

ANGUS COUNCIL

DEVELOPMENT MANAGEMENT REVIEW COMMITTEE - 31 OCTOBER 2024

34 ABBOT STREET, ARBROATH

REPORT BY THE DIRECTOR OF LEGAL, GOVERNANCE & CHANGE

1. ABSTRACT

- 1.1 The Committee is asked to consider an application for a review of the decision taken by the planning authority in respect of the refusal of planning permission for proposed conversion of part of former nursery building to form 2 flats (retrospective), application No 24/00199/FULL, at 34 Abbot Street, Arbroath.

2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES

This Report contributes to the following local outcomes contained within the Angus Council Plan 2023-2028:

- Caring for our people
- Caring for our place

3. RECOMMENDATIONS

It is recommended that the Committee:-

- (i) note that new information has been provided and determine if the statutory requirements have been met as detailed at Section 5 below;
- (ii) consider and determine if further procedure is required as detailed at Section 4;
- (iii) if further procedure is required, the manner in which the review is to be conducted;
- (vi) if no further procedure is required:
 - (a) review the case submitted by the Planning Authority (**Appendix 1**);
 - (b) review the case submitted by the Applicant (**Appendix 2**);
 - (c) consider the further lodged representations (**Appendix 3**); and
 - (d) consider the Applicant's response to the further lodged representations. (**Appendix 4**).

4. CURRENT POSITION

- 4.1 The Development Management Review Committee is required to determine if they have sufficient information to determine the Review without further procedure. If members do not determine the review without further procedure, the Review Committee must determine the manner in which the review is to be conducted. The procedures available in terms of the regulations are: written submissions, hearing sessions or inspection of the land to which the review relates.

5. NEW INFORMATION

- 5.1 The Planning Review Statement submitted by the applicant includes matters which were not raised in the first instance to the planning authority when the application was submitted.

The Town & Country Planning (Scotland) Act 1997 states:

43B Matters which may be raised in a review under section 43A

(1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate -

(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

5.2 Accordingly, the applicant may not raise new matters unless those matters could not have been raised before or exceptional circumstances explain which matters were not raised before.

5.3 The applicant explains the reasons for raising the new matters in the Notice of Review application.

5.4 The Committee requires to determine if the foregoing statutory requirements have been met. Should the Committee decide that the requirements have not been met, then the Committee must not take those new matters into account when determining the Review

6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications arising from the recommendations in this Report.

7. RISK MANAGEMENT

7.1 There are no issues arising from the recommendations of this Report.

8. ENVIRONMENTAL IMPLICATIONS

8.1 There are no direct environmental implications arising from the recommendations of this report.

9. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY

9.1 A screening assessment has been undertaken and a full equality impact assessment is not required.

10. CHILDRENS RIGHTS AND WELLBEING IMPACT ASSESSMENT

10.1 A Childrens Rights and Wellbeing Impact Assessment is not required as the "General Principles" do not apply to this proposal.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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Appendix 4 – Applicant's Response to Further Representations

ANGUS COUNCIL'S SUBMISSION ON GROUNDS OF REFUSAL

APPLICATION NUMBER – 24/00199/FULL

APPLICANT- MS MAYARA AGNES

**PROPOSAL & ADDRESS - PROPOSED CONVERSION OF PART OF FORMER
NURSERY BUILDING TO FORM 2 FLATS (RETROSPECTIVE) AT 34 ABBOT STREET
ARBROATH**

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Angus Council

Application Number:	24/00199/FULL
Description of Development:	Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)
Site Address:	34 Abbot Street Arbroath DD11 1HH
Grid Ref:	364519 : 741273
Applicant Name:	Ms Mayara Agnes

Report of Handling

The application site comprises a ground floor area of a larger building that also accommodates the Abbey Theatre.

The ground floor of the southwestern part of the building was previously an engineering factory and was granted permission for conversion to a children's nursery in 2000. The flats to which this application relates, which have been formed and occupied without planning permission, occupy part of this ground floor area. The main theatre occupies that part of the building to the northeast of the flats, with the backstage area partly above flat 4. The theatre premises extends into the first-floor area above the flats, where there are changing, workshop, toilet, and storage facilities.

To the northwest of the site is a public car park, and Abbot Street runs to the southeast of the building. Former gasworks sit to the southeast and northeast of the site. That site previously benefited from planning permission for the development of 75 houses and is identified in the ALDP as a current housing site. Recently, a Proposal of Application Notice has been submitted in respect of the site, suggesting that a further proposal for redevelopment may be forthcoming.

Existing buildings to the south and west of the site are in predominantly residential use.

Proposal

Planning permission is sought retrospectively for the conversion of the former nursery to form two flats (flats 1 and 2, or 34 and 36 Abbot Street). A concurrent application (24/00179/FULL) seeks the same for the other two flats (flats 3 and 4, or 38 and 40 Abbot Street).

Flat 1 has a floorspace of 73sqm and flat 2 a floorspace of 59sqm, each offering two-bedrooms along with an open plan living/kitchen area. Each of the properties has an enclosed garden/drying green area. Flat 1 has a garden of around 115sqm, whereas flat 2 has a garden measuring around 45sqm.

The application has not been subject of variation.

Publicity

The application was subject to normal neighbour notification procedures.

The application was advertised in the Dundee Courier on 12 April 2024

The nature of the proposal did not require a site notice to be posted.

Planning History

00/00804/COU for Change of Use from Engineering Factory to Childrens Day Nursery at Farnell Patternmakers Abbot Street, Arbroath, Angus was approved subject to conditions on 19 October 2000.

That permission was implemented.

19/00691/FULL for Proposed Conversion of Building to Form Four Dwellings within the ground floor of the building (including the current application site) was withdrawn on 1 February 2023.

23/00001/UNDV – An enforcement notice was served on 8 October 2023 when it became apparent that the ground floor of the building was being used as residential accommodation. The issue was brought to the planning authority's attention when a complaint was received by the council from an occupant of one of the flats regarding noise associated with theatre activity. The notice indicated that there had been a change of use of a children's day nursery to four residential flatted dwelling units at 34, 36, 38 and 40 Abbot Street, Arbroath, without the benefit of planning permission. The notice required the residential use of the properties to cease and desist within 120 days of the notice.

23/00010/ENF – An appeal was submitted in relation to that enforcement notice. The appeal did not contest that a breach of planning control had occurred, but it sought additional time for compliance to allow a further planning application for the use to be considered. The appeal was allowed and the timescale for compliance was extended to 7 months from 30 November 2023.

24/00179/FULL for Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) (flats 3 and 4) is being considered concurrently.

Applicant's Case

Design Statement: The Design Statement outlines the site and its history, and also the process of the previous planning application on the site (19/00691/FULL). The statement contains a breakdown of correspondence between the Council's Environmental Health Service and assessments carried out to demonstrate the noise levels in the flats.

The statement confirms that Building Warrants were secured for the flats shortly after the first lockdown associated with the Covid-19 pandemic. The applicant took the decision to progress with the works and form the flats, with completion certificates issued by Building Standards on 20 December 2021. Almost a year later the applicant decided to let the flats and they were occupied.

The statement considers the proposed development against the Angus Local Development Plan and National Planning Framework 4.

The statement then outlines the process of the Noise Impact Assessment which supports the application. It is submitted that the assessment concludes that the Abbey Theatre Group and their performances have no sound impact upon flats 3 and 4 of the proposed development below.

The design statement concludes as follows:

- We are of the opinion that these proposals are in keeping with the relevant policies of the Angus Local Development Plan and National Planning Framework 4. We feel that although previous noise issues were presented during the previous application, these issues were primarily associated with the theatre's workshop area and Units 1 & 2 which were located directly below.
- We are of the belief that the revised NIA clearly demonstrates that ongoing productions within the Abbey Theatre will have minimal impact on Units 3 & 4 when used as residential dwellings and that this evidence has been produced during the loudest and busiest times that could have been recorded within the theatre itself.

Additional Supporting Information: In response to comments from the Council's Environmental Health Service, supplementary statements have been provided. These comments indicate that a Noise Impact Assessment should not be necessary for flats 1 and 2, as that supplied in support of 24/00179/FULL for flats 3 and 4 demonstrates an acceptable level of noise.

The statement also indicates that the upper floor area is primarily used for storage and is unlikely to offer space for set construction, and therefore impact on the flats below by way of noise. It is submitted that Angus Council have not determined what would be an acceptable worst case scenario level of noise.

A fire escape plan for the theatre itself has been submitted, which indicates the upper floor layout of the building above the flats, most of which is identified as storage.

Finally, a letter has been submitted which draws attention to the recent declaration of a housing emergency by the Scottish Government. It notes that there will be delay in preparation of the next local development plan for Angus, and suggests that small sites, such as the proposal, can make a valid contribution to increasing housing supply within the area providing modest and therefore affordable homes for local people close to services and amenities. It notes that existing residents do not have issue with noise from the theatre and identifies a willingness to meet with environmental officers to discuss the noise assessment.

Consultations

Environmental Health - Object to the planning application on the grounds of noise impact from the adjacent theatre operation.

- No consideration has been given to potential impacts on the proposed flats arising from any lawful Class 10 Use continuing within the remaining part of the former nursery building.
- It is not accepted that a pantomime performance represents a worst-case scenario for music and performance noise at a venue that can accommodate a wide range of music events.
- The final noise impact assessment for the previous application (19/00691/FULL) involving all 4 proposed residential units identified significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. Neither of the current applications are supported by a further assessment of noise from these sources.
- The final noise assessment for the previous application identified that any further noise mitigation measures would require the co-operation of the Theatre group. There doesn't however appear to be anything in the supporting information for either of the current applications that demonstrates that this has been obtained or that new mitigation measures within the control of the applicant have been identified.

In light of the above this Service cannot be satisfied that potential noise impacts on the proposed development arising from the full range of activities undertaken within the theatre premises have been adequately considered in respect of the current applications. Furthermore a detailed assessment of those impacts undertaken and submitted as part of the previous application indicated that noise from certain activities carried out within the theatre premises would have a significant detrimental impact on the level of amenity afforded to the proposed residential units. As no further noise mitigation measures within the control of the applicant have been identified this Service must take the view that the proposed developments are incompatible with the theatre activities on the first floor and accordingly would object to both applications.

In relation to contaminated land, the service has advised that further information should be provided about the previous uses of the land and the potential for sources of contamination. It indicates that there may have been storage of chemicals, vehicles or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination. Prior to use of the building as a day nursery, the site was an engineering workshop and the change of use predated current controls for land contamination. A suspensive condition is therefore required to ensure the provision of a comprehensive contaminated land investigation report, and thereafter ensure that any identified remediation is carried out.

Theatres Trust - Objects to the planning application on the grounds of negative impacts on the theatre's operations and in turn of sub-optimal living conditions for occupants arising from acoustic conflict. The Noise Impact Assessment considers a Pantomime performance which is unlikely to be of greatest impact in terms of sound levels or vibrations. Measurements should be carried out for amplified music with high

levels of bass as well as for the use of construction/ machinery within the workshop and other areas where preparation of sets and equipment may occur.

The rear of the stage sits above flat 4, but the workshop and other areas of the theatre facility sit above flats 1-3. Irrespective of whether much of that area is currently set aside for storage as the applicant contends, there could still be movements and a broader point is that the theatre could legitimately carry out alternative activities within the space if it chose to do so. A fundamental part of NPF4 policy is that the venue can continue without additional restriction.

The Trust indicates it is currently providing support to a venue which is in conflict with residential occupants within the same building. Despite relatively recently being constructed to high standards of insulation nonetheless residents are generating complaint. This demonstrates why co-location of live performance venues and residential uses is highly problematic, and why there must be absolutely conclusive evidence of there being no impact before development can be considered suitable for approval.

Since the previous application there is now additional planning policy following the adoption of NPF4 in February 2023. Policy 23.e does not support development which is likely to raise unacceptable noise issues, applying the 'agent of change' principle to noise sensitive development. Where significant effects are likely, as would be the case in this instance, a Noise Impact Assessment may be required. Policy 31.d goes further, stating that development proposals in the vicinity of existing arts venues will fully reflect the agent of change principle. Applications can only be supported where impacts are demonstrably acceptable and that existing venues can continue without additional restriction.

Health & Safety Executive - There was no response from this consultee at the time of report preparation. However, in response to 19/00691/FULL it was confirmed that "the HSE consultation distance and zones around the former Gas Holder Station site have been withdrawn and there is therefore no need to consult HSE on developments in this area."

Aberdeenshire Council Archaeology Service - no objections.

Community Council - There was no response from this consultee at the time of report preparation.

Roads (Traffic) - no objections.

Scottish Water - no objections.

Representations

Nine letters of representation were received. One offered general comment and eight offer support.

The main points of concern were as follows:

- o The theatre has operated for 55 years without noise nuisance issues arising, as the ground floor has always been in some form of commercial use.
- o Stage productions are inherently noisy events.
- o The upper floor above the flats is used as male and female dressing rooms, the Green Room for actors ready to go on stage and as storage for a large amount of stage furniture and props along with timber and other materials used to build sets.
- o The stage crew have a small workshop in this area with a number of fixed and portable power tools which are used during set construction, and which can be quite noisy when in use. These tools are used the entire length of the upper floor. there is a large and frequent footfall along with movement of heavy and bulky furniture in this area which still has its original wooden floors.
- o The fire escape at the west end of the building which is shown as being within the site is in fact the fire escape from the upper floor and therefore access from the theatre must be maintained at all times. It is questioned why this is being shown as part of the application site when none of the proposed flats have access to this area.
- o The theatre is in use continuously at weekends and on several evenings per week for rehearsals,

and on Saturday mornings to coach the youth group. Also, the stage crew are engaged in striking the set from the last production and building the set for the next production.

- o The trustees also hire the theatre to outside groups for a variety of performances and stage shows on several occasions each year. These can be varied and have included a live band, comedians and other theatre groups.
- o Parking is problematic in Abbot Street, and if charges are reinstated in the adjacent carpark, then residents may choose to park in Abbot Street.
- o The trustees have been in receipt of several noise complaints from the current tenants of the flats. This has included phone calls to the police and environmental health, plus contact via email, the Facebook page and in person from some of the occupants complaining of the noise. Along with complaints regarding the set building noise complaints have been received about patrons waiting on taxis and transport after the show and creating noise through chatting.
- o When these flats were created there was an issue with the theatres water supply being compromised and it had to pay an excess of £2000 in order to reroute its water supply and it is concerned there will be further issues along this line.
- o The trustees are concerned about noise transmission into the proposed flats and ask that if planning permission is granted then an appropriate condition be placed on that permission requiring the developer to install adequate sound installation to ensure that the use of the upper floor as a community theatre does not affect the occupants of the flats.

The main points in support of the application were as follows:

- o There are few suitable rental properties in the Arbroath area.
- o Existing residents are happy in the flats.
- o No tenants have complained about the noise from the theatre productions or set building in the areas above the flats. One enquiry about operating hours was misconstrued as a complaint.
- o The residents have been on the receiving end of aggressive and abusive behaviour from members of the theatre.

Development Plan Policies

NPF4 – national planning policies

Policy 1 Tackling the climate and nature crises
 Policy 2 Climate mitigation and adaptation
 Policy 3 Biodiversity
 Policy 4 Natural places
 Policy 7 Historic assets and places
 Policy 9 Brownfield, vacant and derelict land and empty buildings
 Policy 12 Zero waste
 Policy 14 Design, quality and place
 Policy 15 Local living and 20 minute neighbourhoods
 Policy 16 Quality homes
 Policy 22 Flood risk and water management
 Policy 23 Health and safety
 Policy 31 Culture and creativity

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities
 Policy DS3 : Design Quality and Placemaking
 Policy DS4 : Amenity
 Policy TC2 : Residential Development
 Policy TC8 : Community Facilities and Services
 Policy PV8 : Built and Cultural Heritage
 Policy PV15 : Drainage Infrastructure
 Policy PV18 : Waste Management in New Development

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

In this case the development plan comprises: -

- National Planning Framework 4 (NPF4) (Published 2023)
- Angus Local Development Plan (ALDP) (Adopted 2016)

The development plan policies relevant to the determination of the planning application are reproduced at Appendix 1 and have been taken into account in preparing this report.

The ALDP was adopted in September 2016 while NPF4 was adopted in February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and the provision of a local development plan, whichever of them is the later in date is to prevail.

As indicated above, this site has some significant planning history and that is of some relevance in determining the current application. An application for change of use of the former children's nursery that occupied the ground floor of the building to form four flats was submitted in 2019. A noise impact assessment (NIA) was requested to consider the potential impact of noise from the adjacent theatre on the amenity of the proposed flats. Several iterations of the NIA were submitted and assessed by the council's environmental health service, but the final version of the document identified that significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. The application was withdrawn in February 2023, but the applicant proceeded to undertake the development in the full and certain knowledge there were issues causing impediment to the grant of planning permission, and that their actions represented a breach of planning control.

In this case the application is retrospective as the development has been undertaken and completed and the residential units are now occupied. However, the application should be considered in the normal manner having regard to the development plan and other material considerations.

The application site is located within the Development Boundary for Arbroath as identified in the ALDP. Policy DS1 in the ALDP states that proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP. Policy DS1 also indicates that in all locations proposals that make better use of vacant, derelict or under used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP. Policy 9 in NPF4 states that proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported.

NPF4 policy 16 deals with quality homes. Amongst other things, it provides support for proposals that improve affordability and choice. It indicates that proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where the proposal is supported by an agreed timescale for build-out, and the proposal is otherwise consistent with the plan spatial strategy and other relevant policies. Policy TC2 in the ALDP deals with all residential development proposals and indicates that proposals within development boundaries will be supported where the site is not protected for another use and is consistent with the character and pattern of development in the surrounding area. The policy also requires all proposals for new residential development to be compatible in terms of land use; to provide a satisfactory residential environment; not to result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and to include provision for affordable housing in accordance with Policy TC3 Affordable Housing.

The application site is not safeguarded or protected for another use. The development involves reuse of what was previously a vacant building, and it does not require unacceptable alteration to the fabric or appearance of the building. The roads service and Scottish Water have raised no objection, and the proposal is not of a scale or location where it would require a developer contribution or affordable housing having regard to the council's developer contributions and affordable housing supplementary guidance (2023). There is no reason to consider it would result in any unacceptable impacts on surrounding infrastructure.

However, the key issue in relation to the application is the compatibility of the proposed residential use with the adjoining theatre use, and the quality and acceptability of the residential amenity that would be provided for residents. Policy TC2 requires new residential development to be compatible in terms of land use and to provide a satisfactory residential environment. NPF4 Policy 23 (Health and Safety) states that *"development proposals that are likely to raise unacceptable noise issues will not be supported. The agent of change principle applies to noise sensitive development."* Policy 31 (Culture and Creativity) is more specific in this regard, and states that *"development proposals within the vicinity of existing arts venues will fully reflect the agent of change principle and will only be supported where they can demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that existing venues and facilities can continue without additional restrictions being placed on them as a result of the proposed new development."*

Available information suggests that the theatre has been in use for over 50 years. Available planning history does not identify that the use of the theatre is subject to any specific planning controls or restrictions that would provide safeguard to any neighbouring use. There are no controls for example in relation to operating hours, noise limits, or limitations on what activities can take place in different parts of the building. NPF4 policy seeks to ensure that the venue can continue to operate without additional restriction being placed on it because of new development.

The flats are located directly below and adjoin the theatre. Flat 4 is closest to and sits below the rear of the theatres stage. Available information indicates that the upper area of the building sitting above the flats is currently used for a range of purposes, such as changing, toilets, storage, and set making. A workshop for construction of sets and props is located in the upper floor area, and information indicates that these areas are used regularly, and as matters stand, without restriction or constraint. There is significant potential for transfer of noise from activities in the upper floor of the building to the lower floor and this was confirmed by NIAs submitted with the 2019 application.

The concurrent application for flats 3 and 4 (24/00179/FULL) is supported by a revised NIA, which considers background noise levels, and then noise levels over several nights of a pantomime performance at Christmas time in 2023. The noise assessment was carried out in flat 4, which as indicated above, is closest to the stage area of the theatre. The scope of the assessment was not agreed with the council's environmental health service despite prior knowledge of that services concern. The assessment seeks to demonstrate that a typical performance within the theatre does not impact on a reasonable level of residential amenity within the flats.

The council's environmental health service has reviewed the NIA. It has indicated that it does not accept that a pantomime performance represents a worst-case scenario for music and performance noise at a venue that can accommodate a wide range of music events. That position is supported in the consultation response provided by the Theatres Trust (a statutory consultee for applications of this nature). The Trust indicates that a pantomime performance is unlikely to be of greatest impact in terms of sound levels or vibrations and suggest that measurements should be carried out for amplified music with high levels of bass as well as for the use of construction/ machinery within the workshop and other areas where preparation of sets and equipment may occur. The council's environmental health service has similar concerns regarding the absence of meaningful assessment of noise arising from other activities within the theatre, particularly given the issues identified with those activities in previous NIAs submitted in relation to similar development at this location. The NIA provided as part of the 2019 application clearly identifies a noise level that is substantially in excess of a reasonable level of residential amenity within flats 1 and 2 and the revised NIA with application 24/00179/FULL specifically does not refute that finding. There is no restriction on the upper floor use of the theatre and there is no control on where lawful theatre activity takes place within the building. The measured noise associated with the building of sets in the upper floor

area, which can take place throughout the building, gives rise to noise levels far in excess of any criteria that could be considered acceptable in a residential setting. Both the Theatres Trust and the council's environmental health service object to the application on the basis there is no evidence to demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development. This is directly contrary to NPF4 policy 31.

The applicants suggests that the agent of change principle should not apply in this case as resultant noise levels from the theatre would also be incompatible with the previous lawful use the ground floor area as a children's nursery. That argument is facile and without merit. This development requires planning permission, and the relevant question is whether the unauthorised residential use is compatible with the lawful theatre use. A residential use is considered more sensitive to noise than the previous lawful use of the ground floor area. The Reporter who considered the appeal in relation to the enforcement notice at this property confirmed that '*... it is the applicant's responsibility to demonstrate that the potential impact on occupants has been assessed and that the proposed design incorporates appropriate measures to mitigate the impact. This is described in the Scottish Government's National Planning Framework 4 as the 'agent of change principle'. The extended period I have allowed for compliance enables the appellant to address this responsibility...*'. The appeal decision confirms that the 'agent of change principle' applies and the applicant has not addressed the issue despite the considerable period of time that has elapsed since the previous application was withdrawn and the unauthorised works completed.

In its representation on the application, the theatre club references receipt of several noise complaints from occupants of the unauthorised flats. While no evidence to substantiate that has been provided, it is of some relevance to note that in 2023 the council received a noise complaint from an occupant of one of the unauthorised flats. The complaint states: -

"We have just moved into flats below the Abbey Theatre. It's currently 8:30pm on a Wednesday night and the theatre are completing construction work directly above our flat. I understand it is run by volunteers, there has been no other noise. It must be the back of the store but it is constant drilling, sanding, banging, hammering from around 5-9pm at night everyday. I don't see how this is fair to be completed during weekdays and evenings? If anything it would be great to find out when their construction is due to be finished. I have attached a video where you can hear the banging. It is nonstop."

Conversely, letters of support suggest that occupants of the flats have not complained about noise and that correspondence received by the council was interpreted as a noise complaint rather than an enquiry about operating hours. Any reasonably reading of the 2023 correspondence suggests that noise associated with theatre activity is a matter of concern for the author. Irrespective of the attitude to noise of current residents, advice from the environmental health service is that predicted noise levels would likely be at a level that could cause issue for occupants of the flats. Legitimate complaint raised by occupants of the flats (existing or future) regarding noise generated by lawful activity in the theatre could result in restrictions being placed on the theatre and that is what NPF4 policy specifically seeks to avoid.

The applicant suggests that the upper floor is largely used as storage, and that it is '*more likely*' that set construction would take place on the stage itself rather than in the area above the flats, due to restricted access back to the stage area. However, that is not consistent with the information provided by the theatre club, and it is not consistent the activity reported in the complaint received in 2023, which referenced constant drilling, sanding, banging, hammering directly above a flat, and apparently within the workshop area. Irrespective, the upper floor of the building is not currently subject to any restriction in terms of what lawful theatre activity takes place where. There is currently no impediment to the upper floor area being used for other purposes, such as rehearsals, or even performances, without the need for further planning permission. The grant of permission for residential use at ground floor, could require additional controls to be imposed on the use of the upper floor area of the theatre in response to future complaints, which is in direct conflict with NPF4 Policy 31.

The Theatres Trust objects to the planning application on the grounds of negative impacts on the theatre's operations and in turn of sub-optimal living conditions for occupants arising from acoustic conflict. Those concerns are shared by the council's environmental health service and there appears reasonable evidence to support those concerns. In these circumstances the proposal does not comply with policy TC2 of the ALDP as the proposed use is not compatible with current uses in the area and as it does not

provide a satisfactory residential environment due to noise associated with the lawful use of the theatre. The proposal is contrary to NPF4 policies 23 and 31 as it conflicts with the agent of change principle set out in NPF4 as there is no evidence to demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.

The council's environmental health service has indicated that there may be a risk of contamination on the site. It is highlighted that there may have been storage of chemicals, vehicles, or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination either in the building or in outdoor areas. Prior to use of the building as a day nursery, the site was an engineering workshop and the change of use predated current controls for land contamination. As a result, a condition is recommended requiring the provision of a comprehensive contaminated land investigation report prior to development commencing, and implementation of any necessary remediation before occupation of the properties. That advice is consistent with advice provided by the service in relation to the 2019 application and it is consistent with the policies in the development plan. Notwithstanding that advice, the change of use of the building has been undertaken and the residential units occupied without provision of the identified information. As the application is retrospective, it is not possible to require the contaminated land assessment or remediation prior to development or occupation of the properties. This matter could potentially be addressed by a condition that requires provision of information and completion of remediation within a prescribed period, but at the current time the absence of evidence to demonstrate that there is not land contamination, including in garden areas, results in conflict with policy DS4 of the ALDP and policy 9 of NPF4.

NPF4 Policy 1 gives significant weight to the global climate and nature crises. Policy 2 requires proposals to be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible and requires that proposals are designed to adapt to current and future risks from climate change. Policy 3 requires proposals for local development to include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. The flats have been granted appropriate building warrants and completion certificates that demonstrate appropriate levels of sustainability. As this development seeks to re-use an existing building, there is little additional opportunity for sustainability measures or biodiversity gain, and therefore there is not considered to be a conflict with these policies.

The proposal does not comply with policies DS4 and TC2 of the ALDP or policies 9, 23, and 31 of NPF4 for the reasons set out above. As such it does not comply with policy DS1 of the ALDP, and it does not comply with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the LDP in circumstances where it is not consistent with other relevant policies. While the proposal attracts support from some development plan policies, residential use would not be compatible with the neighbouring theatre use and it would not provide a satisfactory residential environment for existing or future occupants by virtue of noise and disturbance from lawful use of the theatre. The provision of an acceptable residential environmental amenity is considered a fundamental requirement of any proposal for new dwellings. Furthermore, the risk of noise impacts may put the continued operation of the theatre, without additional controls on operations, at risk. A fundamental part of NPF4 policy is that existing arts venues can continue to operate without additional restriction because of new development. In these circumstances, the proposal is contrary to the development plan.

In addition to development plan policy, it is also necessary to have regard to other material considerations.

The fact that the application is retrospective is not a material justification to allow development that represents a departure from the development plan.

The letters of support provided by existing residents are noted. However, notwithstanding their currently stated opinions, advice provided by expert consultation bodies suggests that, having regard to available information regarding noise emissions arising from the theatre, any complaints from existing or future residents, would likely be justified and could require imposition of restrictions on the otherwise lawful operation of the theatre. Notwithstanding the indicated support, the provision of homes that do not meet acceptable amenity standards and that could result in restriction in use or operation of a community facility would not be in the public interest.

It is regrettable that existing residents will be disadvantaged by the refusal of planning permission, but this situation has arisen because a developer has chosen to wilfully undertake development in the knowledge that there were issues with the proposed use, and that the development was in breach of planning control. It is recognised that refusal of permission will have significant implications for those residents, but there is no evidence to demonstrate that it would cause them great hardship in circumstances where there are other housing opportunities in the area. It is not in the public interest to allow new housing that does not provide an acceptable residential amenity because a developer has chosen to undertake works in breach of planning control.

The applicant has identified that a national housing emergency has been declared and suggests that small sites of this nature can contribute to housing supply, particularly in circumstances where the local development plan is unlikely to be adopted until 2029. In this respect, it is relevant to note that the council's housing land audit 2023, which has been agreed with Homes for Scotland, identified that the effective housing land supply in the East Angus housing market area amounts to some 721 units, including 30 units on small sites. There is no evidence of a shortage of housing land in the housing market area and the four units proposed by this application are not material in terms of the available housing land supply. In addition, the declaration of a housing emergency does not justify the grant of planning permission for new homes that do not meet recognised amenity standards.

In conclusion the principle of residential development is generally consistent with the requirements of the development plan in terms of design, parking, and infrastructure, and the reuse of a previously vacant building provides some benefit. However, the proposal is contrary to development plan because it would not provide a reasonable level of residential amenity due to noise and disturbance from the adjacent theatre. Furthermore, the residential use may lead to a requirement to impose additional controls on the operation of the theatre contrary to the provisions of the development plan that seek to safeguard cultural venues. The theatre currently benefits from reasonable separation from the most noise sensitive uses, and introducing highly noise sensitive uses close by could lead to justifiable complaint from existing or future occupants. In addition, the proposal is contrary to development plan policy as it has not been demonstrated that the properties are not adversely affected by land contamination. The various representations and supporting information submitted in relation to the proposal have been considered, but there are no material matters that justify approval of the application contrary to the provisions of the development plan.

Decision

The application is Refused

Reason(s) for Decision:

1. The development does not comply with policy TC2 of the Angus Local Development Plan as it is not compatible with current land use in the area and as it would not provide a satisfactory residential environment by virtue of noise and disturbance associated with the existing lawful use of the adjacent theatre.
2. The development does not comply with NPF4 policies 23 and 31 as it is not consistent with the agent of change principle set out in NPF4 as it is likely to result in unacceptable noise issues given the proximity of the proposed residential units to the existing theatre, and it has not been demonstrated that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.
3. The development does not comply with policy DS4 of the Angus Local Development Plan and policy 9 of NPF4 as no assessment of potential land contamination has been submitted and it has not been demonstrated that the land is, or can be made, safe and suitable for the proposed new use.

4. The does not comply with policy DS1 of the Angus Local Development Plan Policy as it is not in compliance with other relevant policies of the plan, and it is not compatible with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the local development plan in circumstances where it is not consistent with other relevant policies.

Notes:

Case Officer: Ben Freeman

Date: 7th June 2024

Appendix 1 - Development Plan Policies

NPF4 – national planning policies

Policy 1 Tackling the climate and nature crises

When considering all development proposals significant weight will be given to the global climate and nature crises.

Policy 2 Climate mitigation and adaptation

- a) Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible.
- b) Development proposals will be sited and designed to adapt to current and future risks from climate change.
- c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.

Policy 3 Biodiversity

- a) Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
- b) Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:
 - i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
 - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
 - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
 - iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long- term retention and monitoring should be included, wherever appropriate; and
 - v. local community benefits of the biodiversity and/or nature networks have been considered.
- c) Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.
- d) Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. This will take into account the need to reverse biodiversity loss, safeguard the ecosystem services that the natural environment provides, and build resilience by enhancing nature networks and maximising the potential for restoration.

Policy 4 Natural places

- a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.
- b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an "appropriate assessment" of the implications for the conservation objectives.

c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:

- i. The objectives of designation and the overall integrity of the areas will not be compromised; or
- ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

All Ramsar sites are also European sites and/ or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.

d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:

- i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or
- ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.

e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.

f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.

g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:

- i) will support meeting renewable energy targets; or,
- ii) is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area.

All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration.

Policy 7 Historic assets and places

a) Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change.

Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records.

b) Development proposals for the demolition of listed buildings will not be supported unless it has been demonstrated that there are exceptional circumstances and that all reasonable efforts have been made to retain, reuse and/or adapt the listed building. Considerations include whether the:

- i. building is no longer of special interest;
- ii. building is incapable of physical repair and re-use as verified through a detailed structural condition survey report;
- iii. repair of the building is not economically viable and there has been adequate marketing for existing and/or new uses at a price reflecting its location and condition for a reasonable period to attract interest from potential restoring purchasers; or
- iv. demolition of the building is essential to delivering significant benefits to economic growth or the wider community.

- c) Development proposals for the reuse, alteration or extension of a listed building will only be supported where they will preserve its character, special architectural or historic interest and setting. Development proposals affecting the setting of a listed building should preserve its character, and its special architectural or historic interest.
- d) Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the:
- i. architectural and historic character of the area;
 - ii. existing density, built form and layout; and
 - iii. context and siting, quality of design and suitable materials.
- e) Development proposals in conservation areas will ensure that existing natural and built features which contribute to the character of the conservation area and its setting, including structures, boundary walls, railings, trees and hedges, are retained.
- f) Demolition of buildings in a conservation area which make a positive contribution to its character will only be supported where it has been demonstrated that:
- i. reasonable efforts have been made to retain, repair and reuse the building;
 - ii. the building is of little townscape value;
 - iii. the structural condition of the building prevents its retention at a reasonable cost; or
 - iv. the form or location of the building makes its reuse extremely difficult.
- g) Where demolition within a conservation area is to be followed by redevelopment, consent to demolish will only be supported when an acceptable design, layout and materials are being used for the replacement development.
- h) Development proposals affecting scheduled monuments will only be supported where:
- i. direct impacts on the scheduled monument are avoided;
 - ii. significant adverse impacts on the integrity of the setting of a scheduled monument are avoided;
- or
- iii. exceptional circumstances have been demonstrated to justify the impact on a scheduled monument and its setting and impacts on the monument or its setting have been minimised.
- i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.
- j) Development proposals affecting nationally important Historic Battlefields will only be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristics, physical remains and special qualities.
- k) Development proposals at the coast edge or that extend offshore will only be supported where proposals do not significantly hinder the preservation objectives of Historic Marine Protected Areas.
- l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.
- m) Development proposals which sensitively repair, enhance and bring historic buildings, as identified as being at risk locally or on the national Buildings at Risk Register, back into beneficial use will be supported.
- n) Enabling development for historic environment assets or places that would otherwise be unacceptable in planning terms, will only be supported when it has been demonstrated that the enabling development proposed is:
- i. essential to secure the future of an historic environment asset or place which is at risk of serious deterioration or loss; and
 - ii. the minimum necessary to secure the restoration, adaptation and long-term future of the historic

environment asset or place.

The beneficial outcomes for the historic environment asset or place should be secured early in the phasing of the development, and will be ensured through the use of conditions and/or legal agreements.

o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.

Where impacts cannot be avoided they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.

When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.

Policy 9 Brownfield, vacant and derelict land and empty buildings

a) Development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported. In determining whether the reuse is sustainable, the biodiversity value of brownfield land which has naturalised should be taken into account.

b) Proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by policies in the LDP.

c) Where land is known or suspected to be unstable or contaminated, development proposals will demonstrate that the land is, or can be made, safe and suitable for the proposed new use.

d) Development proposals for the reuse of existing buildings will be supported, taking into account their suitability for conversion to other uses. Given the need to conserve embodied energy, demolition will be regarded as the least preferred option.

Policy 12 Zero waste

a) Development proposals will seek to reduce, reuse, or recycle materials in line with the waste hierarchy.

b) Development proposals will be supported where they:

- i. reuse existing buildings and infrastructure;
- ii. minimise demolition and salvage materials for reuse;
- iii. minimise waste, reduce pressure on virgin resources and enable building materials, components and products to be disassembled, and reused at the end of their useful life;
- iv. use materials with the lowest forms of embodied emissions, such as recycled and natural construction materials;
- v. use materials that are suitable for reuse with minimal reprocessing.

c) Development proposals that are likely to generate waste when operational, including residential, commercial, and industrial properties, will set out how much waste the proposal is expected to generate and how it will be managed including:

- i. provision to maximise waste reduction and waste separation at source, and
- ii. measures to minimise the cross-contamination of materials, through appropriate segregation and storage of waste; convenient access for the collection of waste; and recycling and localised waste management facilities.

d) Development proposals for waste infrastructure and facilities (except landfill and energy from waste facilities) will be only supported where:

- i. there are no unacceptable impacts (including cumulative) on the residential amenity of nearby dwellings, local communities; the transport network; and natural and historic environment assets;
- ii. environmental (including cumulative) impacts relating to noise, dust, smells, pest control and

pollution of land, air and water are acceptable;

- iii. any greenhouse gas emissions resulting from the processing and transportation of waste to and from the facility are minimised;
- iv. an adequate buffer zone between sites and sensitive uses such as homes is provided taking account of the various environmental effects likely to arise;
- v. a restoration and aftercare scheme (including appropriate financial mechanisms) is provided and agreed to ensure the site is restored;
- vi. consideration has been given to co-location with end users of outputs.

e) Development proposals for new or extended landfill sites will only be supported if:

- i. there is demonstrable need for additional landfill capacity taking into account Scottish Government objectives on waste management; and
- ii. waste heat and/or electricity generation is included. Where this is considered impractical, evidence and justification will require to be provided.

f) Proposals for the capture, distribution or use of gases captured from landfill sites or waste water treatment plant will be supported.

g) Development proposals for energy-from-waste facilities will not be supported except under limited circumstances where a national or local need has been sufficiently demonstrated (e.g. in terms of capacity need or carbon benefits) as part of a strategic approach to residual waste management and where the proposal:

- i. is consistent with climate change mitigation targets and in line with circular economy principles;
- ii. can demonstrate that a functional heat network can be created and provided within the site for appropriate infrastructure to allow a heat network to be developed and potential local consumers have been identified;
- iii. is supported by a heat and power plan, which demonstrates how energy recovered from the development would be used to provide electricity and heat and where consideration is given to methods to reduce carbon emissions of the facility (for example through carbon capture and storage)
- iv. complies with relevant guidelines published by Scottish Environment Protection Agency (SEPA); and
- v. has supplied an acceptable decarbonisation strategy aligned with Scottish Government decarbonisation goals.

Policy 14 Design, quality and place

a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.

b) Development proposals will be supported where they are consistent with the six qualities of successful places:

Healthy: Supporting the prioritisation of women's safety and improving physical and mental health.

Pleasant: Supporting attractive natural and built spaces.

Connected: Supporting well connected networks that make moving around easy and reduce car dependency

Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.

Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.

Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.

Further details on delivering the six qualities of successful places are set out in Annex D.

c) Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported.

Policy 15 Local living and 20 minute neighbourhoods

a) Development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area, including local access to:

- o sustainable modes of transport including local public transport and safe, high quality walking, wheeling and cycling networks;
- o employment;
- o shopping;
- o health and social care facilities;
- o childcare, schools and lifelong learning opportunities;
- o playgrounds and informal play opportunities, parks, green streets and spaces, community gardens, opportunities for food growth and allotments, sport and recreation facilities;
- o publicly accessible toilets;
- o affordable and accessible housing options, ability to age in place and housing diversity.

Policy 16 Quality homes

a) Development proposals for new homes on land allocated for housing in LDPs will be supported.

b) Development proposals that include 50 or more homes, and smaller developments if required by local policy or guidance, should be accompanied by a Statement of Community Benefit. The statement will explain the contribution of the proposed development to:

- i. meeting local housing requirements, including affordable homes;
- ii. providing or enhancing local infrastructure, facilities and services; and
- iii. improving the residential amenity of the surrounding area.

c) 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:

- i. self-provided homes;
- ii. accessible, adaptable and wheelchair accessible homes;
- iii. build to rent;
- iv. affordable homes;
- v. a range of size of homes such as those for larger families;
- vi. homes for older people, including supported accommodation, care homes and sheltered housing;
- vii. homes for people undertaking further and higher education; and
- viii. homes for other specialist groups such as service personnel.

d) Development proposals for public or private, permanent or temporary, Gypsy/Travellers sites and family yards and Travelling Showpeople yards, including on land not specifically allocated for this use in the LDP, should be supported where a need is identified and the proposal is otherwise consistent with the plan spatial strategy and other relevant policies, including human rights and equality.

e) Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where:

- i. a higher contribution is justified by evidence of need, or
- ii. a lower contribution is justified, for example, by evidence of impact on viability, where proposals are small in scale, or to incentivise particular types of homes that are needed to diversify the supply, such as self-build or wheelchair accessible homes.

The contribution is to be provided in accordance with local policy or guidance.

- f) Development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where:
- i. the proposal is supported by an agreed timescale for build-out; and
 - ii. the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20 minute neighbourhoods;
 - iii. and either:
 - o delivery of sites is happening earlier than identified in the deliverable housing land pipeline. This will be determined by reference to two consecutive years of the Housing Land Audit evidencing substantial delivery earlier than pipeline timescales and that general trend being sustained; or
 - o the proposal is consistent with policy on rural homes; or
 - o the proposal is for smaller scale opportunities within an existing settlement boundary; or
 - o the proposal is for the delivery of less than 50 affordable homes as part of a local authority supported affordable housing plan.
- g) Householder development proposals will be supported where they:
- i. do not have a detrimental impact on the character or environmental quality of the home and the surrounding area in terms of size, design and materials; and
 - ii. do not have a detrimental effect on the neighbouring properties in terms of physical impact, overshadowing or overlooking.
- h) Householder development proposals that provide adaptations in response to risks from a changing climate, or relating to people with health conditions that lead to particular accommodation needs will be supported.

Policy 22 Flood risk and water management

- a) Development proposals at risk of flooding or in a flood risk area will only be supported if they are for:
- i. essential infrastructure where the location is required for operational reasons;
 - ii. water compatible uses;
 - iii. redevelopment of an existing building or site for an equal or less vulnerable use; or.
 - iv. redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long- term safety and resilience can be secured in accordance with relevant SEPA advice.

The protection offered by an existing formal flood protection scheme or one under construction can be taken into account when determining flood risk.

In such cases, it will be demonstrated by the applicant that:

- o all risks of flooding are understood and addressed;
- o there is no reduction in floodplain capacity, increased risk for others, or a need for future flood protection schemes;
- o the development remains safe and operational during floods;
- o flood resistant and resilient materials and construction methods are used; and
- o future adaptations can be made to accommodate the effects of climate change.

Additionally, for development proposals meeting criteria part iv), where flood risk is managed at the site rather than avoided these will also require:

- o the first occupied/utilised floor, and the underside of the development if relevant, to be above the flood risk level and have an additional allowance for freeboard; and
- o that the proposal does not create an island of development and that safe access/ egress can be achieved.

- b) Small scale extensions and alterations to existing buildings will only be supported where they will not significantly increase flood risk.
- c) Development proposals will:
- i. not increase the risk of surface water flooding to others, or itself be at risk.
 - ii. manage all rain and surface water through sustainable urban drainage systems (SUDS), which should form part of and integrate with proposed and existing blue- green infrastructure. All proposals

should presume no surface water connection to the combined sewer;

- iii. seek to minimise the area of impermeable surface.
- d) Development proposals will be supported if they can be connected to the public water mains. If connection is not feasible, the applicant will need to demonstrate that water for drinking water purposes will be sourced from a sustainable water source that is resilient to periods of water scarcity.
- e) Development proposals which create, expand or enhance opportunities for natural flood risk management, including blue and green infrastructure, will be supported.

Policy 23 Health and safety

- a) Development proposals that will have positive effects on health will be supported. This could include, for example, proposals that incorporate opportunities for exercise, community food growing or allotments.
- b) Development proposals which are likely to have a significant adverse effect on health will not be supported. A Health Impact Assessment may be required.
- c) Development proposals for health and social care facilities and infrastructure will be supported.
- d) Development proposals that are likely to have significant adverse effects on air quality will not be supported. Development proposals will consider opportunities to improve air quality and reduce exposure to poor air quality. An air quality assessment may be required where the nature of the proposal or the air quality in the location suggest significant effects are likely.
- e) Development proposals that are likely to raise unacceptable noise issues will not be supported. The agent of change principle applies to noise sensitive development. A Noise Impact Assessment may be required where the nature of the proposal or its location suggests that significant effects are likely.
- f) Development proposals will be designed to take into account suicide risk.
- g) Development proposals within the vicinity of a major accident hazard site or major accident hazard pipeline (because of the presence of toxic, highly reactive, explosive or inflammable substances) will consider the associated risks and potential impacts of the proposal and the major accident hazard site/pipeline of being located in proximity to one another.
- h) Applications for hazardous substances consent will consider the likely potential impacts on surrounding populations and the environment.
- i) Any advice from Health and Safety Executive, the Office of Nuclear Regulation or the Scottish Environment Protection Agency that planning permission or hazardous substances consent should be refused, or conditions to be attached to a grant of consent, should not be overridden by the decision maker without the most careful consideration.
- j) Similar considerations apply in respect of development proposals either for or near licensed explosive sites (including military explosive storage sites).

Policy 31 Culture and creativity

- a) Development proposals that involve a significant change to existing, or the creation of new, public open spaces will make provision for public art. Public art proposals which reflect diversity, culture and creativity will be supported.
- b) Development proposals for creative workspaces or other cultural uses that involve the temporary use of vacant spaces or property will be supported.
- c) Development proposals that would result in the loss of an arts or cultural venue will only be supported where:
 - i. there is no longer a sustainable demand for the venue and after marketing the site at a reasonable rate for at least 12 months, through relevant local and national agents and online platforms,

there has been no viable interest from potential operators; or

- ii. the venue, as evidenced by consultation, no longer meets the needs of users and cannot be adapted; or
- iii. alternative provision of equal or greater standard is made available at a suitable location within the local area; and
- iv. the loss of the venue does not result in loss or damage to assets or objects of significant cultural value.

d) Development proposals within the vicinity of existing arts venues will fully reflect the agent of change principle and will only be supported where they can demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that existing venues and facilities can continue without additional restrictions being placed on them as a result of the proposed new development.

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- o Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.
- o Safe and Pleasant: Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of

landscaping and open space are incorporated and linked to existing green space wherever possible.

- o Well Connected: Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- o Adaptable: Where development is designed to support a mix of compatible uses and accommodate changing needs.
- o Resource Efficient: Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC2 : Residential Development

All proposals for new residential development*, including the conversion of non-residential buildings must:

- o be compatible with current and proposed land uses in the surrounding area;
- o provide a satisfactory residential environment for the proposed dwelling(s);
- o not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and
- o include as appropriate a mix of house sizes, types and tenures and provision for affordable housing in accordance with Policy TC3 Affordable Housing.

Within development boundaries Angus Council will support proposals for new residential development where:

- o the site is not allocated or protected for another use; and
- o the proposal is consistent with the character and pattern of development in the surrounding area.

