

**24/00300/APP**  
**22nd February 2024**

**Mixed use development of 38no one and two bedroom affordable flats 3no retail units a business enterprise hub and new public realm comprising a pedestrian route connecting South Street to High Street and a courtyard at 51, 53 And 59 - 61 South Street, The Jail House And Newmarket Bar High Street Elgin Moray for Robertson Property Ltd**

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**Comments:**

- A site visit has been carried out.
- Advertised as a project that would affect character of conservation area.
- 1 representation received.
- Referred to committee as the application raises matters of a wider community interest and planning significance.

**Procedure:**

- Determine this proposal prior to the associated conservation area consents 24/00302/CON, 24/00303/CON & 24/00304/CON.

**Recommendation**

Grant Planning Permission – Subject to the following:

**Conditions/Reasons**

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

**Reason:** The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. Prior to development commencing, samples of all external finishes of the buildings (including details of the brickwork mortar and its finishing) and hard landscaping shall be submitted to and approved by the Council, as Planning Authority. Thereafter the development shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Council.

**Reason:** To ensure that material finishes are suitable for the development hereby approved, in the interests of the character and appearance of the surrounding

conservation area.

3. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be occupied or brought into use unless a post excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

**Reason:** To safeguard and record the archaeological potential of the area.

4. Prior to the commencement of development details of the affordable housing specification shall be submitted to and approved by the Council, as Planning Authority in consultation with the Housing Strategy and Development Manager regarding the detailed arrangements for the delivery and provision of the affordable housing on the site, which shall include confirmation of the identity of the organisation (or other similar agency) responsible for the provision and management of all affordable housing provided on the site for the lifetime of the development. Thereafter the development shall be implemented in accordance with the approved details.

**Reason:** To ensure all the residential units approved on site are affordable and managed accordingly.

5. All residential units within the development shall be provided and retained as affordable housing for the lifetime of the development unless otherwise agreed in writing with the Council as Planning Authority in consultation with the Housing Strategy & Development Manager.

**Reason:** To ensure an acceptable form of development in terms of the required provision and delivery of affordable housing.

6. Prior to the first occupation of any part of the development hereby approved, finalised details of the public artwork based upon the information identified in section 6 of the approved Placemaking Statement, including timescale for provision shall be submitted to and approved to and approved by the Council, as Planning Authority. Thereafter the development shall be implemented in accordance with these approved details, plans and timescales, unless otherwise agreed by the Council.

**Reason:** To ensure distinctive urban form that incorporates public art, details of which are lacking from this submission.

7. That all waste measures as identified in the submitted Planning Statement shall be provided in full to each residential unit prior to its occupation, with the communal bin stores (as identified in the approved site plan) being provided prior to the first use of the respective section of the development to which it relates. Thereafter the bin stores shall be maintained for use at all times unless otherwise agreed in writing with the Council, as Planning Authority.

**Reason:** To ensure that suitable provision for waste, in accordance with National Planning Framework 4 Policy 12 – Zero waste.

8. All landscaping measures, as identified in drawing number 310SSE-LUC-XX-XX-DR-L-90-001 P05 and “Rain Garden Planting” plan hereby approved shall be provided in full accordance with the approved details in the first planning season following completion of the development. Thereafter any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.

**Reason:** In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

9. All measures identified in the approved Community Wealth Building statement shall be implemented during the course of the development, unless otherwise agreed in writing with the Council, as Planning Authority.

**Reason:** To ensure that the development proceeds in accordance with the submitted Community Wealth Building statement, to ensure compliance with National Planning Framework 4 Policy 25 – Community wealth building.

10. Prior to the commencement of development, details shall be submitted to and approved in writing by the Council, as Planning Authority in consultation with the Road Authority, showing the design and location for the provision of secure, covered and enclosed cycle parking for a minimum of 38 cycles (plans scale 1:200 min). Thereafter the cycle parking shall be provided prior to the building being completed or becoming operational and shall be maintained and available for use thereafter for the lifetime of the building use unless otherwise agreed in writing by the Council, as Planning Authority.

**Reason:** In the interests of sustainable transport, the provision of cycle parking and the provision of details currently lacking from the submission.

11. No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority. Thereafter the development shall be carried out in accordance with the agreed CTMP at all times. For the avoidance of doubt the CTMP shall include as a minimum the following information:

- i. duration of works;
- ii. construction programme;
- iii. number of vehicle movements (i.e. materials, plant, staff, components);
- iv. types and sizes of construction vehicles accessing the site during the construction period (Depending on the size of vehicle accessing the site, vehicle swept paths may be required to confirm that sufficient manoeuvring space would be available and to confirm that vehicles would be able to enter and exit the site in a forward gear);
- v. schedule for delivery of materials and plant;
- vi. parking provision, loading and unloading areas for construction traffic;
- vii. full details of temporary arrangements to safeguard pedestrian movements on South Street during the construction period;
- viii. full details of any temporary access;
- ix. measures to be put in place to prevent material being deposited on the public road;
- x. traffic management measures to be put in place during works including any specific instructions to drivers;
- xi. full details of construction traffic routes from/to the site, including any proposals for temporary haul routes and routes to be used for the disposal of any materials from the site and
- xii. a programme of monitoring for all routes identified within the CTMP during construction will be required.

**Reason:** To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

12. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

**Reason:** To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access.

13. No development shall commence until details have been submitted to and approved in writing by the Council, as Planning Authority, in consultation with the Roads Authority, showing alterations to the existing road markings including the removal of part of the loading bay markings on South Street and the extension of double yellow markings at the widened access to the courtyard area, in accordance with The Traffic Signs Regulations and General Directions 2016; and thereafter the road markings shall be altered in accordance with the approved details once the required changes to the Elgin central area Traffic Regulation Order has been made.

