

# Erection of Restaurant With Bar (Class 3) and Associated Accommodation

## KEY INFORMATION

**Ward** Lochee

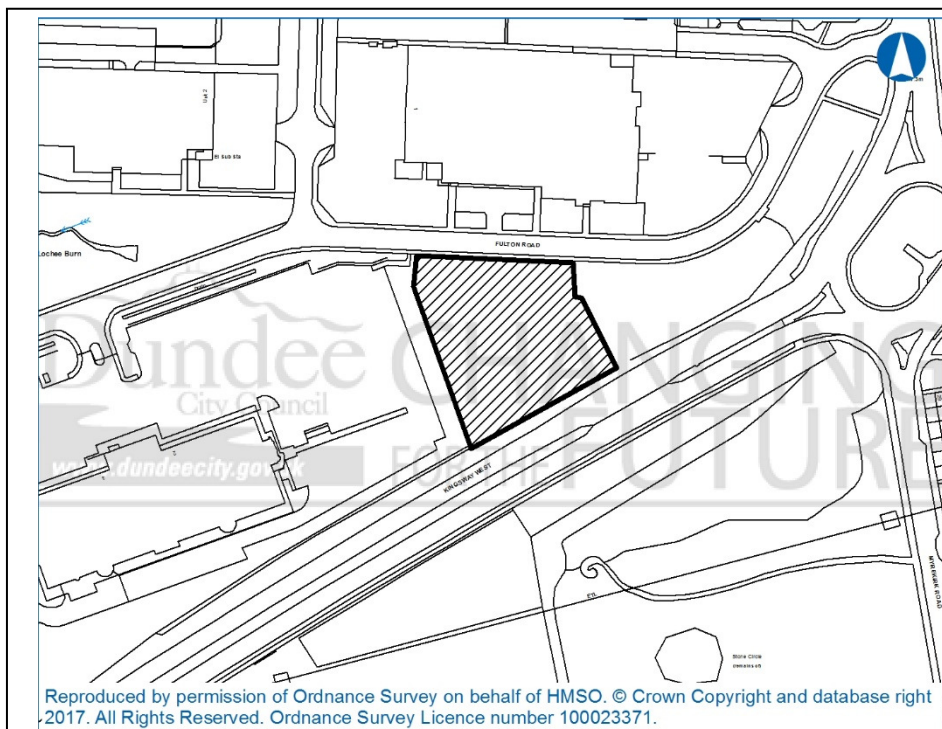
**Address**  
Land To East Of Discovery Centre, Fulton Road, Gourdie Industrial Estate

**Applicant**  
Kilmac (Fulton Road) Ltd  
Carden Church  
Carden Place  
Aberdeen AB10 1UR

**Agent**  
Halliday Fraser Munro  
Planning, Carden Church  
6 Carden Place  
Aberdeen AB10 1UR

**Registered** 21 Dec 2016

**Case Officer** Craig Swankie



## SUMMARY OF REPORT

- Planning permission is sought for the erection of a restaurant and bar with associated living accommodation, car park and infrastructure at Wester Gourdie Industrial Estate.
- The proposed restaurant and bar within a Principle Economic Development Area would be contrary to Policy 1 (Principle Economic Development Areas) and Policy 4 (Ancillary Services with Economic Development Areas) of the Dundee Local Development Plan. The proposed living accommodation would be contrary to Policy 9 (Design of New Housing).
- The applicant states that the proposal would result in investment and job creation at a site which is not suitable for industrial development.
- The statutory neighbour notification procedure was undertaken and one letter of support was received.
- The application requires to be determined by the Development Management Committee at the request of a local member.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>

## RECOMMENDATION

The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be REFUSED.

## 1 DESCRIPTION OF PROPOSAL

1.1 Planning permission is sought for the erection of a restaurant with bar (Class 3) and associated living accommodation, 56 space car park, access and landscaping.

1.2 The proposed restaurant and bar would be positioned in the east of the site, with customer car parking to the west and external customer seating to the south. Access to the site would be taken from Fulton Road, entering the site on the northern boundary. It would then lead to the customer car parking area which would provide a circulatory route through the car park

1.3 The restaurant would be of a traditional design with sections of pitched roof and flat roof. The building would be split into single storey and two storey elements. The building would be finished in brick with slate roof tiles. The ground floor of the building would comprise a customer seating area, kitchen, bar, toilet facilities and storage facilities. The upper floor of the building would comprise of a 3 bedroom staff apartment and staff welfare facilities.