In countryside locations Angus Council will support proposals for the development of houses which fall

into at least one of the following categories:

- o retention, renovation or acceptable replacement of existing houses;
- o conversion of non-residential buildings;
- o regeneration or redevelopment of a brownfield site that delivers significant visual or environmental improvement through the removal of derelict buildings, contamination or an incompatible land use;
- o single new houses where development would:
 - o round off an established building group of 3 or more existing dwellings; or
 - o meet an essential worker requirement for the management of land or other rural business.
- o in Rural Settlement Units (RSUs)**, fill a gap between the curtilages of two houses, or the curtilage of one house and a metalled road, or between the curtilage of one house and an existing substantial building such as a church, a shop or a community facility; and
- o in Category 2 Rural Settlement Units (RSUs), as shown on the Proposals Map, gap sites (as defined in the Glossary) may be developed for up to two houses.

Further information and guidance on the detailed application of the policy on new residential development in countryside locations will be provided in supplementary planning guidance, and will address:

- o the types of other buildings which could be considered suitable in identifying appropriate gap sites for the development of single houses in Category 1 Rural Settlement Units, or for the development of up to two houses in Category 2 Rural Settlement Units.
- o the restoration or replacement of traditional buildings.
- o the development of new large country houses.

*includes houses in multiple occupation, non-mainstream housing for people with particular needs, such as specialist housing for the elderly, people with disabilities, supported housing care and nursing homes.

**Rural Settlement Units are defined in the Glossary and their role is further explained on Page 9.

Policy PV8 : Built and Cultural Heritage

Angus Council will work with partner agencies and developers to protect and enhance areas designated for their built and cultural heritage value. Development proposals which are likely to affect protected sites, their setting or the integrity of their designation will be assessed within the context of the appropriate regulatory regime.

National Sites

Development proposals which affect Scheduled Monuments, Listed Buildings and Inventory Gardens and Designed Landscapes will only be supported where:

- the proposed development will not adversely affect the integrity of the site or the reasons for which it was designated;
- any significant adverse effects on the site or its setting are significantly outweighed by social, environmental and/or economic benefits; and
- appropriate measures are provided to mitigate any identified adverse impacts.

Proposals for enabling development which is necessary to secure the preservation of a listed building may be acceptable where it can be clearly shown to be the only means of preventing its loss and securing its long term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully in order to preserve or enhance the character and setting of the listed building.

Regional and Local Sites

Development proposals which affect local historic environment sites as identified by Angus Council (such as Conservation Areas, sites of archaeological interest) will only be permitted where:

- supporting information commensurate with the site's status demonstrates that the integrity of the historic environment value of the site will not be compromised; or
- the economic and social benefits significantly outweigh the historic environment value of the site.

Angus Council will continue to review Conservation Area boundaries and will include Conservation Area Appraisals and further information on planning and the built and cultural heritage in a Planning Advice Note.

Policy PV15 : Drainage Infrastructure

Development proposals within Development Boundaries will be required to connect to the public sewer where available.

Where there is limited capacity at the treatment works Scottish Water will provide additional wastewater capacity to accommodate development if the Developer can meet the 5 Criteria*. Scottish Water will instigate a growth project upon receipt of the 5 Criteria and will work with the developer, SEPA and Angus Council to identify solutions for the development to proceed.

Outwith areas served by public sewers or where there is no viable connection for economic or technical reasons private provision of waste water treatment must meet the requirements of SEPA and/or The Building Standards (Scotland) Regulations. A private drainage system will only be considered as a means towards achieving connection to the public sewer system, and when it forms part of a specific development proposal which meets the necessary criteria to trigger a Scottish Water growth project.

All new development (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDs) to accommodate surface water drainage and long term maintenance must be agreed with the local authority. SUDs schemes can contribute to local green networks, biodiversity and provision of amenity open space and should form an integral part of the design process.

Drainage Impact Assessment (DIA) will be required for new development where appropriate to identify potential network issues and minimise any reduction in existing levels of service.

*Enabling Development and our 5 Criteria (<http://scotland.gov.uk/Resource/0040/00409361.pdf>)

Policy PV18 : Waste Management in New Development

Proposals for new retail, residential, commercial, business and industrial development should seek to minimise the production of demolition and construction waste and incorporate recycled waste into the development.

Where appropriate, Angus Council will require the submission of a Site Waste Management Plan to demonstrate how the generation of waste will be minimised during the construction and operational phases of the development.

Development proposals that are likely to generate waste when operational will be expected to include appropriate facilities for the segregation, storage and collection of waste. This will include provision for the separate collection and storage of recyclates within the curtilage of individual houses.

Policy TC8 : Community Facilities and Services

The Council will encourage the retention and improvement of public facilities and rural services.

Proposals resulting in the loss of existing public community facilities will only be supported where it can be demonstrated that:

- o The proposal would result in the provision of alternative facilities of equivalent community benefit and accessibility; or
- o The loss of the facility would not have an adverse impact on the community; or
- o The existing use is surplus to requirements or no longer viable; and
- o No suitable alternative community uses can be found for the buildings and land in question.

The Council will seek to safeguard rural services that serve a valuable local community function such as local convenience shops, hotels, public houses, restaurants and petrol stations. Proposals for alternative uses will only be acceptable where it can be demonstrated that:

- o the existing business is no longer viable and has been actively marketed for sale as a going concern at a reasonable price/rent for a reasonable period of time;
- o the building is incapable of being reused for its existing purpose or redeveloped for an appropriate local community or tourism use; or
- o equivalent alternative facilities exist elsewhere in the local community.

New community facilities should be accessible and of an appropriate scale and nature for the location. In the towns of Angus, and where appropriate to the type of facility, a town centre first approach should be applied to identifying a suitable location.

From: Adrian G Gwynne
Sent: 11 April 2024 08:39
To: PLNProcessing
Subject: FW: Planning Application Consultation 24/00199/FULL

Planning Application Consultation 24/00199/FULL no objections

-----Original Message-----

From: PLNProcessing@angus.gov.uk <PLNProcessing@angus.gov.uk>
Sent: Monday, April 8, 2024 11:17 AM
To: Rdspln <rdspln@angus.gov.uk>
Subject: Planning Application Consultation 24/00199/FULL

Please see attached document.

Tuesday, 16 April 2024



Local Planner
Planning Service
Angus Council
Forfar
DD8 1AN

Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Stepps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk



Dear Customer,

34 Abbot Street, Arbroath, DD11 1HH
Planning Ref: 24/00199/FULL
Our Ref: DSCAS-0107844-JDJ
Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)

Please quote our reference in all future correspondence

Audit of Proposal

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced. Please read the following carefully as there may be further action required. Scottish Water would advise the following:

Water Capacity Assessment

Scottish Water has carried out a Capacity review and we can confirm the following:

- ▶ There is currently sufficient capacity in the Lintrathen Water Treatment Works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

Waste Water Capacity Assessment

- ▶ There is currently sufficient capacity for a foul only connection in the Hatton PFI Waste Water Treatment works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

Please Note

- ▶ The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- ▶ Scottish Water asset plans can be obtained from our appointed asset plan providers:
 - ▶ Site Investigation Services (UK) Ltd
 - ▶ Tel: 0333 123 1223
 - ▶ Email: sw@sisplan.co.uk
 - ▶ www.sisplan.co.uk
- ▶ Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area, then they should write to the Customer Connections department at the above address.
- ▶ If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- ▶ Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
- ▶ The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.

- ▶ Please find information on how to submit application to Scottish Water at [our Customer Portal](#).
-

Next Steps:

▶ All Proposed Developments

All proposed developments require to submit a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water via [our Customer Portal](#) prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

▶ Non Domestic/Commercial Property:

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk

▶ Trade Effluent Discharge from Non-Domestic Property:

- ▶ Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and laundrettes. Activities not covered include hotels, caravan sites or restaurants.
- ▶ If you are in any doubt as to whether the discharge from your premises is likely to be trade effluent, please contact us on 0800 778 0778 or email TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found [here](#).
- ▶ Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.
- ▶ For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas, so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices

to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.

- ▶ The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 5kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

I trust the above is acceptable however if you require any further information regarding this matter please contact me on **0800 389 0379** or via the e-mail address below or at planningconsultations@scottishwater.co.uk.

Yours sincerely,

Angela Allison

Development Services Analyst

PlanningConsultations@scottishwater.co.uk

Scottish Water Disclaimer:

"It is important to note that the information on any such plan provided on Scottish Water's infrastructure, is for indicative purposes only and its accuracy cannot be relied upon. When the exact location and the nature of the infrastructure on the plan is a material requirement then you should undertake an appropriate site investigation to confirm its actual position in the ground and to determine if it is suitable for its intended purpose. By using the plan you agree that Scottish Water will not be liable for any loss, damage or costs caused by relying upon it or from carrying out any such site investigation."

Planning Consultation Response from Aberdeenshire Council Archaeology Service	
Planning Application No	24/00199/FULL
Planning Officer	Ben Freeman
Proposal	Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)
Address	34 Abbot Street Arbroath DD11 1HH
Grid Reference	NO 6451 4127

I have the following comments to make on the application:

- (a) I OBJECT to the application for the reason(s) as stated below
- (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal
- (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below
- (d) Further information is required in order to consider the application as set out below

Reason(s) for objection

None

Condition(s)

None

Further comment(s) to be passed to applicant

Further information required to consider the application

Contact: Claire Herbert
email address:
archaeology@aberdeenshire.gov.uk

Date: 18/04/2024
Phone No: 01467537717

Ref.: TC

22 April 2024

Ben Freeman
Angus House
Planning Service
Orchardbank Business Park
Forfar
DD8 1AN

By e-mail: PLNProcessing@angus.gov.uk

Application: 24/00199/FULL

Site: 38 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)

Remit:

Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1978 'to promote the better protection of theatres' and provide statutory planning advice on theatre buildings and theatre use in Scotland through The Town and Country Planning (Development Management Procedure) (Scotland) Regulation 2013, requiring the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre'.

Comment:

Thank you for consulting Theatres Trust on this retrospective planning application for residential use at 38 Abbot Street, Arbroath. We have been consulted because the units subject to conversion and change of use are below the Abbey Theatre Club which occupies the same building.

Theatres Trust

22 Charing Cross Road, London WC2H 0QL

Telephone 020 7836 8591 **Email** info@theatrestrust.org.uk **Website** theatrestrust.org.uk **Twitter** @TheatresTrust

Facebook @theatres.trust **Instagram** @TheatresTrust

Chair Dave Moutrey OBE

Director Jon Morgan

Trustees James Dacre, Suba Das, Stephanie Hall, Annie Hampson, Lucy Osborne, Truda Spruyt, Katie Town

There was a previous planning application for this site which was submitted in 2019. Theatres Trust objected on the grounds of negative impacts on the theatre's operations and in turn of sub-optimal living conditions for future occupants arising from acoustic conflict. That application was eventually withdrawn in 2023. Evidently development in any case proceeded without the requisite consents being in place. This is one of two applications submitted seeking retrospective consent, covering Units 1 and 2. The other, for Units 3 and 4 (application reference 24/00179/FULL), we submitted comments on recently.

As noted within our comments for the corresponding application, there is now additional policy in respect of neighbouring developments and the 'agent of change' principle following adoption of National Planning Framework 4 (NPF4) in February 2023. Policy 23.e does not support development which is likely to raise unacceptable noise issues, applying the 'agent of change' principle to noise sensitive development. Where significant effects are likely, as we contend would be the case in this instance, a Noise Impact Assessment may be required. Policy 31.d goes further, stating that development proposals in the vicinity of existing arts venues will fully reflect the agent of change principle. Applications can only be supported where impacts are demonstrably acceptable and that existing venues can continue without additional restriction. In addition to NPF4 policy, Policy DS4 of the Angus Local Development Plan (2016) also states that development will not be permitted where there is an unacceptable adverse impact on the amenity of future occupiers including as a result of noise and vibration levels.

Whilst these residential units do not sit beneath the auditorium or stage area which would likely generate greatest noise and vibrations particularly from performances and auditions, supporting functions for theatres can nonetheless also give rise to sources of disturbance. These units are below storage, costume and workshop areas. The workshop provides an important function in developing and maintaining the theatre's sets and equipment and is industrial in nature, thereby creating noise and disturbance from machinery. There is also likely to be movement during and after shows with equipment being moved around. Whilst there is some separation between these units and the stage, it is possible nonetheless that there could be some acoustic and vibrational transfer through the building's structure.

The Abbey Theatre Club is an important community and cultural asset for Abroath and its surrounding catchment. It is run by its members, providing opportunities for local people to access and participate in theatre and the arts, to volunteer and to learn and develop new skills. It produces its own work as well as hosting occasional

Theatres Trust

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Trustees James Dacre, Suba Das, Stephanie Hall, Annie Hampson, Lucy Osborne, Truda Spruyt, Katie Town

Theatres fit for
the **future**



external performances, events and hires. Theatres and venues such as the Abbey help improve social and cultural wellbeing and reduce loneliness and isolation. Therefore planning decisions should protect them from harm or loss; Local Development Plan policy TC8 seeks the retention of community facilities.

As with the corresponding application no Noise Impact Assessment has been made available for review. Without sight of this it would not be possible to scrutinise the opinion of the applicant that this development is in keeping with the Angus Local Development Plan and NPF4. In fact, the statement refers to the wrong properties in its conclusion and acknowledges previous issues were within these units. the assertion that there are no sound impacts on Units 3 and 4.

In the absence of relevant information, our current position is that we would object to the granting of retrospective planning permission. Nonetheless, even in the event that noise impacts were deemed acceptable we would still seek imposition of robust planning conditions and legal agreements to ensure suitable mitigations and in place and the activities of the theatre can be protected into the future.

Please contact us if we may be of further assistance or should you wish to discuss these comments in further detail, and continue to consult with us should additional evidence be submitted.

Tom Clarke MRTPI

National Planning Adviser

Theatres Trust

22 Charing Cross Road, London WC2H 0QL

Telephone 020 7836 8591 **Email** info@theatrestrust.org.uk **Website** theatrestrust.org.uk **Twitter** @TheatresTrust

Facebook @theatres.trust **Instagram** @TheatresTrust

Chair Dave Moutrey OBE

Director Jon Morgan

Trustees James Dacre, Suba Das, Stephanie Hall, Annie Hampson, Lucy Osborne, Truda Spruyt, Katie Town

The National Advisory Public Body for Theatres. The Theatres Trust Charitable Fund co-operates with the Theatres Trust, has the same Trustees and is registered as a charity under number 274697

Ben Freeman

From: Tom Clarke <tom.clarke@theatretrust.org.uk>
Sent: 10 May 2024 11:48
To: Ben Freeman
Subject: RE: Comments - 24/00179/FULL and 24/00199/FULL - Abbot Street, Arbroath

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ben

Having considered this additional information for application 24/00179/FULL, we concur with the comments of your Environmental Health service.

With regards to impacts on Units 3 and 4 from the workshop and other areas of the theatre above Units 1 and 2, noise and vibrations can travel through the building's structure so it is right that all activities should be measured and assessed. Irrespective of whether much of that area is currently set aside for storage as the applicant contends, there could still be movements and a broader point is that the theatre could legitimately carry out alternative activities within the space if it chose to do so. A fundamental part of NPF4 policy is that the venue can continue without additional restriction.

We similarly agree that a pantomime is unlikely to be of greatest impact in terms of sound levels, or vibrations. Measurements should be carried out for amplified music with high levels of bass as well as for the use of construction/machinery within the workshop and other areas where preparation of sets and equipment may occur.

Ultimately unless there is a 'box-in-box' construction which structurally and acoustically insulates the homes from the theatre it is probable there will be some degree of noise or vibrational transfer through the structure. We are currently providing support to a venue which is in conflict with residential occupants within the same building. Despite relatively recently being constructed to high standards of insulation nonetheless residents are generating complaint. This demonstrates why co-location of live performance venues and residential uses is highly problematic, and why there must be absolutely conclusive evidence of there being no impact before development can be considered suitable for approval.

Our current position is to object to the granting of retrospective planning permission.

Kind regards

Tom Clarke MRTPI
National Planning Adviser

Theatres Trust

22 Charing Cross Road, London WC2H 0QL

T 020 7836 8591

E tom.clarke@theatretrust.org.uk

W theatretrust.org.uk

From: Ben Freeman <FreemanB@angus.gov.uk>
Sent: Friday, April 26, 2024 1:59 PM
To: Tom Clarke <tom.clarke@theatretrust.org.uk>; Planning <Planning@theatretrust.org.uk>
Subject: RE: Comments - 24/00179/FULL and 24/00199/FULL - Abbot Street, Arbroath

Good afternoon Tom,

I refer to your comments to the above planning applications. I note that, in response to the first of the two applications, which seeks retrospective permission for flats 3 and 4, you reference a noise impact assessment which was not available to you. I can confirm that this is on the planning portal and apologise that you weren't able to see it at the time of commenting. For clarification I have attached a copy for you.

With regard to the second application, for flats 1 and 2, no noise impact assessment has yet been received.

I do not foresee any reason to delay determination of these planning applications and would therefore appreciate any additional comments you might have to make upon sight of the attached NIA document. You may also notice from the public file that our Environmental Health Service had made comments on the NIA, and the applicant has responded to these. I am on leave from the 4th until the 13th May, but aim to prepare my report on both applications ASAP on my return, so I hope that offers a reasonable timescale for you to make any additional comments.

Many thanks in advance

Ben

Ben Freeman | Planning Officer – Development Standards | Angus Council | 01307 492202 | freemanb@angus.gov.uk | www.angus.gov.uk

From: Planning <Planning@theatrust.org.uk>
Sent: Monday, April 8, 2024 4:41 PM
To: PLNProcessing <PLNProcessing@angus.gov.uk>
Subject: Comments - 24/00179/FULL

Good Afternoon

Please find attached our comments for application 24/00179/FULL at 38 Abbot Street, Arbroath.

Kind regards,

Tom Clarke MRTPI
National Planning Adviser

Theatres Trust

22 Charing Cross Road, London WC2H 0QL

T 020 7836 8591

E tom.clarke@theatrust.org.uk

W theatrust.org.uk

Ben Freeman

From: Iain H Graham
Sent: 10 May 2024 11:10
To: Ben Freeman
Subject: 24/00199/FULL - 34 Abbot Street, Arbroath DD11 1HH and 24/00179/FULL - 38 Abbot Street, Arbroath DD11 1HH

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Ben

Re the above applications, thank you for providing me with the information submitted by the agent in response to my previous email of 9 April. Unfortunately I was not aware of the second application when I sent that email so my apologies for any confusion that this has caused. I have however looked at the agent's response and as the 2 applications currently stand I would make the following comments:

- This Service does not accept that a pantomime performance represents a worst case scenario for music and performance noise at a venue that can accommodate a wide range of music events.
- The final noise impact assessment for the previous application (19/00691/FULL) involving all 4 proposed residential units identified significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. Neither of the current applications are supported by a further assessment of noise from these sources.
- The final noise assessment for the previous application identified that any further noise mitigation measures would require the co-operation of the Theatre group. There doesn't however appear to be anything in the supporting information for either of the current applications that demonstrates that this has been obtained or that new mitigation measures within the control of the applicant have been identified.

In light of the above this Service cannot be satisfied that potential noise impacts on the proposed development arising from the full range of activities undertaken within the theatre premises have been adequately considered in respect of the current applications. Furthermore a detailed assessment of those impacts undertaken and submitted as part of the previous application indicated that noise from certain activities carried out within the theatre premises would have a significant detrimental impact on the level of amenity afforded to the proposed residential units. As no further noise mitigation measures within the control of the applicant have been identified this Service must take the view that the proposed developments are incompatible with the theatre activities on the first floor and accordingly would object to both applications.

I trust that you find the above response to be acceptable but please do not hesitate to contact me if you wish to discuss anything further.

Regards

Iain

Iain Graham | Environmental Health Officer | Angus Council - Place | Housing, Regulatory and Protective Services | Angus House, Orchardbank Business Park, Forfar, DD8 1AN | 📞07342 076886



MEMORANDUM

TO: Ben Freeman, Planning Officer (Development Standards)

FROM: Alan Milne, Environmental Protection Officer

YOUR REF: 24/00199/FULL

OUR REF: Site 2672

DATE: 15 May 2024

SUBJECT: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street, Arbroath.

With reference to the above planning application and your consultation requesting comment regarding contaminated land, I can offer the following comments.

Available information including historic mapping and aerial photography has been reviewed. It would be useful to have some further information about the previous uses of the land and studies should be directed to any potential source of contamination. There may have been storage of chemicals, vehicles or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination. Prior to use of the building as a Day Nursery, the site was an engineering workshop and the change of use predated our current controls for land contamination.

I have no objections to the above application however would recommend the undernoted suspensive conditions be placed on any consent granted;

1) That, prior to commencement of any development works, a comprehensive contaminated land investigation report shall be submitted for the written approval of the planning authority. The investigation shall be completed in accordance with a recognised code of practice such as British Standards Institution "The Investigation of Potentially Contaminated Sites – Code of Practice" (BS 10175: 2011+A2:2017). The report must include a site-specific risk assessment of all relevant pollutant linkages, as required in Scottish Government Planning Advice Note 33.

2) That where the contaminated land investigation report identifies any unacceptable risk or risks as defined under Part IIA of the Environmental Protection Act 1990, a detailed remediation strategy shall be submitted for the written approval of the planning authority. No works, other than investigative, demolition or site clearance works shall be carried out on the site prior to the remediation strategy being approved by the planning authority. Prior to the occupation of the development the remediation strategy shall be fully implemented and a validation report confirming that all necessary remediation works have been undertaken shall be submitted for the written approval of the planning authority.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Chloe French

Address: 36 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: To whom it may concern,

My partner and I have been more than happy living in 36 Abbot Street for the past 15 months, and we wish to continue to do so for a long period of time as we are really settled here. There are very few of suitable rented properties in Arbroath and surrounding areas at present.

We really do hope the flats receive the needed planning permission so we can continue to stay in somewhere we really love and fits all of our needs.

Yours faithfully,

Chloe French

Brenna Cunningham

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

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Commenter Type: Member of Public

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Yours faithfully,

Chloe French

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mrs Amanda Anderson

Address: 34 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Myself and husband Neil have lived here happily and peacefully for over a year now. A previous notice of enforcement letter was hand delivered through our letterbox a few months ago. In it, it stated that the building was unsuitable for domestic use purposes due to noise nuisance from The Abbey Theatre. Being the persons who live here, we can strongly refute that statement. We have experienced no noise nuisance whatsoever coming from the theatre. We don't even know when there is a show on, unless we look outside and see the carpark in front of us filling up with the theatre patrons cars. The whole time we have lived here, it's been very peaceful and very quiet. We feel safe and secure, as there is a high gated fence surrounding the building. Our neighbours are the best. As is our landlord, who goes over and above to help us. We have lived in 4 different private rental properties since 2021, as the local authority housing stock is few and far between and there are no available properties to suit our medical needs. Angus Council Housing sent an OT to our current address. She said our current home is perfect for us and meets all of our medical needs. I am my husband's full-time carer. He has dementia. I was diagnosed with advanced Marginal Zone Lymphoma in Nov 2022 and am still going through my cancer treatment. This last year has been so stressful for us both. We are not physically or mentally fit to cope with another move. My cancer treatment is gruelling with lots of side effects. Whilst also caring for my husband 24/7. We live a street away from our GP, close to all amenities, also my husband's dementia group, Arbroath Connections, which he attends twice a week to give me some respite. I have no family close by to get support from. We are both very happy and settled living here. Our home has been done to a very high standard. Financially, we have no savings left to fund another house move. Our previous moves have used up all we had. I trust a decision will be made on this application very soon.

To whom it may concern,

RE The planning permission for the flats on the ground floor of Abbot Street.

Planning reference 24/00199/FULL and 24/00179/FULL

The trustees of The Abbey Theatre are concerned that if the ground floor is converted into housing then there is a risk that the new occupants may consider that the theatre is causing noise nuisance.

The Abbey Theatre club moved into these premises in 1964 and for the past 55 years has used the premises as a working community theatre.

During the whole of those 55 years there has been no problem of noise nuisance arising from the use of the upper floor as a community Theater as the ground floor has always been in some form of commercial use.

Currently the club stages Productions of six plays each year and a Christmas pantomime. Each performance runs for a period of six nights and the pantomime often has additional matinee performances on top of an extra few nights performances.

Stage Productions are inherently noisy with loud and strident voices as parts are played, live and recorded music, stage effects including realistic gunshots, audience laughter and applause, along with the general noise of up to 100 patrons, cast and volunteers entering and leaving the theatre and moving between the Auditorium, coffee lounges and toilets.

As well as using the premises as a theatre the bulk of the first floor above the proposed flats on the ground floor is utilised for male and female dressing rooms, the Green Room for actors ready to go on stage and as storage for a large amount of stage furniture and props along with timber and other materials used to build sets.

The stage crew have a small workshop in this area with a number of fixed and portable power tools which are used during set construction and which can be quite noisy when in use. These tools are used the entire length of the upper floor.

Consequently there is a large and frequent footfall along with movement of heavy and bulky furniture in this area which still has its original wooden floors installed when the former factory was constructed probably over 100 years ago.

It should also be noted that the fire escape at the west end of the building which is shown as being within the site is in fact the fire escape from the upper floor and therefore access from the theatre must be maintained at all times. Indeed it must be questioned why this is being shown as part of the site when none of the proposed flats have access to this area.

Parking in Abbot Street has always been a problem that has become increasingly so since the introduction of parking charges, although these are currently suspended I believe there is plans to reinstate these in the near future. There have been problems in the past with access for emergency vehicles such as fire engines, there have also been access problems to the theatres pantomime store which is located at the extreme West End of the building with the fire escape area between it and the proposed flats.

We would ask that the probability of further congestion arising from the occupancy of a further two flats in the street should be taken into consideration when making a decision on this application. We note that the proposed access to this development is to be taken on the North elevation of the building from the Stanley Street car park but the trustees are concerned that any occupants of the flats will opt to park in Abbot Street rather than pay to use the car park when parking charges are reinstated.

It should be noted that between Productions the theatre is continuously in use at weekends and several nights each week for rehearsals of the next planned production. It is also used on Saturday mornings to coach the youth group in acting and stage skills.

During these periods, while rehearsals are taking place, the stage crew are engaged in striking the set from the last production and building the set for the next production.

The trustees also hire the Theatre to outside groups for a variety of performances and stage shows on several occasions each year. These can be varied and have included a live band, comedians and other theatre groups.

The trustees have been in receipt of several noise complaints from the current tenants of the flats. This has included phone calls to the police and environmental health, plus contact via email, the Facebook page and in person from some of the occupants complaining of the noise. Along with complaints regarding the set building noise we have received complaints about our patrons waiting on taxis and transport after the show and creating noise through chatting.

When these flats were created there was an issue with our water supply being compromised and we had to pay an excess of £2000 in order to reroute our water supply and we are concerned there will be further issues along this line.

The trustees are concerned about noise transmission into the proposed flats and ask that if planning permission is granted then an appropriate condition be placed on that permission requiring the developer to install adequate sound installation to ensure that the use of the upper floor as a community Theatre does not affect the occupants of the flats.

Regards

Laura Barnes

Secretary

James Robb

President

On behalf of The Abbey Theatre Club

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Gavin Stephenson

Address: 41 Monymusk Road Arbroath Dd112bz

Comment Details

Commenter Type: Miscellaneous

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Was previously a Tenant at 40 Abbot Street I had great stay here very well maintained property with great neighbours, good communication with the landlord property was lovely and lovely set out and maintained.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Chris Ettershank

Address: 32 Abbot St Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Having been involved in this development since the very beginning, it is important for me to support this new application.

During all my tenants time in these properties over 18 months none of them had any issues or complaints of noise from the theatre production or set building, in the areas above the flats. One tenant did enquire about the operating hours of the theatre directly to the theatre and to the council which they have all jumped on as a "complaint", which it was not, this tenant still resides happily in the property and has submitted supporting comments for this new application.

I would like noted that senior members of the theatre can be aggressive and abusive to some tenants shouting at them "they shouldn't be living there" and knocking purposely on their windows, almost in an attempt to create complaint's. I have also experienced this firsthand as well as them being abusive to some of my workers during the development.

I done everything I could to appease the theatre and environmental health, however nothing was ever enough and they kept changing the criteria.

Any time I advertise a property in Arbroath I receive in excess of 20 applications in a 48 hour period, there is a drastic shortage of housing in Angus and these 4 ground floor fully accessible disabled apartments are a treasure to the local community.

I fully support this new application.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Grant Mcintosh

Address: 10 Millgate Loan Arbroath Dd111pq

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I fully support this development, as the flats only lie below a store of the theatre and not the actual production area, they are beautiful flats and with a shortage of affordable accommodation in Angus these 4 fully accessible disabled apartments area ideal for rental

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Brenna Cunningham

Address: 36 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I have happily lived in Arbroath for the majority of my life. I have been living on Abbot Street for the last 15 months and have enjoyed living here. The home suits my personal needs, and the location is beneficial for my work. I am really settled here and I hope to be here for a long period of time. There are very few of suitable rented properties in Arbroath and surrounding areas at present. I hope the flats receive the planning permission so I can continue to stay in somewhere I really love and fits all of my needs.

My elderly parents are able to visit me here and I have very respectful community neighbours surrounding the property.

Kind regards,

Brenna Cunningham

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Jade Beaton

Address: 29 keptie road Arbroath Dd113ed

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I fully support this application

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Allan Craik

Address: 3 Hospitalfield Road Arbroath DD11 2LP

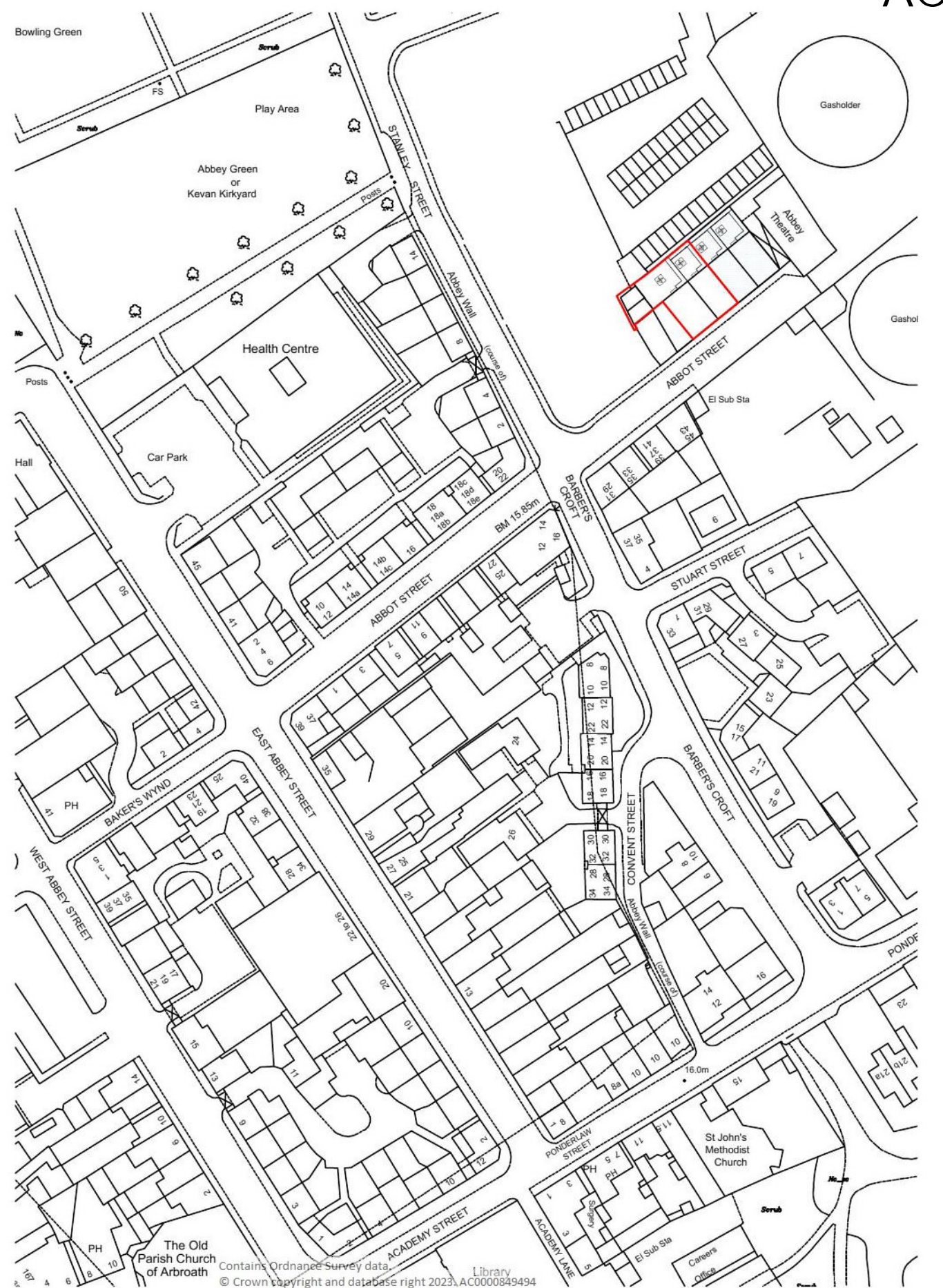
Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: In respect of this application I would like it noted that I fully support it. Given the shortage of rental accommodation within Arbroath, it makes sense to approve this and help those residents living within Angus who can not afford to take that step onto the property market


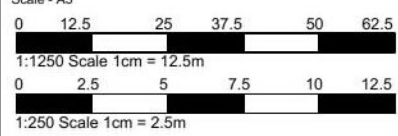



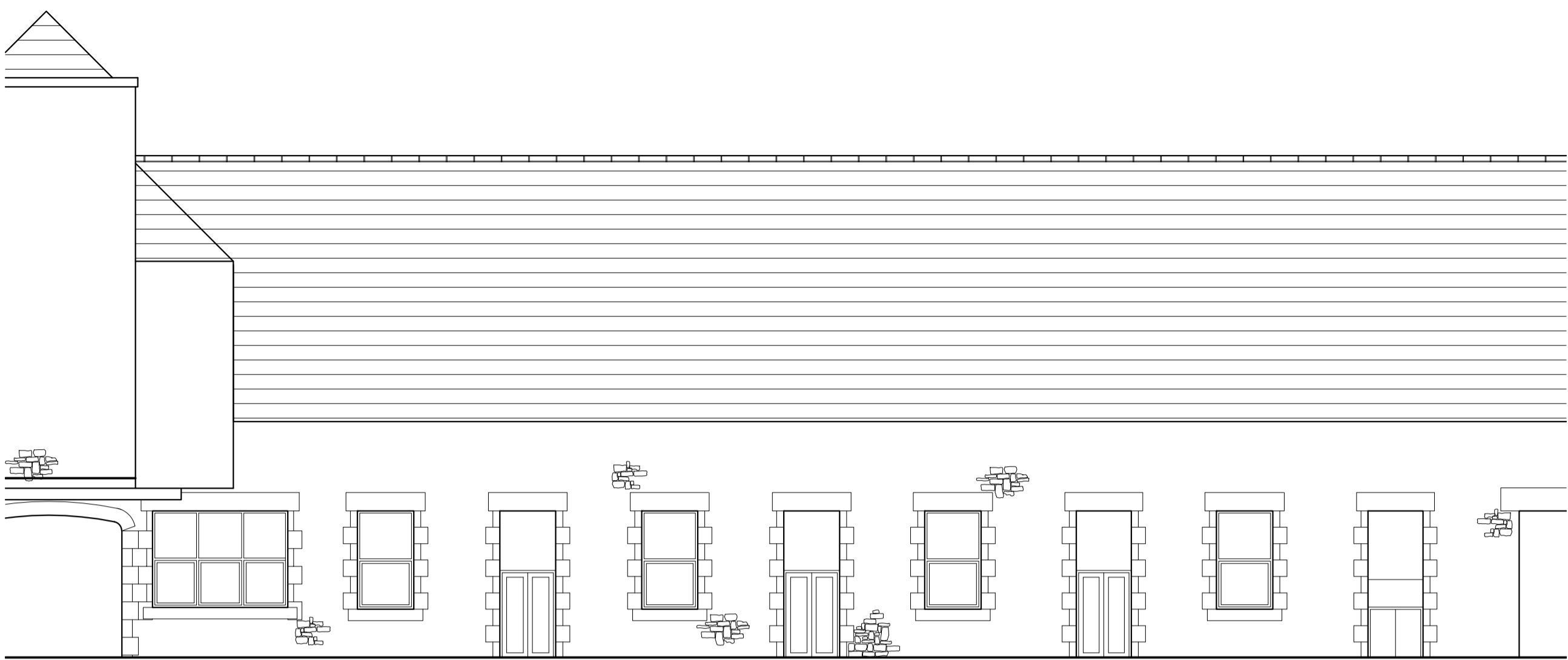
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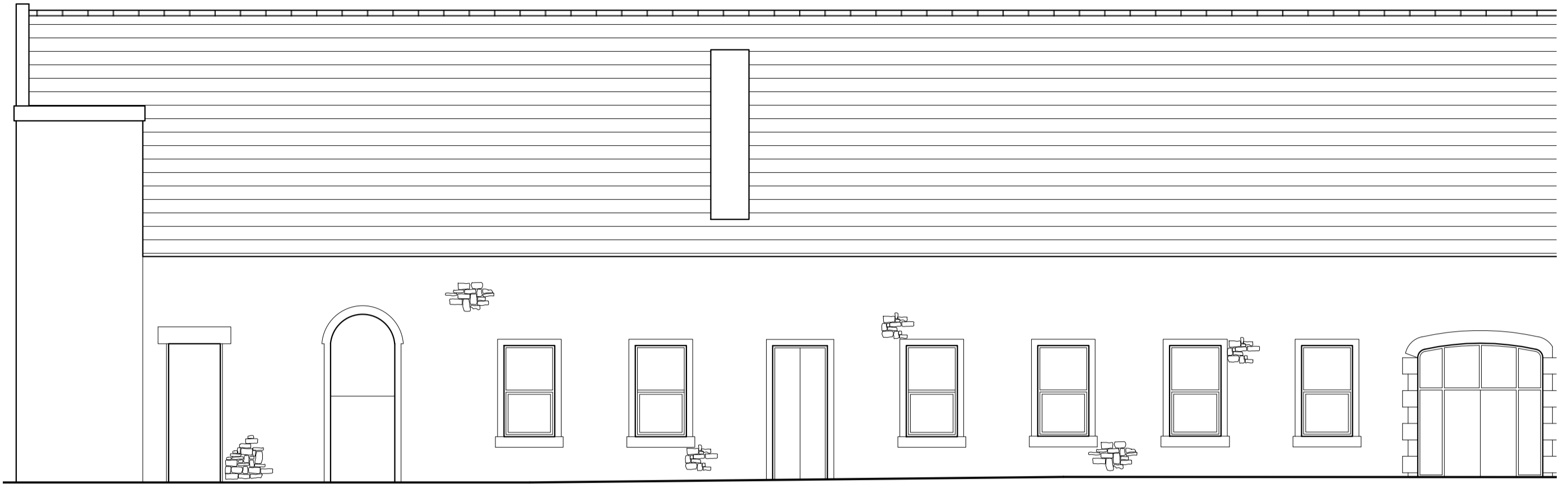
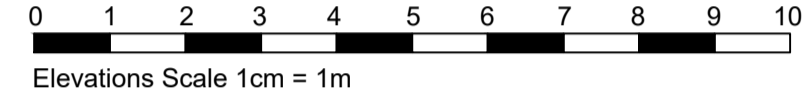
Site Plan - Scale 1.250

Location Plan - Scale 1:1250

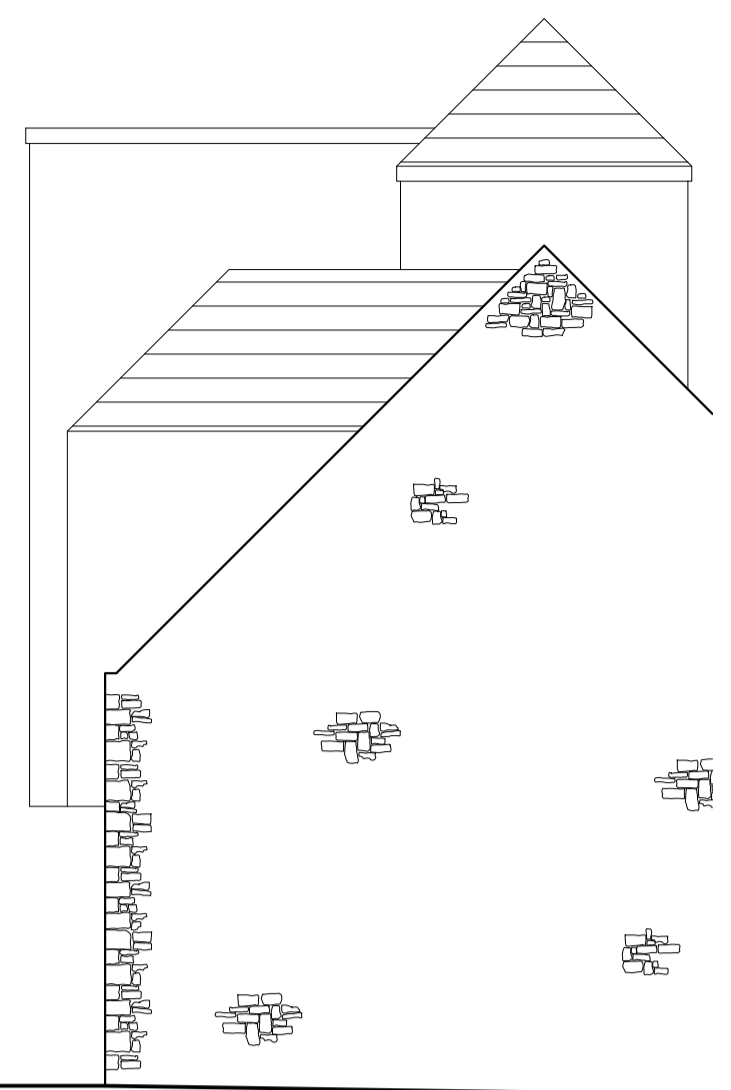
 <p>12 Clerk Street, Brechin, DD9 6AE www.abrogroandyoung.com Tel: 01356 62125</p>	<p>Scale - A3</p>  <p>1:1250 Scale 1cm = 12.5m 1:250 Scale 1cm = 2.5m</p>	<p>Drawing Title</p> <p>Existing & Proposed Site & Location</p>	<p>Drawn By</p> <p>KM</p>	<p>Checked By</p> <p>SWP</p>	<p>Revisions</p>	<p>Job Title:</p> <p>Proposed Alterations to form Domestic Flats at 34 & 36 Abbot Street, Arbroath - Units 1 & 2 Retrospective Application</p>	
		<p>Drawing No.</p> <p>2024 ASA 06</p>	<p>Date</p> <p>February 2024</p>	<p>DO NOT SCALE FROM DRAWINGS</p>			