**Reason:** To ensure acceptable infrastructure at the development access.

14. No development shall commence until details have been submitted to and approved in writing by the Council, as Planning Authority, in consultation with the Roads Authority, showing the details and locations of drop kerbs and tactile paving arrangement across modified and proposed accesses along the South Street to the Moray Council specification and thereafter the drop kerbs and tactile

paving shall be provided in accordance with the approved details prior to first use.  
**Reason:** To ensure acceptable infrastructure at the development access.

15. Prior to the development becoming operational, access to the courtyard area shall be widened to accommodate vehicle swept paths of Council's Refuse Collection Vehicle in accordance with the submitted drawing No. 310SSE-CAM-XX-XX-SK-C-90-0250 dated 04.04.2024, with the first 5m of the access track, measured from the edge of the public carriageway constructed to the Moray Council specification and surfaced with bituminous macadam.

**Reason:** To ensure acceptable infrastructure at the development access.

16. All surface water drainage shall be provided in full accordance with the approved plans and Drainage Impact Assessment prior to completion of the development.

**Reason:** To ensure timeous provision of surface water drainage, in the interests of flood risk.

17. Construction works (including vehicle movements) associated with the development audible at any point on the boundary of any noise sensitive dwelling shall be permitted between 0800 - 1900 hours, Monday to Friday and 0800 - 1300 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays). The above construction hours shall apply, unless otherwise agreed in writing with the Planning Authority, and where so demonstrated exceptional operational constraints require limited periods of construction works to be undertaken out with the permitted construction hours.

**Reason:** To protect local residents from noise nuisance in ensuring the construction phase is restricted within permitted hours.

18. Prior to development commencing, a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing by the Planning Authority in consultation with the Environmental Health Manager. The plan shall include measures to minimise construction related noise, dust and artificial lighting. Thereafter the development will be carried out in accordance with the agreed plan.

**Reason:** In order that environmental emissions are considered and managed at the construction phase, in order to protect local residents.

19. The noise emissions associated with the development's plant and machinery shall not exceed Noise Rating Curve (NR) 25 between 0700-2300 hours, as determined within a living apartment of the nearest noise sensitive property with the window moderately open. This limit would apply and be determined over a minimum of 5 minutes duration. For the avoidance of doubt, unless otherwise agreed in writing with the Planning Authority, the development's plant and machinery is that listed in "Table 5-Plant Noise Sources" of the Noise Impact Assessment supporting document dated 15<sup>th</sup> May 2024 by New Acoustics Ltd, Report no. 7739-01-01, and titled "South Street Elgin. Noise Impact Assessment – Rev 02".

**Reason:** To protect local residents from noise nuisance arising from the

- development's plant.
20. The noise emissions associated with the development's plant and machinery shall not exceed Noise Rating Curve (NR) 20 between 2300-0700 hours, as determined within a bedroom of the nearest noise sensitive property with the window moderately open. This limit would apply and be determined over a minimum of 5 minutes duration. For the avoidance of doubt, unless otherwise agreed in writing with the Planning Authority, the development's plant and machinery is that listed in "Table 5-Plant Noise Sources" of the Noise Impact Assessment supporting document dated 15<sup>th</sup> May 2024 by New Acoustics Ltd, Report no. 7739-01-01, and titled "South Street Elgin. Noise Impact Assessment – Rev 02".

**Reason:** To protect local residents from noise nuisance arising from the development's plant.

21. The noise emissions associated with the development's SSE substation located at ground floor to the rear of "Core 5", as identified in "General Arrangement Ground Floor Plan, drawing no. 310SSE-OBE-ZZ-00-DR-A-97-0104PO9, Project 2893, dated March 2023" shall not exceed the low frequency noise reference curve in Table 2 and figure 1 of Document NANR 45 (Revision 1 Issued December 2011) and titled "Procedure for the assessment of low frequency noise complaints", for daytime (0700 to 2300 hours) and night-time (2300 to 0700 hours), as determined within a living apartment during daytime (0700 to 2300 hours) and bedroom during night-time (2300 to 0700 hours), of the nearest noise sensitive property. This limit would apply and be determined over a minimum of 5 minutes duration.

**Reason:** To protect local residents from noise nuisance arising from the development's plant.

22. The development shall not commence until a noise mitigation scheme has been submitted and agreed in writing with the Planning Authority in respect of the three residential ASHPs on Core 5 Roof and identified in the "Roof Plan, drawing no. 310SSE-OBE-ZZ-RF-DR-A-97-0108P10, Project 2893, dated March 2023" and demonstrating the overall sound power level of the three ASHP's shall be reduced from a predicted level 85 dB(A) to 60 dB(A). The agreed scheme shall thereafter be developed and maintained throughout the lifetime of the development to ensure this noise level is met.

**Reason:** To protect local residents from noise nuisance arising from the development's plant.

### **Reason(s) for Decision**

The Council's reason(s) for making this decision are:-

The proposal complies with the development plan (namely National Planning Framework 4 and the Moray Local Development Plan 2020). It also accords with the aims of the Moray Economic Strategy and the Elgin City Centre Masterplan, both of which are material planning considerations. There are no other material considerations that indicate otherwise.

