

**REPORT OUTLINE FOR AREA PLANNING COMMITTEE****Report No.**

<b>Date of Meeting</b>	24 June 2021
<b>Application Number</b>	PL/2021/03958
<b>Site Address</b>	29 and 29A Brown Street Salisbury SP1 2AS
<b>Proposal</b>	Demolition of existing building with retention of existing façade with minor modifications and use of land as a hospitality area (Description revised following changes to the proposed frontage – previously “Demolition of existing building, erection of gates and railings as modification to front facade to facilitate use of land as a hospitality”)
<b>Applicant</b>	Newbury Pension Scheme
<b>Town/Parish Council</b>	SALISBURY CITY
<b>Electoral Division</b>	Salisbury St Edmund’s - Cllr Paul Sample
<b>Grid Ref</b>	
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Julie Mitchell

**Reason for the application being considered by Committee**

At the request of the elected member Cllr Paul Sample due to location of the site being within close earshot of Charter Court and Gigant Street where residents have expressed concerns about the use of amplified music, lighting and preservation of the quiet hours between 2300 and 0700.

**1. Purpose of Report**

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations. Having reached a balanced conclusion, the report recommends that planning permission be approved subject to conditions.

**2. Report Summary**

The main issues to consider are:

1. Demolition of the existing building and impact on the Conservation Area
2. Principle of the proposed use
3. Impact on residential amenity and noise/disturbance

### 3. Site Description

The application site lies within an urban, built up part of Salisbury city which includes a mix of commercial and residential land uses. The site itself, numbered 29A Brown Street, is developed with a single storey building which brick façade and asbestos roof, being constructed in the 1940's (approximately), and last used by the Alzheimer's Society charity. To each side of the building are timber gates and alley ways which provide access to the building behind, No. 29 Brown Street, also known as Sarum 76. During the course of the consideration of the current application, the building, other than its frontage wall, and the timber gates to each side have been demolished. The photograph below shows the building prior to any demolition works with the gated entrance to the Vision nightclub to the right-hand side and 29 Brown Street behind.



Immediately to the north of the site is the blank brick wall of a large building occupied by a vehicle parts and servicing centre, 'Motabitz'. Immediately to the south of the site is a further blank brick forming the side of Chequers Court, a commercial building comprising offices and consulting rooms. To the rear (east) of the site is part of the nightclub premises (in the same ownership as the applicant site) and on the opposite side of Brown Street to the west is a hotel, which includes an outdoor courtyard dining area, and Brown Street car park. Residential development at Charter Court is located to the south east, off Gigant Street (redevelopment of former brewery site).

The building at 29 Brown Street is internally linked to The Chapel Nightclub and Vestry Bar (34 Milford Street), both Grade II Listed Buildings, via a large extension over a courtyard which forms part of the nightclub. The plan extract below shows the relationship of 29A Brown Street to the Club fronting Milford Street.



The site lies within the Salisbury Conservation Area. The extract map below shows the relationship of the site to listed buildings hatched in black.



#### 4. Planning History

No planning history for the subject building has been identified.

Various permissions relating to the adjacent building, No 29 Brown Street, are identified as follows:

S/1999/1025 - ERECTION OF 1.2M SATELLITE DISH ON SIDE OF BUILDING

S/2000/0925 - ALTERATIONS TO EXISTING NIGHTCLUB TO ALLOW FIRST FLOOR ACCESS FOR SEATING/DINING ROOM WITH NEW ROOF ABOVE TOGETHER WITH EXTENSION OF NIGHTCLUB ACTIVITIES TO REAR INCORPORATING ENTRANCE TO BROWN STREET

S/2003/1966 - PROPOSED ALTERATIONS TO BOTTOM OF STAIRS ADJ. TO ORGAN IN THE CHAPEL

Permissions relating to The Chapel Nightclub (34 Milford Street) excluding land at 29 and 29A Brown Street are identified as follows:

S/2000/1037 - ALTERATIONS AND FIRST FLOOR EXTENSION

S/2004/0735 - REMOVAL AND REFIXING OF PROJECTING LIGHT FITTING TO BELOW STONE DECORATIVE FEATURE. RELOCATION OF SIGN BOARDS TO POSTS IN FAR COURT. ENLARGEMENT OF VENTS

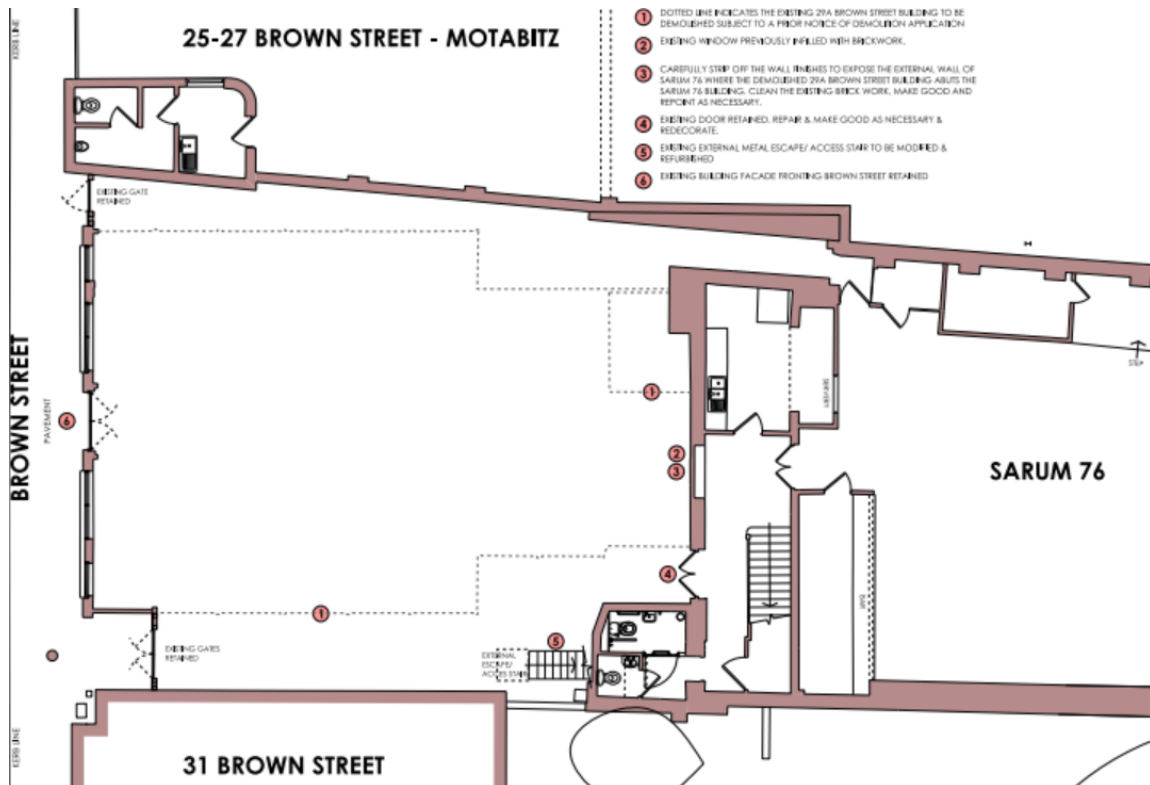
S/2007/0992 - INTERNAL AND EXTERNAL ALTERATIONS

S/2009/1168 - PROPOSED FIRST FLOOR EXTENSION AND ALTERATIONS TO PROVIDE CASINO, PRIVATE DINING ROOM, BAR, MALE AND FEMALE TOILETS

S/2009/1169 – LISTED BUILDING CONSENT - PROPOSED FIRST FLOOR EXTENSION AND ALTERATIONS TO PROVIDE CASINO, PRIVATE DINING ROOM, BAR, MALE AND FEMALE TOILETS

## 5. The Proposal

The proposal is for the demolition of the existing single storey building at 29A Brown Street and use of the land created as an outside hospitality area, together with front boundary treatment comprising the retention of the frontage wall of the existing building. This replaces the railings and gate detailing which was originally proposed.



