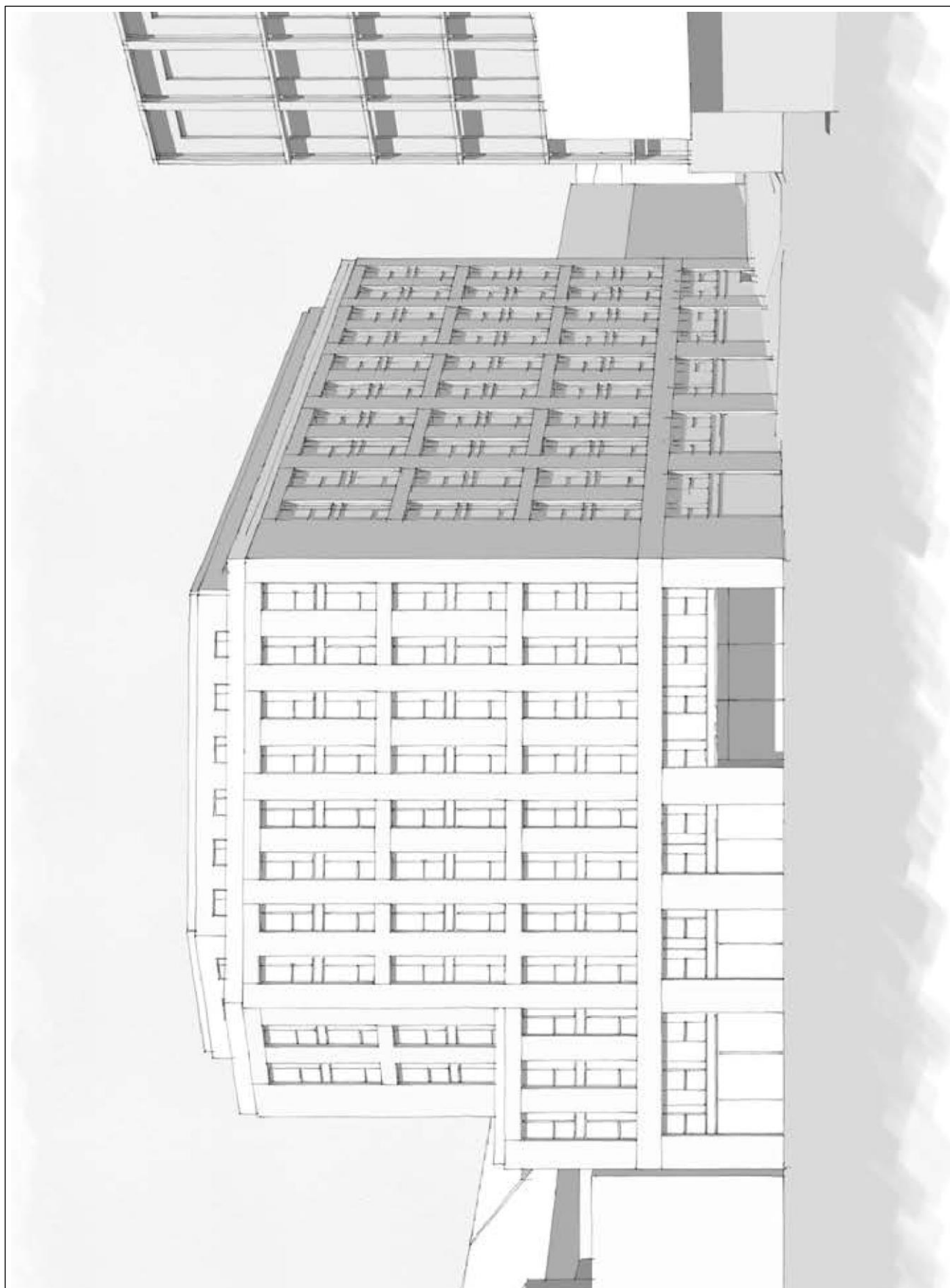


Figure 2 – Proposed Building

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## 2 SITE DESCRIPTION

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- 2.1 The application site is located on the north side of South Ward Road. The site which contains a vacant nightclub premises is 0.11 hectares and level in nature. There are buildings adjoining the site to the north and east.
- 2.2 The existing nightclub building which is finished in white paint with pitched roof fronts onto South Ward Road. The main walls of the building are equivalent in height to two storeys. As the building was a night club it contains a largely open main floor area with amenities. The site can be accessed via South Ward Road, which provides connections to surrounding roads and footways.
- 2.3 The surrounding buildings contain various uses including office, healthcare services and leisure. The site is also close to the city centre shops and services including Overgate Shopping Centre, Dundee House, and High Street/Murraygate. The site is bound by the Central Conservation Area, with a range of heritage buildings within the vicinity including Category B and Category C listed buildings immediately adjacent to the site. The surrounding area contains a range of building types within the city centre, including modern offices and traditional stone-built buildings.