1.4 The site would be enclosed by hedging and timber fencing with areas of landscaping separating the areas of development from the site boundaries.

1.5 The proposed restaurant/bar would be served by a 56 space customer car park.

1.6 The restaurant/bar would be operational between 1000 and midnight Monday to Saturday and 1030 and 2300 on Sundays.

1.7 In accordance with the Council's Scheme of Delegation, this application has been reported to the Council's Development Management Committee at the request of an elected member.

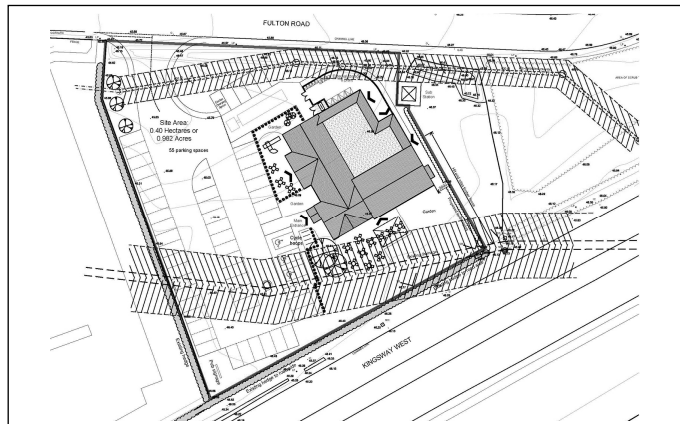


Figure 1 – Proposed Layout



Figure 2 – Proposed Elevations

## 2 SITE DESCRIPTION

2.1 The application site is located immediately north of the A90 Kingsway West, at Myrekirk Roundabout. The 577m<sup>2</sup> site forms part of a rectangular area of land immediately east of existing NCR offices and to the south of Fulton



Figure 3 – Site Photo

Road and Wester Gourdie Industrial Estate. The level site is open in nature and visible from the Kingsway.

- 2.2 Surrounding land uses are predominantly industrial in nature, with factories and yards to the north. Other uses include a car sales business opposite the site on Myrekirk Road and a supermarket to the north east. Beyond the site to the south across the Kingsway are sports pitches and residential areas.

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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:

**TAYPLAN STRATEGIC DEVELOPMENT PLAN 2012-2032**

Policy 3: Protecting Tayplans Assets

**DUNDEE LOCAL DEVELOPMENT PLAN**

Policy 1: Principal Economic Development Areas

Policy 4: Ancillary Services with Economic Development Areas

Policy 7: High Quality Design

Policy 9: Design of New Housing

Policy 28: Public Houses, Restaurants and Hot Food Takeaways Outwith the City Centre

Policy 29: Low and zero carbon technology in new development

Policy 42: Sustainable Drainage Systems

Policy 45: Contaminated Land

Policy 47: Environmental Protection

Policy 54: Active Travel

Policy 55: Accessibility of New Developments.

- 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 There is no planning history at this site.
- 4.2 Planning application 16/01046/FULL for the erection of a coffee shop with drive-through and associated parking and infrastructure on a site immediately to the east is pending consideration and is to be determined by Development Management Committee.

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### **5 PUBLIC PARTICIPATION**

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- 5.1 The statutory neighbour notification procedure has been undertaken. This application was also advertised in the Dundee Evening Telegraph as a departure to the Development Plan.
- 5.2 One letter of support has been received.
- 5.3 Members will already have access to the letter and the matters raised are considered in the Observations section below.

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## 6 CONSULTATIONS

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- 6.1 **The Head of Community Safety and Protection** – has recommended that should permission be granted, conditions controlling noise and delivery times be incorporated into the decision notice.
- 6.2 **Transport Scotland** – has recommended that should permission be granted conditions controlling boundary treatments and site access are incorporated into the decision notice.

## 7 DETERMINING ISSUES

- 7.1 **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 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.