Site Plan as proposed



Elevation plan as proposed (revised detailing)

## 6. Local Planning Policy

### **Planning (Listed Building and Conservation Areas) Act 1990**

Section 72: General duties of planning authorities

### **Wiltshire Core Strategy (2015)**

Core Policy 1 – Settlement Strategy

Core Policy 2 – Delivery Strategy

Core Policy 3 – Infrastructure Requirements

Core Policy 20 – Spatial Strategy for the Salisbury Community Area

Core Policy 57 - Ensuring High Quality Design and Place Shaping

Core Policy 58 – Ensuring the Conservation of the Historic Environment

Core Policy 69 - (Protection of the River Avon SAC)

### **Salisbury District Local Plan (2003)**

### **National Planning Policy Framework 2019**

In particular: Section 4 (decision making); Section 11 (making effective use of land); Section 12 (achieving well- designed places); Section 16 (conserving and enhancing the historic environment)

### **Government Planning Practice Guidance**

### **Salisbury City Conservation Area Appraisal and Management Plan**

### **National Design Guide (September 2019)**

### **Habitat Regulations 2017**

## 7. Summary of consultation responses

### ***Salisbury City Council –***

- No comment

### ***WC Conservation –***

- I'm satisfied with the agent's comments regarding the heritage interest of the site and consideration of the CA and setting of nearby LBs, this provides the necessary information.
- The amended plans are an improvement, although still not especially reflecting or continuing the character of the gates.
- I wonder if the railings would look better with a double strip along the top that is aligned with and incorporates a similar curl detail to the gates?

Updated response:

- I understand that the proposals have been amended so that the front elevation of the Alzheimer's Society building will be retained, and there will be no replacement railings and gates.
- I am satisfied that this would preserve the character of the CA and would have no adverse impact on the setting of any listed buildings.
- I have no particular conditions in mind; if they intend to reglaze the frontage, or to install signage, then these may require consent, depending on the details.

***WC Public Protection –***

- I have given this some thought and recommend the following conditions are applied to any approval:
  - The use hereby permitted shall only take place between the hours of 11am and midnight daily.
  - Amplified music will not be played on the development site after 2300hrs.

**8. Publicity**

The application was publicised by newspaper advertisement, site notice and neighbour notification to properties immediately adjacent to the site. A total of 14 representations had been received in objection to the proposal at the time of writing the report.

Comments are summarised as follows:

- Demolition has already taken place
- Venue has opened before planning permission granted - egregious conduct
- Building should be reinstated
- Why has this been allowed to happen without full consent/unlawfully?
- Is the property not within a Conservation Area?
- Residents already blighted by noise pollution from Chapel Nightclub in early hours
- Open air venue will increase noise pollution, nuisance and anti-social behaviour
- Outdoor music events in Market Square means noise from late after until 3 am
- Additional venue in residential area is not wanted or needed
- It would create an unbearable living environment
- Nightlife and urban, residential regeneration does not sit well
- The proposal is a material change of use
- Full examination of potential noise and nuisance to residents needs to be undertaken
- There are enough hospitality areas in the centre of Salisbury