## **List of Informatives:**

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

A Building Warrant will be required for the proposals. Should you require further assistance please contact the Building Standards Duty Officer between 2pm and 4pm or telephone on 03001234561. No appointment is necessary. Alternatively e-mail [buildingstandards@moray.gov.uk](mailto:buildingstandards@moray.gov.uk)

Comments from POLICE SCOTLAND are attached for your information.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Technical Approval will be required for the widening of the access to the development. The applicant is obliged to apply for permission to modify the existing public road, in accordance with Section 48 of the Roads (Scotland) Act. The applicant will be required to provide technical information, including drawings and drainage calculations, a programme for the proposed works. Advice on this matter can be obtained by emailing [Transport.Develop@moray.gov.uk](mailto:Transport.Develop@moray.gov.uk)

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

<b>LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT</b>		
<b>Reference No.</b>	<b>Version No.</b>	<b>Title/Description</b>
310SSE-CAM-XX-XX-DR-C-90-0600	P03	Proposed site levels
310SSE-LUC-XX-XX-DR-L-90-001	P05	Landscape general arrangement
310SSE-LUC-XX-XX-DR-L-90-0200	P05	Hard landscaping
310SSE-LUC-XX-XX-DR-L-94-0400	P04	Soft landscaping
310SSE-OBE-ZZ-00-DR-A-97-0111	P03	Cycle storage
310SSE-OBE-ZZ-00-DR-A-97-109	P03	Fire strategy
310SSE-OBE-ZZ-00-DR-A-9700110	P03	Waste strategy
310SSE-OBE-ZZ-XX-DR-A-97-0207	P06	Proposed site elevations and sections 3
310SSE-OBE-ZZ-XX-DR-A-97-0208	P05	Proposed site elevations and sections 4
310SSE-OBE-ZZ-XX-DR-A-97-0209	P06	Proposed site elevations and sections 5
310SSE-OBE-ZZ-XX-DR-A-97-0210	P06	Proposed site elevations and sections 6
310SSE-OBE-ZZ-XX-DR-A-97-101	P03	Location plan
310SSE-OBE-ZZ-XX-DR-A-97-102	P03	Proposed demolition works
310SSE-CAM-XX-XX-DR-C-90-0450	P01	Drainage construction details
310SSE-CAM-XX-XX-DR-C-90-0401	P02	Drainage layout blue-green infrastructure
		Rain garden planting
310SSE-CAM-XX-XX-SR-C-90-046	P04	Pre - development impermeable areas
310SSE-OBE-ZZ-XX-DR-A-97-0103	P09	Proposed site plan
310SSE-CAM-XX-XX-DR-C-90-0400	P07	Drainage layout
310SSE-CAM-XX-XX-DR-C-90-0461	P06	Post development drainage hard standing area
310SSE-OBE-ZZ-01-DR-A-97-0105	P09	Proposed first floor
310SSE-OBE-ZZ-00-DR-A-97-104	P09	Proposed ground floor
310SSE-OBE-ZZ-02-DR-A-97-0106	P10	Proposed second floor
310SSE-OBE-ZZ-03-DR-A-97-107	P10	Proposed third floor
310SSE-OBE-ZZ-RF-DR-A-97-0108	P10	Roof plan
310SSE-CAM-XX-XX-DR-C-90-0200	P04	Roads layout
310SSE-OBE-ZZ-XX-DR-A-97-0205	P08	Proposed site elevations sections 1
310SSE-LUC-XX-XX-DR-L-90-0002	P02	Landscape sections
310SSE-OBE-ZZ-XX-DR-A-97-0206	P08	Proposed site elevations and sections 6
310SSE-RYB-Z0-XX-DR-N-960002	P03	External lighting
310SSE-CAM-XX-XX-DR-C-90-025 -	P01	Vehicle swept path of refuse vehicle

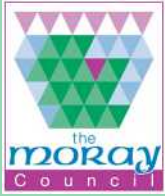
#### Supporting Documents

- Design and Access Statement
- Bat Survey
- Community Wealth Building Statement



- Environmental Management Plan
- Geotechnical Investigation Report
- Heritage Impact Appraisal
- Historic Building Report
- Landscape Maintenance Plan
- Placemaking Statement
- Site Traffic Management Plan
- Planning Statement
- Sustainability and Energy Statement
- Transport Statement
- Written Scheme of Investigation – Archaeology
- Carbon Reduction Statement
- Junner's Elgin Fabric Report
- Drainage Impact Assessment