### TAYPLAN STRATEGIC DEVELOPMENT PLAN

- 7.2 **Policy 3: Protecting Tayplans Assets** - requires participating authorities to identify and safeguard at least 5 years supply of employment land within principal settlements to support the growth of the economy and a diverse range of industrial requirements.
- 7.3 The aspirations of Policy 3 are satisfied by Policy 1 (Principal Economic Development Areas) of the Dundee Local Development Plan which safeguards land allocated for principal economic development for uses falling within Classes 4, 5 or 6 of the Town and Country Planning (Use Classes)(Scotland) Order 1997 only.
- 7.4 While the assessment of the proposed development against Policy 1 of the adopted Local Development Plan below concludes that this policy is contravened, the scale of development proposed will not significantly adversely impact on the supply of employment land within Dundee because at present there is an adequate supply of employment land within the City.
- 7.5 **The proposed development therefore does not conflict with the requirements of Policy 3.**

### DUNDEE LOCAL DEVELOPMENT PLAN

- 7.6 **Policy 1: Principal Economic Development Areas** - safeguards areas designated as Principal Economic Development Areas for uses falling within Classes 4, 5 and 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997.
- 7.7 The proposed restaurant with bar is a Class 3 use and is therefore contrary to the terms of Policy 1.
- 7.8 **The proposal contravenes Policy 1 of the Adopted Dundee Local Development Plan.**
- 7.9 **Policy 4: Ancillary Services with Economic Development Areas** - supports land uses, such as catering facilities, within Principal Economic Development Areas where the

proposals can demonstrate they meet the needs of employees and complement existing business uses.

- 7.10 The proposed development is not considered to be a facility that would be ancillary to the Myrekirk Principal Economic Development Area. The principal elevation of the building would face east towards Kingsway West to maximise its public visibility. The proposed restaurant/bar is of a scale and nature (operating 1000 to midnight Monday to Saturday and 1030 - 2300 on Sundays, with 56 space car park) that is clearly aimed towards attracting large numbers of visiting members of the public. This would create a development that would be significantly larger than a facility for just employees and would generate traffic and footfall from the wider area. The terms of Policy 4 does not support facilities of this scale.
- 7.11 The terms of Policy 4 does not support facilities of this scale.
- 7.12 **The proposal is therefore not ancillary to the Principal Economic Development Area and does not comply with the terms of policy 4.**
- 7.13 **Policy 7: High Quality Design of the Dundee Local Development Plan (2014)** - seeks that development must contribute positively to the quality of the surrounding built and natural environment, with reference to being safe and accessible. All proposals should consider and respect site topography, complement surroundings and respect the existing street scene.
- 7.14 It is proposed to erect a two storey detached building with external finishes including brickwork, slate roof and timber windows and doors. An external storage and plant area would be provided on the north elevation.
- 7.15 The scale and massing of the proposed building is acceptable and would be in keeping with the dispersed nature of development at Wester Gourdie Industrial Estate. Whilst the site is open in nature, the proposals would not appear out of place. The building would be of traditional design and the provision of landscaping areas within the south of the site would help to break up the views into and out of the site.
- 7.16 The applicant has provided a Transport Statement and detailed parking layout. The proposal would have no detrimental impact on road and pedestrian safety. Vehicles could access the site from Fulton Road and the proposed 56 parking spaces would be sufficient. Transport Scotland has requested conditions to ensure access to the site is taken from Fulton Road only and that an unclimbable barrier/fence is provided to the south of the site are incorporated into the grant of planning permission should the Committee be minded to approve this application.
- 7.17 **Subject to suitable conditions, the proposals meets the requirements of Policy 7.**
- 7.18 **Policy 9: Design of New Housing** - is supportive of proposals that involve the creation of high quality housing. All housing developments are expected to adhere to the guidance contained within Appendix 3 of the Local Development Plan.
- 7.19 Appendix 3 stipulates that flats will only be acceptable outwith the City Centre and Inner City through conversions of buildings of merit where conversion to houses is not suitable or achievable or where the application site is the subject of a planning brief.
- 7.20 The proposal involves the formation of a staff apartment on the upper floor of the proposed restaurant/bar building. The proposed development does not involve the conversion of an existing building and the site is not the subject of a planning brief. In addition there is no indication of whether the proposed flat would benefit from communal amenity space or curtilage parking as also required by Appendix 3.