- More beneficial to turn area into an open/green space to be used and enjoyed by residents who do not have a garden of their own
- Charter Court Management has no issue with the demolition of a building which was unattractive and without either historic or architectural importance
- “Existing hospitality use” (section 9 of the planning application) is The Chapel nightclub at 34 Milford Street, Salisbury SP1 2AP, which was established in 1997
- This predates the Charter Court Estate which was built between 2000 and 2001
- Charter Court residents have suffered noise problems at night which the club has taken steps to alleviate through soundproofing
- The proposed business at 29 and 29a Brown Street is a new hospitality venture not “external space in association with existing hospitality use”
- Salisbury Journal (published online on 27 April 2021) refers to it as “a new establishment to be called Brown Street”
- This is a separate open-air venue with “three street food caterers and a platform for live music and DJs” not an integral part of The Chapel
- Opening hours would be 11am to 11pm (initially it would be 4pm to 11pm on weekdays)
- This is a substantial new venture not an extension of existing hospitality use
- The nearest residents in Charter Court are 35 metres from the new venue, all are within earshot
- Loud music will be played outside
- The smell from street food and noise from drinkers at an earlier time of day than the night club’s current opening hours will be a major nuisance to residents
- The proposed use of the land is an integral part of this planning application which requires planning permission, not just demolition/gates
- Concerns about noise and smell should be taken into account
- The scheme should either be rejected or subject to strict controls to minimise nuisance
- We appreciate that licencing is the responsibility of a separate department at Wiltshire Council but feel it should be mentioned
- The applicant stated that The Chapel has a Pavement Licence valid until September 2022 which would enable the night club to operate ‘Brown Street’
- Pavement Licences are issued for public highways and pavements, not privately-owned land
- If such a licence has been issued it is not relevant to the ‘Brown Street’ project
- The Chapel would have to apply for a new premises licence
- An open air area for late night revellers
- Numerous complaints/calls to police to control loud/drunken behaviour in this area
- Barnard St/Gigant St/Trinity St vicinity has one of the highest police call outs in the area
- We are obliged to live with noise and inconvenience at present, which the police do their best to control, this new venue will merely exacerbate the situation
- The occupants of nearby properties are entitled to enjoy peace and quiet in the evenings - this will not be possible with a loud open-air entertainment venue
- Will cause unnecessary stress to those living/working nearby

- Residents deserve better than a late night venue on their doorstep
- There are many empty buildings in Salisbury which could be used to provide valuable and needed services to the young
- The site is directly opposite and overlooked by hotel bedrooms
- There is no mitigation for increased levels of noise and disturbance on residents staying in the hotel during evening/late operation of this proposed area
- Both long-term and short-term residents have a reasonable expectation of acceptable levels of noise pollution
- Exponential increase in noise levels
- Impact on visual amenity
- Hotel guests would not expect to oversee a recently installed beer style garden
- Concerns for highway safety from increased footfall onto Brown Street especially at closing of the late-night venue
- At the close of business, the seating capacity would theoretically allow one hundred plus people to spill directly onto Brown Street
- Wire gates and decorative walls will not reduce noise of over 100 additional seats for people to sit, drink and become louder
- Fail to see how increasing the level of late-night noise is acceptable.
- Regeneration of the City should not come as a highly visible late night noise generator Will increase the likelihood of accidents on Brown Street as people leave late at night
- The application is obviously a “stand alone“ request - by definition a Night Club only operates in the late evening
- Further permission will be required to include change of use
- Proposal will extend the area blighted by night time noise away from Milford St
- Many more residential properties will be affected
- It will be joined with the Chapel and there will be mingling of both clientele
- The presence of a DJ will ensure that every night will become 'party night'
- Residents who came to live in the area never appreciated the nuisance the Chapel already produces
- Local residents are mainly, if not all, pensioners
- Local residents will suffer further inconvenience and sleepless nights
- Surely this application is only to take advantage of current, short-term government guidance
- The night club will continue to have early morning, outdoor, extremely loud and drunk people causing distress to nearby and elderly residents
- Residents have had to suffer unreasonable levels of noise and disruption from late night revelry and anti-social behaviour from the customers of The Chapel
- The proposed “extension” named “Brown Street” can only increase these levels to unacceptable proportions
- Food take-aways are already prolific in nearby Milford Street
- Early morning walkers - residents and visitors - already have to face dirty pavements, discarded food and human detritus strewn around
- Object to loud music going on into the early hours
- Revellers leaving The Chapel have no consideration for people living in the area
- I dread the reopening of the nightclub



- Club goers use Gigant Street as a route to the southern area of the city with no concern for local residents
- The noise from the proposed Brown Street outdoor area, music playing and link into the Chapel will without any doubt be heard within the ring road

## 9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. This requirement is reiterated by the NPPF, which is a material consideration in the decision-making process.