## PLANNING APPLICATION COMMITTEE SITE PLAN

**Planning Application Ref Number:**

**24/00300/APP 24/00301/LBC 24/00302/CON**

**24/00303/CON & 24/00304/CON**

**Site Address:**

**51, 53 And 59 - 61 South Street, The Jail House  
And Newmarket Bar High Street**

**Elgin**

**Applicant Name:**

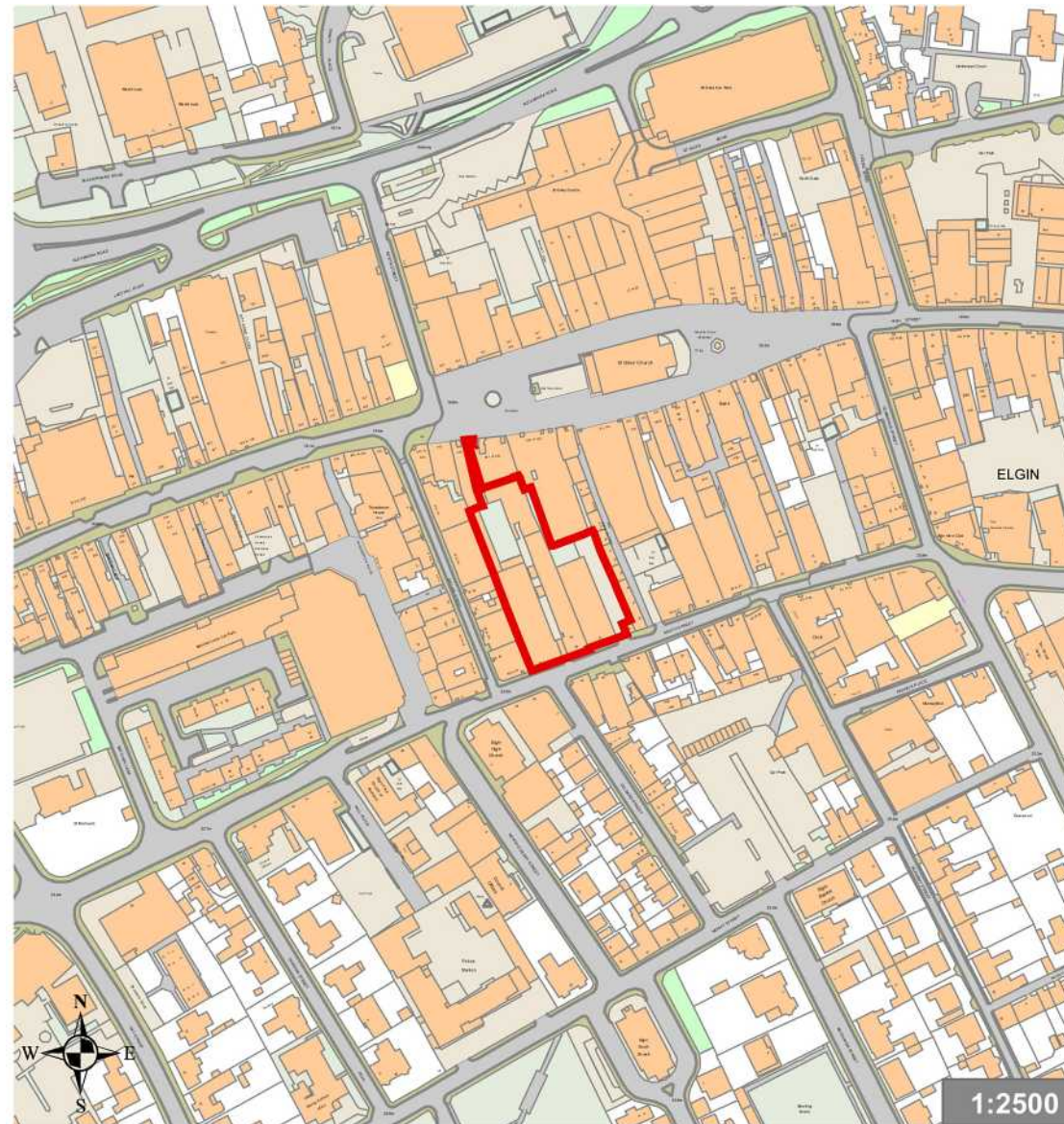