Figure 3: View of Site From Johnston Street



Figure 4: View of Site From South Ward Road

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### 3 POLICY BACKGROUND

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- 3.1 The following plans and policies are considered to be of direct relevance to this application under Section 42 of the Act:

**NATIONAL PLANNING FRAMEWORK 4**

Policy 16c: Quality Homes

**DUNDEE LOCAL DEVELOPMENT PLAN 2019**

Policy 15: Student Accommodation

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

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### 4 SITE HISTORY

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- 4.1 Proposal of application notice 22/00387/PAN for the demolition of existing building and erection of purpose-built student accommodation was submitted in May 2022.
- 4.2 Planning application 22/00681/FULM for the proposed demolition of an existing building and erection of purpose-built student accommodation with ancillary amenity space, associated landscaping and cycle parking was withdrawn in March 2023.
- 4.3 Planning application 23/00311/FULL for the erection of purpose-built student accommodation (PBSA) together with associated access, amenity spaces and infrastructure was approved subject to conditions in December 2023.

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### 5 PUBLIC PARTICIPATION

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- 5.1 The statutory neighbour notification procedure has been undertaken.
- 5.2 No representation were received.

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### 6 CONSULTATIONS

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- 6.1 No consultee comments were received.

## 7 DETERMINING ISSUES

- 7.1 **Section 25 of the Town and Country Planning Act 1997 as amended provides that an application for planning permission (other than for a national development) shall be determined in accordance with the Development Plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

The provisions of the National Planning Framework 4 relevant to the determination of this application are specified in the Policy Background section above.

#### Principle of Development

- 7.2 **Policy 16c: Quality Homes** of NPF4 states development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, will be supported. This could include homes for people undertaking further and higher education.
- 7.3 **Policy 15: Student Accommodation** of the Dundee Local Development Plan 2019 states student accommodation will only be supported where:
- 1 it can be suitably demonstrated that a demand exists within the particular area for the level and type of student accommodation proposed;
  - 2 it is within convenient walking distance of the higher education institution to which a need exists and is well connected to local services and facilities; and
  - 3 the design and layout of the proposed development is of a high quality and provides an appropriate level of amenity space, car parking provision, refuse/recycling storage space and secure bike storage facilities.

Following development of new and replacement purpose-built student accommodation over the past ten years, it is considered unlikely that there will be the need over the short to medium term for significant additions to the existing supply. To ensure that there is not an oversupply of this type of accommodation, proposals will need to demonstrate that there is a need in the area for the accommodation proposed.

- 7.4 The applicant has submitted a Student Demand and Supply Report with the planning application. The report provided analysis of the existing student population and student accommodation within the city.
- 7.5 The study considers that the full-time student population within the city has grown by 9% between 2018/2018 and 2022/2023, to 17,440 students. Whilst there has been growth in the city's student population, the supply of student accommodation has not kept pace with demand. The report considers much of the student accommodation in the city is dated and there is limited supply of studio style accommodation, which is increasingly a preferred choice for students post pandemic.
- 7.6 The proposals will include the demolition of a vacant building within the city centre, and redevelopment of a highly visible brownfield site. With regard to unmet demand, the submitted report considers there to be up to 13,670 students who require accommodation within the city. The Report suggests that there is a potential unmet demand pool of 6,922 students. There is therefore considered to be sufficient demand for the proposed 215-bedroom development to provide new build, accessible purpose-built student accommodation within the city centre.