### 9.1 Demolition of Existing Building and Impact on the Conservation Area

The existing red-brick building which occupied the site until its recent demolition was previously occupied by a charity and known as the 'Alzheimer's Society building' or 'Eventide Centre'. Historic mapping indicates that the building was built between 1936 and 1953-4. The building is unlisted but lies within the Conservation Area. Gated alleyways to each side of the building have historically been used as access/egress from the late-night venue within the building behind the Alzheimer's Society building, most recently known as 'Vision' nightclub. This venue is in the same ownership as The Chapel Nightclub and The Vestry which both front onto Milford Street as well as the building at No. 29 Brown Street (also known as Sarum 76) and there is internal access between each of the venues. The photograph earlier in the report in the Site Description shows the building prior to the commencement of demolition works and the existing gate to the Vision venue. The photograph below shows the inside of the gated entrance from the club and part of the retained from wall and floor.



Prior to the submission of the current application, the applicant applied for a prior notification for the demolition of the existing building. Permission under the prior

notification procedure was refused due to the building being a 'relevant building' within the Conservation Area. This was a procedural decision rather than a decision to refuse the demolition on its merits, the applicant states that she received advice from another department within Wiltshire Council that a demolition notice would be the correct process to follow and this led to delays in the submission of a full planning application, which is the application now under consideration.

Due to the time delays experienced and on the basis that this part of the proposal receiving no objection in principle to the demolition from the Council's Conservation Officer, subject to agreement of detailing to the street elevation, the applicant proceeded with the demolition of the building other than the frontage onto Brown Street. Objections have been received in respect of the timing of the demolition of the building although no objections with regard to the loss of the building. Officers have advised the applicant that undertaking such works without the necessary permission are carried out at their own risk. However, as a valid application had already been submitted, the LPA is not in a position to consider any enforcement action pending the outcome of this application. The decision whether to allow permission must be judged on its merits. The timing of the building being demolished prior to the determination of the application is immaterial to the acceptability of the proposal.

The site is within the Salisbury Conservation Area consideration is required to be had to the impact of the proposed demolition of the building on this designated heritage asset. The Brown Street frontage is not physically related to any identified listed buildings although part of the Grade II listed Red Lion Hotel which fronts onto Milford Street also has a frontage onto Brown Street on the opposite side of the highway to the application site. It is considered that the development proposal would not have any impact on the setting of listed buildings due to the distance and separation.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise of any functions, with respect to any buildings or other land in a conservation area, under or by virtue of any of the provisions mentioned in this Section, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

The NPPF (Section 16) states at :

Paragraph 193, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and that this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 195, where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- c) conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.

Paragraph 196, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 200, Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

Core Policy CP58 (Ensuring the Protection of the Historic Environment) of the adopted WCS indicates that development should protect, conserve and where possible enhance the historic environment and designated heritage assets and their settings should be conserved, and where appropriate enhanced in a manner appropriate to their significance.

Taking into account the age, structure and appearance of the existing building and on the basis of the expert advice of the Council's Conservation Officer, it is considered that there are no grounds to consider that the loss of the building at No. 29A Brown Street would cause harm to the character and appearance of the Conservation Area. The removal of the building also has the benefit of revealing more of the more historically significant building behind (No. 29). Accordingly there is no basis to not permit the principle of the demolition of the building on heritage grounds, however this is subject to the consideration of any proposed building works, including the means of enclosure, providing an acceptable feature within the streetscene taking into account the relationship with adjoining buildings and impact on the character and appearance of the area.