**Robertson Property Ltd**

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## Location Plan

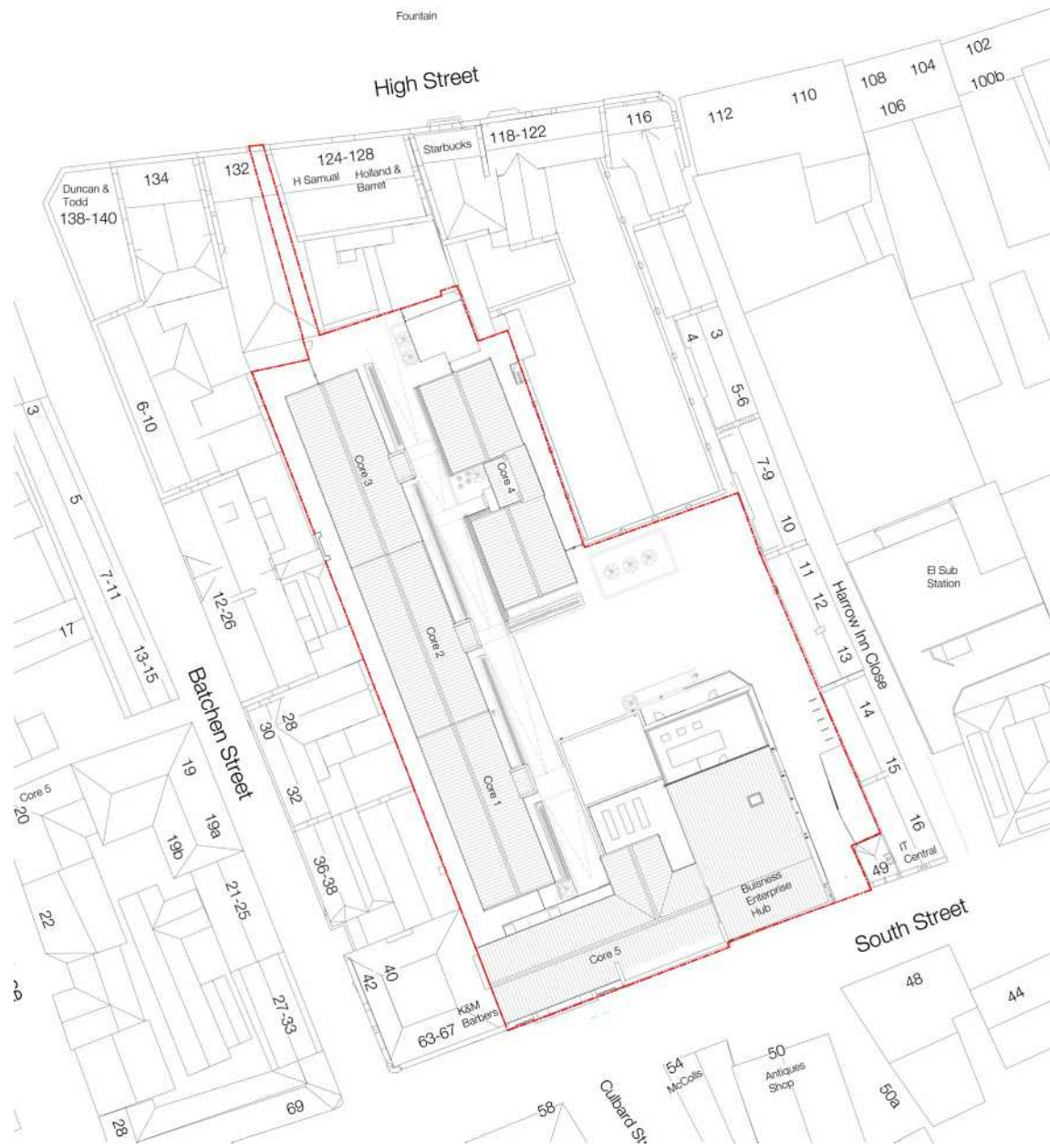


# Site Location



Site Area: 0,100.

# Site plan

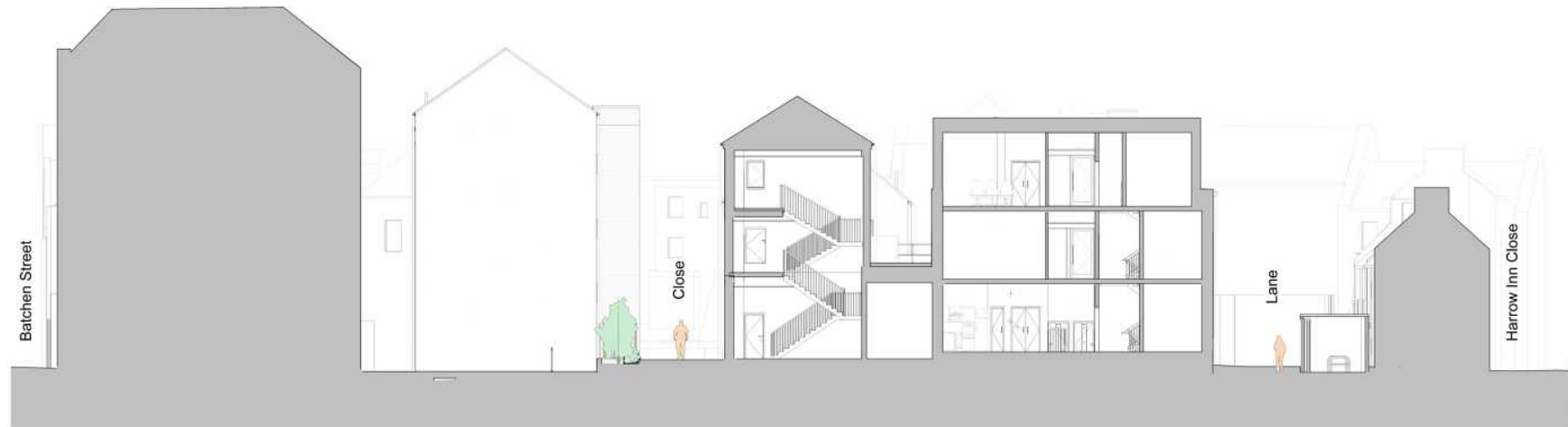


# 3D Model

- Business Enterprise Hub
- Residential - 12no. 1 bed flats  
- 12no. 2 bed flats
- Residential - 6no. 2 bed flats
- Retail - 3 units (GF)  
Residential - 8no. 1 bed flats