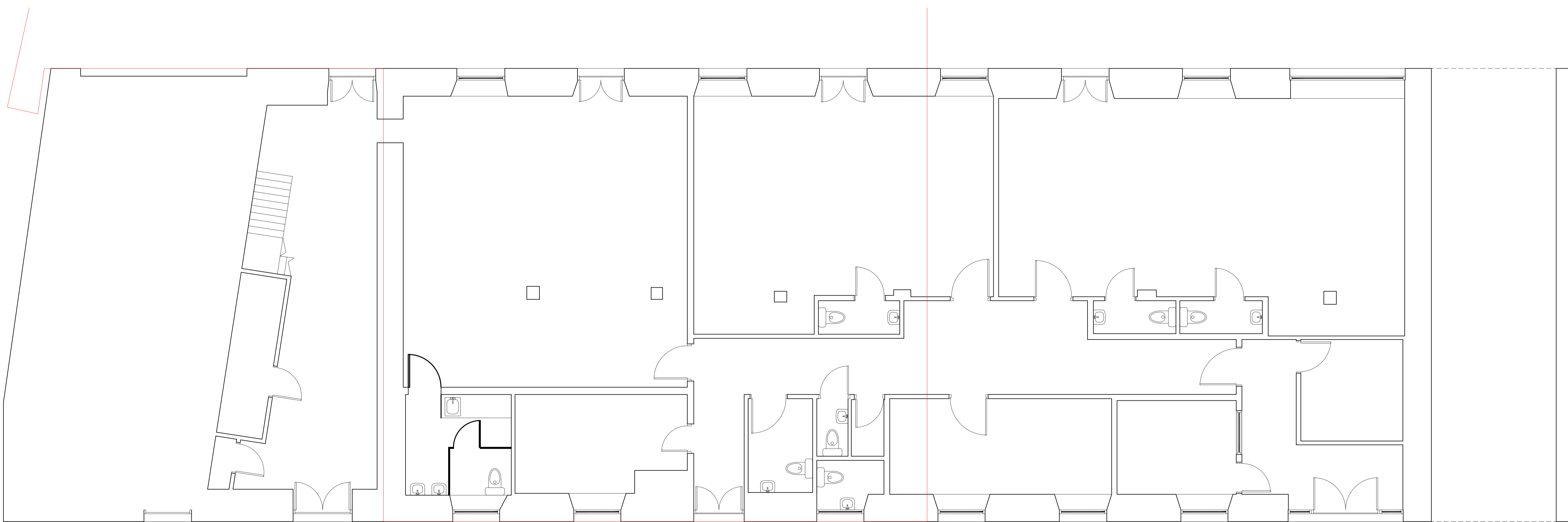
North-West Elevation - Scale 1.100



South-East - Scale 1.100

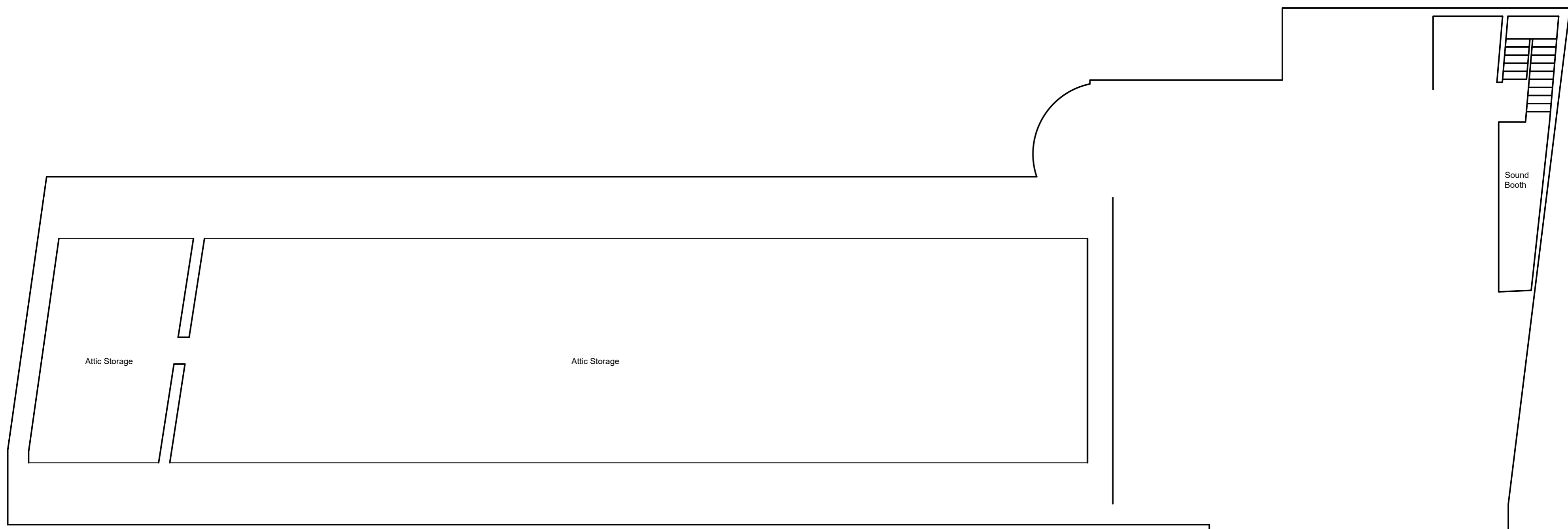


South-West Elevation - Scale 1.100

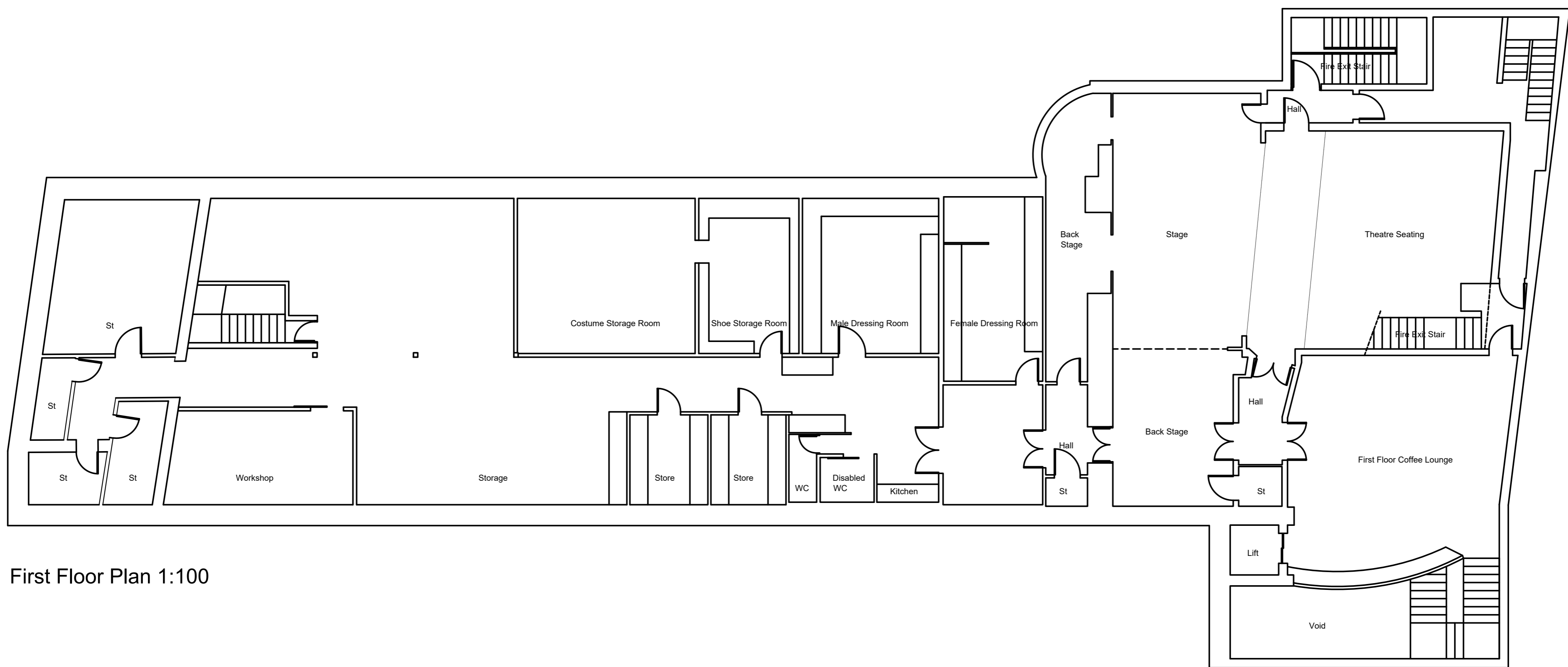


Ground Floor Plan - Scale 1.50

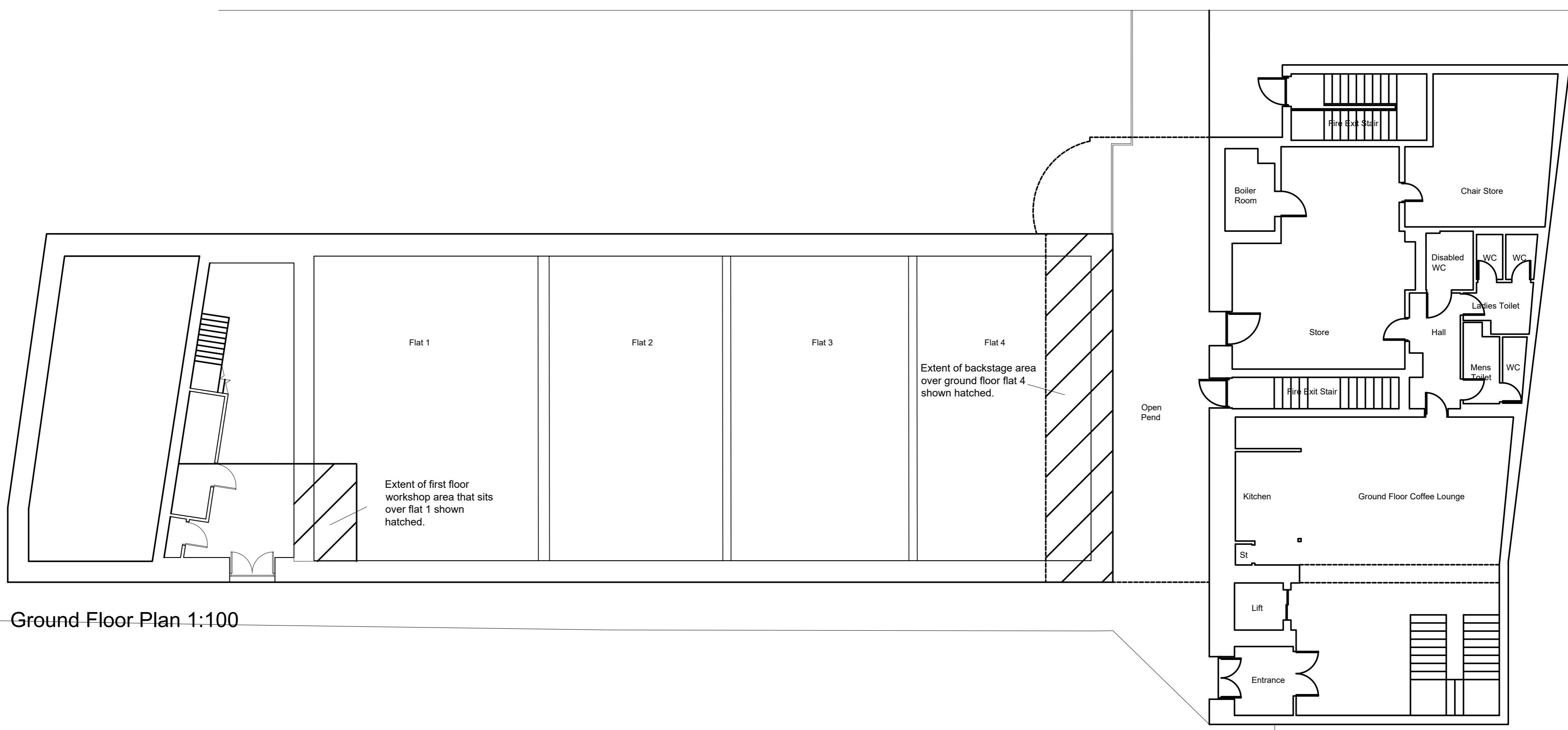
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		<p>Drawing No.</p> <p style="text-align: center;">2024 ASA 04</p>	<p>Date</p> <p style="text-align: center;">February 2024</p>	<p>DO NOT SCALE FROM DRAWINGS</p> <p style="font-size: 8px;">Crown Copyright and Database Right All Rights Reserved Ordnance Survey Licence no. 1000171</p>			



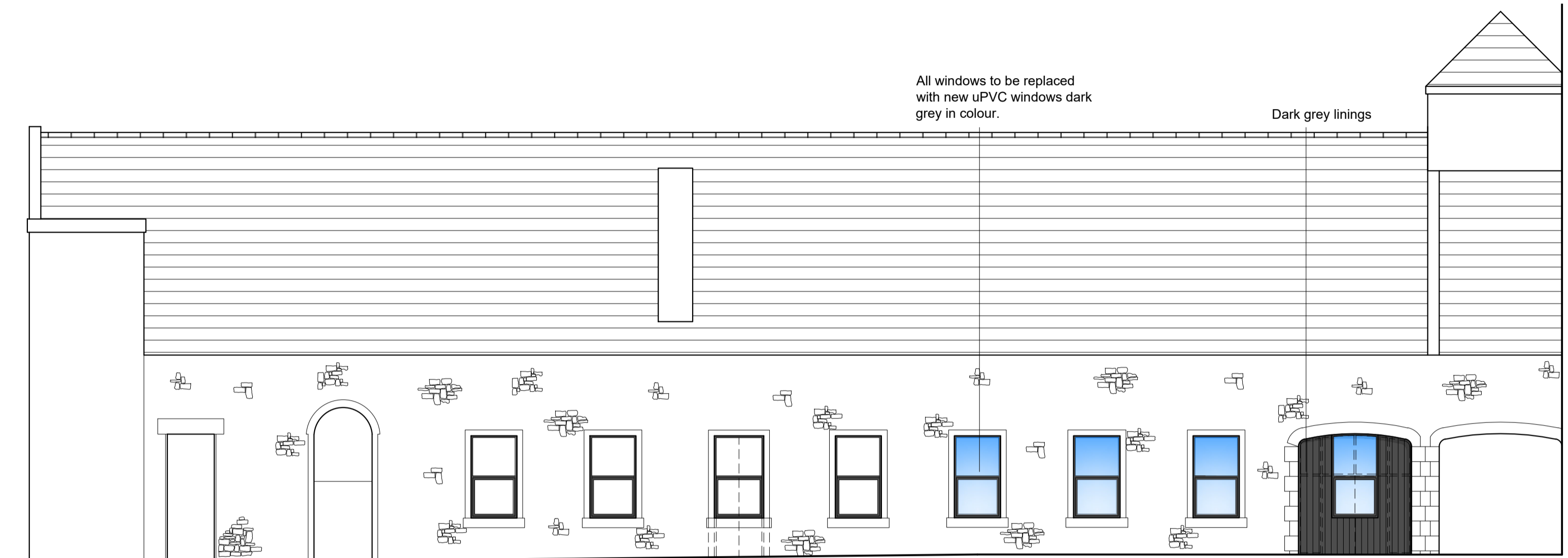
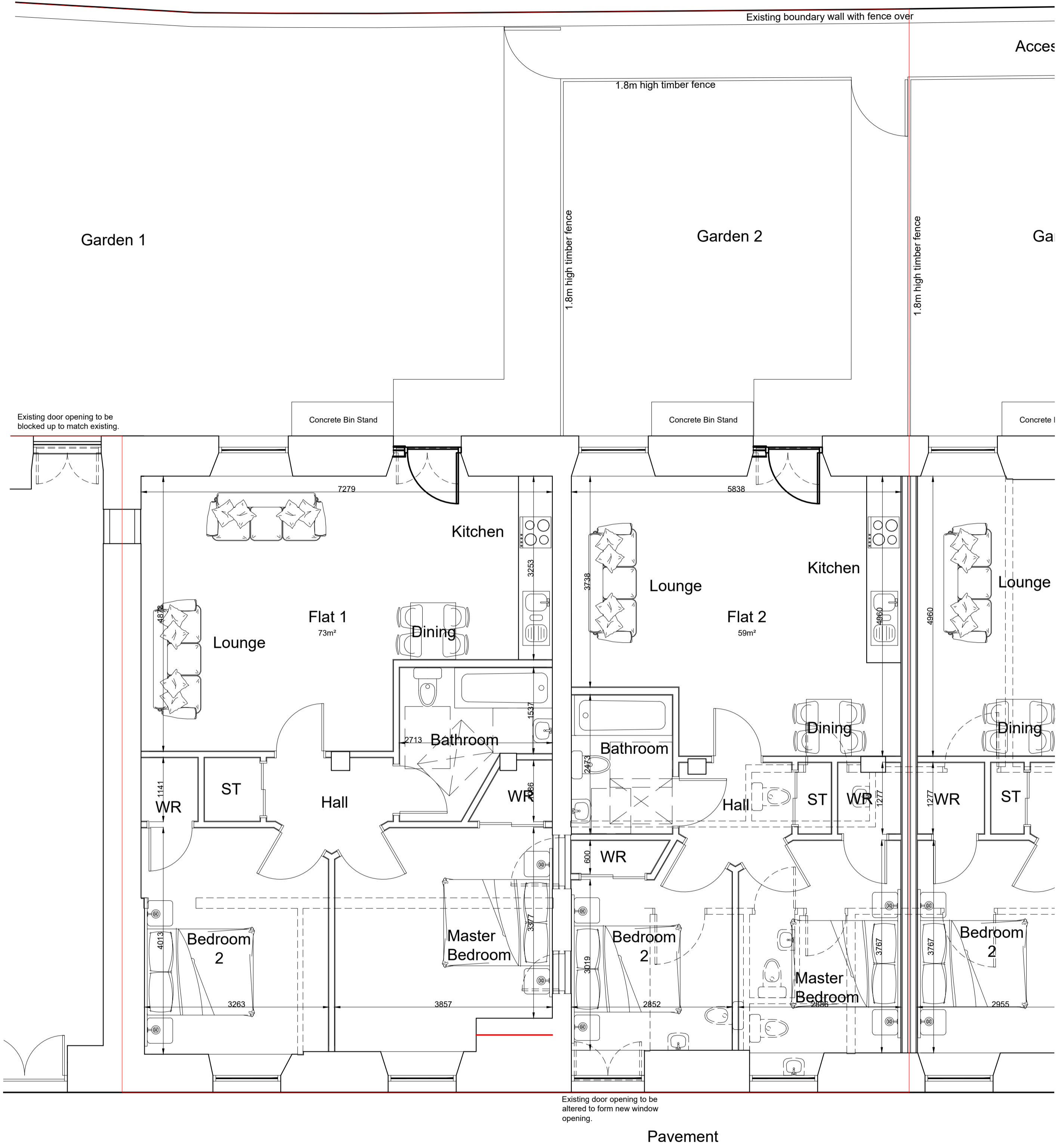
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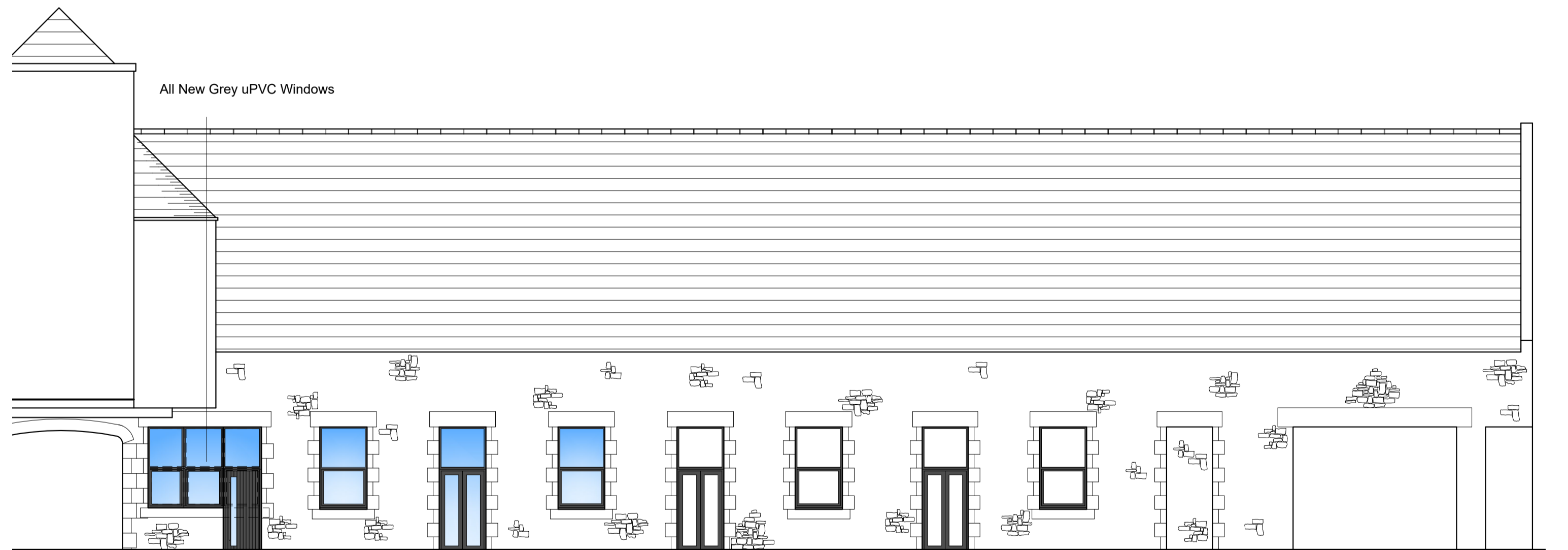
First Floor Plan 1:100



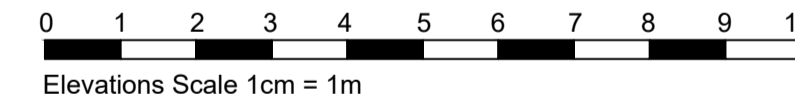
Ground Floor Plan 1:100



South-East Elevation - Scale 1:100



North-West Elevation - Scale 1:100



	<p>Scale - A1</p> <p>0 1 2 3 4 5 6 7 8 9 10</p> <p>1:100 Scale 1cm = 1m</p> <p>0 0.5 1 1.5 2 2.5 3 3.5 4 4.5 5</p> <p>1:50 Scale 1cm = 0.5m</p>	<p>Drawing Title</p> <p>Proposed Plan & Elevation</p>	<p>Drawn By</p> <p>KM</p>	<p>Drawn By</p> <p>SWP</p>	<p>Revisions</p>	<p>Job Title:</p> <p>Proposed Alterations to form Domestic Flats at 34 & 36 Abbot Street, Arbroath - Units 1 & 2 Retrospective Application</p>	
		<p>Drawing No.</p> <p>2024 ASA 05</p>	<p>Date</p> <p>February 2024</p>	<p>DO NOT SCALE FROM DRAWINGS</p>			

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013

PLANNING PERMISSION REFUSAL
REFERENCE : 24/00199/FULL

To **Ms Mayara Agnes**
c/o A B Roger & Young
12 Clerk Street
Brechin
Angus
DD9 6AE

With reference to your application dated 4 April 2024 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street Arbroath DD11 1HH for Ms Mayara Agnes

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Refuse Planning Permission (Delegated Decision)** for the said development in accordance with the particulars given in the application and plans docketed as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. The development does not comply with policy TC2 of the Angus Local Development Plan as it is not compatible with current land use in the area and as it would not provide a satisfactory residential environment by virtue of noise and disturbance associated with the existing lawful use of the adjacent theatre.
2. The development does not comply with NPF4 policies 23 and 31 as it is not consistent with the agent of change principle set out in NPF4 as it is likely to result in unacceptable noise issues given the proximity of the proposed residential units to the existing theatre, and it has not been demonstrated that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.
3. The development does not comply with policy DS4 of the Angus Local Development Plan and policy 9 of NPF4 as no assessment of potential land contamination has been submitted and it has not been demonstrated that the land is, or can be made, safe and suitable for the proposed new use.
4. The does not comply with policy DS1 of the Angus Local Development Plan Policy as it is not in compliance with other relevant policies of the plan, and it is not compatible with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the local development plan in circumstances where it is not consistent with other relevant policies.

Amendments:

The application has not been subject of variation.

Dated this **7 June 2024**

Jill Paterson

Service Lead

Planning and Sustainable Growth

Angus Council

Angus House

Orchardbank Business Park

Forfar

DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

The duration of any permission granted is set out in conditions attached to the permission. Where no conditions are attached the duration of the permission will be in accordance with sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 03452 777 780
E-mail: planning@angus.gov.uk
Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to The Planning and Environmental Appeals Division, Scottish Government, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 2

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

A.B Roger & Young Ltd

Chartered Architect, Planners & Surveyors

12 Clerk Street, Brechin, DD9 6AE

Tel: 01356 622125

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Website: www.abrogerandyoung.com

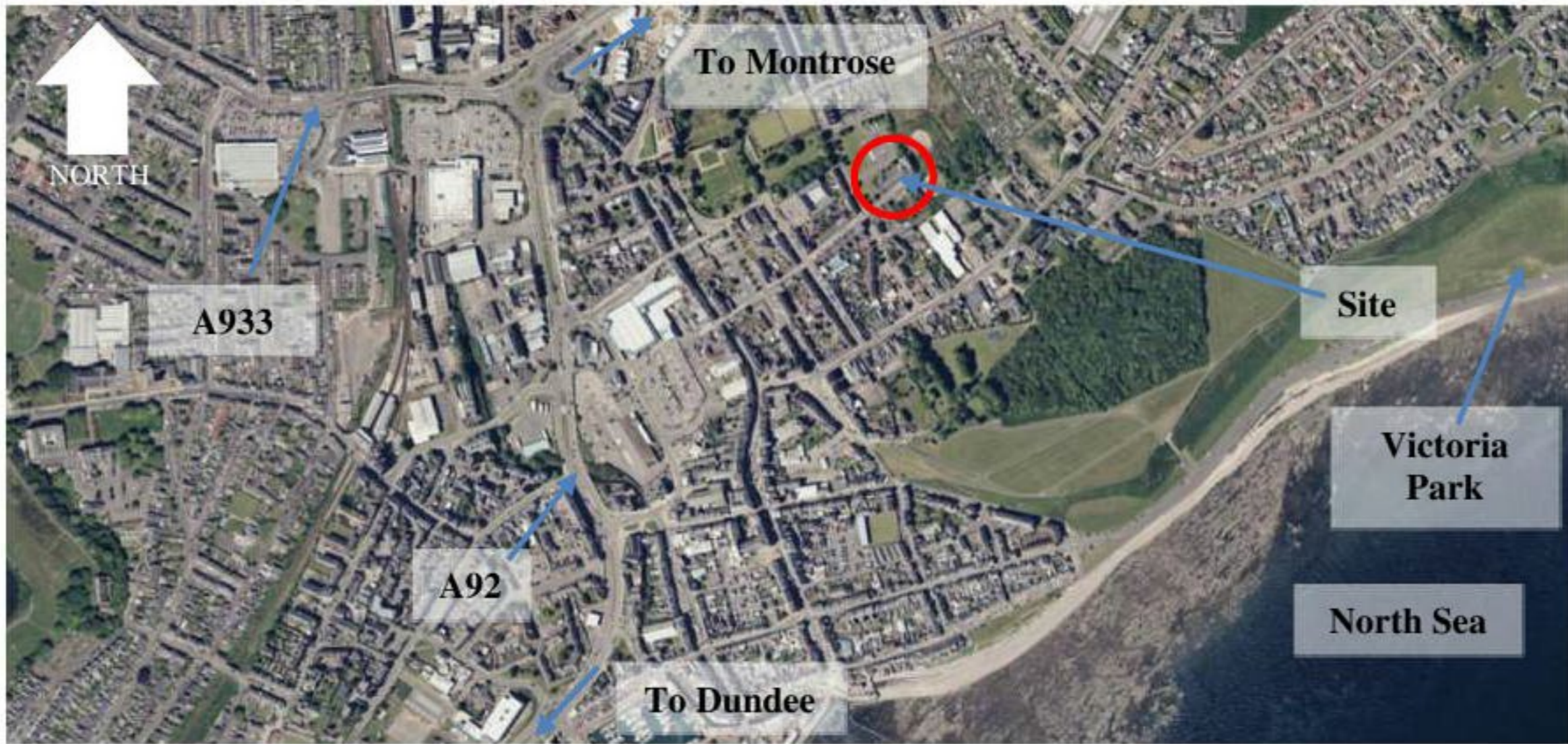


Proposed Alterations to Form Domestic Flats **At 34 & 36 Abbot Street, Arbroath – Units 1 & 2** **Retrospective Application**

Site Analysis and Background

The proposed site is located within the Angus town of Arbroath. Situated at the north-eastern end of Abbot Street, the site is an existing building which was most previously used as a day nursery. After the nursery closed, the building sat empty for over 2 years despite being advertised for sale as a going concern. Our previous client bought the property with the vision of converting it into domestic properties rather than seeing another property sit empty within the town of Arbroath.. Numbers 34 - 40 are bounded by Abbot Street to the South-East, Abbey Theatre to the North-East, a former gas-works site to the South West (now empty and cleared) and a public car park to the North-West. Access to the nursery was taken from Abbot Street.





Site Photographs



Proposed building and Abbey Theatre building



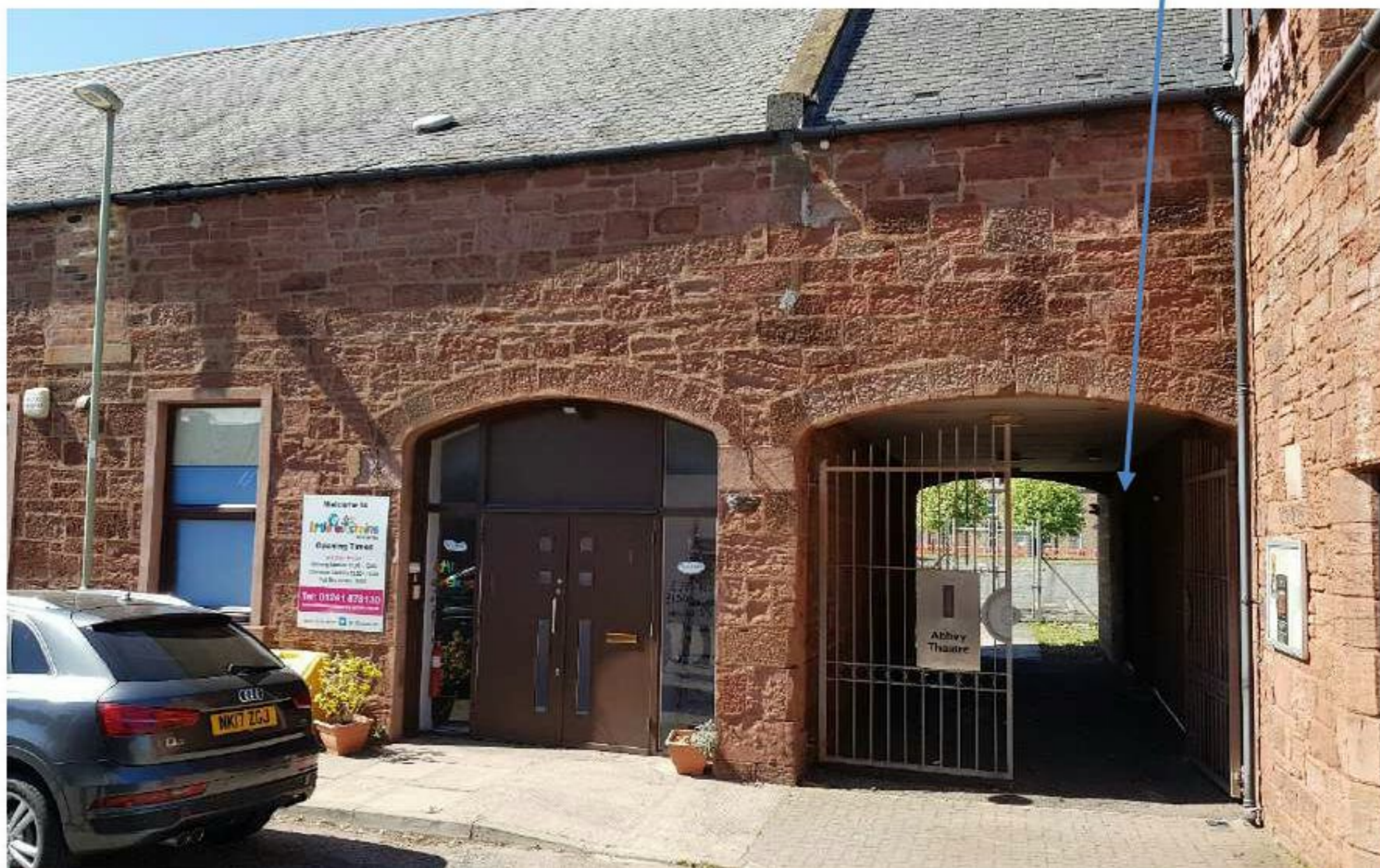
Proposed building



Proposed building



Proposed building and Abbey Theatre Building



Proposed building



North-West elevation – used as nursery garden.



North-West elevation – used as nursery garden.



Abbey Theatre building cantilever over pend



Common Pend

Background History

A full Planning Application for this site was originally submitted on 9th September 2019 and registered on 2nd October 2019 – ref: 19/00691/FULL, in general principles the reuse of an existing building within the settlement of Arbroath would comply with the policies of the Angus Local Development Plan 2016. Initially, no objection was made by the Environmental Health Service. As the application was being processed disappointingly, a number of objections to the application were received from the neighbouring theatre building resulting in Environmental Health changing its stance on the application. As a result the applicant at the time undertook discussions with the Environmental Health Service of Angus Council with numerous Noise Impact Assessments being lodged in support of the application. Unfortunately, due to continually changing parameters being set by the EHO, no solution to the noise issue could be agreed at that time. As a result, and reluctantly, the application was withdrawn on the 1st of February 2023.

Details of the original application progress are below -

Numerous consultees commented on the previous application:

- Scottish water: Scottish water were happy that there was sufficient capacity in the Lintrathen Water Treatment works for the additional surface water and there was sufficient capacity at the Hatton PFI Waste Water Treatment Works for the additional foul water, as such they had no objections.
- Archaeology: There was no archaeological mitigation required for this project.
- Roads Department: There was no objection submitted by the roads department.
- Environmental Health Service (Contamination): There was no objection to the application from the EHS.
- Health and Safety Executive: Initially HSE raised concerns regarding the application in relation to its distance from a hazardous site – former gas works opposite however once further details were provided this objection was removed.

Initial issues raised about the original proposals were -

- 18th of October 2019 Environmental Health confirmed they did not object to the proposals, however following the objection letters from Abbey Theatre and Theatres Trust this statement was withdrawn on 6th November 2019.
- 23rd of October 2019 Abbey Theatre Group wrote a letter through their solicitors asking that the proposals would take the noise between the theatre group and domestic properties below into account when designing the properties.
- This was then expanded on by the Abbey Theatre on the 25th of October to detail how their actions may impact upon the domestic properties below:

-
- The Theatres Trust, a national advisory public body established in 1978, who seeks to safeguard theatres sent a letter of objection on 21st November 2019. They highlighted the issues of having domestic properties adjacent to a theatre and how noise disturbances could be an issue for both parties involved.

Following these comments, an initial noise survey was carried out by E2 Consultants, this found the flats at present fail but presented a solution to resolve this.

- This led to an email from Thorntons Solicitors on the 7th of February 2020 on behalf of the Abbey Theatre Group which indicated that the issues regarding noise transference were satisfactory resolved and stated that their clients 'only further comment is to say that if the Council are minded to grant the application they make it a condition that the applicants carry out and install all of the recommendations made by the Environmental Noise Survey.' Our client at the time confirmed that they were more than happy to do this.
- By this point it was felt that the issues were resolved, and that Planning Approval would be forthcoming, thus the building warrant application was submitted.
- This was further backed up by email correspondence from Environmental Health on the 13th of February 2020 which stated that EH objection would be removed subject to the sound mitigation detailed within the NIA being conditioned within the approval.
- However, on 17/2/2020 the Theatres Trust sent in correspondence which stated that they still objected to the proposals as they felt the conditioning was not enough, and they felt a legal agreement would need to be signed, this was backed by an email from Thorntons Solicitors – again our client at the time confirmed he would be happy to enter into any legal agreement necessary to allow the application to move forward.

Following this continued objection, Environmental Health reassessed the application and Noise Impact Assessment's submitted and on 4/7/2020 revoked their previous comments dated 13/2/2020.

Their new findings felt that:

- Live performances noise levels above the flats were not considered within the NIA.
- During tool testing the noise was not accurate as the circular saw (deemed loudest) was not consistent throughout the whole test.
- The NIA had allowed for a complete floor whereas the theatre floor has considerable gaps which would allow noise to penetrate – as such the flooring above the joists should be discounted from all future calculations.

As a result of the noise issues highlighted, a further NIA was carried out and submitted however further concerns from EH were brought to the table, these were -

NIA's :

- NR32: was not being met due to workshop equipment noise.
- NR61: was not being met due to set building.
- NR18: was not being met due to performance activities.

These comments were challenged at the time by our clients Noise Assessor - CSP Acoustics - as it was felt that the results for the workshop and set building shown were correct and although failing felt the results with regards to performance activities were sufficient also however EH would not change their stance with regards to this.

It should be noted that these additional points came about following numerous site meetings between EH and the neighbouring theatre group. Requests were made by our client at the time to arrange a meeting with EH to personally discuss options on how to deal with these additional requirements but this request was denied.

Our client at the time engaged a total of three different noise assessment companies during this application process with each company attempting to mitigate the points raised by EH and numerous additional revised noise reports being submitted but Environmental Health's concerns could not be resolved with the final of their objections being on 5/5/2022. Our client's noise assessor continued to try and engage with EH on these matters but the application was later withdrawn on 1/2/23. It should be noted that all 3 noise consultants engaged by our previous client stated at the time that the level requirements set by EH were extreme.

As mentioned above a Building Warrant Application was submitted on 4th February 2020 following discussions with Environmental Health as it was believed all matters relating to their objection were now resolved. This application was processed by Building Standards quickly with approval being granted on the 8th April 2020.

The Building Warrant Approval for this site was released just two weeks after the UK entered the first Covid19 national lockdown.

Once it was realized that this lockdown was not going to be just a couple weeks as initially intended our then client made the decision to commence works on site as being a small joinery business it would not have survived furloughing his employees, instead he chose to have one man work on each of the flats which enabled isolated working but also allowed for the company to remain operational. It was not expected at any point that the covid pandemic would affect the country for 2 years. Given that all works associated with the flatted development were completed by the end of the first lockdown our client made the decision to obtain all relevant completion certification from Building Standards on 20/12/21.

The properties then sat empty for almost 1 year prior to the clients decision to move

tenants into the properties being made.

It should also be noted that Planning Approval for 75 domestic housing units has been granted on the neighbouring site under approval ref: 08/01020/FUL which has recently had a PAN application submitted under Ref: 23/00455/PAN.

Proposals

The proposal is to convert a redundant day nursery building into 4 domestic properties, this is a retrospective application for flats 1 & 2 of that development. The relevant policy within the Angus Council Local Development Plan which supports this proposal is Policy TC2.

This policy states:

Policy TC2 Residential Development

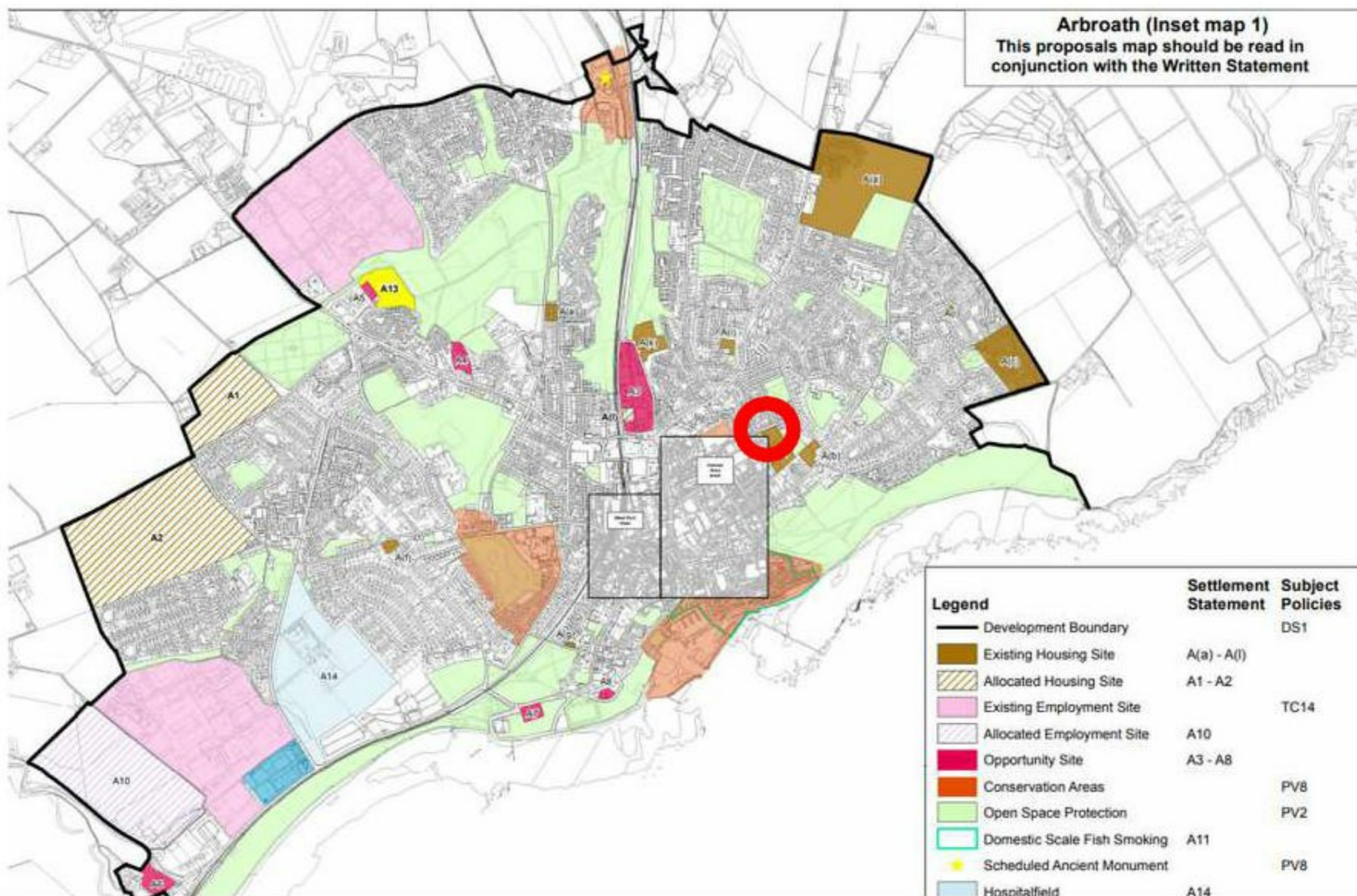
All proposals for new residential development, including the conversion of non-residential buildings must:

- *Be compatible with current and proposed land uses in the surrounding area.*
- *Provide a satisfactory residential environment for the proposed dwellings.*
- *Not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure*
- *Include as appropriate a mix of house sizes, types and tenures and provision for affordable housing in accordance with Policy TC3 Affordable Housing.*

Within development boundaries Angus Council will support proposals for new residential development where:

- *The site is not allocated or protected for another use.*
- *The proposal is consistent with the character and pattern of development in the surrounding area*

The site is located within the Arbroath development boundary and has not been marked for another use.



The proposals will be consistent with the surrounding area. The properties upon the surrounding streets, specifically Abbot Street and Stanley Street comprise of lots of terraced properties and flats, these can be seen in the images below:





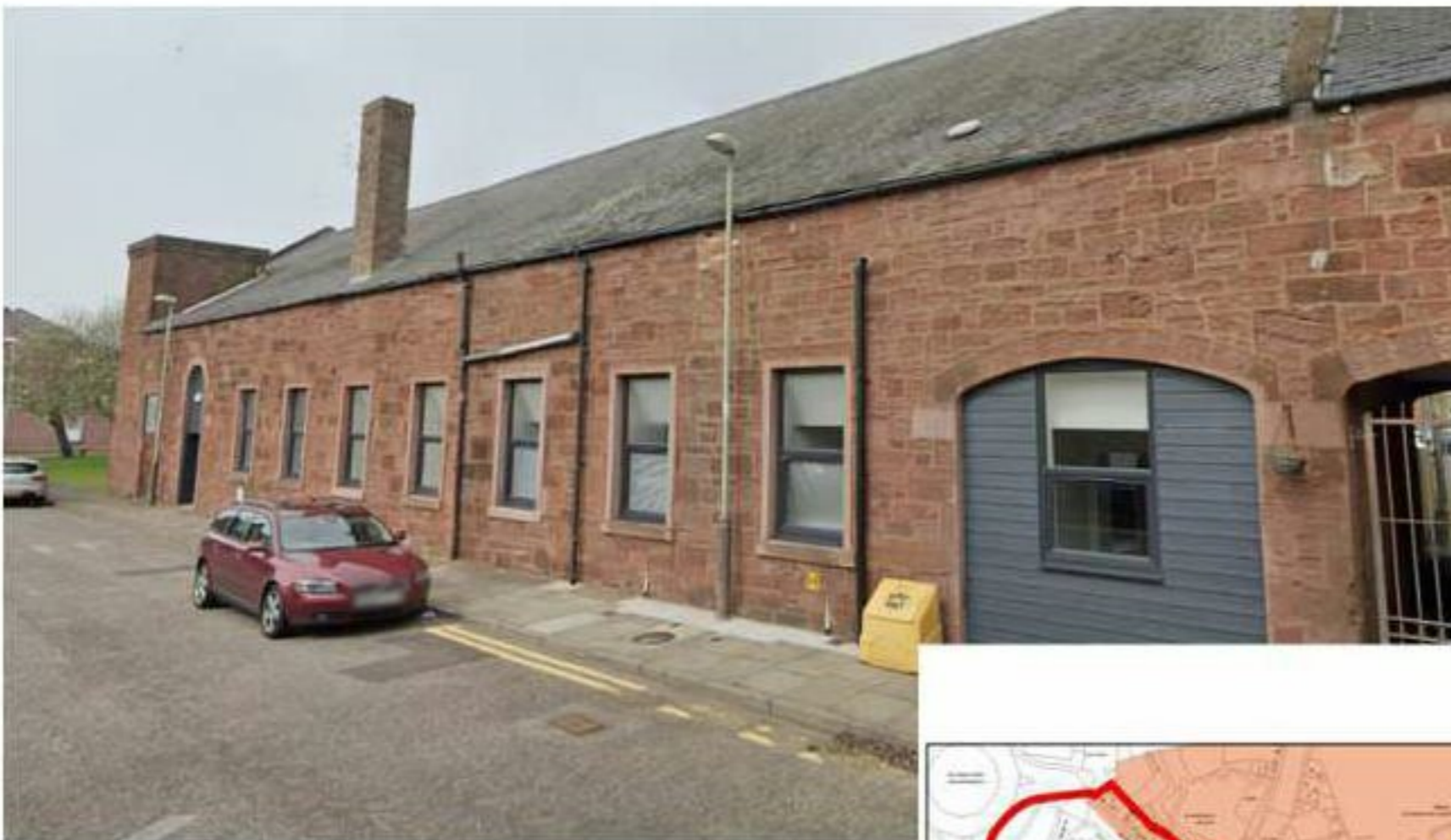
Domestic properties located south-west of the site, upon Abbot Street and Stanley Street



Domestic properties located south-west of the site, upon Abbot Street



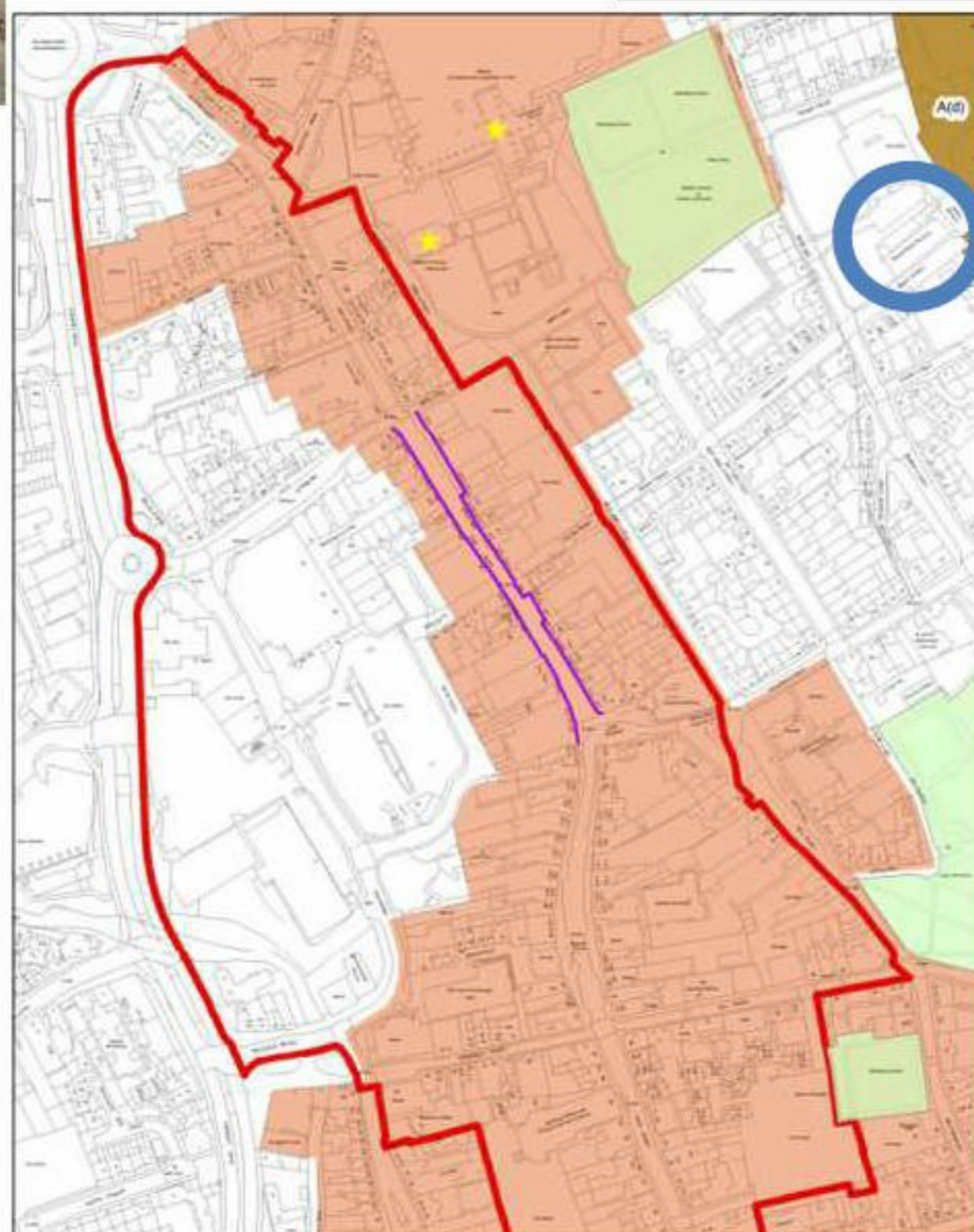
Domestic properties located upon Stanley Street



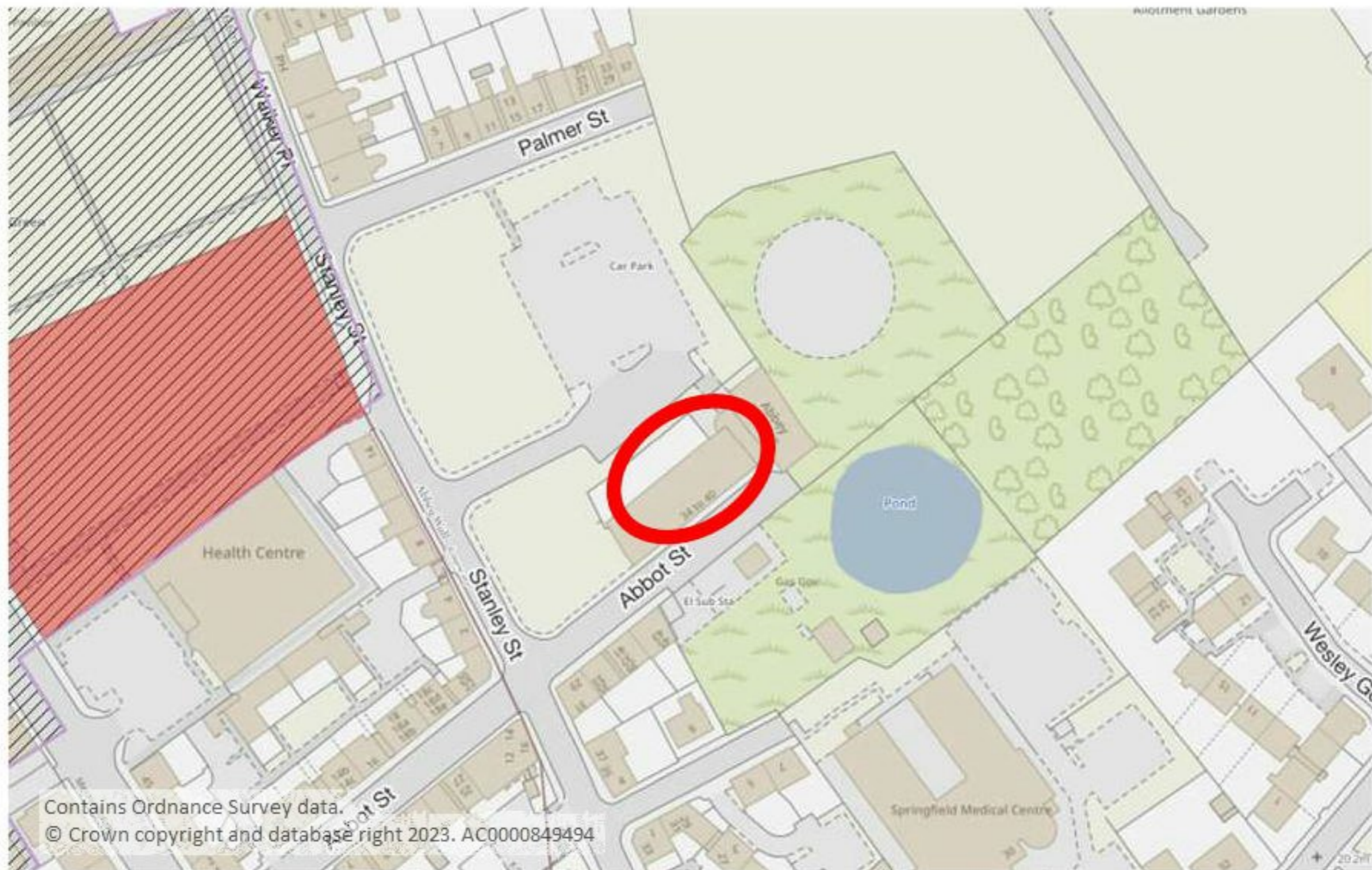
The proposed flats for the site will give a terraced appearance which is in-keeping with the surrounding buildings. This can be seen from the above image of the completed flats.