- 7.7 At the time when planning application 23/00311/FULM was approved, there was other planning applications for purpose built student accommodation which were either under consideration or had been granted planning permission. To ensure there is not an oversupply of student accommodation, and to encourage the early implementation of planning permission the normal time limit for implementation of a planning permission was reduced from 3 years to 18 months.
- 7.8 Twelve planning applications for purpose-built student accommodation have been approved since April 2020 creating a live pipeline of 2,592 beds. Of the approved new build developments, two are completed including Greenmarket (22/00205/FULL) and 56 Brown Street (21/00478/FULL). Development is progressing on two further developments at 63 Brown Street (20/00729/FULM) and 10 Douglas Street (23/00519/FULL). These developments will provide 661 bedrooms. There are no other developments with planning permission where construction has commenced. There are two live planning applications for student accommodation at this time, including a change of use of St Margarets Home to 36 bed PBSA (24/00760/FULL) and change of use of a former public house on St Andrews Lane to 24 bed PBSA (24/00733/FULL).
- 7.9 As there has been no significant increase in the supply of purpose-built student accommodation within the city since the approval of 23/00311/FULM, the amendment of condition 01 would not result in oversupply of accommodation. With regard to encouraging the early implementation of the permission, the justification provided by the applicant is understood and acknowledged. The applicant has demonstrated through the provision of supporting information and ongoing engagement with the Council that the development could be progressed on site, and that further time would enable funding and contractors to be identified. The requirements of criteria 1 of Policy 15 are met.
- 7.10 The location and design of the proposed development is to remain as previously approved, accordingly the requirements of criteria 2 and criteria 3 of Policy 15 are met.
- 7.11 In this case, it is considered that allowing the extension of time for implementation of the planning permission will not result in an oversupply of the type of accommodation proposed. The proposal is in accordance with Policy 16c of NPF4 and Policy 15 of the Local Development Plan, subject to a condition.
- 7.12 **It is concluded that the proposal is in accordance with the Development Plan.**

## **MATERIAL CONSIDERATIONS**

- 7.13 The material considerations to be taken into account are as follows:

### **A – SCOTTISH GOVERNMENT CIRCULAR 4/1998**

- 7.14 Circular 4/1998 provides guidance on the use of conditions in granting planning permission and stipulates that while the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. The Circular demonstrates that conditions that are fair, reasonable and practicable will satisfy the following 6 tests:
- necessary;
  - relevant to planning;
  - relevant to the development to be permitted;
  - enforceable;

- precise; and
- reasonable in all other respects.

- 7.15 Condition 01 of planning permission 23/00311/FULM states: “The development hereby permitted shall be commenced within 18 months of the date of this permission.”
- 7.16 After consideration of the tests in the Circular, and to ensure it is precise and enforceable, the proposed wording has been amended to read:
- 7.17 *“The development hereby permitted shall be commenced no later than 13 December 2026.”*
- 7.18 The proposal to vary condition 01 of planning permission 23/00311/FULM does not undermine the necessity, purpose, relevance or precision of the original conditions. The condition sought to ensure the timeous implementation of the planning permission. Since approval, the applicant states there have been factors including economic conditions which have delayed progress. However, work is continuing on identifying funding and contractors. Once these elements are concluded, the planning conditions can be addressed ahead of the development progressing.
- 7.19 The developer has engaged with Dundee City Council since the initial proposals under 22/00387/PAN were submitted in 2022, including during and after approval of planning permission 23/00311/FULM. There has been no significant increase in the availability of purpose-built student accommodation within the city since planning permission was granted. However, it is still considered necessary to only allow a short period for implementation of the permission in order to encourage the development to progress timeously. Based on the supporting information provided by the applicant and consideration of existing and pipeline student accommodation within the city, the provision of a further 18 months to commencement development would be acceptable. In this instance, the proposals adhere to the requirements of Circular 4/1998.
- 7.20 The effect of granting permission for a Section 42 variation is such that a new and separate permission exists for the development. In this case, the full set of conditions attached to the original permission are proposed to be carried forward and attached to this planning permission, with the variation to condition 01.
- 7.21 **It is concluded that there are material considerations which would justify approval of planning permission.**

## **B – CITY CENTRE STRATEGIC INVESTMENT PLAN**

- 7.22 The City Centre Strategic Investment Plan seeks to prepare and guide the future vision for the city, setting out a long-term strategic investment plan for the next three decades, structured around five themes including city centre living. The plan seeks to double the residential population living in and around the City Centre, ensuring a diverse range of people choose to live in the city.
- 7.23 Strategic Outcome 1 of the plan seeks to deliver high-quality residential development by promoting vacant and underused sites and buildings. The proposed development would meet this requirement, through the redevelopment of a long standing vacant site in the city centre.
- 7.24 The redevelopment of the vacant site and provision of high-quality purpose-built student accommodation for 215 students would support the target of doubling the residential population in the city centre and the returning to use of an unused site.

- 7.25 Strategic Outcome 2 seeks to provide a variety of residential types and tenures to meet the needs of different households and to create a diverse community. As considered under Policy 6 of NPF4 and Policy 15 of the Local Development Plan, there is demand for purpose-built student accommodation within the city.
- 7.26 The proposed development would contribute positively to the variety and form of development within the city centre and support the creation of diverse communities.
- 7.27 Strategic Outcome 3 seeks to attract a range of centrally located services and facilities to support city centre living. The proposed development of student accommodation would introduce a number of residents to the area, which would support the provision, vitality and viability of shops and services within the city centre. The development is located within walking distance of a range of facilities and supports the provision of 20-minute neighbourhoods.
- 7.28 Overall, the proposed development aligns with the themes and requirements of the City Centre Strategic Investment Plan through the provision of city centre residential accommodation, re-development of a brownfield site and by being within proximity of a range of shops and services.