# Site elevations

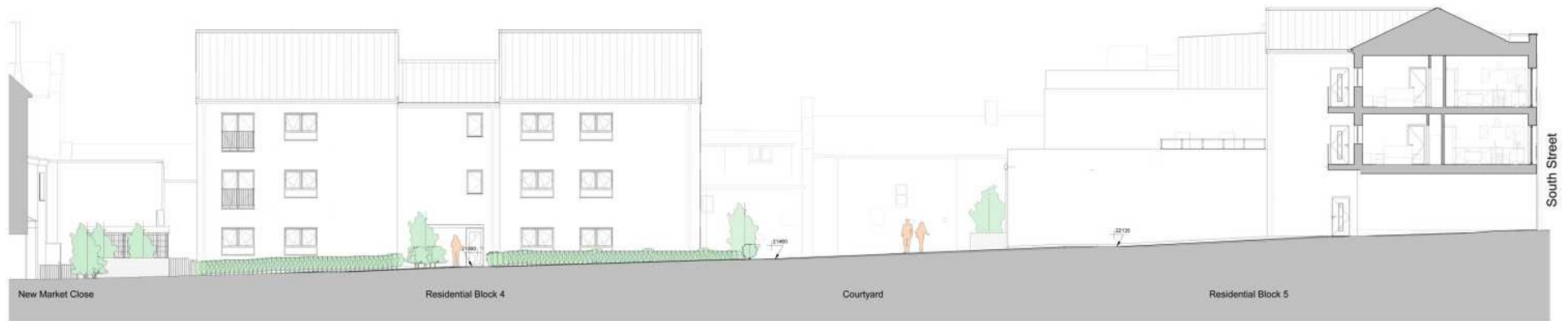


Section 1 - Looking North  
1 : 100



Elevation 1 - South Street  
1 : 100

# Site elevations



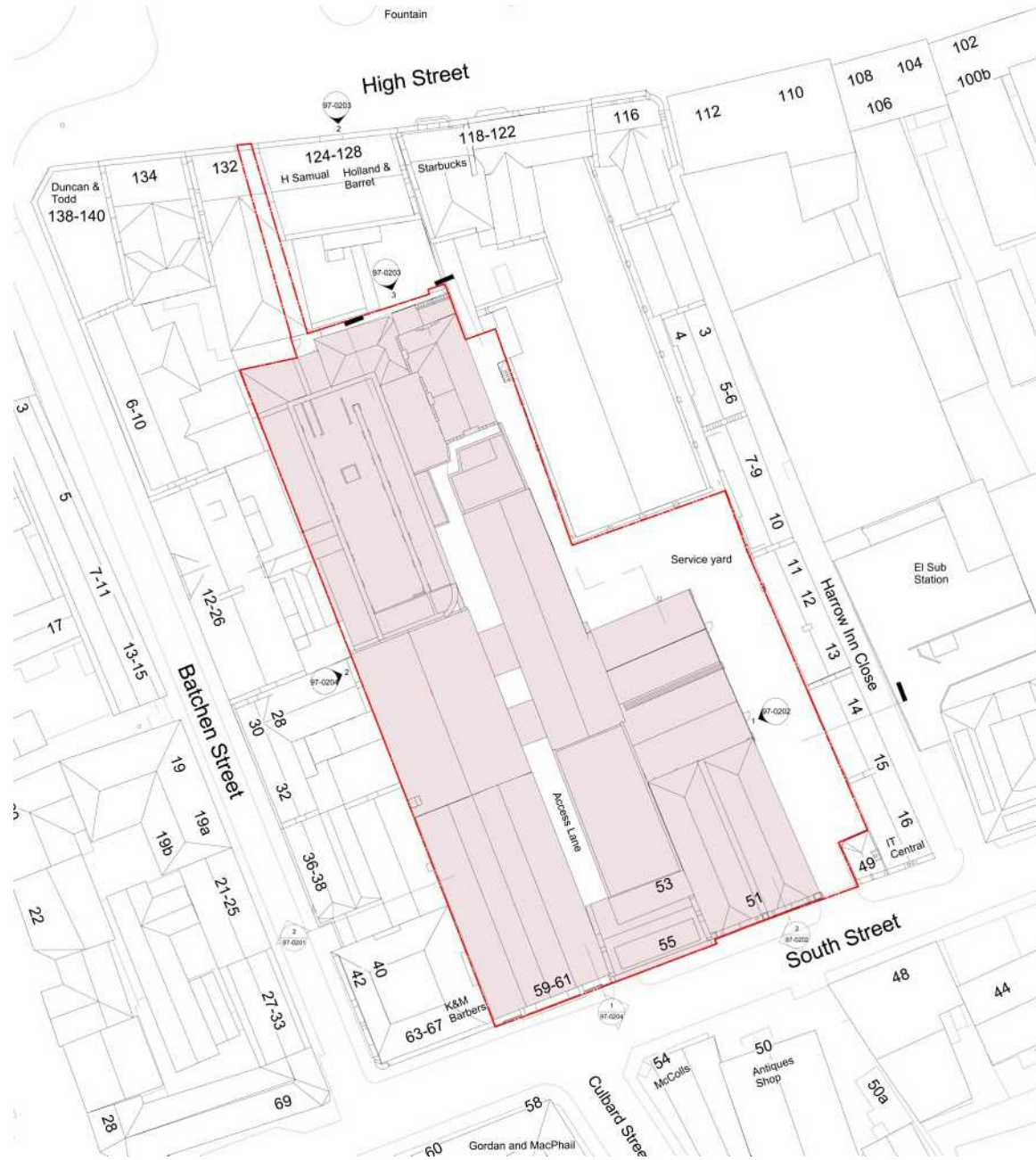