Central Area Inset Map

Legend	Settlement Statement	Subject Policies
Scheduled Ancient Monument		PV8
Opportunity Site	A9	TC18
Core Retail Area		TC17 - TC19
Town Centre		PV2
Open Space Protection		PV8
Conservation Areas	A(h), A(j)	
Existing Housing Site	A9	
Freight Facility		



The site, highlighted blue to contrast the other annotations, is not located with either the town centre of a conservation area.



Although located near the conservation area the proposed site is not within the conservation area or highlighted as a listed building.

The proposals are consistent with overarching aims of The National Planning Framework 4, some key policies are listed below:

Policy 7 – Historic Assets and Places

As mentioned above the site is located outside of the conservation area and is not a building of notable interest. However, this policy looks to ensure proposals near listed buildings and conservation areas will not be detrimental to their setting. The proposed site will not have any detrimental changes in its characteristics which would have an adverse effect on the listed setting. There are to be very little external changes to the building so the appearance will be the same. This can be seen in the before and after pictures of the buildings South-East and North-West elevations shown below.



Policy 9 – Brownfield, vacant and derelict land, and empty buildings

As mentioned, the site is an existing building which was home to a nursery. The nursery has since closed and the building has sat empty for an extensive amount of time, the proposed flats will bring life back to the building and prevent the building sitting redundant and decaying.

Policy 14 – Design, Quality and Place

The site will meet the 6 qualities of a successful place:

Healthy – a healthy building will have access to green space, there are lots of green spaces available to the site within walking distance. These are highlighted on the map below.

Red – Site

Blue – Green space at the proposal

Purple – Victoria Park (10 Minute Walk)

Pink – Springfield Park (5 Minute Walk)

Orange – Spider Park (1 Minute Walk)

Yellow – Seaton Park (13 Minute Walk)

Green – Beach (11 Minute Walk)



Pleasant – The proposals are a sufficient distance away from the sea and are elevated to such an extent that they are safe from sea level rising. The buildings are of a high standard so provide a pleasant living environment.

Connected – successful sites are connected, as mentioned above the proposed site is well connected to green spaces. But in addition, the site is well connected to a variety of local amenities. The below image shows the site in location to several of these amenities.



Red – Site
 Purple – Arbroath High Street
 Blue Dot – Bus Stops
 Blue Building – Bus Station
 Green – Supermarket
 Yellow – Shopping Centre
 Orange – Library, churches, Arbroath Abbey etc.

As can be seen the site has good access to a very large range of amenities, with Morrisons Supermarket (green dot to west) being the furthest away at around a 10-minute walk.

Distinctive – The proposals will be of appropriate scale, height, and orientation as it is existing. The materials are already as existing with the only notable change being grey uPVC windows. These provide a sleek and modern finish.

Sustainable – there will be no detriment to any blue or green infrastructure which are both located near or at the site as works are to be contained within the current building.

Adaptable – the building has already been adapted from its previous use as a nursery to the proposed domestic properties, this shows the building is adaptable.

Policy 15 – Local Living and 20-minute neighbourhoods

Within a town it's ideal if a home can be within a 20-minute walk from everything someone needs. Below are some examples of this site meeting the requirements:

- *Public Transport*
 - o *There are a large number of bus stops (as indicated above) within a 20- minute walk from the site.*
 - o *The nearest bus stop is a 3 minute walk away*
 - o *The bus station is a 10 minute walk from site*
 - o *The train station is a 12 minute walk from site*
- *Employment*
 - o *Obviously it depends on the persons job, but there are job opportunities within a 20 minute walk*
 - o *High street provides lots of job opportunities – 4 minute walk*
 - o *Dentist & Doctors – 11 minute walk*
 - o *Lindsay Street industrial area – 12 minute walk*
- *Shopping*
 - o *The high street as mentioned – 4 minute walk*
 - o *Abbeygate Shopping Centre is within a 6 minute walk*
 - o *Morrisons supermarket is an 11 minute walk*
 - o *Lidl is an 8 minute walk from the site*
- *Health and social care*
 - o *Springfield Dentist is an 11 minute walk*
 - o *Doctors are also located at Springfield Dentist*
 - o *Arbroath Medical Centre is a 6 minute walk*
- *Childcare & Schools*
 - o *Little Einsteins Nursery is located across the road from the site upon Abbot Street*
 - o *Lillie Pond Nursery is a 19 minute walk*

- *Arbroath College is located an 18 minute walk*
- *Helping hands located at Angus College*
- *Ladyloan School is within a 13 minute walk*
- *Abberystwyth Campus (which has 2 schools and a nursery condensed into one unit) is an 8 minute walk*
- *Arbroath Academy is a 20 minute walk*
- *Although just out of the 20 minute walk, Arbroath High School is a 29 minute walk*
- *Playgrounds, community parks & allotments*
 - *As indicated above, lots of playgrounds, community parks are within a 20 minute walk*
- *Sports and recreational facilities*
 - *Saltire Sports Centre is within a 15 minute walk*
 - *Abbey Bowling Club is within a 2 minute walk*
 - *Although just out, Arbroath Sports Centre is a 29 minute walk*
- *Public toilets*
 - *The nearest public toilets is at the Bus station – a 10 minute walk.*

Policy 20 – Blue and Green infrastructure

As mentioned above, the proposals will not cause any detriment to any blue or green infrastructure.

Policy 22 – Flood Risk and Water Management

The proposals are away from any flood risk.

Policy 23 – health and Safety

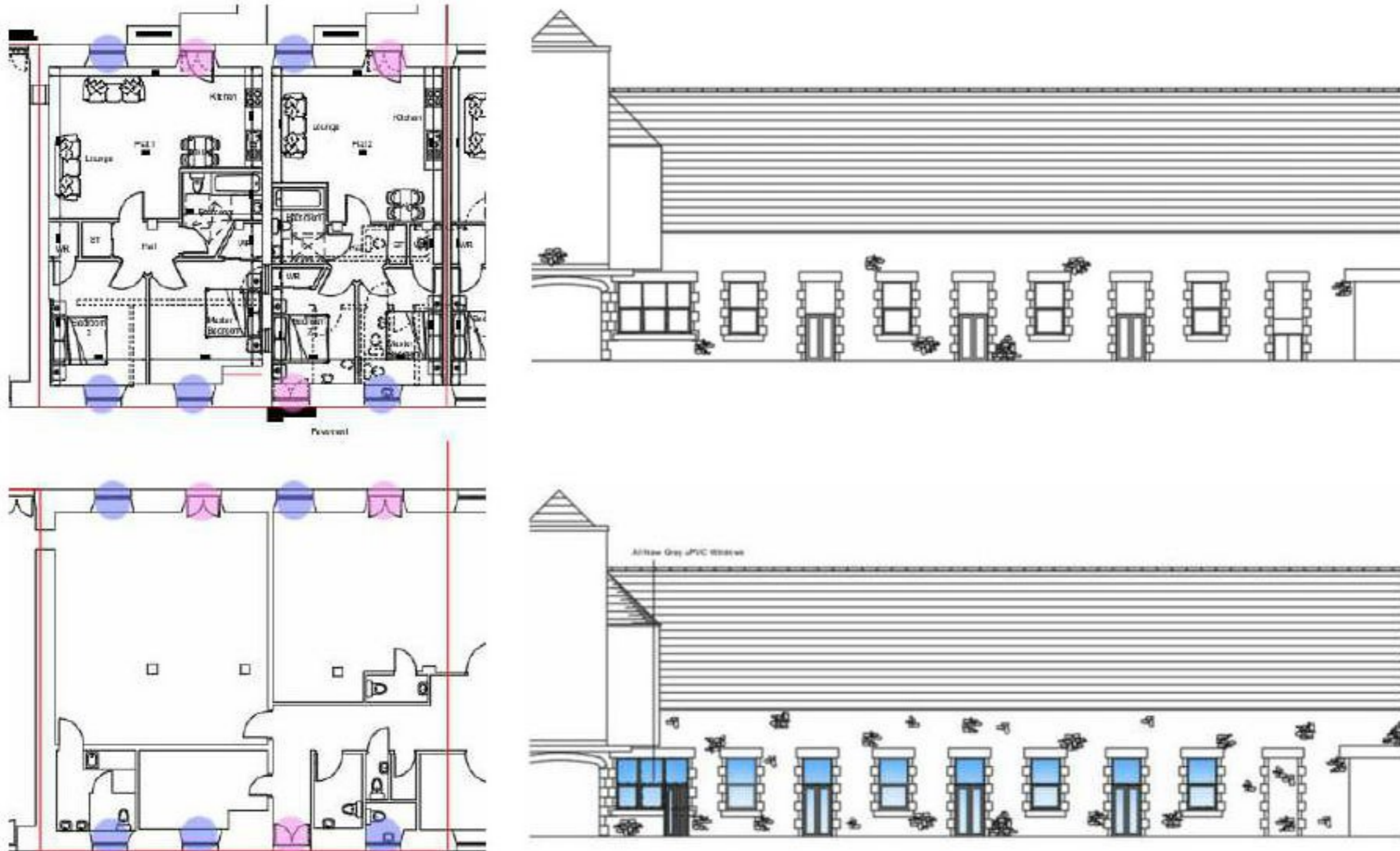
The site is not located upon a hazardous site or near any hazardous substances. The site is not near a source of loud or constant noise or near any site that is a source of poor air quality.

Policy 27 – City, Town, Local and Commercial Centres

Similar to the 20-minute neighborhood policy, this policy supports town centre living, this proposal is located within the town centre and has clearly demonstrated the benefits of this.

Design

The former day nursery divided well into 4 units, this application is however only for 2 of these – units 1 & 2. Thanks to the number of existing doors to the nursery garden the proposals are able to keep the external appearance almost unchanged, with only one noticeable alteration to either elevation. Blue indicates the windows and doors which are the same, pink indicates the windows and doors which are being altered.



As you can see the north-west elevation is very similar in appearance.

Tenants

As mentioned earlier within this accompanying statement our client at the time chose to put tenants into these properties rather than having them sitting empty. The tenants have occupied these properties since December 2022 without issue and have never complained about noise from the neighbouring theatre group. Letters of Support from these tenants will be submitted under separate cover.

Conclusion

We are of the opinion that these proposals are in keeping with the relevant policies of the Angus Local Development Plan and National Planning Framework 4. We feel that although previous noise issues were presented during the previous application, these issues were primarily associated with the theatre's workshop area and Units 1 & 2 which were located directly below.

We are of the belief that the revised NIA clearly demonstrates that ongoing productions within the Abbey Theatre will have minimal impact on Units 3 & 4 when used as residential dwellings and that this evidence has been produced during the loudest and busiest times that could have been recorded within the theatre itself.

We hope that you look favorably upon this application.

A.B ROGER & YOUNG LTD
 CHARTERED ARCHITECT
 February 2024 - KM

A.B Roger & Young Ltd

Chartered Architect, Planners & Surveyors

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SP/AB

13th May 2024

Ben Freeman
Planning Officer
Development Standards
Angus Council

Dear Ben

34 Abbot Street, Arbroath & 38 Abbot Street, Arbroath
Planning Ref. No's 24/00199/FUL & 24/00179/FULL

With reference to the above and your email dated 13th May regarding Environmental Health's repose to the further information provided by ABRY we would provide the following further details -

- This Service does not accept that a pantomime performance represents a worst case scenario for music and performance noise at a venue that can accommodate a wide range of music events. **Can we ask what Environmental Health would constitute as worst-case level of noise? The original assessment for these applications reproduced amplified levels of noise within the theatre that would far exceed the levels that would be typical if a live band were to play in the space. Even with this level of noise the performance of the floor passed and far exceeded the minimum values required in the Building (Scotland) Regulations. Environmental Health have not stated what level of noise would be worse than what has measured and assessed to date or what type of performance would be appropriate to consider. We do not believe that a band with full amp rig would exceed 120 dB(A) in the theatre. For context, the Health and Safety Executive (HSE) research paper (Research Report 35/1991) suggest average noise levels at pop concerts of 104.7 dB(A) at the barrier and 99.6 dB(A) $L_{Aeq,T}$ at the mixing desk (much louder than would be feasible in a theatre of this size).**
- The final noise impact assessment for the previous application (19/00691/FULL) involving all 4 proposed residential units identified significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. Neither of the current applications are supported by a further assessment of noise from these sources. **Can we ask that evidence be provided from Environmental Health to prove that the latest NIA submitted did not capture these sources across the 5 days of continuous data? Surely common sense would dictate that sets were constructed and moved on and off stage during the Pantomime performances that took place during the time of continuous noise testing? Notwithstanding these points, at no time during the extended monitoring did noise levels in the Flats exceed the criterion CSP Acoustics assessed to.**



Directors
Ashleigh H Wilson BSc (Hons), PgDip, RIBA, RIAS
Stephen W Pirie HNC Architectural Technology
Registered in Scotland No: 472189 VAT • Reg No: 266432650
Registered Office at: Trail Drive, Montrose DD10 8SW



34 Abbot Street, Arbroath & 38 Abbot Street, Arbroath.
Planning Ref. No's 24/00199/FUL & 24/00179/FULL

- The final noise assessment for the previous application identified that any further noise mitigation measures would require the co-operation of the Theatre group. There doesn't however appear to be anything in the supporting information for either of the current applications that demonstrates that this has been obtained or that new mitigation measures within the control of the applicant have been identified. **This requirement for noise mitigation was designed to meet a noise criterion requested by the Environmental Protection Team at Angus Council, neither Steve Thomson or the current Environmental Health Officer assigned to these applications have justified with any kind of evidence base for its adoption. When confronted by CSP Acoustics with evidence for an alternative criterion, the current Environmental Health Officer has neither agreed nor disagreed with the content of their argument. CSP Acoustics assessment outcome would suggest that there is adequate headroom in the noise levels produced by the theatre when compared to the latest assessment criterion. The headroom would suggest that the theatre could produce higher levels of noise and the criterion would still be met at all times within the living spaces of the flats.**

With the above in mind we would argue that sufficient evidence has been provided by our NIA to support these applications and would ask that Environmental Health provide the evidence to prove otherwise. In our opinion it is quite clear that levels can be met within the proposed flats requested during the normal day to day running of the Theatre Group building without issue and proof of this is clearly provided by all the letters of support submitted by previous tenants of the flatted development.

Yours sincerely
For A B Roger & Young Ltd

Stephen Pirie
Senior Architectural Technician

A.B Roger & Young Ltd

Chartered Architect, Planners & Surveyors

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SP/AB

30th May 2024

Ben Freeman
Planning Officer
Development Standards
Angus Council

Dear Ben

34 Abbot Street, Arbroath & 36 Abbot Street, Arbroath
Planning Ref. No's 24/00199/FULL

I refer to the above application currently pending consideration and note that the Scottish Government recently declared a national housing emergency. I further note with the significant delay in the next Angus Local Development Plan, which is now not due to be adopted until 2029 at the earliest, small sites, such as that proposed, can make a valid contribution to increasing housing supply within the area providing modest and therefore affordable homes for local people close to services and amenities.

As you know the units subject of the applications are currently rented with the residents very happy and wishing to stay in the premises. They experience no issue of noise from the theatre, due no doubt to the fact that the units have been extremely well insulated for noise and that the upper floor of this section of the building is used primarily for storage.

While we understand that there is an outstanding objection from the Environmental Health Officer, we have been unable to meet with the EHO to discuss their concerns and the parameters of the Noise Assessment. We would welcome this opportunity and can be available at your convenience to meet to discuss the issue of noise.

Yours sincerely
For A B Roger & Young Ltd

Stephen Pirie
Senior Architectural Technician



Directors
Ashleigh H Wilson BSc (Hons), PgDip, RIBA, RIAS
Stephen W Pirie HNC Architectural Technology
Registered in Scotland No: 472189 VAT • Reg No: 266432650
Registered Office at: Trail Drive, Montrose DD10 8SW



DEVELOPMENT MANAGEMENT REVIEW COMMITTEE
APPLICATION FOR REVIEW – 34 ABBOT STREET, ARBROATH

APPLICATION NO 24/00199/FULL

APPLICANT'S SUBMISSION

PAGE NO.

ITEM 1	Notice of Review
ITEM 2	Appeal Statement and Appendices
ITEM 3	Noise Assessment Report
ITEM 4	Original Planning Application
ITEM 5	Report of Handling
ITEM 6	Decision Notice
ITEM 7	Site Plans, Drawings etc.
ITEM 8	Planning Design Statement
ITEM 9	Housing Emergency Letter



Angus House Orchardbank Business Park Forfar DD8 1AN Tel: 01307 473360 Fax: 01307 461 895 Email: plnprocessing@angus.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100666466-006

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="A B Roger & Young Ltd"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Stephen"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="Pirie"/>	Building Number:	<input type="text" value="12"/>
Telephone Number: *	<input type="text" value="01356 622125"/>	Address 1 (Street): *	<input type="text" value="Clerk Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Brechin"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Angus"/>
		Postcode: *	<input type="text" value="DD9 6AE"/>
Email Address: *	<input type="text" value="info@abrogerandyoung.com"/>		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Ms"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="M"/>	Building Number:	<input type="text" value="3"/>
Last Name: *	<input type="text" value="Agnes"/>	Address 1 (Street): *	<input type="text" value="Hospitalfield Road"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Arbroath"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Angus"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="DD11 2LP"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

Planning Authority:	<input type="text" value="Angus Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="34 ABBOT STREET"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="ARBROATH"/>
Post Code:	<input type="text" value="DD11 1HH"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="741266"/>	Easting	<input type="text" value="364524"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 & 36 Abbot Street

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Separate Review Appeal Statement submitted

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

in order to respond to all noise issues fully and comprehensively a separate Noise Assessment was undertaken for units 1 and 2

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

1. Appeal Statement 2. Appendix 1 Letters of Support (submitted in support of original application) 3. Appendix 2 Consultation Response from original application 19/00691/FULL 4. Noise Assessment Report 5. Original Application Form 6. Report of Handling 7. Decision Notice 8. Drawings (submitted with original application) 9. Planning Design Statement (submitted with original application) 10. Letter re Housing Emergency

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

24/00199/FULL

What date was the application submitted to the planning authority? *

28/03/2024

What date was the decision issued by the planning authority? *

07/06/2024

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

request hearing to discuss in detail the issue of noise

Please select a further procedure *

Further written submissions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

in order to respond to all noise issues fully and comprehensively a separate Noise Assessment was undertaken for units 1 and 2

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To allow the members of the Review Board to view the properties in question

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Stephen Pirie

Declaration Date: 26/08/2024

Town and Country Planning (Scotland) Act 1997 as amended.

**Appeal against Refusal of Planning Permission for Change of Use of Part
Former Nursery Building to form 2 Residential Flats (Retrospective)**

Flats 1 and 2 (34-36) Abbot Street, Arbroath DD11 1HH

Application Ref 24/00199/FULL

For: Ms Mayara Agnes (“the appellant”)

By Angus Council (“the Council”)

Karen Clark, Planning Consultancy, Mayriggs, Brechin Road, Kirriemuir DD8 4DE

Telephone [REDACTED] | Email: karen@ktclark.co.uk

- 1. Introduction**
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- Appendix 1 – Letters of support
- Appendix 2 -Consultation Response from EHO Contamination 25th October 2019 Application Ref 19/00691/FUL.

1. Introduction

This appeal statement has been prepared on behalf of Ms Mayara Agnes (the appellant) in respect of the decision of Angus Council (the council) to refuse planning permission Ref 24/00199/FULL for Change of Use of Part Former Nursery Building to form 2 Residential Flats (Retrospective) Flats 1 and 2 (34 and 36) Abbot Street, Arbroath DD11 1HH. A concurrent appeal is lodged in respect of Flats 3 and 4 (38 and 40) Abbot Street.

The Review Statement considers in detail the reasons for refusal and demonstrates that there is no conflict with the relevant policies of the development plan.

This Appeal Statement contains a brief description of the application site and the development proposals, reference to the Council's decision and the reasons for refusal, an assessment of the proposals against the relevant policies contained in the development plan that should be taken into account in the determination of this appeal.

The Local Review Board is required to consider the proposal de novo and is respectfully requested to uphold the review and grant planning permission.

2. Reasons for Refusal

The application was lodged on the 28th of March 2024, Ref 24/00199/FULL, and refused under delegated powers on the 7th of June 2024. The decision notices gives the following reasons for refusal

1. The development does not comply with Policy TC2 of the Angus Local Development Plan as it is not compatible with current land use in the area and as it would not provide a satisfactory residential environment by virtue of noise and disturbance associated with the existing lawful use of the adjacent theatre.
2. The development does not comply with NPF4 policies 23 and 31 as it is not consistent with the agent of change principle set out in NPF4 as it is likely to result in unacceptable noise issues given the proximity of the proposed residential units to the existing theatre, and it has not been demonstrated that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.
3. The development does not comply with policy DS4 of the Angus Local Development Plan and policy 9 of NPF4 as no assessment of potential land contamination has been submitted and it has not been demonstrated that the land is, or can be made, safe and suitable for the proposed new use.
4. The development does not comply with policy DS1 of the Angus Local Development Plan Policy as it is not in compliance with other relevant policies of the plan, and it is not compatible with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the local development plan in circumstances where it is not consistent with other relevant policies.

3. Grounds of Appeal

It will be demonstrated within this appeal statement, supported by the recent noise assessment lodged with the appeal, that the proposed flats offer a satisfactory residential amenity. In addition, the flats have been constructed with high levels of sound insulation which ensure that there is no disturbance from the neighbouring theatre use and as such the agent of change principle is satisfied. As a result, the proposal complies with Policy TC2 and DS4 of the Angus Local Development Plan and Policy 23 and 31 of National Planning Framework 4.

In terms of potential contaminates, it is considered that any contamination would have been addressed as part of the earlier change of use to a children's nursery. In addition, this matter was considered at the time of a previous application Ref 19/00691/FUL at which time the Environmental Health Service made no objection to the proposed change of use subject to conditions related to the requirement for a contamination survey, please refer to Appendix 2 consultation response EHO 25th October 2019. This demonstrates that any concern with regard to contamination can be dealt with satisfactorily through an appropriately worded condition. As such there is no conflict with DS4 of the Angus Local Development Plan and Policy 9 of NPF4.

Finally, while the site is not allocated for residential development, the building is within the settlement boundary of Arbroath within a predominantly residential area. The proposal is in line with the policies of the development plan and as such the change of use of an existing building to provide additional housing, which will assist in addressing the local and national housing emergency, fully complies with Policy DS1 of the Angus Local Development Plan and Policy 16 of National Planning Framework 4.

4. Site Description

The appeal site comprises part of the ground floor premises of an attractive red sandstone building, and, while not listed, the building is of historic interest. The building is located to the north of Abbot Street and was originally constructed as an engineering works; however, this use has long ceased. Most recently the premises accommodated a children's nursery, this use ceased around 2017. To the northeast of the appeal site and on the upper floor is located the Abbey Theatre. The upper floor of the building, above the current appeal site, are located a large storage area and workshop associated with the theatre use. A communal pend connects the buildings at the upper floor.

The appeal site relates to the ground floor west section of the building, a concurrent appeal is lodged for the eastern section of the ground floor (Flats 3 and 4 (38/40) Abbot Street).

The wider surrounding area is in mixed use with residential flats to the south of Abbey Street, to the north a public car park. To the southeast and northeast is the former gas works, now an allocated housing site.

The use of the building currently falls within Class 10 Non-residential Institutions which includes such uses as a day nursery or education; art gallery, for the display of works of art, library or public reading room, public hall or exhibition hall; or in connection with, public worship or religious

instruction, or the social or recreational activities of a religious body. Given the area is predominantly residential in nature, the existing Class 10 use conflicts with the prevailing use of the area.

5. Background to Proposal

The appellant's family purchased the site in 2019 with the intention of securing planning permission for a change of use from day nursery to residential flats. At that time the building was vacant and had been for over 2 years with no interest in operating the premises as a day nursery or for any other commercial use, no doubt as there is a large number of more suitable modern commercial units currently available in Arbroath. A company owned by the appellant lodged the initial application for change of use from day nursery to four flats on the 9th of September 2019 and validated on the 2nd of October 2019, application Ref 19/00691/FULL. The application was supported by all required plans. At that time, it was considered that the general principles the reuse of an existing building within the settlement of Arbroath would comply with the policies of the Angus Local Development Plan 2016. Initially, no objection was made by the Environmental Health Service. However, disappointingly, several objections to the application were received from the neighbouring theatre building. As a result, the then applicant, undertook discussions with the Environmental Health Service of Angus Council with three Noise Assessments lodged in support of the application. The three Noise Assessments were required as a result of the changing noise criterion issued by the EHO. Unfortunately, due to changing parameters being set by the EHO, no solution to the noise issue could be agreed at that time. As a result, reluctantly, the application was withdrawn on the 1st of February 2023.

The application and subsequent discussions etc. were ongoing at the time of the Covid pandemic, as a result there were delays in negotiations and securing the necessary supporting information. The then applicant was confident that a solution to the noise issue could be agreed. As a commercial developer, who had invested in the purchase of the property, there was no option but to start work otherwise the company would have been forced into liquidation resulting in all employees being made redundant at a critical time. Therefore, reluctantly, and at great financial risk, the then applicant chose to proceed with the works in the hope that the issues could be resolved positively, and retrospective planning consent granted.

During the consideration of the current proposal and the previous application the appellant and the associated business have made every attempt to negotiate with both the Environmental Health Service and the Abbey Theatre to agree a solution. Despite their best efforts the other parties have been unwilling to meet to work towards a mutually satisfactory solution.

6. Proposed Development

The current appeal seeks retrospective planning permission for the change of use of part of the former children's nursery to form 2 flats. The internal floor area site extends to 120 sqm providing 2 x 2 bed flats with living kitchen area and garden to the rear. Access to the flats is taken through the rear garden areas. The required alterations are as follows:

Internally- the ground floor is partitioned to form the 2 flats, creating 2 x 2-bedroom flats with living kitchen area. An accessible bathroom is provided.

Externally- Overall the building will be upgraded including the provision of new windows throughout.

The conversion has been undertaken to a very high standard which will be self-evident at a site visit. Effectively the flats are insulated boxes set within the existing building. The works include:

- existing separating floor upgraded from the underside,
- sound insulation fitted between the existing separating floor joists finished with 3 layers of 15mm soundboard plasterboard internally thereby greatly improving the existing separating floor performance.
- new independent timber frame constructed within the existing building structure, the walls and ceiling framed with a high level of sound insulation providing a very well insulated and separate building shell.
- independent suspended ceiling formed approximately 800mm below the existing ceiling insulated with a further 200mm of sound insulation finished within the flats with 3 layers of 15 mm soundboard plasterboard
- All new partitions within the development kept within the new insulated timber frame to minimize contact with the buildings existing structure and in turn to minimize and potential sound transference.

Sound testing of the units was carried out for Building Warrant which indicated that the airborne and impact sound insulation of the separating floors are performing approximately 16 dB and 14 dB better than the minimum performance standards in the Building (Scotland) Regulations. Due to the acoustic performance of the separating floor performing so well, and the measurable airborne sound from the test equipment being so low in the receiving room, it is likely that the true performance of the separating floor is greater than that measured on site.

The insulation results in an EPC rating of B. The units have modern extremely efficient boilers, LED lighting and smart flush WC's meaning that they are both energy and water efficient.

As indicated the proposal is retrospective as such residents have been living in the premises since 2022. All residents have indicated support for the proposal, please refer to letters attached as Appendix 1, and have confirmed that they do not experience any issue of noise from the neighbouring theatre and indeed currently enjoy a high standard of residential amenity. This is further demonstrated by the high level of demand for the units, when a flat becomes vacant it is rented immediately with no vacancy period.

7. Sustainability

The proposal will result in the appropriate reuse of a prominent and attractive building within central Arbroath. The building was vacant for some time with no interest from a commercial use as such the reuse use of the building is considered sustainable in itself.

The design incorporates sustainable features including a high level of insulation which is confirmed by the flats achieving an EPC rating of B. The units have modern efficient boilers, LED lighting and smart flush WC's meaning that they are both energy and water efficient.

8. Consultee Response

As part of the usual application process all necessary consultees were notified, responses as follows:

- Community council- no comment
- Roads Service- No objection
- Scottish Water- no objection
- Environmental Health- objection, this will be considered in full within the Section 10. Noise below
- Environmental Health- contaminated land- further information required on the former engineering use
- Theatres trust- concerns with regard to possible negative impacts on the theatre operations as a result of noise and vibration. This matter will be addressed in Section 10. Noise, below.

9. Representations

As confirmed by the Report of Handling, nine letters of representation were received, eight in support of the application and one letter making general comment, considering these in turn:

Comments of concern:

- Impact on the theatre operations because of noise and general activity which may interfere with the ability of the theatre to function- This issue will be fully addressed within the Noise Section of this statement.
- Concern with regard to access to the fire escape- the proposal will in no way impede the fire escape to the theatre.
- Issues with on street parking- the area is in an established residential area with on street parking available. There has been no objection from the Roads Service
- Concerns with regard to existing services- the appeal site and the theatre are entirely separate premises and therefore should not interfere with each other services, should any issue arise this is a legal matter.
- Previous noise complaints- No evidence of the complaints has been provided. the appellant is aware of only one query which was raised by a resident however this related to the hours of operation and was not a complaint. As far as we are aware no formal complaint has ever been lodged with the EHO. Indeed, the resident still lives in the flat and has no concerns with regard to amenity.

Comments in support:

- Good location close to amenities
- Adaptable and accessible accommodation
- Excellent residential environment, no issue of noise experienced
- Limited suitable rental properties available in Arbroath

10. Noise

The key issue surrounding the suitability of the premises to be converted to residential flats is the issue of noise. A detailed and up to date Noise Assessment has been prepared by Kelly Acoustic Consultants and is lodged in support of the proposal. This report is technical in nature, as a result, in order that the Review Boards fully appreciate the issue of noise, a Hearing Session has been requested in order that the issue of noise can be fully discussed and understood by all parties.

Considering the issue of noise, it is apparent that this can be divided into two areas of concern:

- i) Whether the proposed residential units provide a satisfactory level of amenity for occupants.
- ii) Whether the residential unit will result in complaint leading to a restriction on the operations of the neighbouring theatre use.

Firstly, it is important to recognise that the appellants and their agents have at all times sought to engage with the Environmental Health Officer and representatives of the Abbey Theatre.

Unfortunately, despite their best efforts no meeting has been arranged and no agreement on a suitable assessment criterion has been reached with the EHO. Further, there was an unwillingness on the part of the Abbey Theatre to co-operate in the undertaking of noise assessments or to allow any form of noise insulation in the Abbey Theatre itself.

To demonstrate unequivocally that there is no issue of noise a separate noise assessment for flats 1 and 2 was completed, this was in recognition that the workshop is above these flats and therefore there could be an issue of impact noise. A long term unattended site-specific noise survey was completed between 14th – 20th June 2024. The survey coincided with the Abbey Theatre's production 'Round the Houses' from Monday 17th -22nd June 2024 and therefore captures noise impacts before, during and after a theatre performance.

In terms of the noise criterion, the EHO has required that the matter of noise is assessed against the L_{Fmax} parameter, and that this should not exceed a level of 47 dB and 35 dB in the 63Hz and 125Hz octave bands respectively within any flat. Kelly Acoustics, professional and very experienced acoustic consultant, disagrees that this should be the base noise criterion on the basis that there is no supporting evidence in guidance or standards to justify the adoption of this parameter. A recommendation was made by Kelly Acoustics for the adoption of an assessment criterion that is widely used to quantitatively define the degree of impact upon the amenity of residents during the daytime. This being a parameter known as the L_{eq}. This parameter is supported in the World Health Organisation (WHO) Guidelines for Community Noise, and British Standard (BS) 8233:2014 Guidance on sound insulation and noise reduction for buildings for the assessment of noise impact during the

daytime (i.e. 07:00 – 23:00 hours). These documents also refer to the L_{max} or maximum sound pressure level as being a suitable parameter for the assessment of instantaneous event noise (i.e. hammering, door slams etc.) during the night-time (23:00 – 07:00 hours) only. It is the opinion of the appellants acoustic consultants that the L_{eq} criterion is the most appropriate as it captures the time varying noise level and is readily assimilated with a human response to noise during the daytime periods.

It is important to acknowledge that the use is retrospective and as such the works have been completed. The conversion includes high levels of sound insulation which exceed the requirements of current building regulations. The flats are in effect insulated boxes set within the existing building. As a result, the sound insulation performs very well. Further, the building is in a built-up area of Arbroath where background noise is experienced, for example car and pedestrian movement, seagulls etc. in addition it is reasonable to expect that residents who live in flatted accommodation will expect some internal noise transmission from neighbouring premises.

An extended Noise Survey was undertaken before, after and during a theatre pantomime performance, this concluded that,

- there is approximately a 1-3 dB difference between the day and night-time period ambient noise levels ($L_{Aeq,T}$) across all days.
- Background sound levels (L_{A90}) are typically very low across all days (i.e. less than 30 dB $L_{A90,T}$).
- There is a 2.2 dB range in the daytime background sound levels ($L_{A90,T}$) across all days.
- The daytime $L_{Aeq,16hour}$ value coinciding with the first scheduled performance is lower than the preceding day when no performance was scheduled.
- The daytime $L_{Aeq,16hour}$ values for Tuesday and Wednesday 18-19th June were marginally higher than previous days' values.
- The highest daytime period ambient noise levels within Flat 1 were measured on Wednesday 19th June.

The Report concluded that when assessed against the indoor daytime criterion of 35 dB $L_{Aeq,T}$ as described in BS 8233:2014 for habitable rooms, no exceedance was determined during any period. Internal daytime noise levels within the dwellings are considered to be very low, i.e. less than 30 dB $L_{Aeq,T}$.

Therefore, considering the areas of issue, it is submitted that

- i) The Noise Survey confirmed that when assessed against the standard daytime criterion of 35dB(A) as described in WHO Guidelines and set out in British Standards for habitable rooms, no exceedance in relation to the noise impacts from the neighbouring theatre use were detected. As a result, a good standard of residential amenity is currently being achieved in flats 1 and 2, subject of the current appeal, even during a period of theatre performance.

- ii) It has been demonstrated that there is no issue of noise from the theatre impacting the amenity of residents. To date no complaints have been received from the existing residents. As such it is not anticipated that there will be any complaints or possible restrictions on the theatre use.

11. Development Plan

11.1 National Planning Framework 4

NPF4 is guided by spatial principles, of relevance in the determination of the current application are NPF4 was approved on the 13th of February 2023.

- Local living: supporting local liveability and improve community health and wellbeing by ensuring people can easily access services, greenspace, learning, work and leisure locally.
- Conserving and recycling assets: We will make productive use of existing buildings, places, infrastructure and services, locking in carbon, minimising waste, and building a circular economy.
- Compact urban growth; limiting urban expansion so we can optimise the use of land to provide services and resources, including carbon storage, flood risk management, blue and green infrastructure and biodiversity.

The current proposal fully aligns with these spatial principles as it will make best use of an existing building within an established residential area supporting local living and compact urban growth. The proposal optimises the use of an existing building in an established residential area with excellent connections to existing services and facilities including public transport links providing sustainable homes.

Of particular note is the recent declaration of a National and Local Housing Emergency. Recent advice from the Chief Planner June 2024 in relation to the issue of housing confirms

“An ambitious approach, providing land to accommodate a wide choice of homes across a range of scales of sites and locations, will support the [Policy 16] policy intent.”

It is notable that the declaration is of a housing “emergency” that choice of word is clearly deliberate with an emergency requiring action to be taken. Therefore, doing nothing is not an option in response to this issue.

This advice reiterated that the planning system requires decision makers to weigh up all relevant policies, for example, quality homes, brownfield development and town centre living, as well as relevant material considerations and apply a balanced planning judgement. In the current circumstances, although small scale, the proposal will make a positive contribution towards addressing the National and Local Housing Emergency with small scale conversion of an existing building to provide residential accommodation, such as that proposed, which reuses a building with no use, in an existing settlement thereby reducing the need for greenfield sites providing a high-

quality homes in an accessible location, on a site which adheres to the spatial strategy including local living and 20-minute neighbourhoods.

Considering the policies of relevance to the current application:

- Policy 1 Tackling the climate and nature crises
- Policy 2 Climate mitigation and adaptation
- Policy 7 Historic assets and places
- Policy 9 Brownfield, vacant and derelict land and empty buildings
- Policy 12 Zero waste
- Policy 14 Design, quality and place
- Policy 15 Local living and 20-minute neighbourhoods
- Policy 16 Quality homes
- Policy 22 Flood risk and water management
- Policy 23 Health and safety
- Policy 31 Culture and creativity

Policy 1 Tackling the climate and nature crises *seeks to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.*

When considering all development proposals significant weight will be given to the global climate and nature crises.

Policy 2 Climate mitigation and adaptation again seeks to encourage, promote and facilitate development that minimises emissions from development.

c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.

Response to Policies 1 and 2: The proposal will result in the reuse of an attractive historic building within the centre of Arbroath within a predominantly residential area. The proposal includes a number of sustainable elements including a high level of insulation which means that the flats achieve a EPC rating of B. The units have modern extremely efficient boilers, LED lighting and smart flush WC's meaning that they are both energy and water efficient.

Therefore, it is considered that the proposal complies with Policy 1 and 2 as it brings an existing building back into an active use and therefore conserves an existing built asset and supports local living and compact urban growth.

Policy 7 Historic assets and places

Seeks to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.

Response- In the current circumstances the appeal site is not a listed building nor is it within a conservation area, however, is an historic building of merit.

The proposal will maintain and protect the architectural and historic character of the area while providing a long-term use for this prominent building. Therefore, it is submitted that the proposal fully adheres to the policy intent and outcomes of Policy 7.

Policy 9 Brownfield, vacant and derelict land, and empty buildings

Seeks to encourage, promote, and facilitate the reuse of brownfield, vacant and derelict land, and empty buildings, and to help reduce the need for greenfield development.

a) Development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported. In determining whether the reuse is sustainable, the biodiversity value of brownfield land which has naturalised should be taken into account.

Response: The application will provide a new active use for this historic building which was vacant and unused for a number of years prior to becoming flats. The use and alterations fully respect the character of the surrounding area and the historic fabric of the building. The proposed use is small-scale and will in no way detract from the amenity of the existing residents. The structure has been very carefully specified with a high level of noise insulation to ensure a high-quality amenity is provided for prospective residents while not detracting from the ability of the existing neighbouring theatre use to operate.

In terms of possible contamination, it is not anticipated that there is any issue of contamination as this matter would have been fully addressed prior to the change of use to a children's nursery. However, if concern remains we submit that, similar to the previous application, this matter can adequately be addressed through an appropriately worded condition. Please refer to the consultation response to application 19/00691/FUL dated 25th October 2019 attached as Appendix 2.

The proposal supports Policy 9 by providing for a new and appropriate use for an existing building.

Policy 12 Zero waste

Seeks to encourage, promote and facilitate development that is consistent with the waste hierarchy.

b) Development proposals will be supported where they:

i) reuse existing buildings and infrastructure

Response: The current proposal ensures the reuse of an existing attractive historic building within Arbroath, as such fully supports Policy 12 b(i).

Policy 13 Sustainable transport

The Policy Intent is stated “To encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.”

e) Development proposals which are ambitious in terms of low/no car parking will be supported, particularly in urban locations that are well-served by sustainable transport modes and where they do not create barriers to access by disabled people.

Response: The proposal does not provide any parking. However, the site is in the centre of Arbroath close to existing amenities and services and benefits from existing excellent safe and well-lit footpath and cycle links which in turn connect to public transport facilities. Further, existing on street parking and public car parks are located in close proximity. There is no objection from the Roads Service.

Therefore, it is submitted that the proposal complies with Policy 13 as it will encourage use of modes of transport other than the car, supporting compact urban growth and local living.

Policy 14 (Liveable Places Design, quality and place)

Policy Intent: To encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.

b) Development proposals will be supported where they are consistent with the six qualities of successful places:

Healthy: Supporting the prioritisation of women’s safety and improving physical and mental health.

Pleasant: Supporting attractive natural and built spaces.

Connected: Supporting well connected networks that make moving around easy and reduce car dependency

Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.

Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.

Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.

Response: The proposal will result in the reuse of a building within an established residential area which benefits from easy access to local facilities and services fully adheres to the principles of local living. The proposal will result in two modest and therefore affordable, high-quality flats which are in high demand within the area. The conversion has been designed to complement the immediate area while providing adaptable ground floor accommodation allowing residents to live long term in the properties. The flats are currently tenanted, demonstrating the demand for flats of this nature within the area. All existing tenants are supportive of the proposal and have confirmed that the properties provide high quality residential amenity.

Therefore, it is submitted that the proposal complies with Policy 14 Liveable Spaces

Policy 15 (Local Living and 20 Minute Neighbourhoods)

Policy Intent: To encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

a) Development proposals will contribute to local living including, where relevant, 20-minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area, including local access to a range of services and facilities.

Response: The application site is located within an established residential area close to existing facilities and services. The site is a short, safe walk to the local public transport network. The layout demonstrates that the site can accommodate modest homes which continues the development pattern of the area.

Therefore, it is submitted that the proposal complies with Policy 15 Local Living and 20-minute Neighbourhoods.

Policy 16 (Quality homes)

Policy Intent: To encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

a) Development proposals for new homes on land allocated for housing in LDPs will be supported.

Response: The site is allocated for residential purposes in the ALDP and thus the development accords with NPF4 policy 16-part a.

Therefore, it is submitted that the proposal complies with Policy 16. The proposed two flats will also assist in responding to the declared housing emergency.

Policy 22 (Flood Risk and Water Management)

Policy Intent: To strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.