- 7.21 **The proposal is contrary to Policy 9.**
- 7.22 **Policy 28: Public Houses, Restaurants and Hot Food Takeaways Outwith the City Centre** - supports public houses, restaurants and hot food takeaways if the proposal is more than 30 meters from existing or proposed housing, where the premises has a gross floor area of up to 150m<sup>2</sup>. If the floor area would be over 150m<sup>2</sup>, a 45 meter separation would be required from the curtilage of the proposal to the facade of any existing or proposed houses.
- 7.23 The proposal satisfies this policy given the size of the unit and its location relative to neighbouring residential properties. Whilst staff accommodation is proposed on the upper floor of the restaurant/bar, the unit would be wholly ancillary to the main use of the premises and within the control of the applicant.
- 7.24 **The proposal meets the requirements of Policy 28.**
- 7.25 **Policy 29: Low and Zero Carbon Technology in New Development** - requires that, for specified developments, carbon emissions will be reduced by defined percentages through the installation and operation of zero-carbon generating technologies.
- 7.26 A Sustainability Statement has been provided by the applicant which details the proposed measures to reduce the carbon footprint of the proposed restaurant and bar.
- 7.27 **The proposal meets the requirements of Policy 29.**
- 7.28 **Policy 42: Sustainable Drainage Systems** - requires new development proposals to be accompanied by a Sustainable Drainage scheme at the time of submitting a planning application. This must be supplemented by a Drainage Impact Assessment that shows the impact of a 1 in 200-year rainstorm event. SUDS schemes should be designed accordingly so that if this event occurs, flooding will not be higher than 300mm below floor level.
- 7.29 A flood risk assessment and drainage strategy have been submitted in support of the proposed development. In principle, the proposed drainage system satisfies the requirements of the Council as Flood Authority. However, should the Committee be minded to approve this application, conditions relating to the implementation of the proposed drainage system should be incorporated into the grant of planning permission to ensure that surface water from the development does not drain onto the public road or generate instances of localised flooding.
- 7.30 **Subject to conditions, the application meets the requirements of Policy 42.**
- 7.31 **Policy 45: Contaminated Land requires** - applicants in considering possible contamination of application sites to:
- a submit the results of site investigations which assess the nature and extent of any contamination which may be present; and
  - b where contamination is found to be present, notify the authority of the remediation measures proposed to render the site fit for its intended use including all receptors.
- 7.32 The applicant has submitted a site investigation and risk assessment to the satisfaction of the Head of Community Safety and Protection. Both reports concluded ground gas protection measures are required. To ensure the proposed ground gas protection measures are implemented and are successful in dealing with contamination, the Head of Community Safety and Protection has recommended conditions be incorporated into the grant of planning permission should the Committee be minded to approve this application.

- 7.33 **The proposal meets the requirements of Policy 45.**
- 7.34 **Policy 47: Environmental Protection** - states all new development or an extension to an existing development that would generate noise, vibration or light pollution will be required to demonstrate that it can be accommodated without an unsatisfactory level of disturbance on the surrounding area.
- 7.35 Noise sources include mechanical and electrical services and noise generated by delivery vehicles. The nearest residential property is to the south, although the Kingsway lies between the application site and residential properties.
- 7.36 The Head of Community Safety and Protection has requested that the maximum level of noise produced by any mechanical and electric services and restriction of delivery times, including loading and unloading of vehicles are controlled by condition should the Committee be minded to approve this application.
- 7.37 **Subject to suitable conditions, the development would comply with Policy 47.**
- 7.38 **Policy 54: Active Travel and Policy: 55 Accessibility of New Developments** - require all developments to consider ease and safety of pedestrian access and access to public transport over all other modes of transport. Proposals should also comply with Dundee City Council's road standards.
- 7.39 A Transport Statement has been submitted with the application documents and the findings are accepted. The site is easily accessible from the adjacent trunk road and surrounding roads by car, the site is also located adjacent to a bus route. Whilst the Transport Statement does not identify any nearby cycling infrastructure, Dundee Green Circular walking and cycling route runs to the south of the site along Kingsway West and Myrekirk Road.
- 7.40 The application site is accessible and is in accordance with Policy 54 and Policy 55. However it is expected that access to the proposed restaurant/bar would be predominantly by private car. This is evidenced by the large customer car park that would serve the proposed restaurant/bar. It should be noted that the proposed restaurant/bar would be significantly more accessible in a City Centre or District Centre location.
- 7.41 **The proposal meets the requirements of Policy 54 and Policy 55.**
- 7.42 **It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.**

## **OTHER MATERIAL CONSIDERATIONS**

- 7.43 The other material considerations to be taken into account are as follows

### **A - NATIONAL POLICY AND GUIDANCE**

- 7.44 Scottish Planning Policy (SPP) highlights that the overarching aim of achieving sustainable economic growth through the planning system is to achieve the right development in the right place. It is within this context that Members should note that the application site is located within a designated Principal Economic Development Area safeguarded by the adopted Dundee Local Development Plan for uses falling within Classes 4, 5 or 6 of the Town and Country Planning (Use Classes)(Scotland) Order 1997. The approval of this application could prevent the future redevelopment of the vacant site to the east of the application site for business/industrial uses given the requirement to restrict noise and operating hours so as not to adversely impact on the amenity of the surrounding area. In

addition, the construction of the proposal would prevent the development of this prominent site for permissible uses within Classes 4, 5 or 6.