The original plans submitted with the scheme showed that the frontage of the building would be replaced by metal railings and gate, providing an enclosure of the site but enhanced visibility of No. 29 Brown Street, which was previously obscured by the presence of No. 29 A. During the consideration of the application, the majority of the building has been removed but the red brick frontage of the building has been retained. The applicant has advised that it is now the intention to retain the existing front wall of the building rather than remove this wall and install new railings. Revised plans detailing the retention of the front wall have been provided and it has been agreed to amend the description of development which previously referred to the provision of gates and railings. Comments have been sought from the Council's Conservation Officer who is satisfied that this would preserve the character of the CA and would have no adverse impact on the setting of any listed buildings. No conditions are

recommended, however it is noted that if it is intended to reglaze the frontage, or to install signage, then these elements may require consent, depending on the details.

Having regard to local and national planning policy and Section 72 of the P(LBaCA) Act, as referred to above, it is considered that the proposed physical works associated with the change of use will have no material impact or harm to the character and appearance of the Conservation Area.

## **9.2 Principle of the Proposed Use**

As a result of the demolition, an outdoor space is to be created and the second part of the description of development relates to the proposed use of land as a 'hospitality area'. This will include tables and chairs for the consumption of food and drink which would form part of the proposed use but are not development within the definition of the 1990 Town and Country Planning Act.

Wiltshire Core Policy 1 (Settlement Strategy) identifies settlements where sustainable development will take place. Salisbury is categorised as a 'Principal Settlement', which is a strategically important centre and the primary focus of development. Core Policy 2 (Delivery Strategy) states that a more detailed distribution is set out in the Community Area Strategies and development proposals should also be in general conformity with these. Core Policy 2 includes the following statement:

"...Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages..."

The description of development originally given was for the "demolition of existing building, erection of gates and railings as modification to front facade to facilitate use of land as a hospitality area". Whilst noting the content of third-party representations regarding the use of the land being part of the consideration of this application, officers consider that the original description of development was sufficiently clear to indicate that the proposal was to include the proposed use of land as a hospitality area as well as the demolition and associated operational development as described. However with the need to change the description to include the retention of the front wall instead of new railings, the description of development has been simplified to: "Demolition of existing building with retention of existing façade with minor modifications and use of land as a hospitality area."

The description does not state that the use of the hospitality area would be linked to any specific commercial element of the applicants existing businesses in Brown Street or Milford Street and in planning terms there is no requirement for it to do so. From the information available and provided by the applicant, including the land ownership plan, the proposed use of the space would be related to the existing use of adjoining licenced premises but also proposes a more flexible use that would represent a diversification of the existing business to include a daytime/early evening use as well as the existing night club. The hours of opening of the hospitality area are proposed in the accompanying planning statement as 11 am to 11 pm with some flexibility until midnight requested through discussions with the applicant. From the information provided, there is no

stated intention to seek permission to use the outdoor space for any purpose beyond midnight and into “the early hours” as suggested in a number of third-party representations.

The applicant may need to consider whether or not any future use of the existing building at 29 Brown Street as a mixed use to include nightclub/public house/drinking establishment with food provision (sui generis uses) would constitute a material change of use from a nightclub (also a sui generis use), however this is not included within the scope of the current application which seeks to establish the principle of the demolition, use of land and associated alterations to the site. Any appropriate licensing requirements for an alternative business offer will be dealt with outside of the scope of the planning regime.