Response: The site is not at any risk of flooding, nor will the development increase the risk of flooding within the surrounding area.

It is submitted that the proposal complies with Policy 22 Flood risk and water management.

Policy 23 Health and safety

Policy Intent: To protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.

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

Response: It has been demonstrated through the undertaking of comprehensive noise testing detailed in the Noise Survey lodged in support of the proposal that the proposed flats have a good standard of residential amenity and that there is no issue of noise disturbance from the adjacent theatre. The construction of the flats has been undertaken with a high level of noise insulation which exceeds current buildings standards which mitigate any noise issue. It must also be appreciated that the building is within the built-up area of Arbroath and as a result there is an existing level of background noise experienced further, as with all flatted properties, residents do expect some marginal noise transmission for the adjoining properties, it is not possible to legislate against any possible noise.

Therefore, it is submitted that there is no conflict with Policy 23.

Policy 31 Culture and creativity to encourage, promote and facilitate development which reflects our diverse culture and creativity, and to support our culture and creative industries.

d) Development proposals within the vicinity of existing arts venues will fully reflect the agent of change principle and will only be supported where they can demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that existing venues and facilities can continue without additional restrictions being placed on them as a result of the proposed new development.

Response: Section 10 Noise of this Report along with the detail Noise Survey lodged in support of the appeal submission have successfully demonstrated that flats have a high level of noise insulation which exceed current building regulations. Detailed noise assessments have confirmed that, even during theatre performances, the noise criterion is being met within the proposed flats. As a result, there is no concern that the proposed flats will in any way interfere with the ongoing activity of the theatre.

Therefore, there is no conflict with policy 31.

Therefore, it is submitted that the current proposal complies with the policies of National Planning Framework 4.

11.2 Angus Local Development Plan 2016

It is considered the following policies are of relevance to the consideration of the current appeal.

- Policy DS1: Development Boundaries and Priorities
- Policy DS3: Design Quality and Placemaking
- Policy DS4: Amenity
- Policy TC2: Residential Development
- Policy TC8: Community Facilities and Services
- Policy PV8: Built and Cultural Heritage
- Policy PV15: Drainage Infrastructure

Considering these policies in detail:

Policy DS1 Development Boundaries Confirms that proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Response: The appeal site is located within a predominantly residential area of Arbroath. The development will result in the reuse of an existing building to provide two residential flats. The development is of an appropriate scale and nature within the area, and it will be demonstrated that the proposal complies with the relevant policies of the ALDP therefore the proposal complies with Policy DS1.

Policy DS3 Design Quality and Place making requires development proposal to deliver a high design standard and draw upon those aspects of landscape or townscape within the area.

Response: The proposal will reuse an existing building with minimal external alterations. The proposal complies with the six qualities of successful places in that:

Distinctive: The development will ensure the reuse of a previously vacant building in an established residential area. The building although not listed or in a conservation area, is of historic interest with the proposed flats ensuring the long-term use and maintenance of this distinctive building.

Safe and Pleasant: The development provides 2 x two bedroomed flats with all amenities including rear garden area. All existing residents have attested to the high-quality environment and have lodged letters of support to the application, please refer to Appendix 1.

Easy to get around: The site is located within Arbroath adjacent to existing well-lit and safe footpath links which connect to the wider area, including local services and facilities and public transport links.

Welcoming: The flats provide a welcoming outlook to Abbot Street and assist with passive surveillance of the immediate surrounding streets.

Resource Efficient The development will reuse an existing building which was vacant for some time and therefore represents efficient use of an existing built asset. Further the flats have been insulated to a very standard exceeding all current building control requirements.

The flats provide ground floor adaptable family accommodation. Indeed, currently a resident with limited mobility resides in Flat 1 and has confirmed the accommodation meets his particular needs.

Therefore, it is submitted that the current proposal complies with Policy DS3 Design Quality and Place as the development will provide a high-quality residential accommodation while reusing an existing built asset within an established residential area.

Policy DS4: Amenity requires proposals to have regard to opportunities for maintaining and improving environmental quality. Development is not permitted where there would be an unacceptable adverse impact on the area or the environment or amenity of nearby sensitive property. The Policy identifies a number of areas to be considered including.

- Air quality
- Noise and vibration
- Levels of light pollution
- Levels of odour
- Suitable provision of refuse collection/storage and recycling
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety.
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

In respect of air pollution, light pollution, and odour it is submitted that the application site raises no concerns with regard to these issues.

Regarding road traffic movement roads/parking/access, the site is located within Arbroath and has excellent walking cycle links. On street parking is available within the area. No objection has been made by the Roads Service.

In terms of contamination, the building was originally constructed for an engineering use however the last known use was as a children's nursery. It is reasonable to assume that at the time of the previous change of use to a children's nursery, a sensitive use with similar amenity requirements in terms of contamination to a residential use, that the appropriate contamination assessments would have been completed and had any decontamination been required this would have been completed. Therefore, it is submitted that there is no requirement for any further investigation. However, that said, should further investigations be required these can be appropriately conditioned.

In terms of noise, this matter has been very carefully assessed by an experienced acoustic expert with noise surveys undertaken before, during and after theatre performances. Using the appropriate noise criterion, the Noise Assessments have confirmed that the flats have an acceptable residential amenity. The acceptable residential amenity is further demonstrated by the fact that the residents have now been living in the flats for over 2 years, during this time there have been twelve theatre performances along with the associated set building and rehearsals with **no** complaints or concerns from any resident made to the appellant as landlord or the EHO.

Therefore, it is submitted that the proposal complies with Policy DS4.

Policy TC2 Residential Development requires that all residential development proposals are:

- compatible in terms of land use;
- provide a satisfactory residential environment;
- not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure and
- provide for affordable housing in accordance with Policy TC3 Affordable Housing.

Response: The site subject to the appeal is located within a predominantly well-established and predominantly residential area of Arbroath, as such there is no issue of incompatibility. There will be no unacceptable impact as a result of the development on the surrounding natural or built environment.

With regard to the proposed residential amenity, this matter has been assessed in response to Policy DS4 and an acceptable residential amenity demonstrated.

Therefore, it is submitted that the proposal complies with Policy TC2.

Policy TC8 Community Facilities and Services

The Council will encourage the retention and improvement of public facilities and rural services.

Response: Concern has been raised by the neighbouring Abbey Theatre with regard to the possible issue of complaints from the flats as a result of noise and disturbance from the proposed flats which may interfere with their ability to continue their established use.

As indicated, the flats have been constructed to a very high standard with high-quality noise insulation. The appropriate noise survey has been completed by an experienced acoustic expert before, during and after theatre performance and the required Noise Assessments lodged in support of the proposal. These demonstrate that there is no issue of noise from the theatre on the amenity of residents. To date no complaints have been received from the existing residents. As such it is not anticipated that there will be any complaints and therefore no anticipated restrictions on the theatre use.

Policy PV15 Drainage Infrastructure Development proposals within Development Boundaries will be required to connect to the public sewer where available.

Response: the property is already connected to the public sewer.

Therefore, it is submitted that the proposal complies with Policy PV15.

12 Conclusion

The proposal subject of the current appeal seeks full planning permission for the change of use of an existing building within an established residential area of Arbroath to form 2 residential flats. While not listed or in a conservation area the building is an attractive historic building which is worthy of retention and reuse. All Scottish Government and Angus Council policies support the reuse of vacant buildings. Given the principal use in the immediate area is residential, the proposed residential use is wholly appropriate. The proposal will provide 2 high quality modest scaled homes which assist in responding to the local and national housing emergency.

The main issue surrounding the use centres around the concern with regard to noise from the adjacent Abbey Theatre. As part of this appeal submission a hearing session has been requested to discuss the matter of noise. However, as detailed in this Report the issue of noise has been extensively investigated by experienced noise consultants with detailed a Noise Survey lodged in support of the application this demonstrates that using the appropriate British Standard noise criterion that there is no loss of amenity to the residents as a result of activity in the theatre, equally there is no concern that the activity in the theatre will result in complaints from residents which could restrict the theatre activity.

In conclusion, it has been demonstrated the change of use of the former children's nursery to form 2 residential flats (retrospective) complies with the policies of National Planning Framework 4 and Angus Local Development Plan 2016. The development will result in the reuse of a previously vacant building creating two flats within an established residential area, close to existing local amenities and services. The proposal complies with the spatial policies of NPF4 as it makes best use of existing buildings, supports local liveability and compact urban growth. Finally, although small scale the proposal makes a valid contribution to addressing the accepted National and Local housing emergency, which requires direct action such as that proposed in order to provide new housing.

Therefore, it is respectfully requested that the appeal is upheld, and planning permission granted.

August 2024

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Chloe French

Address: 36 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: To whom it may concern,

My partner and I have been more than happy living in 36 Abbot Street for the past 15 months, and we wish to continue to do so for a long period of time as we are really settled here. There are very few of suitable rented properties in Arbroath and surrounding areas at present.

We really do hope the flats receive the needed planning permission so we can continue to stay in somewhere we really love and fits all of our needs.

Yours faithfully,

Chloe French

Brenna Cunningham

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mrs Amanda Anderson

Address: 34 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Myself and husband Neil have lived here happily and peacefully for over a year now. A previous notice of enforcement letter was hand delivered through our letterbox a few months ago. In it, it stated that the building was unsuitable for domestic use purposes due to noise nuisance from The Abbey Theatre. Being the persons who live here, we can strongly refute that statement. We have experienced no noise nuisance whatsoever coming from the theatre. We don't even know when there is a show on, unless we look outside and see the carpark in front of us filling up with the theatre patrons cars. The whole time we have lived here, it's been very peaceful and very quiet. We feel safe and secure, as there is a high gated fence surrounding the building. Our neighbours are the best. As is our landlord, who goes over and above to help us. We have lived in 4 different private rental properties since 2021, as the local authority housing stock is few and far between and there are no available properties to suit our medical needs. Angus Council Housing sent an OT to our current address. She said our current home is perfect for us and meets all of our medical needs. I am my husband's full-time carer. He has dementia. I was diagnosed with advanced Marginal Zone Lymphoma in Nov 2022 and am still going through my cancer treatment. This last year has been so stressful for us both. We are not physically or mentally fit to cope with another move. My cancer treatment is gruelling with lots of side effects. Whilst also caring for my husband 24/7. We live a street away from our GP, close to all amenities, also my husband's dementia group, Arbroath Connections, which he attends twice a week to give me some respite. I have no family close by to get support from. We are both very happy and settled living here. Our home has been done to a very high standard. Financially, we have no savings left to fund another house move. Our previous moves have used up all we had. I trust a decision will be made on this application very soon.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Gavin Stephenson

Address: 41 Monymusk Road Arbroath Dd112bz

Comment Details

Commenter Type: Miscellaneous

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Was previously a Tenant at 40 Abbot Street I had great stay here very well maintained property with great neighbours, good communication with the landlord property was lovely and lovely set out and maintained.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Chloe French

Address: 36 Abbot St Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: To whom it may concern,

My partner and I have been more than happy living in 36 Abbot Street for the past 15 months, and we wish to continue to do so for a long period of time as we are really settled here. There are very few of suitable rented properties in Arbroath and surrounding areas at present.

We really do hope the flats receive the needed planning permission so we can continue to stay in somewhere we really love and fits all of our needs.

Yours faithfully,

Chloe French

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Chris Ettershank

Address: 32 Abbot St Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Having been involved in this development since the very beginning, it is important for me to support this new application.

During all my tenants time in these properties over 18 months none of them had any issues or complaints of noise from the theatre production or set building, in the areas above the flats. One tenant did enquire about the operating hours of the theatre directly to the theatre and to the council which they have all jumped on as a "complaint", which it was not, this tenant still resides happily in the property and has submitted supporting comments for this new application.

I would like noted that senior members of the theatre can be aggressive and abusive to some tenants shouting at them "they shouldn't be living there" and knocking purposely on their windows, almost in an attempt to create complaint's. I have also experienced this firsthand as well as them being abusive to some of my workers during the development.

I done everything I could to appease the theatre and environmental health, however nothing was ever enough and they kept changing the criteria.

Any time I advertise a property in Arbroath I receive in excess of 20 applications in a 48 hour period, there is a drastic shortage of housing in Angus and these 4 ground floor fully accessible disabled apartments are a treasure to the local community.

I fully support this new application.

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Grant Mcintosh

Address: 10 Millgate Loan Arbroath Dd111pq

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I fully support this development, as the flats only lie below a store of the theatre and not the actual production area, they are beautiful flats and with a shortage of affordable accommodation in Angus these 4 fully accessible disabled apartments area ideal for rental

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Jade Beaton

Address: 29 keptie road Arbroath Dd113ed

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I fully support this application

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Miss Brenna Cunningham

Address: 36 Abbot Street Arbroath DD11 1HH

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I have happily lived in Arbroath for the majority of my life. I have been living on Abbot Street for the last 15 months and have enjoyed living here. The home suits my personal needs, and the location is beneficial for my work. I am really settled here and I hope to be here for a long period of time. There are very few of suitable rented properties in Arbroath and surrounding areas at present. I hope the flats receive the planning permission so I can continue to stay in somewhere I really love and fits all of my needs.

My elderly parents are able to visit me here and I have very respectful community neighbours surrounding the property.

Kind regards,

Brenna Cunningham

Comments for Planning Application 24/00199/FULL

Application Summary

Application Number: 24/00199/FULL

Address: 34 Abbot Street Arbroath DD11 1HH

Proposal: Proposed Conversion of Part of Former Nursery Building to Form 2 Flats
(Retrospective)

Case Officer: Ben Freeman

Customer Details

Name: Mr Allan Craik

Address: 3 Hospitalfield Road Arbroath DD11 2LP

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: In respect of this application I would like it noted that I fully support it. Given the shortage of rental accommodation within Arbroath, it makes sense to approve this and help those residents living within Angus who can not afford to take that step onto the property market



MEMORANDUM

TO: Fraser MacKenzie, Planning Officer (Development Standards)

FROM: Alan Milne, Environmental Protection Officer

YOUR REF: 19/00691/FULL

OUR REF: Site 2672

DATE: 25 October 2019

SUBJECT: Proposed Conversion of Building to Form Four Dwellinghouses at Day Nursery, Abbot Street, Arbroath.

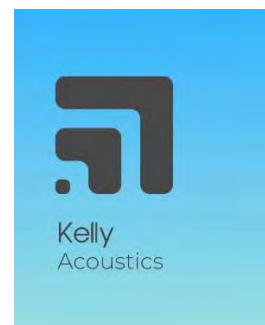
With reference to the above planning applications and your consultation requesting comment regarding contaminated land, I can offer the following comments.

Available information including historic mapping and aerial photography has been reviewed. It would be useful to have some further information about the previous uses of the land and studies should be directed to any potential source of contamination. There may have been storage of chemicals, vehicles or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination. Prior to use of the building as a Day Nursery, the site was an engineering workshop and the change of use predated our current controls for land contamination.

I have no objections to the above application however would recommend the undernoted suspensive conditions be placed on any consent granted;

1) That, prior to commencement of any development works, a comprehensive contaminated land investigation report shall be submitted for the written approval of the planning authority. The investigation shall be completed in accordance with a recognised code of practice such as British Standards Institution "The Investigation of Potentially Contaminated Sites – Code of Practice" (BS 10175: 2011). The report must include a site-specific risk assessment of all relevant pollutant linkages, as required in Scottish Government Planning Advice Note 33.

2) That where the contaminated land investigation report identifies any unacceptable risk or risks as defined under Part IIA of the Environmental Protection Act 1990, a detailed remediation strategy shall be submitted for the written approval of the planning authority. No works, other than investigative, demolition or site clearance works shall be carried out on the site prior to the remediation strategy being approved by the planning authority. Prior to the occupation of the development the remediation strategy shall be fully implemented and a validation report confirming that all necessary remediation works have been undertaken shall be submitted for the written approval of the planning authority.



Flats 1 & 2, Abbot Street, Arbroath

Noise Assessment

Ms Mayara Agnes
3 Hospitalfield Road
Arbroath
DD11 2LP
Report Number: R002

Report No.: R002

Version: 02

Prepared by: Iain Kelly BSc (Hons)
PGDip, AMIOA

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Version Control

Version	Revisions	Issued by	Date
01	Draft	IK	17/07/2024
02	Final Issue	IK	25/07/2024

This report has been prepared for the titled project or named part thereof and should not be used in whole or part and relied upon for any other project without the written authorisation of Kelly Acoustics. Kelly Acoustics accepts no responsibility or liability for the consequences of this document if it is used for a purpose other than that for which it was commissioned. Persons wishing to use or rely upon this report for other purposes must seek written authority to do so from the owner of this report and/or Kelly Acoustics and agree to indemnify Kelly Acoustics for any and all loss or damage resulting therefrom. Kelly Acoustics accepts no responsibility or liability for this document to any other party other than the person by whom it was commissioned.

The findings and opinions expressed are relevant to the dates of the site works and should not be relied upon to represent conditions at substantially later dates. Opinions included therein are based on information gathered during the study and from our experience. If additional information becomes available which may affect our comments, conclusions or recommendations Kelly Acoustics reserve the right to review the information, reassess any new potential concerns and modify our opinions accordingly.

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1. Introduction

- 1.1. Kelly Acoustics has been appointed by Ms Mayara Agnes to prepare a noise impact assessment (NIA) to support an appeal for the planning application for the proposed conversion of part of a former nursery to form two flatted dwellings (retrospective) at 34 Abbot Street, Arbroath, DD11 1HH (Planning reference: 24/00199/FULL).
- 1.2. The development partly occupies the ground floor area of a building jointly occupied by a theatre in Abbot Street, Arbroath. The majority of the direct adjacency between the theatre and proposed residential dwellings is currently used as a workshop, and store area for props, costume and sets.
- 1.3. The results of an extended noise survey within one of the apartments prior to and during a theatre performance have been utilised to inform the assessment of noise impact within Flats 1 and 2.
- 1.4. This NIA presents a discussion of the suitability of a previously agreed noise criterion as requested by Angus Council (AC) and presents a suitable criterion that is both measurable and enforceable.
- 1.5. This report utilises on-site measured sound levels both in the absence and during a theatre performance. The results of the survey have been used to assess noise impact from the theatre and workshop on the proposed residential dwellings directly below the workshop and stores. This assessment has therefore been undertaken with the benefit of objective measurement in the physical rooms under evaluation.
- 1.6. The report presents a comparison of the measured ambient noise levels with criteria proposed and previously discussed with Angus Council (AC) to ascertain the degree of amenity afforded to existing residents.
- 1.7. This report is necessarily technical in nature, and a glossary is provided in Appendix A to assist the reader.

2. Background Information & Consultation

Project Background Information

- 2.1. A noise impact assessment report was prepared by CSP Acoustics in March 2024 (Report Ref: 1883-001-IK V3) to support a planning application for Flats 3 and 4.
- 2.2. This report superseded the NIA report dated April 2022 (Report ref: 1713 002 JT V2.1) for the proposed change of use from Class 10, previously a day nursery, to four flatted dwellings (sui generis).
- 2.3. The dwellings partly occupy the ground floor area of a building jointly occupied by a theatre in Abbot Street, Arbroath. The majority of the direct adjacency between the theatre and the residential dwellings is currently used as a workshop, and storage for props, costumes, and sets. The assessment established the likely impact the existing Abbey Theatre may have on the residential dwellings.
- 2.4. For the original report (April 2022), AC requested that the assessment consider both airborne and impact noise transmission through the separating floor to determine the impact upon future residents from a range of activities within the theatre, storage, and workshop areas. The main noise sources of concern included theatre performance noise (voice, amplified music, and pyrotechnics), and noise from prop and set construction within and outside the workshop.
- 2.5. Detailed surveys were undertaken to determine the acoustic performance of the separating floor, and measurements of noise from the workshop and theatre were completed to inform the subsequent noise predictions and assessment.
- 2.6. The previous NIA detailed the sound insulation test measurement results of the floor separating the theatre and flatted dwellings. A summary of the sound insulation testing is summarised in Table 1 below.

Table 1: Sound Insulation Test Results

Test Ref.	Source Room	Receiving Room	Separating Element	Airborne $D_{nT,w}$ (dB)	Impact $L'_{nT,w}$ (dB)
1	First Floor Theatre Workshop	Ground Floor Plot 1 Bedroom 2	Floor	69	44
2	First Floor Theatre Backstage/Hall	Ground Floor Plot 4 Master Bedroom	Floor	79 ¹	36

¹ Due to the acoustic performance of the separating floor performing so well, the measurable airborne sound insulation performance was limited. It is considered that the true performance of the separating floor could be greater than that measured on site.

- 2.7. In terms of meeting Section 5 Building Standards, the sound insulation performances not only comply with the requirements but provide a very high level of sound insulation.
- 2.8. The outcome of the NIA found that the worst-case workshop noise expressed as the L_{fmax} would exceed the target criterion of NR15 within Plot 1, Bedroom 2. When considering set construction (i.e. hammering directly onto the floor in the storage area) an impact noise level of NR61 was predicted.
- 2.9. To address the excess of the criterion as a result of workshop and set construction noise, mitigation was recommended on the theatre side of the separating floor. It was concluded

that this would require the cooperation of the theatre and to date the mitigation has not been implemented.

- 2.10. Mr Steven Thomson Environmental Health Officer of Angus Council presented his review of the NIA report (Report Ref: 1713 002 JT V2.1) in an email exchange with Ed Taylor, Development Standards, Angus Council dated 05th May 2022. Mr Thomson stated that;
- “In terms of both the workshop and set-building activities this Service is satisfied that the assessment methodology used by the consultant is appropriate and would agree the predicted noise levels reported for these sources.”*
- 2.11. In terms of the performance noise, Mr Thomson added:
- “this Service has concerns that the predicted noise levels within Flat 4 have been significantly under-estimated due to the use of relatively low source noise levels... This Service does not therefore consider the assessment of performance related noise to reflect worst-case conditions and does not agree the predicted noise levels that are reported.”*
- 2.12. Mr Thomson goes on to state that:
- “It is recognised that activity within the theatre premises will vary in terms of noise levels and there will undoubtedly be periods of noisy use and periods with no noise. The development requires to be assessed in terms of policy DS4 and residential amenity.”*
- 2.13. Policy DS4, Amenity as defined in Angus Council’s Local development Plan (LDP) is as follows:
- “All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.”*
- 2.14. The Technical Advice Note that accompanies the Planning Advice Note (PAN) Planning and Noise 1/2011 states that the adoption of a single indicator used for assessing the magnitude of adverse noise impacts may be inadequate as this will provide only a partial indication of the full impact. Other indices such as those based on the L_{Aeq} index and statistical indices including L_{A10} may be appropriate.
- 2.15. Nevertheless, the adoption of the L_{fmax} in the assessment of daytime noise impact does not readily correlate with a human response to noise at these times. TAN advises that in determining the magnitude of a noise impact the effect on the amenity value of the noise sensitive receptor may depend on the time of day. Therefore, in the absence of any evidence base to inform the significance of effects on humans from L_{max} noise events in the daytime, no evidence base exists for determining a magnitude of impact using this parameter. It is logical to adopt a more suitable index based on the continuous equivalent sound pressure level over short time averaging periods to ensure short term noisy events are not diminished entirely. An index that is well researched and supported by evidence presented in WHO Guidelines and criteria summarised within BS 8233:2014.
- 2.16. This NIA report attempts to demonstrate that a good standard of amenity can be achieved within Flats 1 and 2 when assessed in terms of policy DS4 and residential amenity.
- 2.17. Figure 1 illustrates the site location.



Figure 1: Site Location

Consultation with Angus Council

- 2.18. Consultation has previously been undertaken with Angus Council Environmental Health Officer Mr. Iain Graham to discuss the previously requested target noise criterion and to propose a reasonable alternative criterion. Details of the proposed assessment of theatre noise within the flatted dwellings was presented in an email dated 11th January 2024.
- 2.19. AC have requested that noise generated by the Abbey Theatre expressed as the L_{Fmax} noise level, should not exceed a target noise criterion of NR15 in any of the flatted dwellings.
- 2.20. CSP Acoustics raised concern in relation to the reference source to support the requested criterion. CSP Acoustics have previously referred to NANR163 Noise from Pubs and Clubs (Phase II) Final Report (2006) to propose a criterion of L_{10} . However, this was rejected by AC on the basis it would not capture the instantaneous nature of noise generated by both the workshop and theatre when in use.
- 2.21. It is important to consider that the World Health Organization considered the adoption of the L_{max} criterion in the context of sleep awakening and therefore its use in the assessment of daytime (07:00-23:00 hours) noise impact does not readily correlate with a human response during these time periods. Neither is it possible to readily distinguish between L_{max} events associated with the theatre and those outside/inside the building or arising from short mid frequency events (i.e., clicks) within the dwelling. In any case, this criterion would be challenging for the Local Authority to condition and successfully enforce.
- 2.22. To arrive at a suitable assessment criterion reference was made to research by Salford University and which is summarized in Manchester City Council's Planning and Noise Technical Guidance. The adoption of NR15 as a criterion for NIA is discussed whereby;
- “the NR curve may be too stringent at mid and higher frequencies and may be lower than background noise levels in habitable spaces. Furthermore, the NR curve is most commonly used to set limits for mechanical services noise in buildings, i.e. steady, continuous noise sources.”*
- 2.23. The document also presents a useful definition of ‘inaudibility’, where “Noise is considered to be inaudible when it is at a sufficiently low level such that it is not recognisable as emanating from the source in question and it does not alter the perception of the ambient noise environment that would prevail in the absence of the source in question.”

- 2.24. There is an inference from these statements that NR curves are intended for the assessment of steady noise rather than an instantaneous event such as hammering or footfall. That 'inaudibility' can mean the noise is still audible, however, its origin is not discernible by the recipient. An appropriate target design criterion is therefore based on the L_{eq} parameter in specific low frequency octave bands as follows:
- noise levels in the 63 Hz and 125 Hz octave centre frequency bands (L_{eq}) should be controlled so as not to exceed (in habitable rooms) 47dB and 41dB ($L_{eq,5min}$), respectively.
- 2.25. The above criterion would be more suited to the assessment of unsteady and non-continuous noise in situations, where at higher frequency bands, NR curves would be at or below the prevailing background sound level in the receiving room.

3. Site Survey

Introduction

- 3.1. A long term unattended site-specific noise survey was completed within the living room of Flat 1. The survey commenced at approximately 15:50 hours on Friday 14th June 2024. The measurement system ceased logging at approximately 04:55 hours on Thursday 20th June 2024.
- 3.2. Time synchronised audio recordings were made using a stereo field recorder to assist with the identification of any potential noise sources outside of the dwelling.
- 3.3. The Abbey Theatre ran a production of 'Round the Houses' from Monday 17th June 2024 through until Saturday 22nd June 2024, with performances commencing at 19:30 hours each day.
- 3.4. Wherever possible all measurements were undertaken to comply with the requirements of relevant Standards including BS 7445: 2003.

Survey Methodology

- 3.5. The flat remained unoccupied throughout the survey and the rooms were fully furnished. Windows to the property remained in the closed position and with background trickle vents in the open position throughout the survey. All electrical appliances, including the heating system was isolated prior to the commencement of the survey.
- 3.6. The microphone was tripod mounted at 1.2 metres above floor level and more than 1 metre from any vertical reflecting surfaces.
- 3.7. The sound level meter was set to record all parameters with 5-minute averaging periods and with a resolution of 1-second.
- 3.8. Figure 2 illustrates the approximate measurement location within Flat 1.

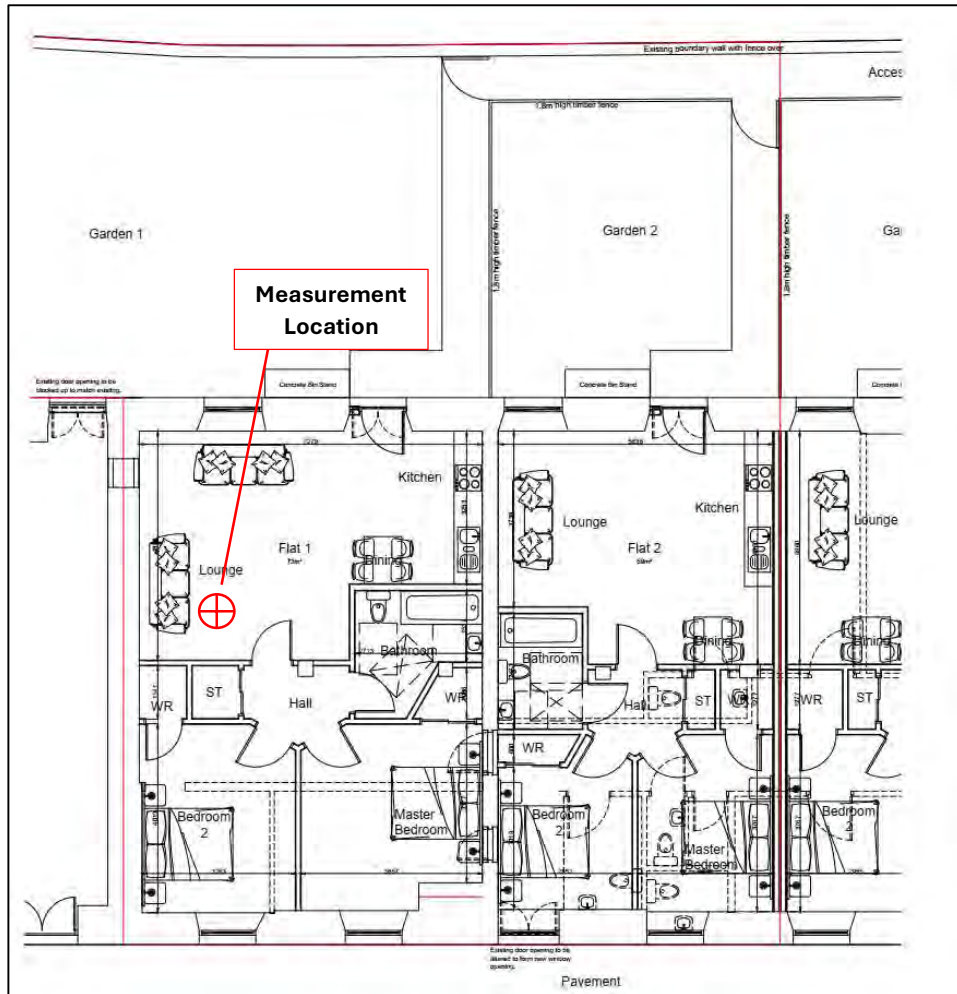


Figure 2: Approximate measurement location within Flat 1

Equipment

- 3.9. The equipment deployed during the site survey is detailed in the following table.

Table 2: Measurement Equipment

Type	Equipment	Serial No.	Last Calibration Date
Sound meter	Norsonic Nor118	28972	09/02/2023
Microphone	Norsonic Nor1225	505545	09/02/2023
Pre-amplifier	Norsonic Nor1201	20201	09/02/2023
Calibrator	Castle GA611 dBCal	075311	11/01/2024

- 3.10. The noise measurement equipment was operated in accordance with British Standard and ISO procedures. The sound level meter was calibrated prior and post to site measurements using the appropriate calibrator to a reference tone of 113.9 dB at 1 kHz. Pre and post calibrations indicated a shift of no more than 0.1 dB.

Extended Noise Survey Measurement Results

- 3.11. A summary of the daytime and night-time period ambient sound levels acquired during the long-term measurement survey (14-19/06/2024) are presented in Table 3 below. The survey results coinciding with the theatre performance are the daytime periods of Monday 17th June through to Wednesday 19th June 2024.
- 3.12. The results have been summarised for the entire day (07:00 – 23:00 hours) and night-time (23:00 – 07:00 hours) periods where applicable. Detailed results are available upon request.

Table 2: Unattended Survey Noise Measurement Results Summary (14-20th June 2024)

Day	Period	T	L _{Aeq,T} (dB)	L _{A90,T} (dB)
Friday 14/06/24	Day	7 hours *	20.0	18.3
	Night	8 hours	18.6	17.9
Saturday 15/06/24	Day	16 hours	19.6	18.1
	Night	8 hours	19.0	17.9
Sunday 16/06/24	Day	16 hours	20.9	18.7
	Night	8 hours	19.0	17.9
Monday 17/12/23	Day	16 hours	20.5	18.5
	Night	8 hours	21.2	17.9
Tuesday 18/06/24	Day	16 hours	22.0	18.2
	Night	8 hours	19.3	17.8
Wednesday 19/06/24	Day	16 hours	22.5	18.3
	Night	6 hours *	18.3	17.8
Average Period	Day	16 hours	20.9	18.3
	Night	8 hours	19.2	17.9

* Averaged data includes Friday daytime and Tuesday night measurement which was 7 hours and 6 hours in duration respectively, not a full 16 and 8 hours.

- 3.13. The results from Table 2 indicates the following:
- There is approximately a 1-3 dB difference between the day and night-time period ambient noise levels (L_{Aeq,T}) across all days.
 - Background sound levels (L_{A90}) are typically very low across all days (i.e. less than 30 dB L_{A90,T}).
 - There is a 2.2 dB range in the daytime background sound levels (L_{A90,T}) across all days.
 - The daytime L_{Aeq,16hour} value coinciding with the first scheduled performance is lower than the preceding day when no performance was scheduled.
 - The daytime L_{Aeq,16hour} values for Tuesday and Wednesday 18-19th June were marginally higher than previous days' values.
 - The highest daytime period ambient noise levels within Flat 1 were measured on Wednesday 19th June.
- 3.14. Detailed analysis, presentation and discussion of the octave band noise levels during a theatre performance are presented in the following sections.

4. Assessment

Overview

- 4.1. This section presents the findings of the detailed data analysis of the 5-minute period L_{eq} values across all days when the theatre was operational and days in the absence of a theatre performance.
- 4.2. It is understood that there were no public theatre performances on the evenings of the 14th to 16th June 2024. However, it is assumed that rehearsals and set preparation is likely to have occurred on these days.
- 4.3. The $L_{eq,5min}$ theatre performance noise levels have been assessed for the following days and times:
 - 17th June 2024, 19:30 hours to 22:30 hours, evening performance only (19:30 start).
 - 18th June 2024, 19:30 hours to 22:30 hours, evening performance only (19:30 start).
 - 19th June 2024, 19:30 hours to 22:30 hours, evening performance only (19:30 start).

Assessment of Theatre Noise Levels within Flat 1

- 4.4. The ambient 5-minute period noise data captured between 19:30 and 22:30 hours on the evenings of the 17-19th June have been directly plotted against the criterion presented in Section 2.
- 4.5. The values do not include a correction for the influence of background noise as the entire measured values are within 6 dB of the background sound and therefore any correction applied will likely overestimate the actual received theatre specific noise level. In other words, the specific noise level is not directly measurable above the background sound level in Flat 1.
- 4.6. Figure 3 presents the plot of the 63 Hz octave band $L_{eq,5min}$ values within Flat 1, across all performance days against the criterion of 47 dB $L_{eq,5min}$.

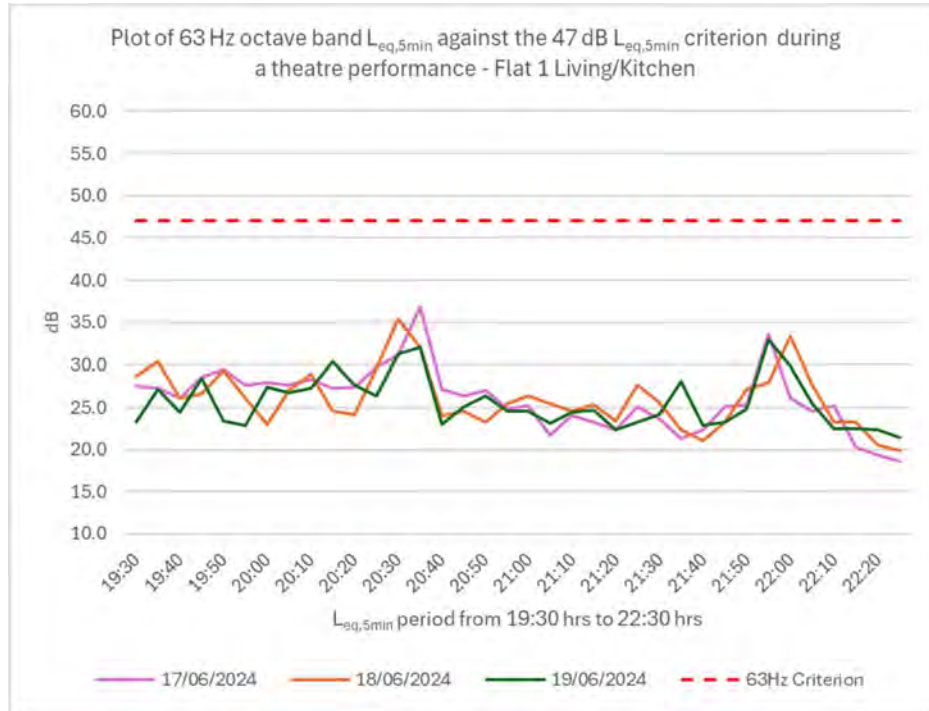


Figure 3: 63 Hz octave band $L_{eq,5min}$ values against the criterion of 47 dB $L_{eq,5min}$

- 4.7. From Figure 3 it is evident that the 63 Hz octave band ambient noise levels during a theatre performance do not exceed the criterion of 47 dB $L_{eq,5min}$. It should be noted that these noise levels include contributions from all sources of noise both inside and outside of the dwelling e.g., birdsong, vehicles on the road network, neighbouring domestic noise.
- 4.8. Figure 4 presents the plot of the 125 Hz octave band $L_{eq,5min}$ values within Flat 1, across all performance days against the criterion of 41 dB $L_{eq,5min}$.

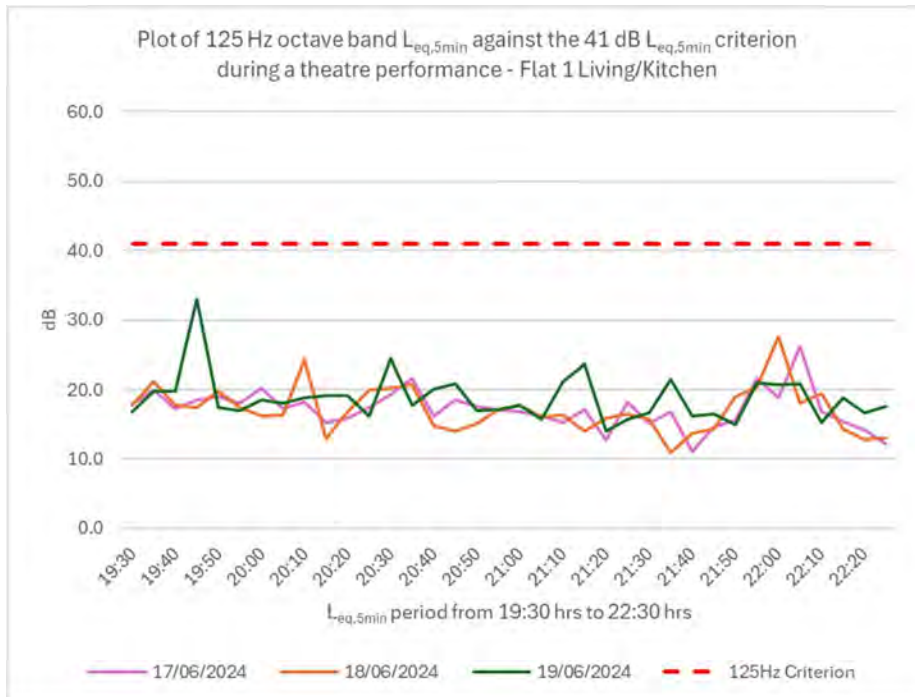


Figure 4: 125 Hz octave band $L_{eq,5min}$ values against the criterion of 41 dB $L_{eq,5min}$

- 4.9. The 125 Hz octave band ambient noise levels during a theatre performance do not exceed the criterion of 41 dB $L_{eq,5min}$. The elevated 125 Hz $L_{eq,5min}$ values on the 19th June are likely as a result of domestic activity from neighbouring properties and vehicles on the surrounding road network.

Pre-Theatre Performance Noise Levels

- 4.10. The 63 Hz and 125 Hz octave band background noise levels across the three evening periods prior to the commencement of the theatre performance have been plotted against the same criterion presented above.
- 4.11. Figures 5 and 6 present the 63 Hz and 125 Hz octave band background noise levels against the 47 dB $L_{eq,5min}$ and 41 dB $L_{eq,5min}$ criterion respectively.



Figure 5: 63 Hz octave band $L_{eq,5min}$ values against the criterion of 47 dB $L_{eq,5min}$

- 4.12. The 63 Hz octave band background noise levels are marginally lower when compared with the evenings where a performance occurred. The elevated values on the evening of the 16th June correspond to vehicle noise and voices being audible and originating from outside of the dwelling.

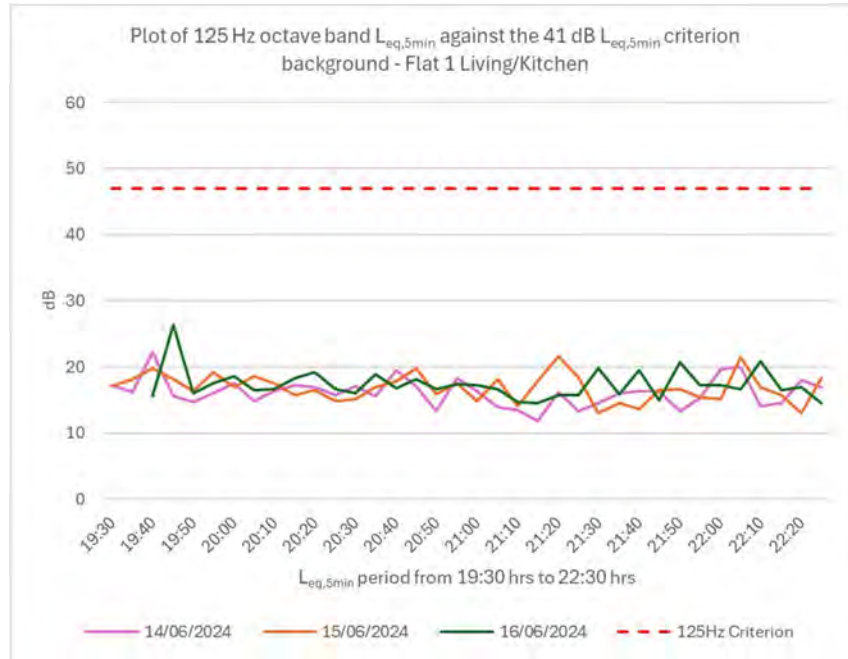


Figure 5: 125 Hz octave band $L_{eq,5min}$ values against the criterion of 41 dB $L_{eq,5min}$

- 4.13. The 125 Hz octave band background noise levels are similar when compared with the evenings where a performance occurred. The elevated 125 Hz $L_{eq,5min}$ value at approximately 19:40 and 19:45 hours on the 14th and 16th June (Pink & Green trace) corresponds to a period where vehicle noise and conversation was audible and originating from outside the dwelling. These events were clearly an outlier in the data.

A Review of the Maximum Noise Levels

- 4.14. Figure 6 presents the 63 Hz and 125 Hz octave band noise levels expressed as the L_{fFmax} parameter across the whole measurement duration. As this value represents the maximum sound pressure level in each respective octave band centre frequency at any given moment, it is generally not influenced by the underlying sound level.
- 4.15. It should be noted that the following graph is the maximum sound pressure level in each octave band as a result of all individual noise events measured within Flat 1 across the entire measurement period of 14th to 20th June 2024.

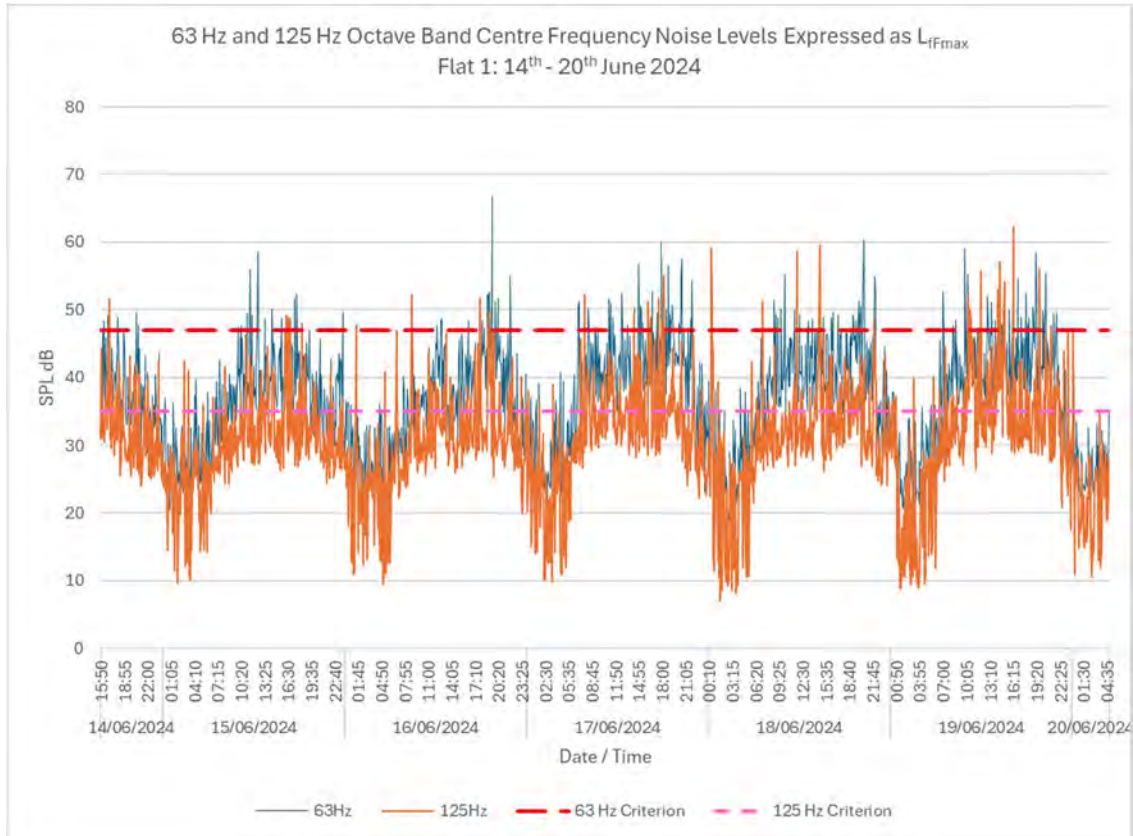


Figure 6: 63 Hz & 125 Hz octave band $L_{eq,5min}$ values against the criteria

- 4.16. Figure 6 indicates that for the majority of the daytime and night-time measurement periods, the L_{fmax} noise levels in the 63 Hz octave band centre frequency were below the corresponding target noise criterion of 47 dB L_{fmax} . The individual events where an exceedance occurred do not necessarily correspond to periods during a theatre performance or when the workshop is likely to have been in use.
- 4.17. For example, during the weekday periods of the 17-19th June, there were many events that registered as an excess of the criterion. These are likely as a result of events unrelated to the theatre and workshop.
- 4.18. The more onerous criterion of 35 dB L_{fmax} at the 125 Hz octave band centre frequency was frequently exceeded across all day and night-time periods.
- 4.19. From the captured audio samples, it is apparent that noise events contributing to the maximum sound pressure level included bird call (seagulls), vehicle pass-bys, raised voices, car door slams and structural expansion/contraction noises within the dwelling. If noise from the workshop was present on any given day, it was not possible to discern this noise source within Flat 1 at any time.
- 4.20. These findings would suggest that the adoption of the L_{fmax} criterion is neither appropriate for determining whether a good level amenity is being afforded to the residents, nor is it likely to be enforceable from a planning perspective.
- 4.21. If the source triggering the maximum noise level event remains unidentifiable, then this noise source could be determined as being 'inaudible' when referencing the descriptor presented in research by Salford University.
- 4.22. These findings support the original statement discussed in Section 2 of this report whereby:

“Neither is it possible to readily distinguish between L_{max} events associated with the theatre and those outside/inside the building or arising from short mid frequency events (i.e., clicks) within the dwelling. In any case, this criterion would be virtually impossible for the Local Authority to condition and successfully enforce against without challenge from the applicant.”