- 7.45 The Scottish Government's Town Centre First Principle encourages Councils to invest in City Centres and help communities thrive. It states that "centres are a key element of the economic, social and environmental fabric of Scotland's towns; often at the core of community and economic life, offering spaces in which to live, meet and interact, do business, and access facilities and services."
- 7.46 The principle requests that:
- "Government, local authorities, the wider public sector, businesses and communities put the health of town centres at the heart of proportionate and best value decision making, seeking to deliver the best local outcomes regarding investment and de-investment decisions, alignment of policies, targeting of available resources to priority town centre sites, and encouraging vibrancy, equality and diversity. "
- 7.47 The proposed Class 3 use on an out-of-centre site goes against the Town Centres First Principle and would encourage members of the public from the wider area to visit the site. It would not encourage people to visit the City Centre, District Centres or Commercial Centres in the same way that such a use would if it were located elsewhere.
- 7.48 The applicant has not provided an assessment of alternative sites. The proposals for a restaurant and bar out with an existing centre will generate a greater travel demand than if the proposals were within an existing centre. The proposals also miss an opportunity to increase footfall and enhance the vitality of existing centres.
- 7.49 No case has been provided that has identified a deficiency in the provision of restaurants in this area. There are a number of restaurants and food outlets to the east and west of the site on the Kingsway which serve the needs of local areas and passing traffic. These include sites at Camperdown Leisure Park, Kingsway West, and other commercial premises including the Filling Station, Gourdie Croft, Subway and the Hotel at the Swallow roundabout. Given the existing provision, there is no deficiency in provision that the proposal would address.
- 7.50 The proposal does not comply with Scottish Planning Policy 2014 or the Town Centres First approach.

## **B - SUPPORTING INFORMATION**

- 7.51 A planning statement, transport statement, ground investigations report, flood risk assessment and site history information accompany this application. The contents of the transport statement, ground investigations reports and flood risk assessment have been assessed against the requirements of the Development Plan in the observations section above.
- 7.52 The applicant advises that they consider the application to be in accordance with Policies 4 of the LDP.
- 7.53 The applicant states the proposed development would not undermine the purpose of the Principal Economic Development Area or adversely impact on the fabric of the surrounding area. Issues in relation to the suitability of the site for a non-industrial use have been discussed in relation to Policy 1 and Policy 4 above. It was concluded that the information put forward does not demonstrate that the proposals will be aimed at meeting the needs of



those within the Economic Development Area and would not support further industrial development within Wester Gourdie Industrial Estate.

7.54 The statement also puts forward the following in support of the application:

1 Creation of jobs

7.55 The statement makes reference to the potential for a restaurant/bar to develop this site, and resulting permanent employment both full and part-time, during and post-construction.

7.56 Brand practice indicates that employment could total up to 40-45 jobs within the restaurant and bar. The applicant believes this level of employment would not be achievable through a Class 4, 5, 6 Use on this site.

7.57 Response: No specific details of employment including number of permanent or full time posts have been provided. It is not possible to comment on or predict potential employment figures within a Class 4, 5 or 6 use. There is no sufficient evidence to suggest the proposed use would result in a greater number of jobs than a business/industrial use or justify a departure from the requirements of Policy 1 and Policy 4. Furthermore the development of the site for industrial development could support existing industrial uses and job creation at neighbouring businesses within Wester Gourdie Industrial Estate.

2 Employment Land Supply and Site Constraints

7.58 The applicant has provided details of available employment land in Dundee. A submitted Feasibility Study and Marketing History report concludes there is a significant over supply of Industrial and office properties within close proximity to the site providing far better cost effective alternatives to any new potential occupier /end user who is looking to move or expand within Dundee.