## **C – STUDENT HOUSING IN DUNDEE**

- 7.29 In September 2024 the Scottish Government Cross Party Group on Housing released a report 'Student Housing Options and Experiences of Homelessness in Scotland'.
- 7.30 Within the report, student housing within Dundee is considered and reviewed. The report finds in 2022/2023 there were 14,060 students seeking rental accommodation in the City. The report considers the existing supply of PBSA within the city to be 3,289 bed spaces with a shortfall of 6,084. It is noted that whilst some new developments are progressing and will ease pressure more is needed and affordability remains a concern.
- 7.31 The findings of the report align with assessments of student accommodation within the City which have been submitted with planning applications for PBSA. This includes the Need and Demand Assessment submitted with this planning application which identified a potential shortfall of bed spaces to be 6,992. It is acknowledged the student population will vary from year to year, however current reports identified a demand of over 6,000 bed spaces in the city. There is therefore sufficient demand for further PBSA developments to be supported.
- 7.32 The present proposals would provide a further 215 bed spaces within a City Centre location, within walking distance of higher education institutions. The proposals would contribute to the range and availability of PBSA within Dundee and work toward addressing existing demand for student accommodation.
- 7.33 **It is concluded that there are no material considerations which would justify refusal of planning permission.**

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## **8 CONCLUSION**

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- 8.1 The application under Section 42 of The Town and Country Planning (Scotland) Act 1997 to vary Condition 01 of planning permission 23/00311/FULM is in accordance with the Development Plan. There are no material considerations of sufficient weight that would justify refusal of planning permission.

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## 9 RECOMMENDATION

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9.1 It is recommended that planning permission be GRANTED subject to the following conditions:

- 1 **Condition** - the development hereby permitted shall be commenced no later than 13 December 2026.

**Reason** - to ensure the timeous commencement of development and in compliance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

- 2 **Condition** - development shall not begin until the investigation and risk assessment proposed in the submitted Stage I Desk Study are completed and a remediation strategy to deal with contamination risks at the site has been submitted to and approved in writing by the Council. The strategy shall contain proposals to deal with contamination to include:

- i the nature, extent and type(s) of contamination on the site;
- ii measures to treat/remove contamination to ensure the site is fit for the use proposed and does not contain any significant pollution linkages;
- iii measures to deal with contamination during construction works; and
- iv verification of the condition of the site on completion of decontamination measures.

**Reason** - in order to ensure that any potential contamination of the site is dealt with appropriately in the interests of public and environmental safety.

- 3 **Condition** – prior to first occupation, the remediation strategy shall be fully implemented and a verification report with relevant documentation demonstrating that the objectives of the remediation strategy have been achieved shall be submitted to and approved by the planning authority.

**Reason** - in order to ensure that any potential contamination of the site is dealt with appropriately in the interests of public and environmental safety.

- 4 **Condition** - prior to the commencement of any construction works, details of a scheme of public art to be provided within the development hereby approved shall be submitted to the Council for written approval. Thereafter, the approved scheme of public art shall be installed prior to the completion of the development hereby approved.

**Reason** - in the interests of enhancing the visual amenity and environmental quality of the development.

- 5 **Condition** - prior to the commencement of development, a scheme of features or measures to conserve, restore and enhance biodiversity, such as those measures set out in the NatureScot Developing with Nature guidance and Section 6 of document 07 – Bat Roost Survey dated May 2023, shall be submitted to and agreed in writing by the Council. The approved details thereafter shall be implemented, retained and maintained for their designed purpose in accordance with the approved scheme.

**Reason** - to ensure that a satisfactory biodiversity enhancement scheme is proposed and implemented, mitigating the biodiversity impact that development has on the site.

- 6 **Condition** – prior to the commencement of development, a detailed hard and soft landscaping plan shall be submitted to the Council for written approval. Thereafter,

landscaping shall be provided on site as the agreed details prior to first occupation of the development hereby approved. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of this condition.

**Reason** - to ensure the implementation and management of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local streetscape in the interests of the visual amenity of the area.

- 7 **Condition** – prior to the commencement of any construction works, a detailed surface water drainage/SUDS design including drawings, calculations, full modelling, simulation results, design risk assessment, signed Dundee City Council Design Compliance and Independent Check Certification, evidence of compliance with the Simple Index Approach as described in section 26.7.1 of the CIRIA SUDS Manual (C753), and where appropriate SEPA comments shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out prior to the first occupation of the development hereby approved.