- 4.23. It can therefore be concluded that during the entire measurement period, noise from the theatre within Flat 1 and by extension Flat 2, does not alter the perception of the ambient noise environment that would prevail in the absence of the source in question.

Discussion of the Ambient Noise Level in Flat 1

- 4.24. The indoor ambient noise level results in Table 2 of this report have been summarised in the following table.

Table 3: Summary of Indoor Ambient Noise Levels, Flat 1 (14-20th June 2024)

Day	Period	T	$L_{Aeq,T}$ (dB)	$L_{A90,T}$ (dB)
Average Period	Day	16 hours	20.9	18.3
	Night	8 hours	19.2	17.9
* Averaged data includes Friday daytime and Tuesday night measurement which was 7 hours and 6 hours in duration respectively, not a full 16 and 8 hours.				

- 4.25. BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* establishes indoor daytime and night-time ambient noise criteria of 35 dB $L_{Aeq,T}$ and 30 dB $L_{Aeq,T}$ respectively. These noise levels are considered to be a ‘good standard’ of amenity to ensure, speech, rest and sleep are not disturbed. The internal noise levels within the living room of Flat 1 are at least 14 dB(A) and 19 dB(A) lower than the criterion respectively.
- 4.26. The measured indoor ambient noise levels in Flat 1 are typical of habitable rooms in dwellings with excellent acoustic insulation and where the dwelling is located in a rural area (i.e. not located near busy roads). The noise floor of most Class 1 sound level meters is given as 18-20 dB(A) with the equipment used during the site survey having a noise floor of 17 dB(A). The ambient night-time noise levels in Flat 1 are therefore approximately 2 dB(A) above the self noise level of the instrumentation used during the survey.
- 4.27. In accordance with the TAN the resultant magnitude of impact would be considered to be ‘no change.’ The magnitude of impact presented at this quantitative stage is based on a comparison of the existing ambient noise level against target noise criteria at the noise sensitive development (NSD). In certain situations, this may not adequately describe the true impact where for example, the quantitative assessment fails to consider the noise impact upon all the amenities associated with the noise sensitive receptor.
- 4.28. In accordance with the TAN the qualitative assessment is presented to support or modify the magnitude of impact. It is dependent on additional factors including the nature of the noise source, its spectral content and its absolute level and how these factors affect the amenity value of the noise sensitive receptor. In accordance with the TAN to the PAN1/2011, sufficient data has been obtained to adequately assess, in quantitative terms, the main noise source that has the potential to impact upon all the amenities associated with the noise sensitive receptors during the daytime. On this basis a qualitative assessment to assist in supporting or modifying the outcome reached from the quantitative assessment is not required.

- 4.29. Based on the outcome of the assessment within Flat 1, by extension, it is considered that a good level of amenity will be afforded to the residents of Flat 2 based on the fact that Angus Council have previously considered Flat 1 to be worst affected by noise from the theatre workshop.

5. Conclusions

- 5.1. This noise impact assessment has been prepared to support a planning application for the proposed change of use from Class 10, previously a day nursery, to residential dwellings (sui generis), which partly occupies the ground floor area of a building jointly occupied by a theatre in Abbot Street, Arbroath. The majority of the direct adjacency between the theatre and proposed residential dwellings is currently used for prop, costume and set storage and workshop. The assessment establishes the likely impact the existing Abbey Theatre may have on the residential dwellings, namely Flats 1 and 2.
- 5.2. An extended noise survey has been completed within the living room of Flat 1 prior to and during a theatre performance. Baseline noise measurements were completed for an extended period of three days in the absence of theatre performance noise. The results of these surveys have been used to determine a suitable assessment criterion and to ascertain the degree of amenity afforded to the residents.
- 5.3. Consultation has previously been completed with the Environmental Health Team at Angus Council and a suitable methodology proposed to adequately address the requirements of Policy DS4, Amenity as defined in Angus Council's Local Development Plan (LDP).
- 5.4. The assessment of theatre performance noise within Flat 1 against the following criterion found no exceedance against the criteria, as follows:
 - Noise levels in the 63Hz and 125Hz octave centre frequency bands (L_{eq}) should be controlled so as not to exceed (in habitable rooms) 47 dB and 41 dB ($L_{eq,5min}$), respectively.
 - When assessed against the more onerous criterion of 47 dB and 35 dB L_{fmax} in the 63Hz and 125Hz octave centre frequency bands respectively it is not possible to distinguish between events associated with the theatre and/or workshop and other extraneous environmental noise sources.
- 5.5. A review of the maximum sound pressure levels in the 63Hz and 125Hz octave centre frequency bands has been completed. The review indicates that even in the absence of theatre noise and likely periods when the workshop might be in use, individual noise events as a result of general environmental sounds are likely to result in an exceedance of the criteria in each octave band centre frequency.
- 5.6. These findings would suggest that the adoption of the L_{fmax} criterion is neither appropriate for determining whether a good level amenity is being afforded to the residents, nor is it likely to be enforceable from a planning perspective as any exceedance cannot be attributed to one source or another with any confidence.
- 5.7. When assessed against the indoor daytime criterion of 35 dB $L_{Aeq,T}$ as described in BS 8233:2014 for habitable rooms, no exceedance was determined during any period. Internal daytime noise levels within the dwellings are considered to be very low, i.e. less than 30 dB $L_{Aeq,T}$.

Appendix A: Acoustic Glossary

Terminology	Description
Sound Pressure	Sound, or sound pressure, is a fluctuation in air pressure over the static ambient pressure.
Sound Pressure Level (Sound Level)	The sound level is the sound pressure relative to a standard reference pressure of $20\mu\text{Pa}$ (20×10^{-6} Pascals) on a decibel scale.
Decibel (dB)	A scale for comparing the ratios of two quantities, including sound pressure and sound power. The difference in level between two sounds s_1 and s_2 is given by $20 \log_{10} (s_1 / s_2)$. The decibel can also be used to measure absolute quantities by specifying a reference value that fixes one point on the scale. For sound pressure, the reference value is $20\mu\text{Pa}$.
A-weighting, dB(A)	The unit of sound level, weighted according to the A-scale, which considers the increased sensitivity of the human ear at some frequencies.
Noise Level Indices	Noise levels usually fluctuate over time, so it is often necessary to consider an average or statistical noise level. This can be done in several ways, so a number of different noise indices have been defined, according to how the averaging or statistics are carried out.
$L_{\text{eq},T}$	A noise level index called the equivalent continuous noise level over the time period T. This is the level of a notional steady sound that would contain the same amount of sound energy as the actual, possibly fluctuating, sound that was recorded.
$L_{\text{max},T}$	A noise level index defined as the maximum noise level during the period T. L_{max} is sometimes used for the assessment of occasional loud noises, which may have little effect on the overall L_{eq} noise level but will still affect the noise environment. Unless described otherwise, it is measured using the 'fast' sound level meter response.
$L_{90,T}$	A noise level index. The noise level exceeded for 90% of the time over the period T. L_{90} can be considered to be the "average minimum" noise level and is often used to describe the background noise.
$L_{10,T}$	A noise level index. The noise level exceeded for 10% of the time over the period T. L_{10} can be considered to be the "average maximum" noise level. Generally used to describe road traffic noise.
Free-Field	Far from the presence of sound reflecting objects (except the ground), usually taken to mean at least 3.5m.
Façade	At a distance of 1m in front of a large sound reflecting object such as a building façade.
Fast/Slow Time Weighting	Averaging times used in sound level meters.
Octave Band	A range of frequencies whose upper limit is twice the frequency of the lower limit.



Angus House Orchardbank Business Park Forfar DD8 1AN Tel: 01307 473360 Fax: 01307 461 895 Email: plnprocessing@angus.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100666466-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) *

Yes No

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	A B Roger & Young Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Stephen	Building Name:	
Last Name: *	Pirie	Building Number:	12
Telephone Number: *	01356 622125	Address 1 (Street): *	Clerk Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Brechin
Fax Number:		Country: *	Angus
		Postcode: *	DD9 6AE
Email Address: *	info@abrogerandyoung.com		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Ms	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Mayara	Building Number:	3
Last Name: *	Agnes	Address 1 (Street): *	Hospitalfield Road
Company/Organisation		Address 2:	
Telephone Number: *		Town/City: *	Arbroath
Extension Number:		Country: *	Angus
Mobile Number:		Postcode: *	DD11 2LP
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

Angus Council

Full postal address of the site (including postcode where available):

Address 1:

34 ABBOT STREET

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

ARBROATH

Post Code:

DD11 1HH

Please identify/describe the location of the site or sites

Northing

741266

Easting

364524

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Site Area

Please state the site area:

331.80

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Former Nursery Building

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? * Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

0

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? * Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
 No – proposing to make private drainage arrangements
 Not Applicable – only arrangements for water supply required

Do your proposals make provision for sustainable drainage of surface water?? * Yes No
(e.g. SUDS arrangements) *

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
 No, using a private water supply
 No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? * Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? * Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? * Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? * Yes No

If Yes or No, please provide further details: * (Max 500 characters)

see plans

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

Yes No

How many units do you propose in total? *

2

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Stephen Pirie

On behalf of: Ms Mayara Agnes

Date: 28/03/2024

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

- | | |
|--|--|
| A copy of an Environmental Statement. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. * | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A |
| A Flood Risk Assessment. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Habitat Survey. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Processing Agreement. * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Stephen Pirie

Declaration Date: 28/03/2024

Payment Details

Pay Direct

Created: 28/03/2024 10:20

Angus Council

Application Number:	24/00199/FULL
Description of Development:	Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective)
Site Address:	34 Abbot Street Arbroath DD11 1HH
Grid Ref:	364519 : 741273
Applicant Name:	Ms Mayara Agnes

Report of Handling

The application site comprises a ground floor area of a larger building that also accommodates the Abbey Theatre.

The ground floor of the southwestern part of the building was previously an engineering factory and was granted permission for conversion to a children's nursery in 2000. The flats to which this application relates, which have been formed and occupied without planning permission, occupy part of this ground floor area. The main theatre occupies that part of the building to the northeast of the flats, with the backstage area partly above flat 4. The theatre premises extends into the first-floor area above the flats, where there are changing, workshop, toilet, and storage facilities.

To the northwest of the site is a public car park, and Abbot Street runs to the southeast of the building. Former gasworks sit to the southeast and northeast of the site. That site previously benefited from planning permission for the development of 75 houses and is identified in the ALDP as a current housing site. Recently, a Proposal of Application Notice has been submitted in respect of the site, suggesting that a further proposal for redevelopment may be forthcoming.

Existing buildings to the south and west of the site are in predominantly residential use.

Proposal

Planning permission is sought retrospectively for the conversion of the former nursery to form two flats (flats 1 and 2, or 34 and 36 Abbot Street). A concurrent application (24/00179/FULL) seeks the same for the other two flats (flats 3 and 4, or 38 and 40 Abbot Street).

Flat 1 has a floorspace of 73sqm and flat 2 a floorspace of 59sqm, each offering two-bedrooms along with an open plan living/kitchen area. Each of the properties has an enclosed garden/drying green area. Flat 1 has a garden of around 115sqm, whereas flat 2 has a garden measuring around 45sqm.

The application has not been subject of variation.

Publicity

The application was subject to normal neighbour notification procedures.

The application was advertised in the Dundee Courier on 12 April 2024

The nature of the proposal did not require a site notice to be posted.

Planning History

00/00804/COU for Change of Use from Engineering Factory to Childrens Day Nursery at Farnell Patternmakers Abbot Street, Arbroath, Angus was approved subject to conditions on 19 October 2000.

That permission was implemented.

19/00691/FULL for Proposed Conversion of Building to Form Four Dwellings within the ground floor of the building (including the current application site) was withdrawn on 1 February 2023.

23/00001/UNDV – An enforcement notice was served on 8 October 2023 when it became apparent that the ground floor of the building was being used as residential accommodation. The issue was brought to the planning authority's attention when a complaint was received by the council from an occupant of one of the flats regarding noise associated with theatre activity. The notice indicated that there had been a change of use of a children's day nursery to four residential flatted dwelling units at 34, 36, 38 and 40 Abbot Street, Arbroath, without the benefit of planning permission. The notice required the residential use of the properties to cease and desist within 120 days of the notice.

23/00010/ENF – An appeal was submitted in relation to that enforcement notice. The appeal did not contest that a breach of planning control had occurred, but it sought additional time for compliance to allow a further planning application for the use to be considered. The appeal was allowed and the timescale for compliance was extended to 7 months from 30 November 2023.

24/00179/FULL for Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) (flats 3 and 4) is being considered concurrently.

Applicant's Case

Design Statement: The Design Statement outlines the site and its history, and also the process of the previous planning application on the site (19/00691/FULL). The statement contains a breakdown of correspondence between the Council's Environmental Health Service and assessments carried out to demonstrate the noise levels in the flats.

The statement confirms that Building Warrants were secured for the flats shortly after the first lockdown associated with the Covid-19 pandemic. The applicant took the decision to progress with the works and form the flats, with completion certificates issued by Building Standards on 20 December 2021. Almost a year later the applicant decided to let the flats and they were occupied.

The statement considers the proposed development against the Angus Local Development Plan and National Planning Framework 4.

The statement then outlines the process of the Noise Impact Assessment which supports the application. It is submitted that the assessment concludes that the Abbey Theatre Group and their performances have no sound impact upon flats 3 and 4 of the proposed development below.

The design statement concludes as follows:

- We are of the opinion that these proposals are in keeping with the relevant policies of the Angus Local Development Plan and National Planning Framework 4. We feel that although previous noise issues were presented during the previous application, these issues were primarily associated with the theatre's workshop area and Units 1 & 2 which were located directly below.
- We are of the belief that the revised NIA clearly demonstrates that ongoing productions within the Abbey Theatre will have minimal impact on Units 3 & 4 when used as residential dwellings and that this evidence has been produced during the loudest and busiest times that could have been recorded within the theatre itself.

Additional Supporting Information: In response to comments from the Council's Environmental Health Service, supplementary statements have been provided. These comments indicate that a Noise Impact Assessment should not be necessary for flats 1 and 2, as that supplied in support of 24/00179/FULL for flats 3 and 4 demonstrates an acceptable level of noise.

The statement also indicates that the upper floor area is primarily used for storage and is unlikely to offer space for set construction, and therefore impact on the flats below by way of noise. It is submitted that Angus Council have not determined what would be an acceptable worst case scenario level of noise.

A fire escape plan for the theatre itself has been submitted, which indicates the upper floor layout of the building above the flats, most of which is identified as storage.

Finally, a letter has been submitted which draws attention to the recent declaration of a housing emergency by the Scottish Government. It notes that there will be delay in preparation of the next local development plan for Angus, and suggests that small sites, such as the proposal, can make a valid contribution to increasing housing supply within the area providing modest and therefore affordable homes for local people close to services and amenities. It notes that existing residents do not have issue with noise from the theatre and identifies a willingness to meet with environmental officers to discuss the noise assessment.

Consultations

Environmental Health - Object to the planning application on the grounds of noise impact from the adjacent theatre operation.

- No consideration has been given to potential impacts on the proposed flats arising from any lawful Class 10 Use continuing within the remaining part of the former nursery building.
- It is not accepted that a pantomime performance represents a worst-case scenario for music and performance noise at a venue that can accommodate a wide range of music events.
- The final noise impact assessment for the previous application (19/00691/FULL) involving all 4 proposed residential units identified significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. Neither of the current applications are supported by a further assessment of noise from these sources.
- The final noise assessment for the previous application identified that any further noise mitigation measures would require the co-operation of the Theatre group. There doesn't however appear to be anything in the supporting information for either of the current applications that demonstrates that this has been obtained or that new mitigation measures within the control of the applicant have been identified.

In light of the above this Service cannot be satisfied that potential noise impacts on the proposed development arising from the full range of activities undertaken within the theatre premises have been adequately considered in respect of the current applications. Furthermore a detailed assessment of those impacts undertaken and submitted as part of the previous application indicated that noise from certain activities carried out within the theatre premises would have a significant detrimental impact on the level of amenity afforded to the proposed residential units. As no further noise mitigation measures within the control of the applicant have been identified this Service must take the view that the proposed developments are incompatible with the theatre activities on the first floor and accordingly would object to both applications.

In relation to contaminated land, the service has advised that further information should be provided about the previous uses of the land and the potential for sources of contamination. It indicates that there may have been storage of chemicals, vehicles or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination. Prior to use of the building as a day nursery, the site was an engineering workshop and the change of use predated current controls for land contamination. A suspensive condition is therefore required to ensure the provision of a comprehensive contaminated land investigation report, and thereafter ensure that any identified remediation is carried out.

Theatres Trust - Objects to the planning application on the grounds of negative impacts on the theatre's operations and in turn of sub-optimal living conditions for occupants arising from acoustic conflict. The Noise Impact Assessment considers a Pantomime performance which is unlikely to be of greatest impact in terms of sound levels or vibrations. Measurements should be carried out for amplified music with high

levels of bass as well as for the use of construction/ machinery within the workshop and other areas where preparation of sets and equipment may occur.

The rear of the stage sits above flat 4, but the workshop and other areas of the theatre facility sit above flats 1-3. Irrespective of whether much of that area is currently set aside for storage as the applicant contends, there could still be movements and a broader point is that the theatre could legitimately carry out alternative activities within the space if it chose to do so. A fundamental part of NPF4 policy is that the venue can continue without additional restriction.

The Trust indicates it is currently providing support to a venue which is in conflict with residential occupants within the same building. Despite relatively recently being constructed to high standards of insulation nonetheless residents are generating complaint. This demonstrates why co-location of live performance venues and residential uses is highly problematic, and why there must be absolutely conclusive evidence of there being no impact before development can be considered suitable for approval.

Since the previous application there is now additional planning policy following the adoption of NPF4 in February 2023. Policy 23.e does not support development which is likely to raise unacceptable noise issues, applying the 'agent of change' principle to noise sensitive development. Where significant effects are likely, as would be the case in this instance, a Noise Impact Assessment may be required. Policy 31.d goes further, stating that development proposals in the vicinity of existing arts venues will fully reflect the agent of change principle. Applications can only be supported where impacts are demonstrably acceptable and that existing venues can continue without additional restriction.

Health & Safety Executive - There was no response from this consultee at the time of report preparation. However, in response to 19/00691/FULL it was confirmed that "the HSE consultation distance and zones around the former Gas Holder Station site have been withdrawn and there is therefore no need to consult HSE on developments in this area."

Aberdeenshire Council Archaeology Service - no objections.

Community Council - There was no response from this consultee at the time of report preparation.

Roads (Traffic) - no objections.

Scottish Water - no objections.

Representations

Nine letters of representation were received. One offered general comment and eight offer support.

The main points of concern were as follows:

- o The theatre has operated for 55 years without noise nuisance issues arising, as the ground floor has always been in some form of commercial use.
- o Stage productions are inherently noisy events.
- o The upper floor above the flats is used as male and female dressing rooms, the Green Room for actors ready to go on stage and as storage for a large amount of stage furniture and props along with timber and other materials used to build sets.
- o The stage crew have a small workshop in this area with a number of fixed and portable power tools which are used during set construction, and which can be quite noisy when in use. These tools are used the entire length of the upper floor. there is a large and frequent footfall along with movement of heavy and bulky furniture in this area which still has its original wooden floors.
- o The fire escape at the west end of the building which is shown as being within the site is in fact the fire escape from the upper floor and therefore access from the theatre must be maintained at all times. It is questioned why this is being shown as part of the application site when none of the proposed flats have access to this area.
- o The theatre is in use continuously at weekends and on several evenings per week for rehearsals,

and on Saturday mornings to coach the youth group. Also, the stage crew are engaged in striking the set from the last production and building the set for the next production.

- o The trustees also hire the theatre to outside groups for a variety of performances and stage shows on several occasions each year. These can be varied and have included a live band, comedians and other theatre groups.
- o Parking is problematic in Abbot Street, and if charges are reinstated in the adjacent carpark, then residents may choose to park in Abbot Street.
- o The trustees have been in receipt of several noise complaints from the current tenants of the flats. This has included phone calls to the police and environmental health, plus contact via email, the Facebook page and in person from some of the occupants complaining of the noise. Along with complaints regarding the set building noise complaints have been received about patrons waiting on taxis and transport after the show and creating noise through chatting.
- o When these flats were created there was an issue with the theatres water supply being compromised and it had to pay an excess of £2000 in order to reroute its water supply and it is concerned there will be further issues along this line.
- o The trustees are concerned about noise transmission into the proposed flats and ask that if planning permission is granted then an appropriate condition be placed on that permission requiring the developer to install adequate sound installation to ensure that the use of the upper floor as a community theatre does not affect the occupants of the flats.

The main points in support of the application were as follows:

- o There are few suitable rental properties in the Arbroath area.
- o Existing residents are happy in the flats.
- o No tenants have complained about the noise from the theatre productions or set building in the areas above the flats. One enquiry about operating hours was misconstrued as a complaint.
- o The residents have been on the receiving end of aggressive and abusive behaviour from members of the theatre.

Development Plan Policies

NPF4 – national planning policies

Policy 1 Tackling the climate and nature crises
Policy 2 Climate mitigation and adaptation
Policy 3 Biodiversity
Policy 4 Natural places
Policy 7 Historic assets and places
Policy 9 Brownfield, vacant and derelict land and empty buildings
Policy 12 Zero waste
Policy 14 Design, quality and place
Policy 15 Local living and 20 minute neighbourhoods
Policy 16 Quality homes
Policy 22 Flood risk and water management
Policy 23 Health and safety
Policy 31 Culture and creativity

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities
Policy DS3 : Design Quality and Placemaking
Policy DS4 : Amenity
Policy TC2 : Residential Development
Policy TC8 : Community Facilities and Services
Policy PV8 : Built and Cultural Heritage
Policy PV15 : Drainage Infrastructure
Policy PV18 : Waste Management in New Development

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

In this case the development plan comprises: -

- National Planning Framework 4 (NPF4) (Published 2023)
- Angus Local Development Plan (ALDP) (Adopted 2016)

The development plan policies relevant to the determination of the planning application are reproduced at Appendix 1 and have been taken into account in preparing this report.

The ALDP was adopted in September 2016 while NPF4 was adopted in February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and the provision of a local development plan, whichever of them is the later in date is to prevail.

As indicated above, this site has some significant planning history and that is of some relevance in determining the current application. An application for change of use of the former children's nursery that occupied the ground floor of the building to form four flats was submitted in 2019. A noise impact assessment (NIA) was requested to consider the potential impact of noise from the adjacent theatre on the amenity of the proposed flats. Several iterations of the NIA were submitted and assessed by the council's environmental health service, but the final version of the document identified that significant noise impacts arising from workshop and set-building activities even with construction of the proposed use being completed and an acoustic ceiling in place. The application was withdrawn in February 2023, but the applicant proceeded to undertake the development in the full and certain knowledge there were issues causing impediment to the grant of planning permission, and that their actions represented a breach of planning control.

In this case the application is retrospective as the development has been undertaken and completed and the residential units are now occupied. However, the application should be considered in the normal manner having regard to the development plan and other material considerations.

The application site is located within the Development Boundary for Arbroath as identified in the ALDP. Policy DS1 in the ALDP states that proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP. Policy DS1 also indicates that in all locations proposals that make better use of vacant, derelict or under used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP. Policy 9 in NPF4 states that proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported.

NPF4 policy 16 deals with quality homes. Amongst other things, it provides support for proposals that improve affordability and choice. It indicates that proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where the proposal is supported by an agreed timescale for build-out, and the proposal is otherwise consistent with the plan spatial strategy and other relevant policies. Policy TC2 in the ALDP deals with all residential development proposals and indicates that proposals within development boundaries will be supported where the site is not protected for another use and is consistent with the character and pattern of development in the surrounding area. The policy also requires all proposals for new residential development to be compatible in terms of land use; to provide a satisfactory residential environment; not to result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and to include provision for affordable housing in accordance with Policy TC3 Affordable Housing.

The application site is not safeguarded or protected for another use. The development involves reuse of what was previously a vacant building, and it does not require unacceptable alteration to the fabric or appearance of the building. The roads service and Scottish Water have raised no objection, and the proposal is not of a scale or location where it would require a developer contribution or affordable housing having regard to the council's developer contributions and affordable housing supplementary guidance (2023). There is no reason to consider it would result in any unacceptable impacts on surrounding infrastructure.

However, the key issue in relation to the application is the compatibility of the proposed residential use with the adjoining theatre use, and the quality and acceptability of the residential amenity that would be provided for residents. Policy TC2 requires new residential development to be compatible in terms of land use and to provide a satisfactory residential environment. NPF4 Policy 23 (Health and Safety) states that *"development proposals that are likely to raise unacceptable noise issues will not be supported. The agent of change principle applies to noise sensitive development."* Policy 31 (Culture and Creativity) is more specific in this regard, and states that *"development proposals within the vicinity of existing arts venues will fully reflect the agent of change principle and will only be supported where they can demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that existing venues and facilities can continue without additional restrictions being placed on them as a result of the proposed new development."*

Available information suggests that the theatre has been in use for over 50 years. Available planning history does not identify that the use of the theatre is subject to any specific planning controls or restrictions that would provide safeguard to any neighbouring use. There are no controls for example in relation to operating hours, noise limits, or limitations on what activities can take place in different parts of the building. NPF4 policy seeks to ensure that the venue can continue to operate without additional restriction being placed on it because of new development.

The flats are located directly below and adjoin the theatre. Flat 4 is closest to and sits below the rear of the theatres stage. Available information indicates that the upper area of the building sitting above the flats is currently used for a range of purposes, such as changing, toilets, storage, and set making. A workshop for construction of sets and props is located in the upper floor area, and information indicates that these areas are used regularly, and as matters stand, without restriction or constraint. There is significant potential for transfer of noise from activities in the upper floor of the building to the lower floor and this was confirmed by NIAs submitted with the 2019 application.

The concurrent application for flats 3 and 4 (24/00179/FULL) is supported by a revised NIA, which considers background noise levels, and then noise levels over several nights of a pantomime performance at Christmas time in 2023. The noise assessment was carried out in flat 4, which as indicated above, is closest to the stage area of the theatre. The scope of the assessment was not agreed with the council's environmental health service despite prior knowledge of that services concern. The assessment seeks to demonstrate that a typical performance within the theatre does not impact on a reasonable level of residential amenity within the flats.

The council's environmental health service has reviewed the NIA. It has indicated that it does not accept that a pantomime performance represents a worst-case scenario for music and performance noise at a venue that can accommodate a wide range of music events. That position is supported in the consultation response provided by the Theatres Trust (a statutory consultee for applications of this nature). The Trust indicates that a pantomime performance is unlikely to be of greatest impact in terms of sound levels or vibrations and suggest that measurements should be carried out for amplified music with high levels of bass as well as for the use of construction/ machinery within the workshop and other areas where preparation of sets and equipment may occur. The council's environmental health service has similar concerns regarding the absence of meaningful assessment of noise arising from other activities within the theatre, particularly given the issues identified with those activities in previous NIAs submitted in relation to similar development at this location. The NIA provided as part of the 2019 application clearly identifies a noise level that is substantially in excess of a reasonable level of residential amenity within flats 1 and 2 and the revised NIA with application 24/00179/FULL specifically does not refute that finding. There is no restriction on the upper floor use of the theatre and there is no control on where lawful theatre activity takes place within the building. The measured noise associated with the building of sets in the upper floor

area, which can take place throughout the building, gives rise to noise levels far in excess of any criteria that could be considered acceptable in a residential setting. Both the Theatres Trust and the council's environmental health service object to the application on the basis there is no evidence to demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development. This is directly contrary to NPF4 policy 31.

The applicants suggests that the agent of change principle should not apply in this case as resultant noise levels from the theatre would also be incompatible with the previous lawful use the ground floor area as a children's nursery. That argument is facile and without merit. This development requires planning permission, and the relevant question is whether the unauthorised residential use is compatible with the lawful theatre use. A residential use is considered more sensitive to noise than the previous lawful use of the ground floor area. The Reporter who considered the appeal in relation to the enforcement notice at this property confirmed that '*... it is the applicant's responsibility to demonstrate that the potential impact on occupants has been assessed and that the proposed design incorporates appropriate measures to mitigate the impact. This is described in the Scottish Government's National Planning Framework 4 as the 'agent of change principle'. The extended period I have allowed for compliance enables the appellant to address this responsibility...*'. The appeal decision confirms that the 'agent of change principle' applies and the applicant has not addressed the issue despite the considerable period of time that has elapsed since the previous application was withdrawn and the unauthorised works completed.

In its representation on the application, the theatre club references receipt of several noise complaints from occupants of the unauthorised flats. While no evidence to substantiate that has been provided, it is of some relevance to note that in 2023 the council received a noise complaint from an occupant of one of the unauthorised flats. The complaint states: -

"We have just moved into flats below the Abbey Theatre. It's currently 8:30pm on a Wednesday night and the theatre are completing construction work directly above our flat. I understand it is run by volunteers, there has been no other noise. It must be the back of the store but it is constant drilling, sanding, banging, hammering from around 5-9pm at night everyday. I don't see how this is fair to be completed during weekdays and evenings? If anything it would be great to find out when their construction is due to be finished. I have attached a video where you can hear the banging. It is nonstop."

Conversely, letters of support suggest that occupants of the flats have not complained about noise and that correspondence received by the council was interpreted as a noise complaint rather than an enquiry about operating hours. Any reasonable reading of the 2023 correspondence suggests that noise associated with theatre activity is a matter of concern for the author. Irrespective of the attitude to noise of current residents, advice from the environmental health service is that predicted noise levels would likely be at a level that could cause issue for occupants of the flats. Legitimate complaint raised by occupants of the flats (existing or future) regarding noise generated by lawful activity in the theatre could result in restrictions being placed on the theatre and that is what NPF4 policy specifically seeks to avoid.

The applicant suggests that the upper floor is largely used as storage, and that it is '*more likely*' that set construction would take place on the stage itself rather than in the area above the flats, due to restricted access back to the stage area. However, that is not consistent with the information provided by the theatre club, and it is not consistent the activity reported in the complaint received in 2023, which referenced constant drilling, sanding, banging, hammering directly above a flat, and apparently within the workshop area. Irrespective, the upper floor of the building is not currently subject to any restriction in terms of what lawful theatre activity takes place where. There is currently no impediment to the upper floor area being used for other purposes, such as rehearsals, or even performances, without the need for further planning permission. The grant of permission for residential use at ground floor, could require additional controls to be imposed on the use of the upper floor area of the theatre in response to future complaints, which is in direct conflict with NPF4 Policy 31.

The Theatres Trust objects to the planning application on the grounds of negative impacts on the theatre's operations and in turn of sub-optimal living conditions for occupants arising from acoustic conflict. Those concerns are shared by the council's environmental health service and there appears reasonable evidence to support those concerns. In these circumstances the proposal does not comply with policy TC2 of the ALDP as the proposed use is not compatible with current uses in the area and as it does not

provide a satisfactory residential environment due to noise associated with the lawful use of the theatre. The proposal is contrary to NPF4 policies 23 and 31 as it conflicts with the agent of change principle set out in NPF4 as there is no evidence to demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.

The council's environmental health service has indicated that there may be a risk of contamination on the site. It is highlighted that there may have been storage of chemicals, vehicles, or fuel tanks, as well as processes in which chemicals were used that may have resulted in contamination either in the building or in outdoor areas. Prior to use of the building as a day nursery, the site was an engineering workshop and the change of use predated current controls for land contamination. As a result, a condition is recommended requiring the provision of a comprehensive contaminated land investigation report prior to development commencing, and implementation of any necessary remediation before occupation of the properties. That advice is consistent with advice provided by the service in relation to the 2019 application and it is consistent with the policies in the development plan. Notwithstanding that advice, the change of use of the building has been undertaken and the residential units occupied without provision of the identified information. As the application is retrospective, it is not possible to require the contaminated land assessment or remediation prior to development or occupation of the properties. This matter could potentially be addressed by a condition that requires provision of information and completion of remediation within a prescribed period, but at the current time the absence of evidence to demonstrate that there is not land contamination, including in garden areas, results in conflict with policy DS4 of the ALDP and policy 9 of NPF4.

NPF4 Policy 1 gives significant weight to the global climate and nature crises. Policy 2 requires proposals to be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible and requires that proposals are designed to adapt to current and future risks from climate change. Policy 3 requires proposals for local development to include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. The flats have been granted appropriate building warrants and completion certificates that demonstrate appropriate levels of sustainability. As this development seeks to re-use an existing building, there is little additional opportunity for sustainability measures or biodiversity gain, and therefore there is not considered to be a conflict with these policies.

The proposal does not comply with policies DS4 and TC2 of the ALDP or policies 9, 23, and 31 of NPF4 for the reasons set out above. As such it does not comply with policy DS1 of the ALDP, and it does not comply with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the LDP in circumstances where it is not consistent with other relevant policies. While the proposal attracts support from some development plan policies, residential use would not be compatible with the neighbouring theatre use and it would not provide a satisfactory residential environment for existing or future occupants by virtue of noise and disturbance from lawful use of the theatre. The provision of an acceptable residential environmental amenity is considered a fundamental requirement of any proposal for new dwellings. Furthermore, the risk of noise impacts may put the continued operation of the theatre, without additional controls on operations, at risk. A fundamental part of NPF4 policy is that existing arts venues can continue to operate without additional restriction because of new development. In these circumstances, the proposal is contrary to the development plan.

In addition to development plan policy, it is also necessary to have regard to other material considerations.

The fact that the application is retrospective is not a material justification to allow development that represents a departure from the development plan.

The letters of support provided by existing residents are noted. However, notwithstanding their currently stated opinions, advice provided by expert consultation bodies suggests that, having regard to available information regarding noise emissions arising from the theatre, any complaints from existing or future residents, would likely be justified and could require imposition of restrictions on the otherwise lawful operation of the theatre. Notwithstanding the indicated support, the provision of homes that do not meet acceptable amenity standards and that could result in restriction in use or operation of a community facility would not be in the public interest.

It is regrettable that existing residents will be disadvantaged by the refusal of planning permission, but this situation has arisen because a developer has chosen to wilfully undertake development in the knowledge that there were issues with the proposed use, and that the development was in breach of planning control. It is recognised that refusal of permission will have significant implications for those residents, but there is no evidence to demonstrate that it would cause them great hardship in circumstances where there are other housing opportunities in the area. It is not in the public interest to allow new housing that does not provide an acceptable residential amenity because a developer has chosen to undertake works in breach of planning control.

The applicant has identified that a national housing emergency has been declared and suggests that small sites of this nature can contribute to housing supply, particularly in circumstances where the local development plan is unlikely to be adopted until 2029. In this respect, it is relevant to note that the council's housing land audit 2023, which has been agreed with Homes for Scotland, identified that the effective housing land supply in the East Angus housing market area amounts to some 721 units, including 30 units on small sites. There is no evidence of a shortage of housing land in the housing market area and the four units proposed by this application are not material in terms of the available housing land supply. In addition, the declaration of a housing emergency does not justify the grant of planning permission for new homes that do not meet recognised amenity standards.

In conclusion the principle of residential development is generally consistent with the requirements of the development plan in terms of design, parking, and infrastructure, and the reuse of a previously vacant building provides some benefit. However, the proposal is contrary to development plan because it would not provide a reasonable level of residential amenity due to noise and disturbance from the adjacent theatre. Furthermore, the residential use may lead to a requirement to impose additional controls on the operation of the theatre contrary to the provisions of the development plan that seek to safeguard cultural venues. The theatre currently benefits from reasonable separation from the most noise sensitive uses, and introducing highly noise sensitive uses close by could lead to justifiable complaint from existing or future occupants. In addition, the proposal is contrary to development plan policy as it has not been demonstrated that the properties are not adversely affected by land contamination. The various representations and supporting information submitted in relation to the proposal have been considered, but there are no material matters that justify approval of the application contrary to the provisions of the development plan.

Decision

The application is Refused

Reason(s) for Decision:

1. The development does not comply with policy TC2 of the Angus Local Development Plan as it is not compatible with current land use in the area and as it would not provide a satisfactory residential environment by virtue of noise and disturbance associated with the existing lawful use of the adjacent theatre.
2. The development does not comply with NPF4 policies 23 and 31 as it is not consistent with the agent of change principle set out in NPF4 as it is likely to result in unacceptable noise issues given the proximity of the proposed residential units to the existing theatre, and it has not been demonstrated that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.
3. The development does not comply with policy DS4 of the Angus Local Development Plan and policy 9 of NPF4 as no assessment of potential land contamination has been submitted and it has not been demonstrated that the land is, or can be made, safe and suitable for the proposed new use.

4. The does not comply with policy DS1 of the Angus Local Development Plan Policy as it is not in compliance with other relevant policies of the plan, and it is not compatible with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the local development plan in circumstances where it is not consistent with other relevant policies.

Notes:

Case Officer: Ben Freeman
Date: 7th June 2024

Appendix 1 - Development Plan Policies

NPF4 – national planning policies

Policy 1 Tackling the climate and nature crises

When considering all development proposals significant weight will be given to the global climate and nature crises.

Policy 2 Climate mitigation and adaptation

- a) Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible.
- b) Development proposals will be sited and designed to adapt to current and future risks from climate change.
- c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.

Policy 3 Biodiversity

- a) Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
- b) Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:
 - i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
 - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
 - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
 - iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long- term retention and monitoring should be included, wherever appropriate; and
 - v. local community benefits of the biodiversity and/or nature networks have been considered.
- c) Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.
- d) Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. This will take into account the need to reverse biodiversity loss, safeguard the ecosystem services that the natural environment provides, and build resilience by enhancing nature networks and maximising the potential for restoration.

Policy 4 Natural places

- a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.
- b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an "appropriate assessment" of the implications for the conservation objectives.

c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:

- i. The objectives of designation and the overall integrity of the areas will not be compromised; or
- ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

All Ramsar sites are also European sites and/ or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.

d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:

- i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or
- ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.

e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.

f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.

g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:

- i) will support meeting renewable energy targets; or,
- ii) is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area.

All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration.

Policy 7 Historic assets and places

a) Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change.

Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records.

b) Development proposals for the demolition of listed buildings will not be supported unless it has been demonstrated that there are exceptional circumstances and that all reasonable efforts have been made to retain, reuse and/or adapt the listed building. Considerations include whether the:

- i. building is no longer of special interest;
- ii. building is incapable of physical repair and re-use as verified through a detailed structural condition survey report;
- iii. repair of the building is not economically viable and there has been adequate marketing for existing and/or new uses at a price reflecting its location and condition for a reasonable period to attract interest from potential restoring purchasers; or
- iv. demolition of the building is essential to delivering significant benefits to economic growth or the wider community.

- c) Development proposals for the reuse, alteration or extension of a listed building will only be supported where they will preserve its character, special architectural or historic interest and setting. Development proposals affecting the setting of a listed building should preserve its character, and its special architectural or historic interest.
- d) Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the:
- i. architectural and historic character of the area;
 - ii. existing density, built form and layout; and
 - iii. context and siting, quality of design and suitable materials.
- e) Development proposals in conservation areas will ensure that existing natural and built features which contribute to the character of the conservation area and its setting, including structures, boundary walls, railings, trees and hedges, are retained.
- f) Demolition of buildings in a conservation area which make a positive contribution to its character will only be supported where it has been demonstrated that:
- i. reasonable efforts have been made to retain, repair and reuse the building;
 - ii. the building is of little townscape value;
 - iii. the structural condition of the building prevents its retention at a reasonable cost; or
 - iv. the form or location of the building makes its reuse extremely difficult.
- g) Where demolition within a conservation area is to be followed by redevelopment, consent to demolish will only be supported when an acceptable design, layout and materials are being used for the replacement development.
- h) Development proposals affecting scheduled monuments will only be supported where:
- i. direct impacts on the scheduled monument are avoided;
 - ii. significant adverse impacts on the integrity of the setting of a scheduled monument are avoided;
- or
- iii. exceptional circumstances have been demonstrated to justify the impact on a scheduled monument and its setting and impacts on the monument or its setting have been minimised.
- i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.
- j) Development proposals affecting nationally important Historic Battlefields will only be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristics, physical remains and special qualities.
- k) Development proposals at the coast edge or that extend offshore will only be supported where proposals do not significantly hinder the preservation objectives of Historic Marine Protected Areas.
- l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.
- m) Development proposals which sensitively repair, enhance and bring historic buildings, as identified as being at risk locally or on the national Buildings at Risk Register, back into beneficial use will be supported.
- n) Enabling development for historic environment assets or places that would otherwise be unacceptable in planning terms, will only be supported when it has been demonstrated that the enabling development proposed is:
- i. essential to secure the future of an historic environment asset or place which is at risk of serious deterioration or loss; and
 - ii. the minimum necessary to secure the restoration, adaptation and long-term future of the historic

environment asset or place.

The beneficial outcomes for the historic environment asset or place should be secured early in the phasing of the development, and will be ensured through the use of conditions and/or legal agreements.

o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.

Where impacts cannot be avoided they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.

When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.

Policy 9 Brownfield, vacant and derelict land and empty buildings

a) Development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported. In determining whether the reuse is sustainable, the biodiversity value of brownfield land which has naturalised should be taken into account.

b) Proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by policies in the LDP.

c) Where land is known or suspected to be unstable or contaminated, development proposals will demonstrate that the land is, or can be made, safe and suitable for the proposed new use.

d) Development proposals for the reuse of existing buildings will be supported, taking into account their suitability for conversion to other uses. Given the need to conserve embodied energy, demolition will be regarded as the least preferred option.

Policy 12 Zero waste

a) Development proposals will seek to reduce, reuse, or recycle materials in line with the waste hierarchy.

b) Development proposals will be supported where they:

i. reuse existing buildings and infrastructure;

ii. minimise demolition and salvage materials for reuse;

iii. minimise waste, reduce pressure on virgin resources and enable building materials, components and products to be disassembled, and reused at the end of their useful life;

iv. use materials with the lowest forms of embodied emissions, such as recycled and natural construction materials;

v. use materials that are suitable for reuse with minimal reprocessing.

c) Development proposals that are likely to generate waste when operational, including residential, commercial, and industrial properties, will set out how much waste the proposal is expected to generate and how it will be managed including:

i. provision to maximise waste reduction and waste separation at source, and

ii. measures to minimise the cross-contamination of materials, through appropriate segregation and storage of waste; convenient access for the collection of waste; and recycling and localised waste management facilities.

d) Development proposals for waste infrastructure and facilities (except landfill and energy from waste facilities) will be only supported where:

i. there are no unacceptable impacts (including cumulative) on the residential amenity of nearby dwellings, local communities; the transport network; and natural and historic environment assets;

ii. environmental (including cumulative) impacts relating to noise, dust, smells, pest control and

pollution of land, air and water are acceptable;

iii. any greenhouse gas emissions resulting from the processing and transportation of waste to and from the facility are minimised;

iv. an adequate buffer zone between sites and sensitive uses such as homes is provided taking account of the various environmental effects likely to arise;

v. a restoration and aftercare scheme (including appropriate financial mechanisms) is provided and agreed to ensure the site is restored;

vi. consideration has been given to co-location with end users of outputs.

e) Development proposals for new or extended landfill sites will only be supported if:

i. there is demonstrable need for additional landfill capacity taking into account Scottish Government objectives on waste management; and

ii. waste heat and/or electricity generation is included. Where this is considered impractical, evidence and justification will require to be provided.

f) Proposals for the capture, distribution or use of gases captured from landfill sites or waste water treatment plant will be supported.

g) Development proposals for energy-from-waste facilities will not be supported except under limited circumstances where a national or local need has been sufficiently demonstrated (e.g. in terms of capacity need or carbon benefits) as part of a strategic approach to residual waste management and where the proposal:

i. is consistent with climate change mitigation targets and in line with circular economy principles;

ii. can demonstrate that a functional heat network can be created and provided within the site for appropriate infrastructure to allow a heat network to be developed and potential local consumers have been identified;

iii. is supported by a heat and power plan, which demonstrates how energy recovered from the development would be used to provide electricity and heat and where consideration is given to methods to reduce carbon emissions of the facility (for example through carbon capture and storage)

iv. complies with relevant guidelines published by Scottish Environment Protection Agency (SEPA); and

v. has supplied an acceptable decarbonisation strategy aligned with Scottish Government decarbonisation goals.

Policy 14 Design, quality and place

a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.

b) Development proposals will be supported where they are consistent with the six qualities of successful places:

Healthy: Supporting the prioritisation of women's safety and improving physical and mental health.

Pleasant: Supporting attractive natural and built spaces.

Connected: Supporting well connected networks that make moving around easy and reduce car dependency

Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.

Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.

Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.

Further details on delivering the six qualities of successful places are set out in Annex D.

c) Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported.

Policy 15 Local living and 20 minute neighbourhoods

a) Development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area, including local access to:

- o sustainable modes of transport including local public transport and safe, high quality walking, wheeling and cycling networks;
- o employment;
- o shopping;
- o health and social care facilities;
- o childcare, schools and lifelong learning opportunities;
- o playgrounds and informal play opportunities, parks, green streets and spaces, community gardens, opportunities for food growth and allotments, sport and recreation facilities;
- o publicly accessible toilets;
- o affordable and accessible housing options, ability to age in place and housing diversity.