**Section 7 - New Market Close Looking East**  
1 : 100



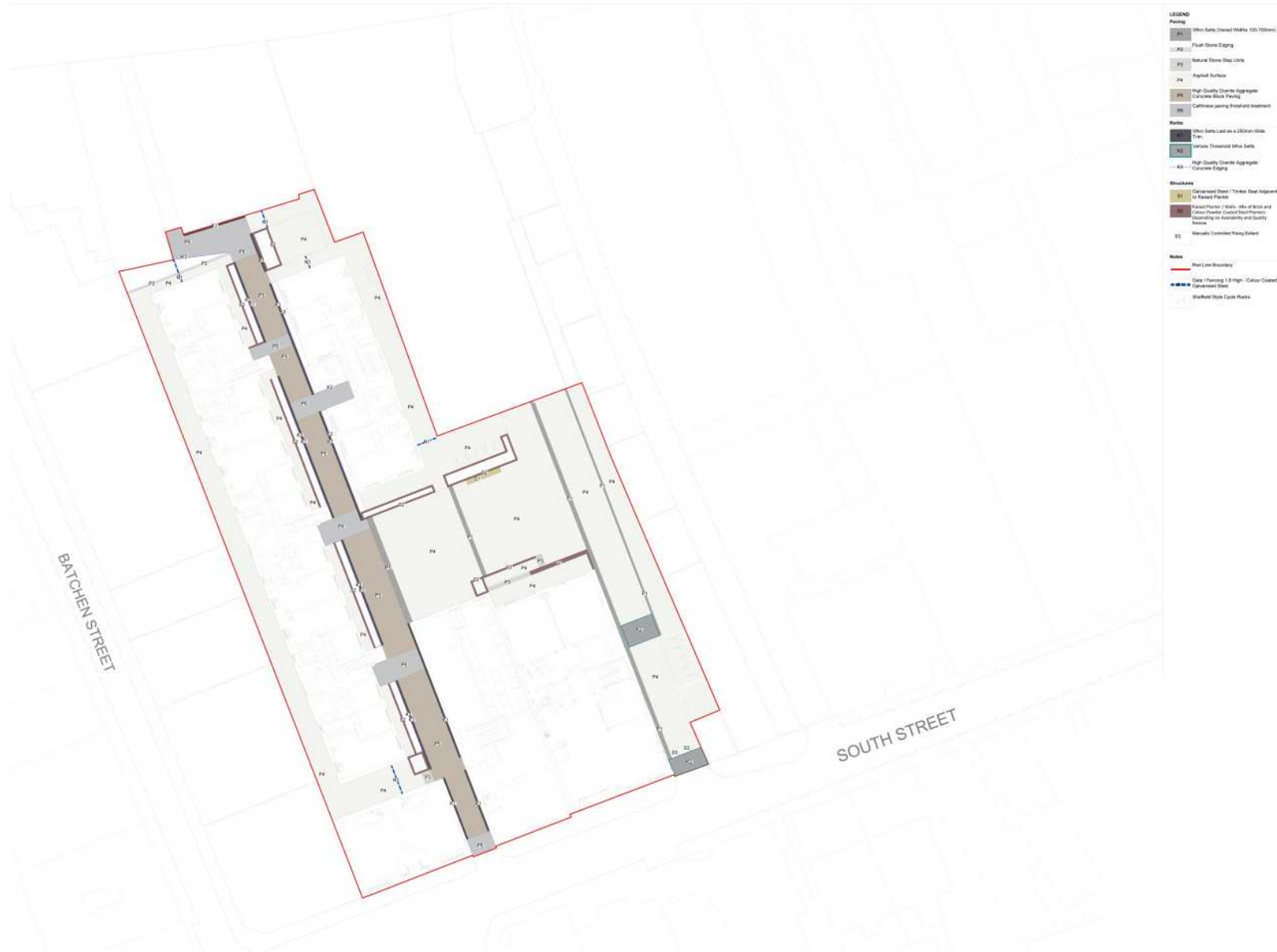
**Section 8 - New Market Close Looking West**  
1 : 100