The application site lies within an urban, built up part of the city which includes a mix of commercial and residential land uses. Immediately to the north of the site is the blank brick wall of a large building occupied by a vehicle parts and servicing centre, ‘Motabitz’. Immediately to the south of the site is a further blank brick forming the side of Chequers Court, a commercial building comprising offices and consulting rooms. To the rear (east) of the site is the associated nightclub premises and on the opposite side of Brown Street to the west is a hotel, which includes an outdoor courtyard dining area, and Brown Street car park. Residential development at Charter Court is located to the south east, off Gigant Street (redevelopment of former brewery site).

It is acknowledged that the site lies within an area which accommodates residential properties but which also has a strong commercial element including licensed premises. Within a city centre location such as this, it is considered that a hospitality area such as that which would normally be associated with a public house or restaurant would not be out of character or incompatible, in principle, with the range of commercial uses and activities that are present in the immediate and wider locality. Most food and drink establishments incorporate outdoor seating areas where there is the land available to do so. The potential use of the hospitality area in association with existing licensed premises with a late-night licence (“nightclub”) is of significant concern to local residents. However the information provided within the application is that this is not what the application is seeking to achieve.

A third-party representation has suggested that the privately owned land should be used to create a garden/park area for public use, it would not be possible to require a private land owner to provide such a use.

It is concluded that the principle of the proposed land use is an appropriate re-use of this city centre site following demolition of the existing building.

### **9.3 Impact on Residential Amenity and Noise/Disturbance**

Criteria (vii) of Core Policy 57 (Ensuring high quality design and place shaping) states that new development shall have regard to:

“...the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable

within the development itself, including the consideration of privacy, overshadowing; vibration; and pollution (such as light intrusion, noise, smoke, fumes, effluent, waste or litter)".

The NPPF at paragraph 127(f) states that the planning system should seek to secure a high-quality design and good standard of amenity for all existing (and future) occupiers of land and buildings. The issue for consideration in this case is the impact of the proposed land use on the amenities of neighbouring residents.

Numerous third-party objections have been received on the impact on the amenity of nearby residents and the local community as a result of the proposed use of the land due to the potential for noise and disturbance to residents late at night as well as food smells. The representations are made by occupiers of Charter Court, which is located off Gigant Street to the south east of No. 29 Brown Street, as well as other addresses in the locality. Not all representations include an address and it is not possible to verify the individual relationship of their properties to the application site. The majority of representations state that their experience of living in this locality is already adversely affected by noise and disturbance from the existing late night venues with many reporting that this has reduced due to the Covid-19 restrictions where premises have been closed for significant periods. It is strongly felt by the residents that have commented on the application that the proposed land use would increase noise and disturbance further. However, it is also accepted that the refusal of the current application would not address any pre-existing issues or complaints relating to established drinking establishments.

The submitted documentation states hours of use as 11 am to 11 pm daily although it was requested that the Council consider allowing for the use of the seating area up until midnight as elsewhere in the city centre. The application documents do not propose the use of the land into the early hours of the morning and no request has been made for the LPA to consider the use of land after midnight on any day of the week.

In consideration of the proposal, the Council's Public Protection Officer has not raised any objection in principle to the proposed land use. The following conditions have been recommended in respect of the hours and nature of use which is considered appropriate in this context:

1. The use hereby permitted shall only take place between the hours of 11am and midnight daily.
2. Amplified music will not be played on the development site after 2300hrs

The suggested conditions indicate that in this city centre location, the continuation of the use as a seating area only for one hour beyond 11pm is not considered to represent a noise nuisance having regard to existing night-time activity generated by existing, non-associated premises with the provision that this does not include amplified music. It is considered that with such a condition, the proposed land use would not demonstrably increase the potential for noise impacts on the surrounding area when assessed in the context of the existing evening and night-time activity in the locality and is considered acceptable in principle. The Council's Public Protection Team (EHO) has raised no objection in relation to residential amenity and noise other than to comment on the hours of use and amplified music as set out above.