**Reason** - in the interests of sustainable drainage provision and flood protection.

- 8 **Condition** – prior to the commencement of any construction works, maintenance responsibilities along with a maintenance schedule for the surface water drainage system/SUDS features shall be submitted to the Council for written approval. Thereafter, all works approved by virtue of this condition shall be carried out in perpetuity.

**Reason** - in the interests of flood protection and visual amenity.

- 9 **Condition** - prior to first occupation the scheme of sound insulation detailed in Appendix 5 of the Noise Impact Assessment "Proposed Student Accommodation, South Ward Road, Dundee " (Project No: 5220 V6) dated 25 October 2023, shall be implemented in full. If the specified glazing/ventilation is not to be installed, a revised scheme of sound insulation shall be submitted to the Council for approval prior to construction and thereafter implemented in accordance with the approved scheme.

**Reason** – to ensure adequate noise mitigation measures are implemented in the interests of protecting surrounding land uses and residential amenity.

- 10 **Condition** - the total noise from the mechanical and electrical plant/services shall not exceed NR45, during daytime, and shall not exceed NR35 during night-time, as measured 1 metre external to the facade of adjacent residential property. Furthermore, it shall not exceed NR25 within any adjoining residential property. NR45 is applicable for the period 0700 to 2300 hours and NR35 and NR25 are applicable for 2300 to 0700 hours.

**Reason** - in the interests of protecting residential amenity.

- 11 **Condition** – the received noise from the electrical substation(s) shall not exceed NR30 as measured 1 metre external to the facade of adjacent residential property.

**Reason** - in the interests of protecting residential amenity.

- 12 **Condition** - prior to any construction works onsite, full details of the proposed means of providing heating (and/or additional standby/emergency power) to the building, including details of any flues or extracts or similar related works shall be submitted to and approved in writing by the Local Planning Authority. An air quality assessment may also be needed depending on the size, location and fuel type of any combustion appliances

**Reason** – in the interest of air quality and protecting residential amenity.

- 13 **Condition** - prior to first occupation, the mitigation measures detailed in Section 6 of the Odour Risk Assessment dated 27 October 2023 entitled “Proposed Purpose-Built Student Accommodation, South Ward Road, Dundee” Version 2.1 (Project number 5220) prepared by ITP Energised, shall be implemented in full.

**Reason** - in the interest of air quality and protecting residential amenity.

- 14 **Condition** – full details of secure and covered cycle storage within the site shall be submitted to the Council for approval. Thereafter, the cycle storage shall be installed as the agreed details prior to first occupation of the development.

**Reason** – in the interest of ensuring that provision is made for sustainable transport measures.

- 15 **Condition** - a Travel Plan must be in place and agreed with the Council within one year of the development opening.

**Reason** - in the interest of ensuring that provision is made for sustainable transport measures.

- 16 **Condition** - the development hereby approved shall be used solely for the purposes of providing student accommodation and ancillary facilities associated with their needs, other than from 1 June to 31 August annually when it may be used as short term holiday accommodation, unless otherwise agreed in writing by the planning authority.

**Reason** - to retain control of use of the building.

- 17 **Condition** - prior to the commencement of development, a site waste management plan shall be submitted to and approved by the Council. The waste management plan shall contain details of how site waste will be controlled during construction and operation of the development.

**Reason** - in the interest of sustainable waste management.

- 18 **Condition** - prior to the commencement of work on site, full details and samples of all of the proposed finishing materials of the development hereby approved shall be submitted to the Council for written approval. For the avoidance of doubt, these shall include bricks, cladding, render, windows and doors. Thereafter, the proposed development shall be finished in strict accordance with the details approved by this condition.

**Reason** - in the interests of visual amenity and to ensure the character and setting of surrounding listed buildings is maintained.

- 19 **Condition** - a Sustainability Statement demonstrating the extent to which the new build elements of the development will meet the requirements of Policy 48 of the Dundee Local Development Plan shall be submitted for the approval of the planning authority and the works shall be completed in accordance with the approved Statement.

**Reason** - in the interests of reducing carbon emissions associated with the proposed development.

- 20 **Condition** - Prior to the commencement of any works on site, a construction management plan shall be submitted to the Council for written approval. The plan shall include details



of road closures, site management and temporary secure boundary treatments to be used during demolition and construction operations. Thereafter, the agreed construction management plan shall be implemented in full.

**Reason** - to minimise disruption to neighbouring businesses during the construction period.