Policy 16 Quality homes

a) Development proposals for new homes on land allocated for housing in LDPs will be supported.

b) Development proposals that include 50 or more homes, and smaller developments if required by local policy or guidance, should be accompanied by a Statement of Community Benefit. The statement will explain the contribution of the proposed development to:

- i. meeting local housing requirements, including affordable homes;
- ii. providing or enhancing local infrastructure, facilities and services; and
- iii. improving the residential amenity of the surrounding area.

c) 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:

- i. self-provided homes;
- ii. accessible, adaptable and wheelchair accessible homes;
- iii. build to rent;
- iv. affordable homes;
- v. a range of size of homes such as those for larger families;
- vi. homes for older people, including supported accommodation, care homes and sheltered housing;
- vii. homes for people undertaking further and higher education; and
- viii. homes for other specialist groups such as service personnel.

d) Development proposals for public or private, permanent or temporary, Gypsy/Travellers sites and family yards and Travelling Showpeople yards, including on land not specifically allocated for this use in the LDP, should be supported where a need is identified and the proposal is otherwise consistent with the plan spatial strategy and other relevant policies, including human rights and equality.

e) Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where:

- i. a higher contribution is justified by evidence of need, or
- ii. a lower contribution is justified, for example, by evidence of impact on viability, where proposals are small in scale, or to incentivise particular types of homes that are needed to diversify the supply, such as self-build or wheelchair accessible homes.

The contribution is to be provided in accordance with local policy or guidance.

- f) Development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where:
- i. the proposal is supported by an agreed timescale for build-out; and
 - ii. the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20 minute neighbourhoods;
 - iii. and either:
 - o delivery of sites is happening earlier than identified in the deliverable housing land pipeline. This will be determined by reference to two consecutive years of the Housing Land Audit evidencing substantial delivery earlier than pipeline timescales and that general trend being sustained; or
 - o the proposal is consistent with policy on rural homes; or
 - o the proposal is for smaller scale opportunities within an existing settlement boundary; or
 - o the proposal is for the delivery of less than 50 affordable homes as part of a local authority supported affordable housing plan.
- g) Householder development proposals will be supported where they:
- i. do not have a detrimental impact on the character or environmental quality of the home and the surrounding area in terms of size, design and materials; and
 - ii. do not have a detrimental effect on the neighbouring properties in terms of physical impact, overshadowing or overlooking.
- h) Householder development proposals that provide adaptations in response to risks from a changing climate, or relating to people with health conditions that lead to particular accommodation needs will be supported.

Policy 22 Flood risk and water management

- a) Development proposals at risk of flooding or in a flood risk area will only be supported if they are for:
- i. essential infrastructure where the location is required for operational reasons;
 - ii. water compatible uses;
 - iii. redevelopment of an existing building or site for an equal or less vulnerable use; or.
 - iv. redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long- term safety and resilience can be secured in accordance with relevant SEPA advice.

The protection offered by an existing formal flood protection scheme or one under construction can be taken into account when determining flood risk.

In such cases, it will be demonstrated by the applicant that:

- o all risks of flooding are understood and addressed;
- o there is no reduction in floodplain capacity, increased risk for others, or a need for future flood protection schemes;
- o the development remains safe and operational during floods;
- o flood resistant and resilient materials and construction methods are used; and
- o future adaptations can be made to accommodate the effects of climate change.

Additionally, for development proposals meeting criteria part iv), where flood risk is managed at the site rather than avoided these will also require:

- o the first occupied/utilised floor, and the underside of the development if relevant, to be above the flood risk level and have an additional allowance for freeboard; and
- o that the proposal does not create an island of development and that safe access/ egress can be achieved.

b) Small scale extensions and alterations to existing buildings will only be supported where they will not significantly increase flood risk.

c) Development proposals will:

- i. not increase the risk of surface water flooding to others, or itself be at risk.
- ii. manage all rain and surface water through sustainable urban drainage systems (SUDS), which should form part of and integrate with proposed and existing blue- green infrastructure. All proposals

should presume no surface water connection to the combined sewer;

iii. seek to minimise the area of impermeable surface.

d) Development proposals will be supported if they can be connected to the public water mains. If connection is not feasible, the applicant will need to demonstrate that water for drinking water purposes will be sourced from a sustainable water source that is resilient to periods of water scarcity.

e) Development proposals which create, expand or enhance opportunities for natural flood risk management, including blue and green infrastructure, will be supported.

Policy 23 Health and safety

a) Development proposals that will have positive effects on health will be supported. This could include, for example, proposals that incorporate opportunities for exercise, community food growing or allotments.

b) Development proposals which are likely to have a significant adverse effect on health will not be supported. A Health Impact Assessment may be required.

c) Development proposals for health and social care facilities and infrastructure will be supported.

d) Development proposals that are likely to have significant adverse effects on air quality will not be supported. Development proposals will consider opportunities to improve air quality and reduce exposure to poor air quality. An air quality assessment may be required where the nature of the proposal or the air quality in the location suggest significant effects are likely.

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

f) Development proposals will be designed to take into account suicide risk.

g) Development proposals within the vicinity of a major accident hazard site or major accident hazard pipeline (because of the presence of toxic, highly reactive, explosive or inflammable substances) will consider the associated risks and potential impacts of the proposal and the major accident hazard site/pipeline of being located in proximity to one another.

h) Applications for hazardous substances consent will consider the likely potential impacts on surrounding populations and the environment.

i) Any advice from Health and Safety Executive, the Office of Nuclear Regulation or the Scottish Environment Protection Agency that planning permission or hazardous substances consent should be refused, or conditions to be attached to a grant of consent, should not be overridden by the decision maker without the most careful consideration.

j) Similar considerations apply in respect of development proposals either for or near licensed explosive sites (including military explosive storage sites).

Policy 31 Culture and creativity

a) Development proposals that involve a significant change to existing, or the creation of new, public open spaces will make provision for public art. Public art proposals which reflect diversity, culture and creativity will be supported.

b) Development proposals for creative workspaces or other cultural uses that involve the temporary use of vacant spaces or property will be supported.

c) Development proposals that would result in the loss of an arts or cultural venue will only be supported where:

i. there is no longer a sustainable demand for the venue and after marketing the site at a reasonable rate for at least 12 months, through relevant local and national agents and online platforms,

there has been no viable interest from potential operators; or

- ii. the venue, as evidenced by consultation, no longer meets the needs of users and cannot be adapted; or
- iii. alternative provision of equal or greater standard is made available at a suitable location within the local area; and
- iv. the loss of the venue does not result in loss or damage to assets or objects of significant cultural value.

d) Development proposals within the vicinity of existing arts venues will fully reflect the agent of change principle and will only be supported where they can demonstrate that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that existing venues and facilities can continue without additional restrictions being placed on them as a result of the proposed new development.

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- o Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.
- o Safe and Pleasant: Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of

landscaping and open space are incorporated and linked to existing green space wherever possible.

- o Well Connected: Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- o Adaptable: Where development is designed to support a mix of compatible uses and accommodate changing needs.
- o Resource Efficient: Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC2 : Residential Development

All proposals for new residential development*, including the conversion of non-residential buildings must:

- o be compatible with current and proposed land uses in the surrounding area;
- o provide a satisfactory residential environment for the proposed dwelling(s);
- o not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and
- o include as appropriate a mix of house sizes, types and tenures and provision for affordable housing in accordance with Policy TC3 Affordable Housing.

Within development boundaries Angus Council will support proposals for new residential development where:

- o the site is not allocated or protected for another use; and
- o the proposal is consistent with the character and pattern of development in the surrounding area.

In countryside locations Angus Council will support proposals for the development of houses which fall

into at least one of the following categories:

- o retention, renovation or acceptable replacement of existing houses;
- o conversion of non-residential buildings;
- o regeneration or redevelopment of a brownfield site that delivers significant visual or environmental improvement through the removal of derelict buildings, contamination or an incompatible land use;
- o single new houses where development would:
 - o round off an established building group of 3 or more existing dwellings; or
 - o meet an essential worker requirement for the management of land or other rural business.
- o in Rural Settlement Units (RSUs)**, fill a gap between the curtilages of two houses, or the curtilage of one house and a metalled road, or between the curtilage of one house and an existing substantial building such as a church, a shop or a community facility; and
- o in Category 2 Rural Settlement Units (RSUs), as shown on the Proposals Map, gap sites (as defined in the Glossary) may be developed for up to two houses.

Further information and guidance on the detailed application of the policy on new residential development in countryside locations will be provided in supplementary planning guidance, and will address:

- o the types of other buildings which could be considered suitable in identifying appropriate gap sites for the development of single houses in Category 1 Rural Settlement Units, or for the development of up to two houses in Category 2 Rural Settlement Units.
- o the restoration or replacement of traditional buildings.
- o the development of new large country houses.

*includes houses in multiple occupation, non-mainstream housing for people with particular needs, such as specialist housing for the elderly, people with disabilities, supported housing care and nursing homes.

**Rural Settlement Units are defined in the Glossary and their role is further explained on Page 9.

Policy PV8 : Built and Cultural Heritage

Angus Council will work with partner agencies and developers to protect and enhance areas designated for their built and cultural heritage value. Development proposals which are likely to affect protected sites, their setting or the integrity of their designation will be assessed within the context of the appropriate regulatory regime.

National Sites

Development proposals which affect Scheduled Monuments, Listed Buildings and Inventory Gardens and Designed Landscapes will only be supported where:

- the proposed development will not adversely affect the integrity of the site or the reasons for which it was designated;
- any significant adverse effects on the site or its setting are significantly outweighed by social, environmental and/or economic benefits; and
- appropriate measures are provided to mitigate any identified adverse impacts.

Proposals for enabling development which is necessary to secure the preservation of a listed building may be acceptable where it can be clearly shown to be the only means of preventing its loss and securing its long term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully in order to preserve or enhance the character and setting of the listed building.

Regional and Local Sites

Development proposals which affect local historic environment sites as identified by Angus Council (such as Conservation Areas, sites of archaeological interest) will only be permitted where:

- supporting information commensurate with the site's status demonstrates that the integrity of the historic environment value of the site will not be compromised; or
- the economic and social benefits significantly outweigh the historic environment value of the site.

Angus Council will continue to review Conservation Area boundaries and will include Conservation Area Appraisals and further information on planning and the built and cultural heritage in a Planning Advice Note.

Policy PV15 : Drainage Infrastructure

Development proposals within Development Boundaries will be required to connect to the public sewer where available.

Where there is limited capacity at the treatment works Scottish Water will provide additional wastewater capacity to accommodate development if the Developer can meet the 5 Criteria*. Scottish Water will instigate a growth project upon receipt of the 5 Criteria and will work with the developer, SEPA and Angus Council to identify solutions for the development to proceed.

Outwith areas served by public sewers or where there is no viable connection for economic or technical reasons private provision of waste water treatment must meet the requirements of SEPA and/or The Building Standards (Scotland) Regulations. A private drainage system will only be considered as a means towards achieving connection to the public sewer system, and when it forms part of a specific development proposal which meets the necessary criteria to trigger a Scottish Water growth project.

All new development (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDs) to accommodate surface water drainage and long term maintenance must be agreed with the local authority. SUDs schemes can contribute to local green networks, biodiversity and provision of amenity open space and should form an integral part of the design process.

Drainage Impact Assessment (DIA) will be required for new development where appropriate to identify potential network issues and minimise any reduction in existing levels of service.

*Enabling Development and our 5 Criteria (<http://scotland.gov.uk/Resource/0040/00409361.pdf>)

Policy PV18 : Waste Management in New Development

Proposals for new retail, residential, commercial, business and industrial development should seek to minimise the production of demolition and construction waste and incorporate recycled waste into the development.

Where appropriate, Angus Council will require the submission of a Site Waste Management Plan to demonstrate how the generation of waste will be minimised during the construction and operational phases of the development.

Development proposals that are likely to generate waste when operational will be expected to include appropriate facilities for the segregation, storage and collection of waste. This will include provision for the separate collection and storage of recyclates within the curtilage of individual houses.

Policy TC8 : Community Facilities and Services

The Council will encourage the retention and improvement of public facilities and rural services.

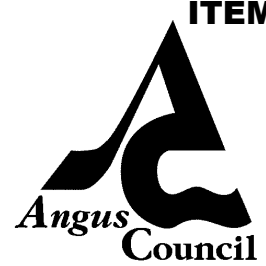
Proposals resulting in the loss of existing public community facilities will only be supported where it can be demonstrated that:

- o The proposal would result in the provision of alternative facilities of equivalent community benefit and accessibility; or
- o The loss of the facility would not have an adverse impact on the community; or
- o The existing use is surplus to requirements or no longer viable; and
- o No suitable alternative community uses can be found for the buildings and land in question.

The Council will seek to safeguard rural services that serve a valuable local community function such as local convenience shops, hotels, public houses, restaurants and petrol stations. Proposals for alternative uses will only be acceptable where it can be demonstrated that:

- o the existing business is no longer viable and has been actively marketed for sale as a going concern at a reasonable price/rent for a reasonable period of time;
- o the building is incapable of being reused for its existing purpose or redeveloped for an appropriate local community or tourism use; or
- o equivalent alternative facilities exist elsewhere in the local community.

New community facilities should be accessible and of an appropriate scale and nature for the location. In the towns of Angus, and where appropriate to the type of facility, a town centre first approach should be applied to identifying a suitable location.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013

PLANNING PERMISSION REFUSAL
REFERENCE : 24/00199/FULL

To Ms Mayara Agnes
c/o A B Roger & Young
12 Clerk Street
Brechin
Angus
DD9 6AE

With reference to your application dated 4 April 2024 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street Arbroath DD11 1HH for Ms Mayara Agnes

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Refuse Planning Permission (Delegated Decision)** for the said development in accordance with the particulars given in the application and plans docqueted as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. The development does not comply with policy TC2 of the Angus Local Development Plan as it is not compatible with current land use in the area and as it would not provide a satisfactory residential environment by virtue of noise and disturbance associated with the existing lawful use of the adjacent theatre.
2. The development does not comply with NPF4 policies 23 and 31 as it is not consistent with the agent of change principle set out in NPF4 as it is likely to result in unacceptable noise issues given the proximity of the proposed residential units to the existing theatre, and it has not been demonstrated that measures can be put in place to ensure that existing noise and disturbance impacts on the proposed development would be acceptable and that the theatre could continue without additional restrictions being placed on it as a result of the proposed new development.
3. The development does not comply with policy DS4 of the Angus Local Development Plan and policy 9 of NPF4 as no assessment of potential land contamination has been submitted and it has not been demonstrated that the land is, or can be made, safe and suitable for the proposed new use.
4. The does not comply with policy DS1 of the Angus Local Development Plan Policy as it is not in compliance with other relevant policies of the plan, and it is not compatible with policy 16 of NPF4 as it involves provision of new homes on land not allocated for housing in the local development plan in circumstances where it is not consistent with other relevant policies.

Amendments:

The application has not been subject of variation.

Dated this 7 June 2024
Jill Paterson
Service Lead
Planning and Sustainable Growth
Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

The duration of any permission granted is set out in conditions attached to the permission. Where no conditions are attached the duration of the permission will be in accordance with sections 58 and 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

NOTICES

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 03452 777 780
E-mail: planning@angus.gov.uk
Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure)
(Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to The Planning and Environmental Appeals Division, Scottish Government, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure)
(Scotland) Regulations 2013 – Schedule to Form 2

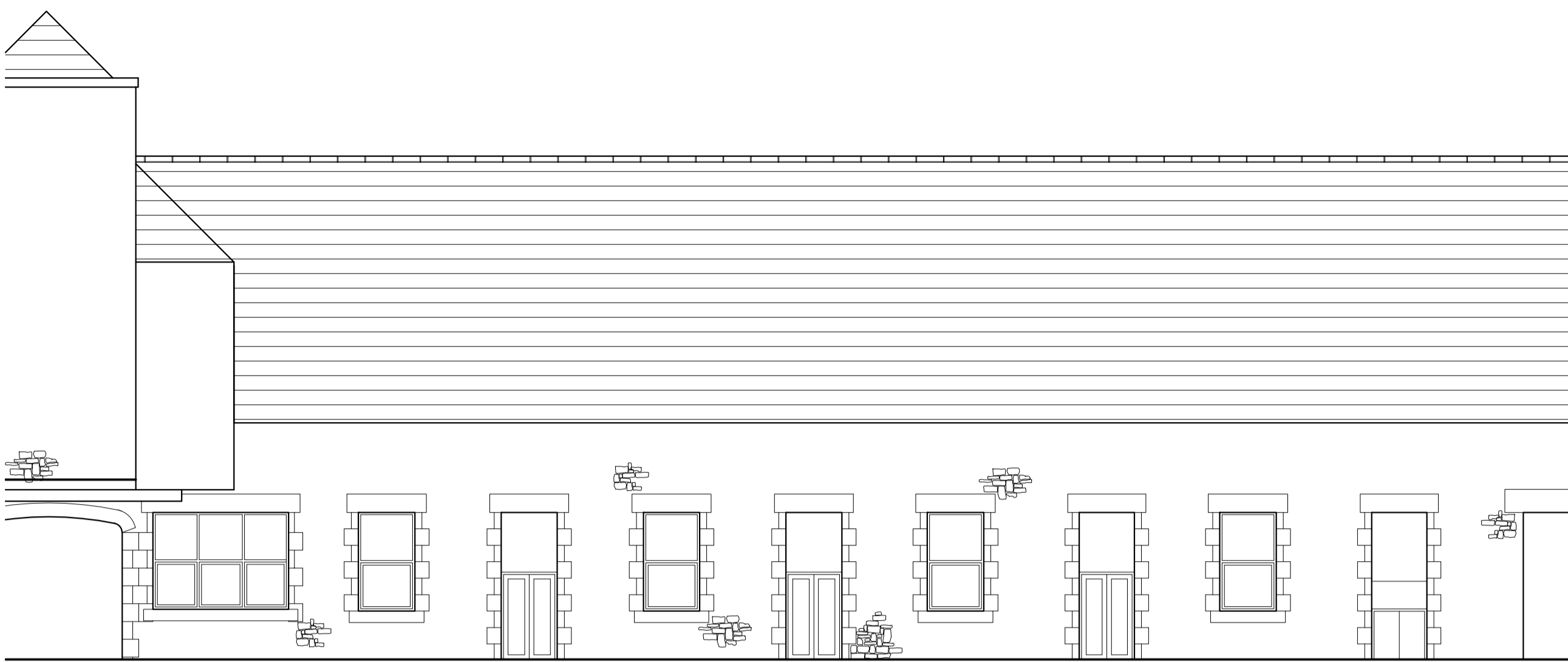
*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

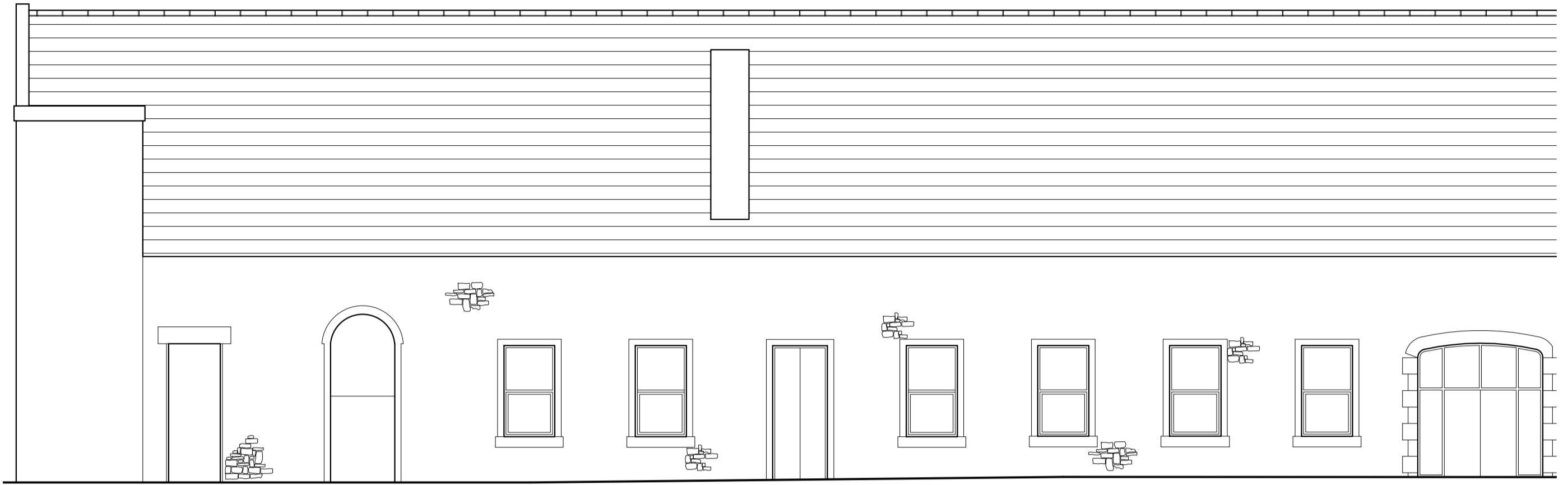
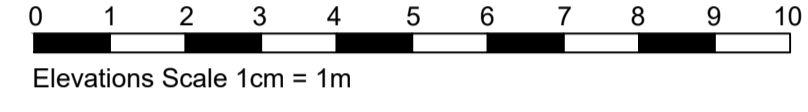
the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

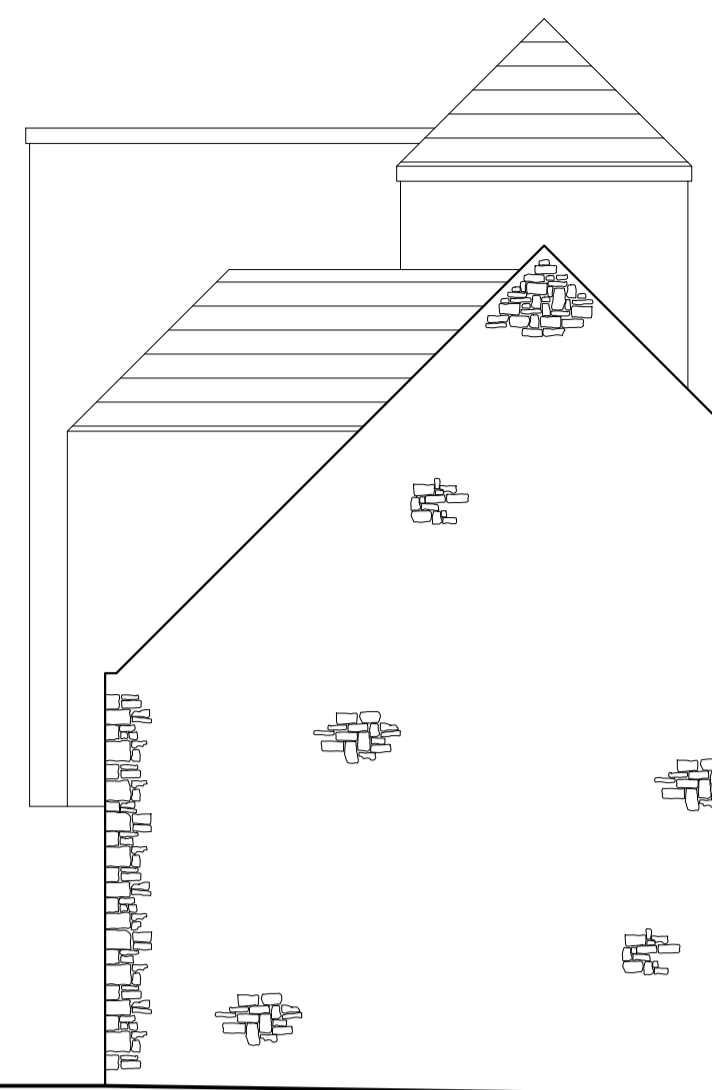
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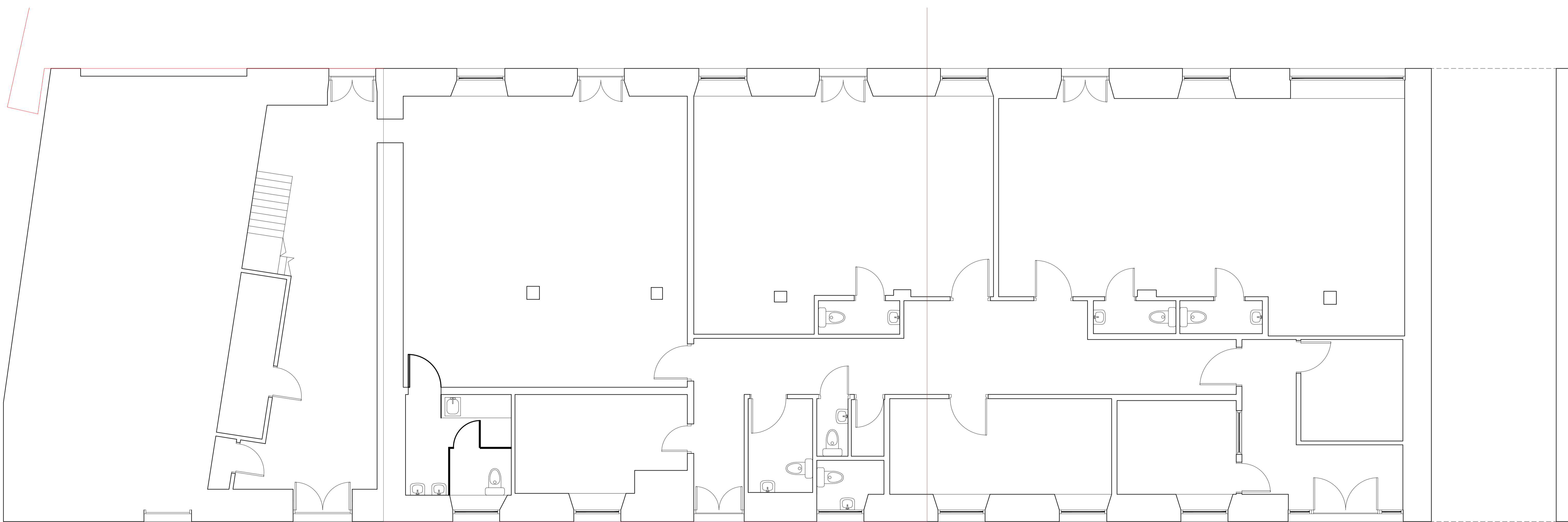
North-West Elevation - Scale 1.100







South-East - Scale 1.100

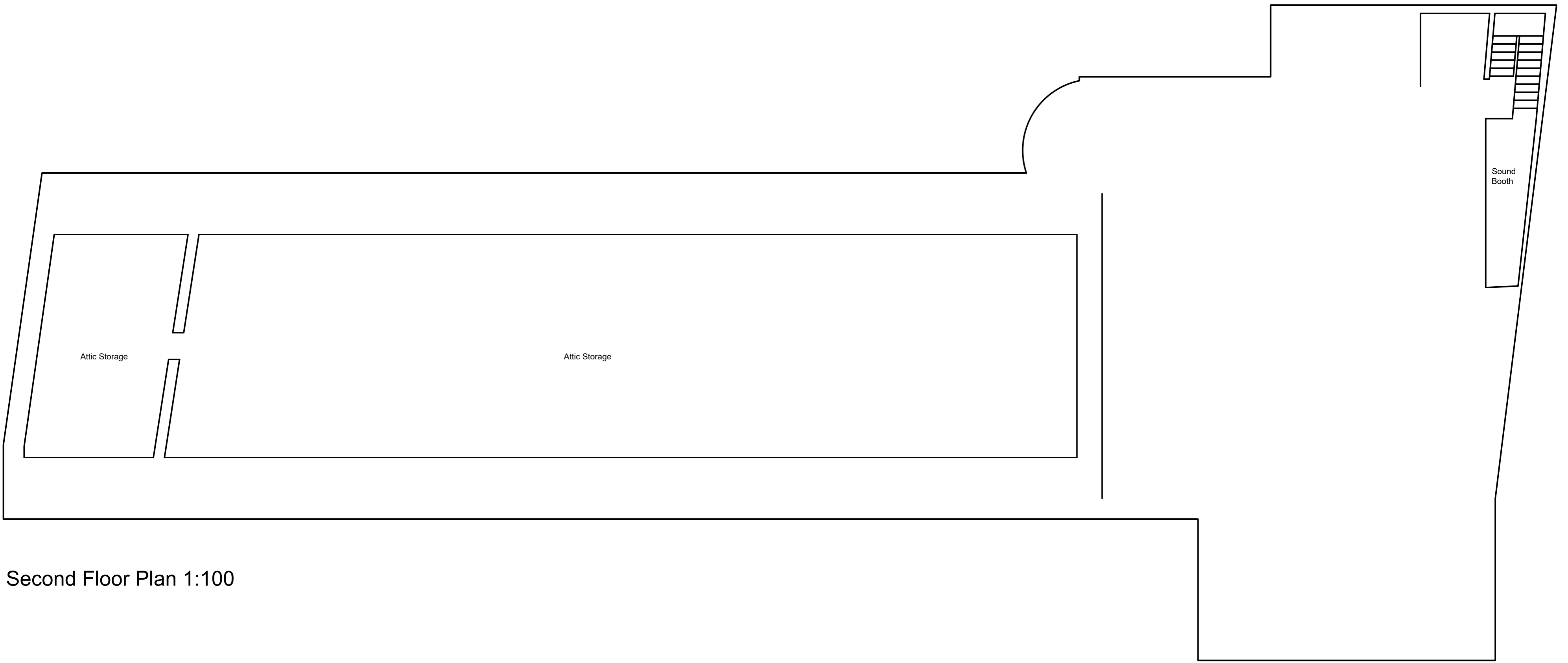


South-West Elevation - Scale 1.100

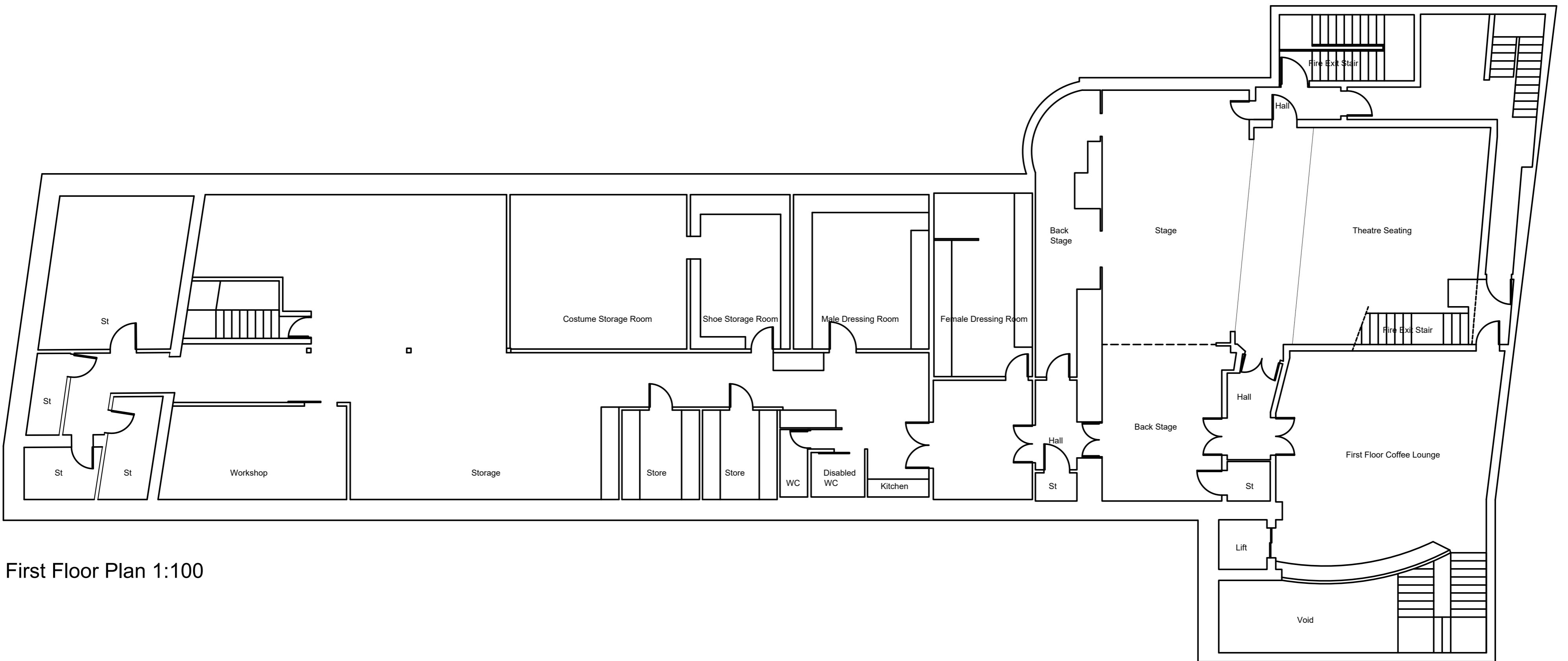


Ground Floor Plan - Scale 1.50

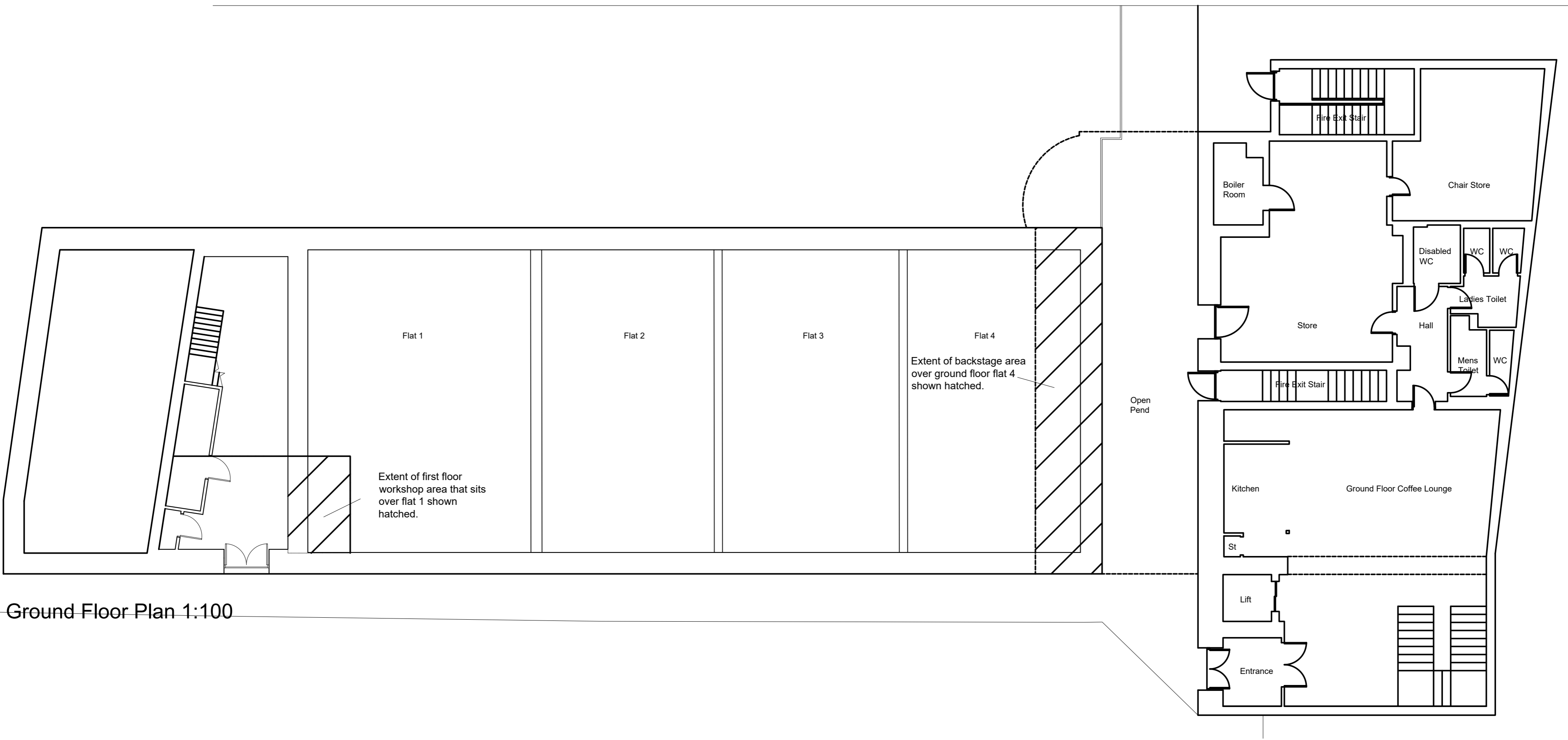
	<p>Scale - A1</p>  <p>1:100 Scale 1cm = 1m</p>  <p>1:50 Scale 1cm = 0.5m</p>	<p>Drawing Title</p> <p style="text-align: center;">Existing Plan & Elevation</p>	<p>Drawn By</p> <p style="text-align: center;">KM</p>	<p>Drawn By</p> <p style="text-align: center;">SWP</p>	<p>Revisions</p>	<p>Job Title:</p> <p style="text-align: center;">Proposed Alterations to form Domestic Flats at 34 & 36 Abbot Street, Arbroath - Units 1 & 2 Retrospective Application</p>	
		<p>Drawing No.</p> <p style="text-align: center;">2024 ASA 04</p>	<p>Date</p> <p style="text-align: center;">February 2024</p>	<p>DO NOT SCALE FROM DRAWINGS</p> <p><small> Crown Copyright and Database Right All Rights Reserved Ordnance Survey Licence no. 1000171</small></p>			



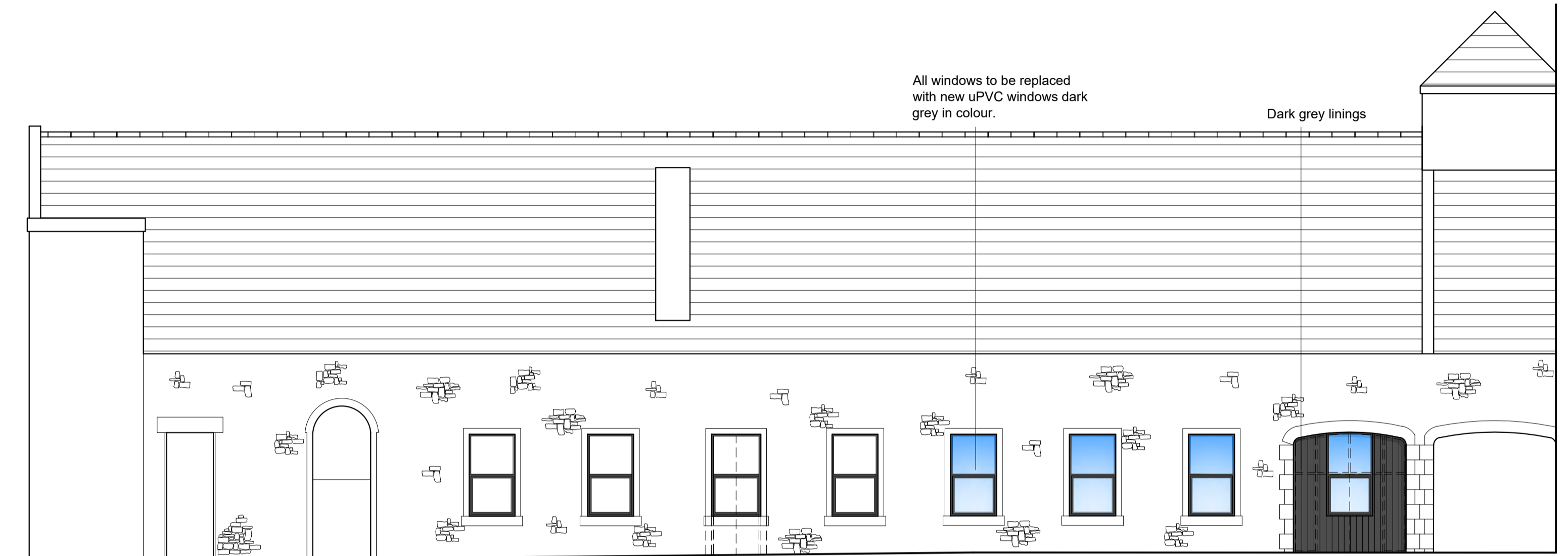
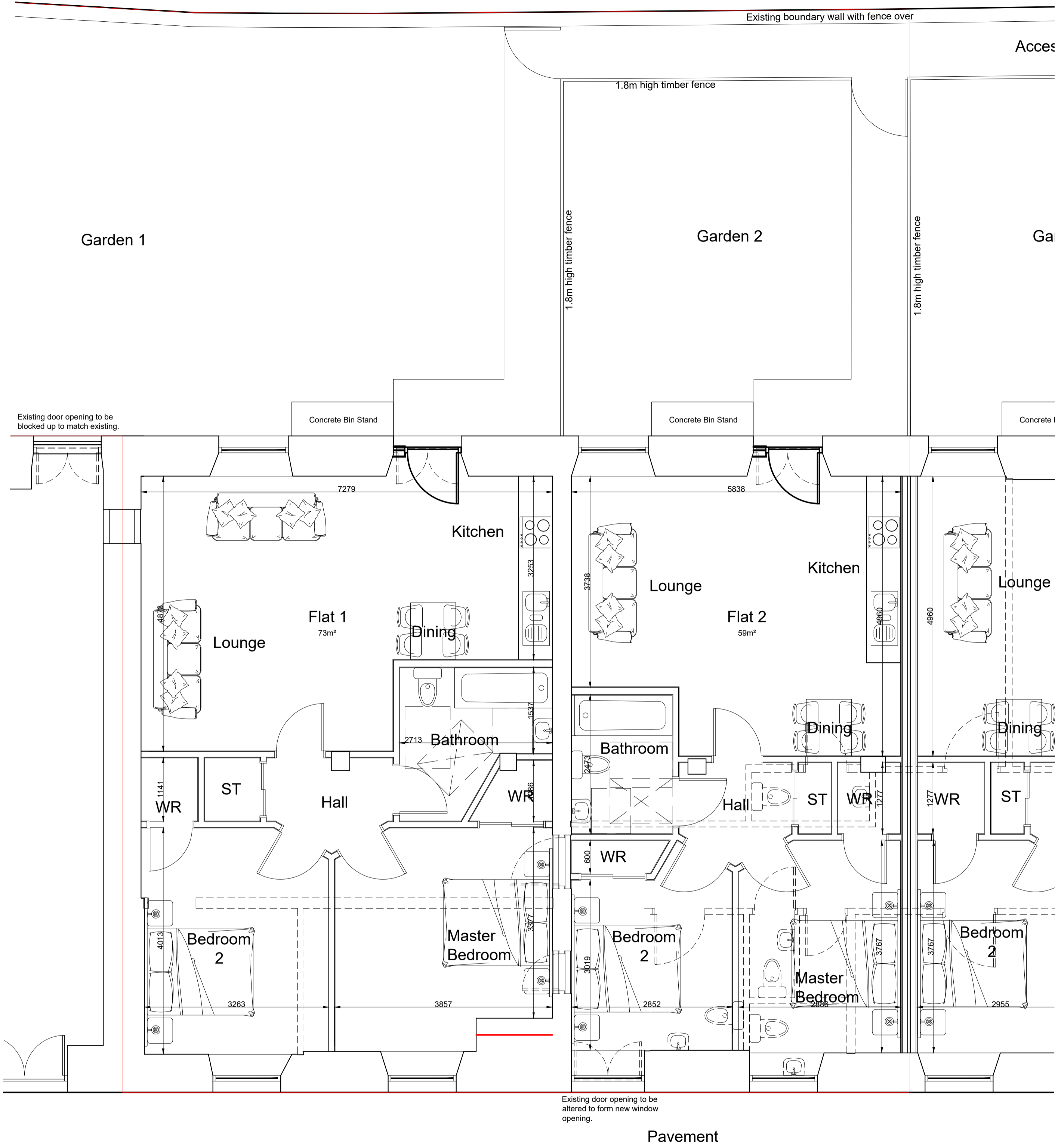
Second Floor Plan 1:100