Given that the application site is within a location where there are established night time venues and associated activity and movement to and from such premises, including food takeaway premises, which objectors to the proposal have confirmed in their representations, it is not considered that the proposed use of land is likely to generate any significantly greater impact on the residential amenity of nearby occupants through

increased levels of noise, disturbance or food smells than already exists (other than during the temporary pandemic conditions). Whilst this proposal would represent a new hospitality area where there was previously a building, it would be difficult for the LPA to argue that the refusal of the use of land would be justified on residential amenity grounds in a city centre location of mixed uses where outdoor 'beer gardens' and terraces and premises serving alcohol and hot foods form a significant and integral part of commercial uses. Similarly, the hotel accommodation on the opposite side of the road incorporates a courtyard seating area including food and drink provision from within the existing premises which would have a similar relationship to guest rooms as the proposed site.

Taking the views of the local residents and the suggested wording of the condition recommended by the Council's Public Protection Officer into account, officers consider that it would be reasonable and justifiable to alter the suggested wording to allow for the hours of use to be 11 am to 11 pm daily (Sundays to Thursdays inclusive) and 11 am to midnight only on Fridays and Saturdays, with no amplified music at any time/day after 11 pm. In terms of the use of the site itself, this would preserve the standard quiet hours between 11 pm and 7 am with the exception of 2 days each week at weekends. Subject to this condition it is not considered that the proposal would demonstrably harm the amenities of local residents or hotel guests given the city centre location of the site and the context for existing commercial activity. The proposed activities may also require a new licence which would be dealt with separately to the planning regime.

## **10. Conclusion (The Planning Balance)**

In the planning balance, the principle of the demolition of the existing building is acceptable having regard to the neutral to positive impact that the removal of the building would have on the character and appearance of the Conservation Area and opening up views of No. 29 Brown Street. The retention of the front wall as a means of enclosure on the front boundary along Brown Street is also acceptable having regard to the interests of preserving the character and appearance of the Conservation Area. The principle of the proposed land use as a hospitality area is also considered acceptable having regard to the location of the site where such a use would not be out of character or incompatible with commercial uses within the city centre, with due regard to the proximity to residential properties, conditions limiting the hours of use would be necessary in the interests of residential amenity.

Whilst noting the level of objection from local residents, the issues raised are predominantly associated with the impacts of noise and disturbance resulting from established and permitted land uses including the late licence of the adjoining nightclub premises and other bars, drinking and food establishments in the area. As these impacts are reported as being experienced for many years, these impacts cannot be attributable to the current proposal. The suggested hours of use of the proposed hospitality space, which have been recommended by the Council's Public Protection Officer, as amended, would not materially increase impacts on the surroundings given the existing context. The licensing requirements for the proposed use are outside the scope of the planning considerations and will be dealt with separately by the licensing officer as necessary. Comments relating to the demolition of the existing building taking place prior to planning permission being granted are not a reason for refusal of development where the proposed development would be considered acceptable on its merits. It is not within the scope of planning controls to require that a private landowner

makes the space available for the public enjoyment and recreation only. Taking all matters into consideration there are no material considerations which would weigh against the acceptability of the proposal, subject to the conditions set out.

## **RECOMMENDATION**

Approve subject to the following conditions:

- 1 The use hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan PP1338/100 P3 dated 25.03.2021  
Ground Floor Plan PP1338/101 P3 dated 22.03.2021  
Street Elevation PP1338/104 P1 dated 04.06.2021  
Site Survey PP1338/DM02 dated 10.03.2021

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3 The use hereby permitted shall only take place between the hours of 1100 hours and 2300 hours daily and 1100 hours and midnight on Fridays and Saturdays. Amplified music shall not be played on the development site after 2300 hours on any day.

REASON: In the interests of residential amenity.

## **INFORMATIVES TO APPLICANT:**

- The applicant is advised that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.
- Any alterations to the approved plans, brought about by compliance with Building Regulations, Licensing or any other reason, and resulting in external alterations to the approved details must first be agreed with the Local Planning Authority before commencement of work.