7.59 The planning statement considers the size and shape of the site means that business/general industrial use is not capable of being accommodated on the site. The site is constrained by the presence of underground sewers and would require a dedicated power supply. The applicant believes it is valid to assume that Class 4, 5 and 6 development would be difficult to deliver on the site, particularly of a scale which would not be rendered unviable by such constraints.

7.60 Response: Dundee also has a number of long established and well located Principal Economic Development Areas that remain well suited for their purpose and capable of providing future employment opportunities either through their retention, regeneration or modest expansion.

7.61 The exact needs of businesses are varied and the technology and processes are constantly evolving. Dundee will need to respond quickly to meet the requirements of evolving sectors such as energy and oil and gas as it competes with other locations to accommodate these new opportunities. To do this Dundee will need a generous and varied supply of land in locations across the city where existing businesses can expand and new businesses can locate. Requirements are likely to be for a variety of uses from storage to heavy engineering.

7.62 The application sites provides a quality environment in a highly visible location that is accessible to both the transport network and workforce. Within Dundee the maintenance of a good range of sites available for development is required to actively assist economic development; it is also necessary to safeguard employment and business land from other

development pressures. Existing constraints within the site would not restrict development, subject to re-alignment of underground sewers as presently proposed.

- 7.63 The proposed restaurant and bar would adversely impact on the variety of size and location of available employment land within the city. Whilst the site has been vacant for a number of years, the proposed use would not meet the requirements of Policy 1 and Policy 4 and existing site constraints would not prohibit a business/industrial development within use class 4, 5 or 6.

### 3 Previous approvals

- 7.64 The applicant's agent also makes reference to a previous planning application within Wester Gourdie Industrial Estate for ScotKart (11/0422/FULL) which was supported as a departure to Policy 18 (Principle Economic Development Areas) of the Dundee Local Plan Review 2005 due to the economic benefits of the proposal.
- 7.65 Response: There is no concept of binding precedents in the planning system whereby an authority might be obliged to follow the same approach taken in a previous application. Each application must be decided on its own merit.
- 7.66 It is also noted that the application cited by the applicant's supporting statement relates to an existing industrial building and site of a much larger scale. The previously approved development, which has since ceased trading is not considered to have direct relevance to the determination of the current proposals.

## **C - PROVISION OF RESIDENTIAL ACCOMMODATION**

- 7.67 The provision of on-site staff accommodation within a restaurant/bar development of the scale proposed is not uncommon. Although the proposed flat would not adhere to the Council's standards for residential development detailed within the adopted Local Plan and Proposed Dundee Local Development Plan the provision of such accommodation could be considered integral to the operation of the proposed restaurant/bar. Therefore, had the principle of development been acceptable it is likely that the occupancy of the proposed flats would have been restricted by condition to employees only.

## **D - LETTER OF SUPPORT**

- 7.68 One letter of support was received in relation to the proposals, stating the development could bring extra footfall to the area and enhance local amenity through the development of a vacant site.
- 7.69 It is acknowledged that the proposals would provide employment opportunities. However, the proposed restaurant and bar would be located within an area designated for uses of an industrial nature. The site is suitable for, and could accommodate development within Use Class 4, 5 or 6. Development of that nature could bring benefits and employment opportunities to the city and provide services to existing businesses at Wester Gourdie Industrial Estate.
- 7.70 **It is concluded from the foregoing that there are no material considerations of sufficient weight to support the approval of planning permission contrary to the development plan.**

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## 8 CONCLUSION

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- 8.1 The proposed restaurant and bar (Class 3) would be located within a Principal Economic Development Area where only uses within Class 4, 5 and 6 are supported. The proposals would not support the function of the existing Principal Economic Development Area, would have an adverse impact on the variety and quantity of employment land within the City and would not comply with the Town Centres First Principle.

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## 9 RECOMMENDATION

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- 9.1 It is recommended that consent be REFUSED for the following reason:

### REASON

- 1 The development, in proposing a restaurant and bar (Class 3) at Wester Gourdie Industrial Estate, is contrary to Policies 1 and 4 of Dundee Local Development Plan as the site is designated as a Principal Economic Development Area where only uses within Class 4, 5 and 6 are supported. The proposed restaurant and bar would not support the function of the existing Principal Economic Development Area. The proposals would have an adverse impact on the variety and quantity of employment land within the City. The proposal, for an out of centre Class 3 use would not protect the vitality and viability of Dundee's City Centre, District Centres, and Commercial Centres. There are no material considerations that would justify approval of the application contrary to the approved and adopted development plan.