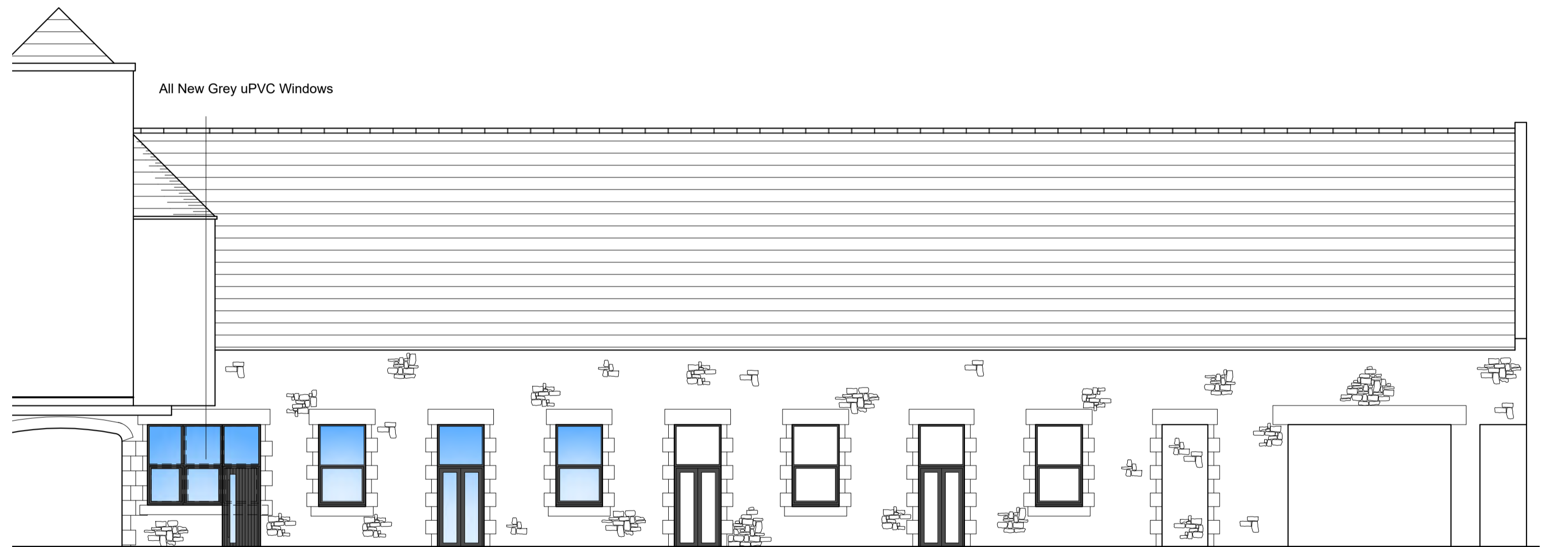
First Floor Plan 1:100



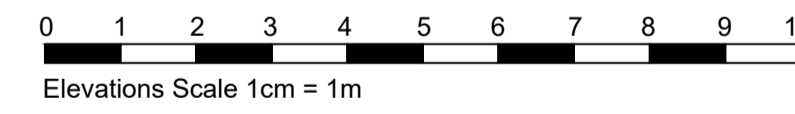
Ground Floor Plan 1:100


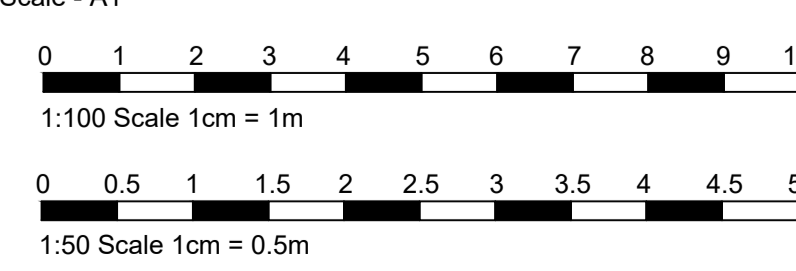



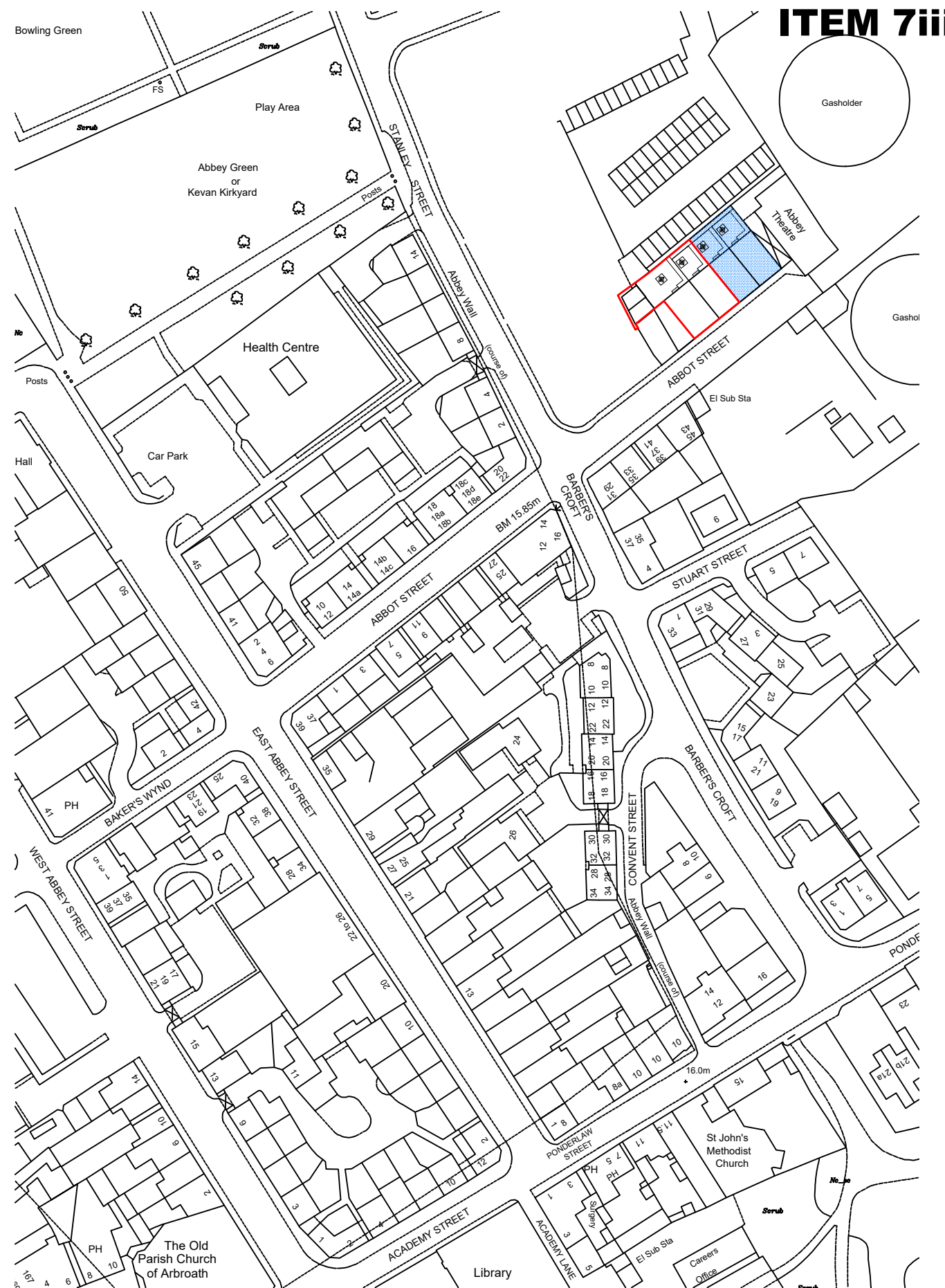
South-East Elevation - Scale 1:100



North-West Elevation - Scale 1:100



 <p>12 Clerk Street, Brechin, DD9 6AE www.abrogerandyoung.com Tel: 01356 622125</p>	<p>Scale - A1</p>  <p>1:100 Scale 1cm = 1m 1:50 Scale 1cm = 0.5m</p>	<p>Drawing Title</p> <p style="text-align: center;">Proposed Plan & Elevation</p>	<p>Drawn By</p> <p style="text-align: center;">KM</p>	<p>Drawn By</p> <p style="text-align: center;">SWP</p>	<p>Revisions</p>	<p>Job Title:</p> <p style="text-align: center;">Proposed Alterations to form Domestic Flats at 34 & 36 Abbot Street, Arbroath - Units 1 & 2 Retrospective Application</p>	
		<p>Drawing No.</p> <p style="text-align: center;">2024 ASA 05</p>	<p>Date</p> <p style="text-align: center;">February 2024</p>	<p>DO NOT SCALE FROM DRAWINGS</p> <p><small>Crown Copyright and Database Right. All Rights Reserved. Ordnance Survey Licence no. L100171.</small></p>			



Site Plan - Scale 1.250

Location Plan - Scale 1.1250

	Scale - A3 0 12.5 25 37.5 50 62.5 1:1250 Scale 1cm = 12.5m	Drawing Title Existing & Proposed Site & Location	Drawn By KM	Checked By SWP	Revisions	Job Title: Proposed Alterations to form Domestic Flats at 34 & 36 Abbot Street, Arbroath - Units 1 & 2 Retrospective Application	
	0 2.5 5 7.5 10 12.5 1:250 Scale 1cm = 2.5m	Drawing No. 2024 ASA 06	Date February 2024	DO NOT SCALE FROM DRAWINGS <small> Crown Copyright and Database Right. All Rights Reserved. Ordnance Survey License no. L1000111</small>			

A.B Roger & Young Ltd

Chartered Architect, Planners & Surveyors

12 Clerk Street, Brechin, DD9 6AE

Tel: 01356 622125

Email: info@abrogerandyoung.com
Website: www.abrogerandyoung.com

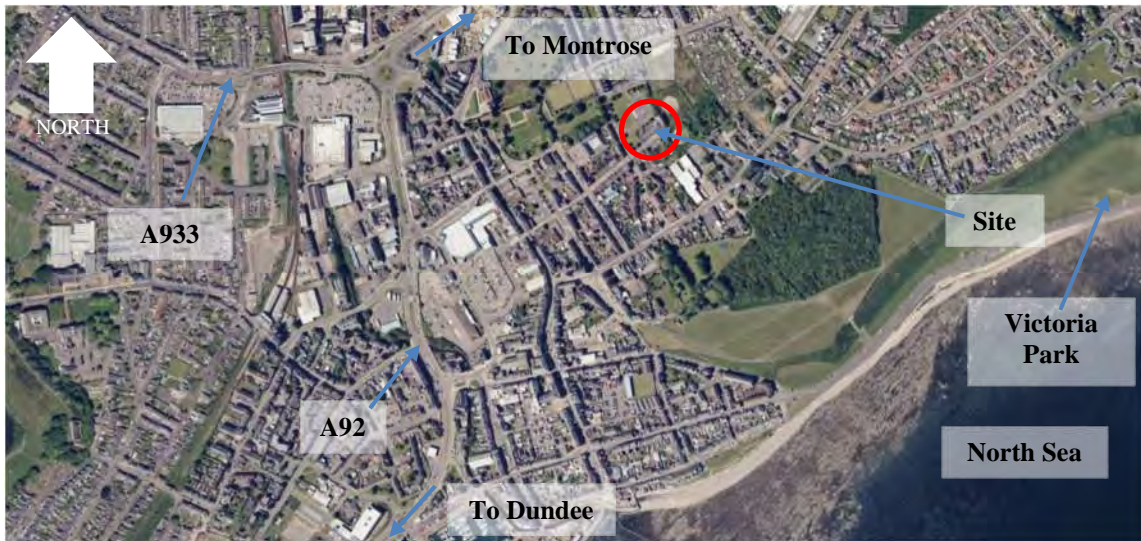


Proposed Alterations to Form Domestic Flats **At 34 & 36 Abbot Street, Arbroath – Units 1 & 2** **Retrospective Application**

Site Analysis and Background

The proposed site is located within the Angus town of Arbroath. Situated at the north-eastern end of Abbot Street, the site is an existing building which was most previously used as a day nursery. After the nursery closed, the building sat empty for over 2 years despite being advertised for sale as a going concern. Our previous client bought the property with the vision of converting it into domestic properties rather than seeing another property sit empty within the town of Arbroath.. Numbers 34 - 40 are bounded by Abbot Street to the South-East, Abbey Theatre to the North-East, a former gas-works site to the South West (now empty and cleared) and a public car park to the North-West. Access to the nursery was taken from Abbot Street.





Site Photographs



Proposed building and Abbey Theatre building



Proposed building



Proposed building



Proposed building and Abbey Theatre Building



Proposed building



North-West elevation – used as nursery garden.



North-West elevation – used as nursery garden.



Abbey Theatre building cantilever over pend



Common Pend

Background History

A full Planning Application for this site was originally submitted on 9th September 2019 and registered on 2nd October 2019 – ref: 19/00691/FULL, in general principles the reuse of an existing building within the settlement of Arbroath would comply with the policies of the Angus Local Development Plan 2016. Initially, no objection was made by the Environmental Health Service. As the application was being processed disappointingly, a number of objections to the application were received from the neighbouring theatre building resulting in Environmental Health changing its stance on the application. As a result the applicant at the time undertook discussions with the Environmental Health Service of Angus Council with numerous Noise Impact Assessments being lodged in support of the application. Unfortunately, due to continually changing parameters being set by the EHO, no solution to the noise issue could be agreed at that time. As a result, and reluctantly, the application was withdrawn on the 1st of February 2023.

Details of the original application progress are below -

Numerous consultees commented on the previous application:

- Scottish water: Scottish water were happy that there was sufficient capacity in the Lintrathen Water Treatment works for the additional surface water and there was sufficient capacity at the Hatton PFI Waste Water Treatment Works for the additional foul water, as such they had no objections.
- Archaeology: There was no archaeological mitigation required for this project.
- Roads Department: There was no objection submitted by the roads department.
- Environmental Health Service (Contamination): There was no objection to the application from the EHS.
- Health and Safety Executive: Initially HSE raised concerns regarding the application in relation to its distance from a hazardous site – former gas works opposite however once further details were provided this objection was removed.

Initial issues raised about the original proposals were -

- 18th of October 2019 Environmental Health confirmed they did not object to the proposals, however following the objection letters from Abbey Theatre and Theatres Trust this statement was withdrawn on 6th November 2019.
- 23rd of October 2019 Abbey Theatre Group wrote a letter through their solicitors asking that the proposals would take the noise between the theatre group and domestic properties below into account when designing the properties.
- This was then expanded on by the Abbey Theatre on the 25th of October to detail how their actions may impact upon the domestic properties below:

-
- The Theatres Trust, a national advisory public body established in 1978, who seeks to safeguard theatres sent a letter of objection on 21st November 2019. They highlighted the issues of having domestic properties adjacent to a theatre and how noise disturbances could be an issue for both parties involved.

Following these comments, an initial noise survey was carried out by E2 Consultants, this found the flats at present fail but presented a solution to resolve this.

- This led to an email from Thorntons Solicitors on the 7th of February 2020 on behalf of the Abbey Theatre Group which indicated that the issues regarding noise transference were satisfactory resolved and stated that their clients ‘only further comment is to say that if the Council are minded to grant the application they make it a condition that the applicants carry out and install all of the recommendations made by the Environmental Noise Survey.’ Our client at the time confirmed that they were more than happy to do this.
- By this point it was felt that the issues were resolved, and that Planning Approval would be forthcoming, thus the building warrant application was submitted.
- This was further backed up by email correspondence from Environmental Health on the 13th of February 2020 which stated that EH objection would be removed subject to the sound mitigation detailed within the NIA being conditioned within the approval.
- However, on 17/2/2020 the Theatres Trust sent in correspondence which stated that they still objected to the proposals as they felt the conditioning was not enough, and they felt a legal agreement would need to be signed, this was backed by an email from Thorntons Solicitors – again our client at the time confirmed he would be happy to enter into any legal agreement necessary to allow the application to move forward.

Following this continued objection, Environmental Health reassessed the application and Noise Impact Assessment’s submitted and on 4/7/2020 revoked their previous comments dated 13/2/2020.

Their new findings felt that:

- Live performances noise levels above the flats were not considered within the NIA.
- During tool testing the noise was not accurate as the circular saw (deemed loudest) was not consistent throughout the whole test.
- The NIA had allowed for a complete floor whereas the theatre floor has considerable gaps which would allow noise to penetrate – as such the flooring above the joists should be discounted from all future calculations.

As a result of the noise issues highlighted, a further NIA was carried out and submitted however further concerns from EH were brought to the table, these were -

NIA's :

- NR32: was not being met due to workshop equipment noise.
- NR61: was not being met due to set building.
- NR18: was not being met due to performance activities.

These comments were challenged at the time by our clients Noise Assessor - CSP Acoustics - as it was felt that the results for the workshop and set building shown were correct and although failing felt the results with regards to performance activities were sufficient also however EH would not change their stance with regards to this.

It should be noted that these additional points came about following numerous site meetings between EH and the neighbouring theatre group. Requests were made by our client at the time to arrange a meeting with EH to personally discuss options on how to deal with these additional requirements but this request was denied.

Our client at the time engaged a total of three different noise assessment companies during this application process with each company attempting to mitigate the points raised by EH and numerous additional revised noise reports being submitted but Environmental Health's concerns could not be resolved with the final of their objections being on 5/5/2022. Our client's noise assessor continued to try and engage with EH on these matters but the application was later withdrawn on 1/2/23. It should be noted that all 3 noise consultants engaged by our previous client stated at the time that the level requirements set by EH were extreme.

As mentioned above a Building Warrant Application was submitted on 4th February 2020 following discussions with Environmental Health as it was believed all matters relating to their objection were now resolved. This application was processed by Building Standards quickly with approval being granted on the 8th April 2020.

The Building Warrant Approval for this site was released just two weeks after the UK entered the first Covid19 national lockdown.

Once it was realized that this lockdown was not going to be just a couple weeks as initially intended our then client made the decision to commence works on site as being a small joinery business it would not have survived furloughing his employees, instead he chose to have one man work on each of the flats which enabled isolated working but also allowed for the company to remain operational. It was not expected at any point that the covid pandemic would affect the country for 2 years. Given that all works associated with the flatted development were completed by the end of the first lockdown our client made the decision to obtain all relevant completion certification from Building Standards on 20/12/21.

The properties then sat empty for almost 1 year prior to the clients decision to move

tenants into the properties being made.

It should also be noted that Planning Approval for 75 domestic housing units has been granted on the neighbouring site under approval ref: 08/01020/FUL which has recently had a PAN application submitted under Ref: 23/00455/PAN.

Proposals

The proposal is to convert a redundant day nursery building into 4 domestic properties, this is a retrospective application for flats 1 & 2 of that development. The relevant policy within the Angus Council Local Development Plan which supports this proposal is Policy TC2.

This policy states:

Policy TC2 Residential Development

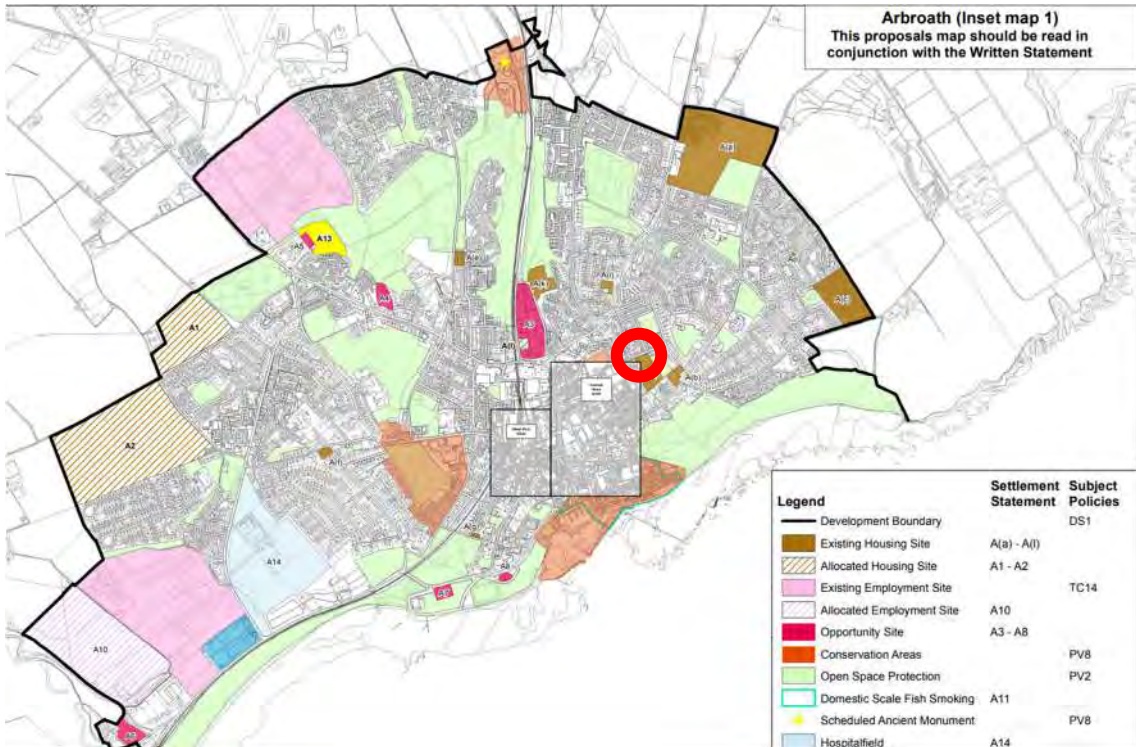
All proposals for new residential development, including the conversion of non-residential buildings must:

- *Be compatible with current and proposed land uses in the surrounding area.*
- *Provide a satisfactory residential environment for the proposed dwellings.*
- *Not result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure*
- *Include as appropriate a mix of house sizes, types and tenures and provision for affordable housing in accordance with Policy TC3 Affordable Housing.*

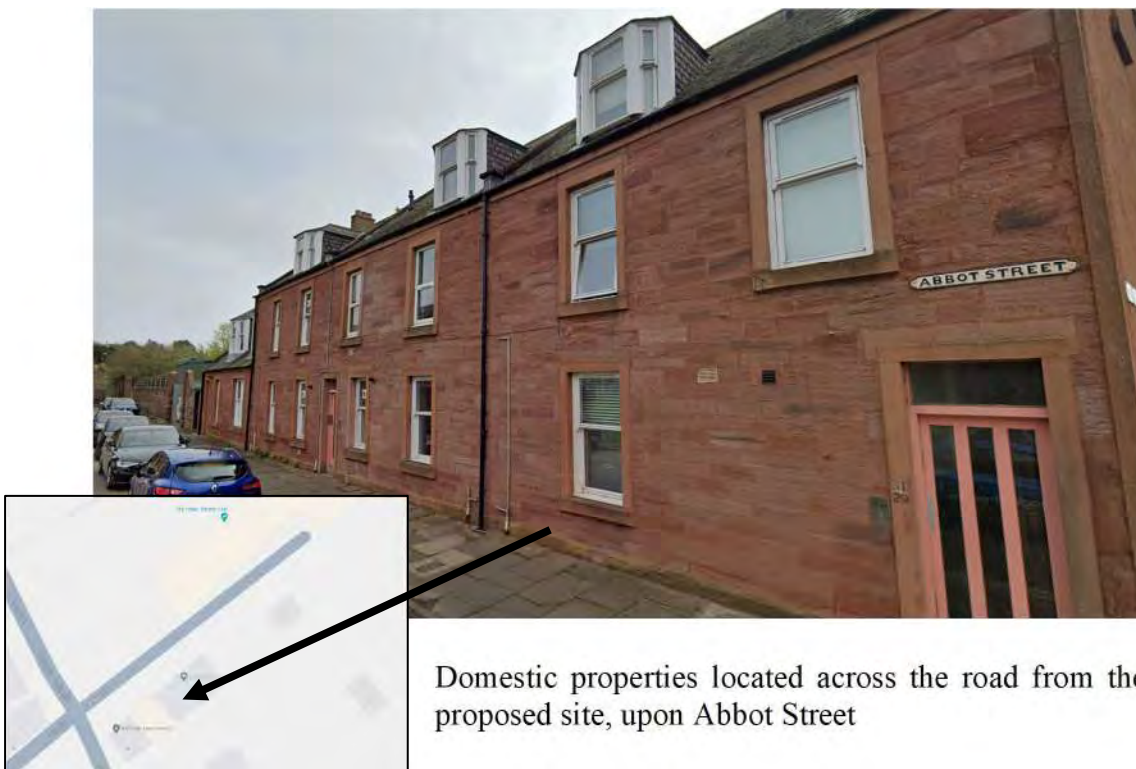
Within development boundaries Angus Council will support proposals for new residential development where:

- ***The site is not allocated or protected for another use.***
- ***The proposal is consistent with the character and pattern of development in the surrounding area***

The site is located within the Arbroath development boundary and has not been marked for another use.

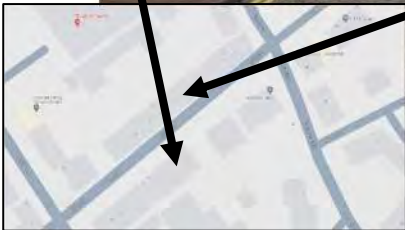


The proposals will be consistent with the surrounding area. The properties upon the surrounding streets, specifically Abbot Street and Stanley Street comprise of lots of terraced properties and flats, these can be seen in the images below:

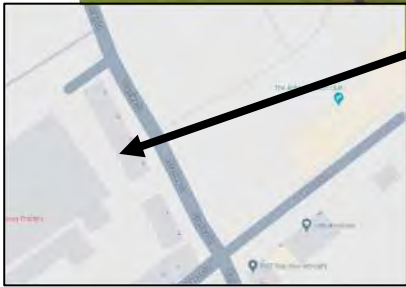




Domestic properties located south-west of the site, upon Abbot Street and Stanley Street



Domestic properties located south-west of the site, upon Abbot Street



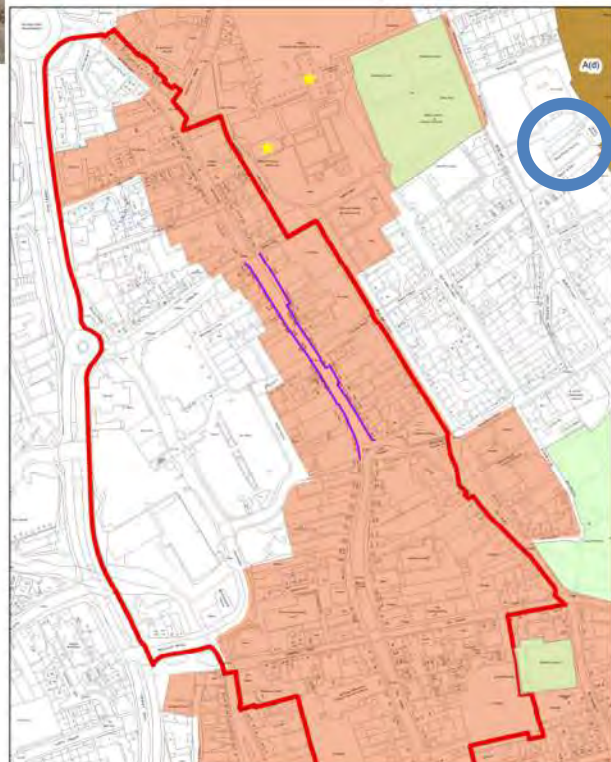
Domestic properties located upon Stanley Street



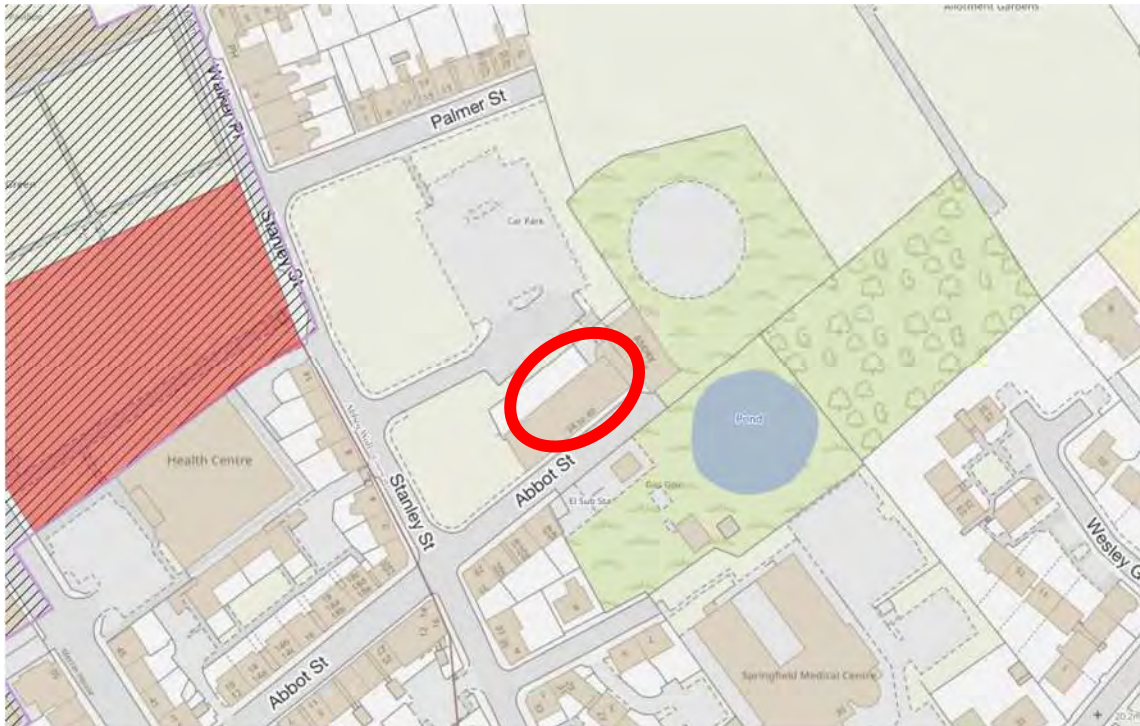
The proposed flats for the site will give a terraced appearance which is in-keeping with the surrounding buildings. This can be seen from the above image of the completed flats.

Central Area Inset Map

Legend	Settlement Statement	Subject Policies
Scheduled Ancient Monument		PV8
Opportunity Site	A9	TC18
Core Retail Area		TC17 - TC19
Town Centre		PV2
Open Space Protection		PV8
Conservation Areas	A(h), A(j)	
Existing Housing Site	A9	
Freight Facility		



The site, highlighted blue to contrast the other annotations, is not located with either the town centre of a conservation area.



Although located near the conservation area the proposed site is not within the conservation area or highlighted as a listed building.

The proposals are consistent with overarching aims of The National Planning Framework 4, some key policies are listed below:

Policy 7 – Historic Assets and Places

As mentioned above the site is located outside of the conservation area and is not a building of notable interest. However, this policy looks to ensure proposals near listed buildings and conservation areas will not be detrimental to their setting. The proposed site will not have any detrimental changes in its characteristics which would have an adverse effect on the listed setting. There are to be very little external changes to the building so the appearance will be the same. This can be seen in the before and after pictures of the buildings South-East and North-West elevations shown below.



Policy 9 – Brownfield, vacant and derelict land, and empty buildings

As mentioned, the site is an existing building which was home to a nursery. The nursery has since closed and the building has sat empty for an extensive amount of time, the proposed flats will bring life back to the building and prevent the building sitting redundant and decaying.

Policy 14 – Design, Quality and Place

The site will meet the 6 qualities of a successful place:

Healthy – a healthy building will have access to green space, there are lots of green spaces available to the site within walking distance. These are highlighted on the map below.

Red – Site

Blue – Green space at the proposal

Purple – Victoria Park (10 Minute Walk)

Pink – Springfield Park (5 Minute Walk)

Orange – Spider Park (1 Minute Walk)

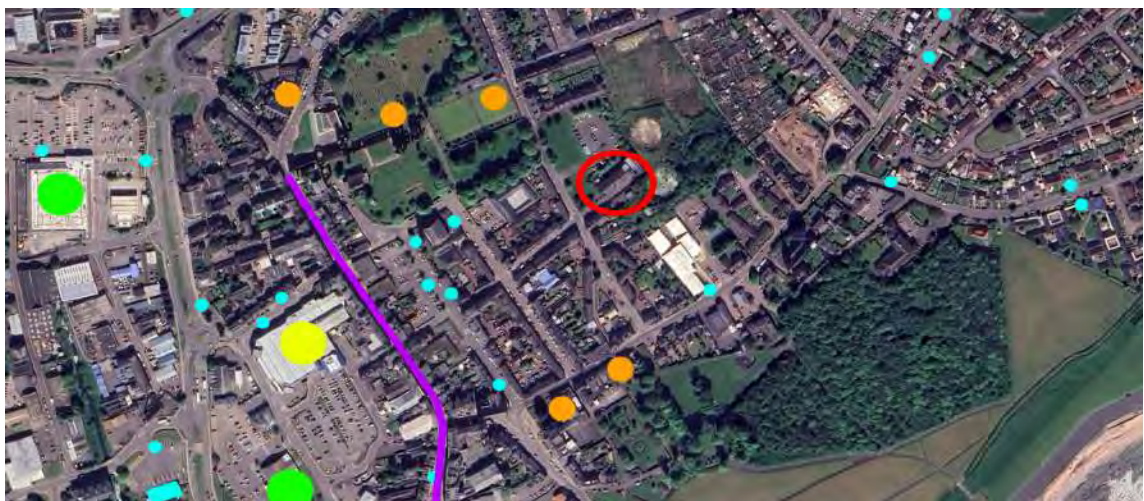
Yellow – Seaton Park (13 Minute Walk)

Green – Beach (11 Minute Walk)



Pleasant – The proposals are a sufficient distance away from the sea and are elevated to such an extent that they are safe from sea level rising. The buildings are of a high standard so provide a pleasant living environment.

Connected – successful sites are connected, as mentioned above the proposed site is well connected to green spaces. But in addition, the site is well connected to a variety of local amenities. The below image shows the site in location to several of these amenities.



Red – Site
Purple – Arbroath High Street
Blue Dot – Bus Stops
Blue Building – Bus Station
Green – Supermarket
Yellow – Shopping Centre
Orange – Library, churches, Arbroath Abbey etc.

As can be seen the site has good access to a very large range of amenities, with Morrisons Supermarket (green dot to west) being the furthest away at around a 10-minute walk.

Distinctive – The proposals will be of appropriate scale, height, and orientation as it is existing. The materials are already as existing with the only notable change being grey uPVC windows. These provide a sleek and modern finish.

Sustainable – there will be no detriment to any blue or green infrastructure which are both located near or at the site as works are to be contained within the current building.

Adaptable – the building has already been adapted from its previous use as a nursery to the proposed domestic properties, this shows the building is adaptable.

Policy 15 – Local Living and 20-minute neighbourhoods

Within a town it's ideal if a home can be within a 20-minute walk from everything someone needs. Below are some examples of this site meeting the requirements:

- *Public Transport*
 - *There are a large number of bus stops (as indicated above) within a 20- minute walk from the site.*
 - *The nearest bus stop is a 3 minute walk away*
 - *The bus station is a 10 minute walk from site*
 - *The train station is a 12 minute walk from site*
- *Employment*
 - *Obviously it depends on the persons job, but there are job opportunities within a 20 minute walk*
 - *High street provides lots of job opportunities – 4 minute walk*
 - *Dentist & Doctors – 11 minute walk*
 - *Lindsay Street industrial area – 12 minute walk*
- *Shopping*
 - *The high street as mentioned – 4 minute walk*
 - *Abbeygate Shopping Centre is within a 6 minute walk*
 - *Morrisons supermarket is an 11 minute walk*
 - *Lidl is an 8 minute walk from the site*
- *Health and social care*
 - *Springfield Dentist is an 11 minute walk*
 - *Doctors are also located at Springfield Dentist*
 - *Arbroath Medical Centre is a 6 minute walk*
- *Childcare & Schools*
 - *Little Einsteins Nursery is located across the road from the site upon Abbot Street*
 - *Lillie Pond Nursery is a 19 minute walk*

- *Arbroath College is located an 18 minute walk*
- *Helping hands located at Angus College*
- *Ladyloan School is within a 13 minute walk*
- *Abberystwyth Campus (which has 2 schools and a nursery condensed into one unit) is an 8 minute walk*
- *Arbroath Academy is a 20 minute walk*
- *Although just out of the 20 minute walk, Arbroath High School is a 29 minute walk*
- *Playgrounds, community parks & allotments*
 - *As indicated above, lots of playgrounds, community parks are within a 20 minute walk*
- *Sports and recreational facilities*
 - *Saltire Sports Centre is within a 15 minute walk*
 - *Abbey Bowling Club is within a 2 minute walk*
 - *Although just out, Arbroath Sports Centre is a 29 minute walk*
- *Public toilets*
 - *The nearest public toilets is at the Bus station – a 10 minute walk.*

Policy 20 – Blue and Green infrastructure

As mentioned above, the proposals will not cause any detriment to any blue or green infrastructure.

Policy 22 – Flood Risk and Water Management

The proposals are away from any flood risk.

Policy 23 – health and Safety

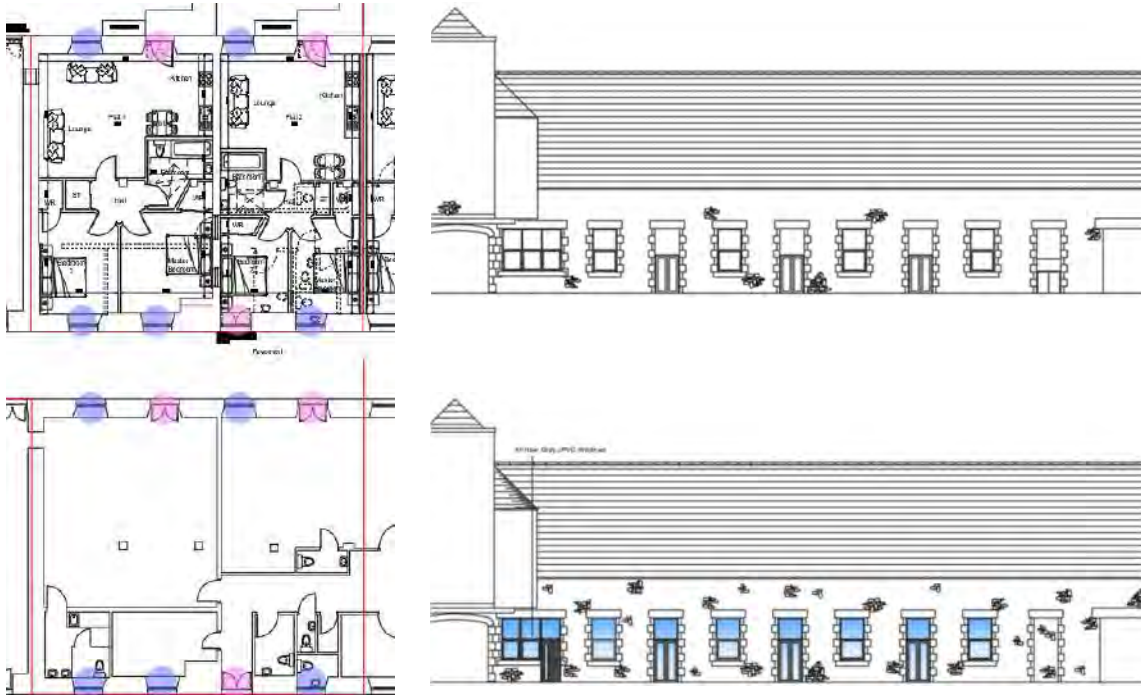
The site is not located upon a hazardous site or near any hazardous substances. The site is not near a source of loud or constant noise or near any site that is a source of poor air quality.

Policy 27 – City, Town, Local and Commercial Centres

Similar to the 20-minute neighborhood policy, this policy supports town centre living, this proposal is located within the town centre and has clearly demonstrated the benefits of this.

Design

The former day nursery divided well into 4 units, this application is however only for 2 of these – units 1 & 2. Thanks to the number of existing doors to the nursery garden the proposals are able to keep the external appearance almost unchanged, with only one noticeable alteration to either elevation. Blue indicates the windows and doors which are the same, pink indicates the windows and doors which are being altered.



As you can see the north-west elevation is very similar in appearance.

Tenants

As mentioned earlier within this accompanying statement our client at the time chose to put tenants into these properties rather than having them sitting empty. The tenants have occupied these properties since December 2022 without issue and have never complained about noise from the neighbouring theatre group. Letters of Support from these tenants will be submitted under separate cover.

Conclusion

We are of the opinion that these proposals are in keeping with the relevant policies of the Angus Local Development Plan and National Planning Framework 4. We feel that although previous noise issues were presented during the previous application, these issues were primarily associated with the theatre's workshop area and Units 1 & 2 which were located directly below.

We are of the belief that the revised NIA clearly demonstrates that ongoing productions within the Abbey Theatre will have minimal impact on Units 3 & 4 when used as residential dwellings and that this evidence has been produced during the loudest and busiest times that could have been recorded within the theatre itself.

We hope that you look favorably upon this application.

A.B ROGER & YOUNG LTD
CHARTERED ARCHITECT
February 2024 - KM

A.B Roger & Young Ltd

Chartered Architect, Planners & Surveyors

12 Clerk Street, Brechin, DD9 6AE
Tel: 01356 622125

Email: info@abrogerandyoung.com
Website: www.abrogerandyoung.com



SP/AB

30th May 2024

Ben Freeman
Planning Officer
Development Standards
Angus Council

Dear Ben

34 Abbot Street, Arbroath & 36 Abbot Street, Arbroath
Planning Ref. No's 24/00199/FULL

I refer to the above application currently pending consideration and note that the Scottish Government recently declared a national housing emergency. I further note with the significant delay in the next Angus Local Development Plan, which is now not due to be adopted until 2029 at the earliest, small sites, such as that proposed, can make a valid contribution to increasing housing supply within the area providing modest and therefore affordable homes for local people close to services and amenities.

As you know the units subject of the applications are currently rented with the residents very happy and wishing to stay in the premises. They experience no issue of noise from the theatre, due no doubt to the fact that the units have been extremely well insulated for noise and that the upper floor of this section of the building is used primarily for storage.

While we understand that there is an outstanding objection from the Environmental Health Officer, we have been unable to meet with the EHO to discuss their concerns and the parameters of the Noise Assessment. We would welcome this opportunity and can be available at your convenience to meet to discuss the issue of noise.

Yours sincerely
For A B Roger & Young Ltd

Stephen Pirie
Senior Architectural Technician



Directors
Ashleigh H Wilson BSc (Hons), PgDip, RIBA, RIAS
Stephen W Pirie HNC Architectural Technology
Registered in Scotland No: 472189 VAT • Reg No: 266432650
Registered Office at: Trail Drive, Montrose DD10 8SW



FURTHER LODGED REPRESENTATIONS

From: [REDACTED]
To: [Laura Stewart](mailto:Laura.Stewart)
Subject: Re: Application for Review - 34 Abbot Street, Arbroath
Date: 02 September 2024 18:36:04

I reiterate our support for this development which from my experience provides high quality residential accommodation. I can confirm that I experience no issue of noise from the theatre.

If required councillors are welcome to visit our houses and satisfy themselves.
Many Thanks Chris

On 2 Sep 2024, at 10:47, Laura Stewart <StewartLD@angus.gov.uk> wrote:

Dear Sir/Madam

**Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
Application for Review – Refusal of Planning Permission for the Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street Arbroath DD11 1HH - Ms Mayara Agnes
Application No 24/00199/FULL – DMRC 7/24**

I refer to the above planning application and your lodged representations to that application.

I write to advise you that the applicant has made an application for a review of the decision taken by the Service Lead – Planning and Sustainable Growth. This is a process brought in by the above legislation to enable applicants dissatisfied with a decision of the Planning Authority to ask for it to be reviewed. This review will be considered by Angus Council's Development Management Review Committee. A copy of the Council's Decision Notice is attached for your information.

In accordance with the above Regulations, I am required to ask you if you wish to make any further representations. The Review Committee will be given copies of your original representation. If you do wish to do so, you have 14 days from the date of receipt of this email to make such representations. **These should be sent directly to me.**

The applicant will then be sent a copy of these representations and the applicant will be entitled to make comments on them. These comments will also be placed before the Review Committee when it considers the review.

I can also advise that a copy of the Notice of Review and other

documents related to the review can be viewed by contacting me directly.

In the meantime, should you have any queries please do not hesitate to contact me.

Kind regards
Laura

Laura Stewart - Committee and Elections Officer – Legal, Governance and Change Services -Angus Council
Tel: 01307 491804- E-mail: StewartLD@angus.gov.uk

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<decision notice.pdf>

From: [Tom Clarke](#)
To: [Laura Stewart](#)
Subject: RE: Application for Review - 38 Abbot Street, Arbroath
Date: 09 September 2024 14:23:13

Dear Laura

Thank you for notifying Theatres Trust of the Applications for Review for the two applications impacting the Abbey Theatre Club, at 34 and 38 Abbot Street (24/00179/FUL and 24/00199/FUL).

Our submitted comments for both application remain current. We concur with the assessment and conclusion of the respective Reports of Handling. We would additionally note that in addition to the applications being in conflict with relevant NPF4 policy on 'agent of change' and Policy DS4 of the Council's Local Development Plan, the Review decision must also take account the provisions within the Planning (Scotland) Act 2019 particularly should it choose to depart from current decisions and advice.

Should the Review overturn the current decisions to refuse permission, it is essential that robust planning conditions are in place to manage impacts on residents whilst not impacting on the activities and operations of the theatre. Similarly the legislative position is clear that additional costs must not be placed on the theatre.

Theatres Trust as the national advisory public body for theatres and a statutory consultee within the planning system would be happy to be called upon by the Review Committee to offer further objective advice, including on the wording of planning conditions, should it be required.

Kind regards,

Tom Clarke MRTPI
National Planning Adviser

Theatres Trust

22 Charing Cross Road, London WC2H 0QL

T 020 7836 8591

E tom.clarke@theatretrust.org.uk

W theatretrust.org.uk

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Save energy and paper.

From: Laura Stewart <StewartLD@angus.gov.uk>
Sent: 02 September 2024 10:35
Subject: Application for Review - 38 Abbot Street, Arbroath

Dear Sir/Madam

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
Application for Review – Refusal of Planning Permission for the Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 38 Abbot Street Arbroath DD11 1HH - Ms Mayara Agnes
Application No 24/00179/FULL – DMRC 8/24

I refer to the above planning application and your lodged representations to that application.

I write to advise you that the applicant has made an application for a review of the decision taken by the Service Lead – Planning and Sustainable Growth. This is a process brought in by the above legislation to enable applicants dissatisfied with a decision of the Planning Authority to ask for it to be reviewed. This review will be considered by Angus Council's Development Management Review Committee. A copy of the Council's Decision Notice is attached for your information.

In accordance with the above Regulations, I am required to ask you if you wish to make any further representations. The Review Committee will be given copies of your original representation. If you do wish to do so, you have 14 days from the date of receipt of this email to make such representations. **These should be sent directly to me.**

The applicant will then be sent a copy of these representations and the applicant will be entitled to make comments on them. These comments will also be placed before the Review Committee when it considers the review.

I can also advise that a copy of the Notice of Review and other documents related to the review can be viewed by contacting me directly.

In the meantime, should you have any queries please do not hesitate to contact me.

Kind regards

Laura

Laura Stewart - Committee and Elections Officer – Legal, Governance and Change Services -Angus Council
Tel: 01307 491804- E-mail: StewartLD@angus.gov.uk

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**APPLICANTS RESPONSE TO FURTHER
LODGED REPRESENTATIONS**

From: [Info](#)
To: [Laura Stewart](#)
Subject: RE: Application for Review - 34 Abbot Street, Arbroath - Further Representation
Date: 26 September 2024 10:22:26

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
Application for Review – Refusal of Planning Permission for the Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street Arbroath DD11 1HH - Ms Mayara Agnes
Application No 24/00199/FULL – DMRC 7/24

Hi Laura

Many thanks for the forwarding the representations. We consider the appeal statement responds in full to the comments made. The only point we would wish to highlight is that the Theatres Trust confirm that there is the opportunity to manage the issue of noise through appropriate conditions which the appellant is happy to accept.

Regards

Angela Bushnell
Office Manager
A B Roger & Young Ltd
12 Clerk Street
Breachin
DD9 6AE

[Tel:01356 622125](tel:01356622125)

Email:info@abrogerandyoung.com

From: Laura Stewart <StewartLD@angus.gov.uk>
Sent: 18 September 2024 14:07
To: Info <info@abrogerandyoung.com>
Subject: Application for Review - 34 Abbot Street, Arbroath - Further Representation

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Dear Sir/Madam

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
Application for Review – Refusal of Planning Permission for the Proposed Conversion of Part of Former Nursery Building to Form 2 Flats (Retrospective) at 34 Abbot Street Arbroath DD11 1HH - Ms Mayara Agnes
Application No 24/00199/FULL – DMRC 7/24

I refer to the above application for review and write to advise you that I have received further representation from two of the interested parties.

In accordance with the legislation, I am now forwarding copies of these to you.

You have the right to make comment on the representations and, should you wish to do so, you have 14 days from the date of receipt of this correspondence to make any such representation which should be sent directly to me.

Kind regards
Laura

Laura Stewart - Committee and Elections Officer – Legal, Governance and Change Services -Angus Council
Tel: 01307 491804- E-mail: StewartLD@angus.gov.uk

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