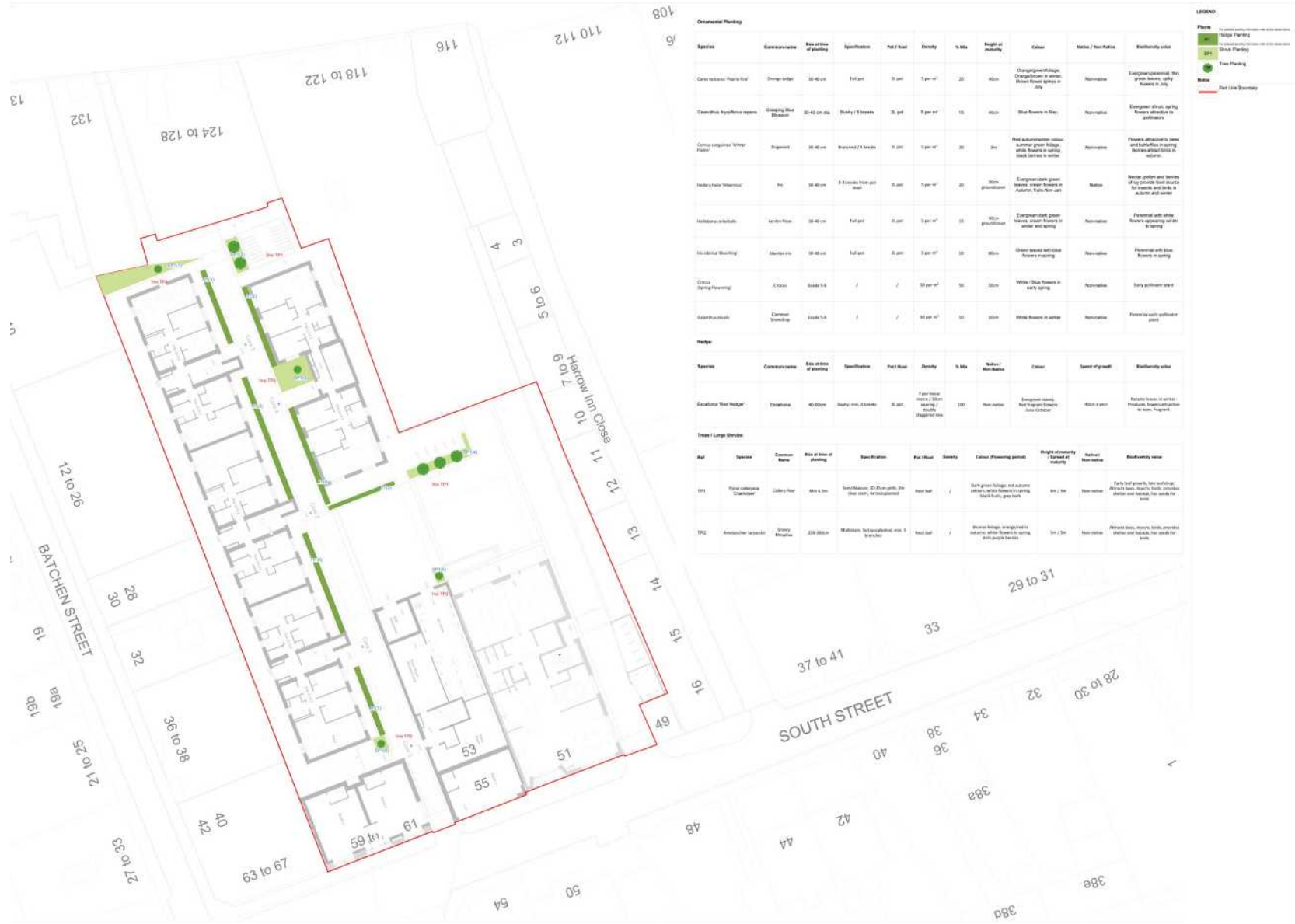
# Demolition plan



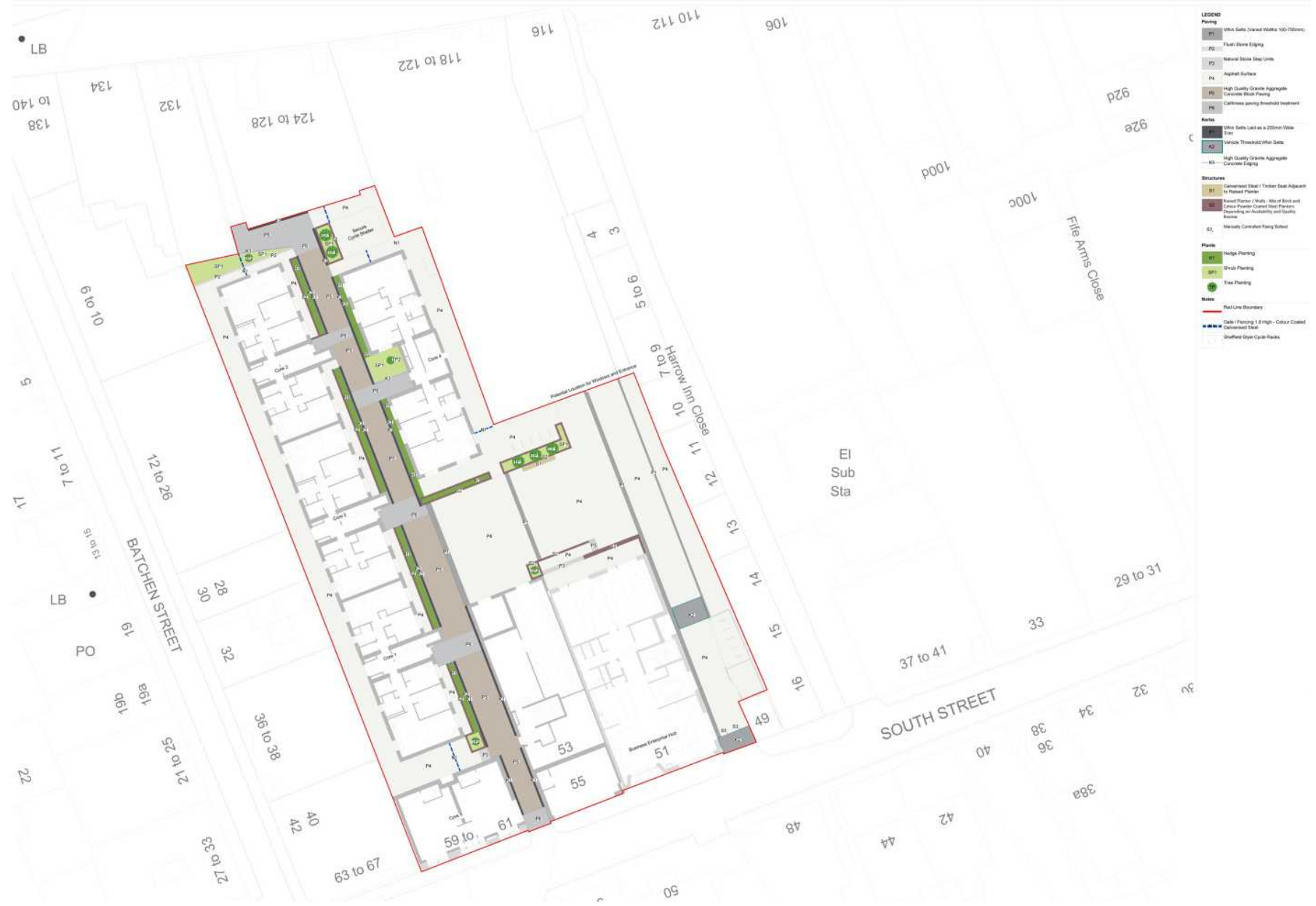
# Hard landscaping



# Soft landscaping



# Landscape general arrangement





# Photo location plan

## South Street Redevelopment



Map Description: Arrows point in direction photograph was taken.

Scale: 1:1,000 @ A4



**Photo 1—57-61 South Street from above**



**Photo 2—53— 55 South Street from above**





**Photo 3— 57—61 South Street**



**Photo 4—51 South Street**



**Photo 5— rear of 51 South Street**



**Photo 6—Newmarket**



**Photo 7—Jailhouse**





*In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications*

## 1. THE PROPOSAL

- A mixed use redevelopment in Elgin Town Centre comprising 38 affordable flats, 3 retail units, a business enterprise hub (linked to Moray College), and public realm works including the opening up of a close running between High Street and South Street.
- Demolition of all existing buildings on site apart from the listed archway at 57 South Street (covered under separate applications for Conservation Area Consent), comprising the following elements:
- **Business Enterprise Hub** (on site of 51 South Street)
  - 3 storeys in height with a shallow pitched roof.
  - Fronting to and access from South Street.
  - Finished in standing seam metal cladding with large expanses of glazing to the front.
  - A mix of white render and metal cladding to the sides and rear.
- **Mixed Use Building** (on site of 53 – 55 South Street)
  - A retail unit at ground floor fronting to South Street with bin store and plant room to rear.
  - 4 flats at upper floor levels.
  - 3 storeys in height with pitched roof.
  - Finished in brick to front and render to rear, with standing seam metal roof.
  - New pend formed at ground floor on western side of building to link to development to rear and High Street.
  - Together with adjacent mixed use building, metal external stairways and balconies to rear to access upper floor flats.
- **Mixed Use Building** (on site of 57 – 61 South Street)
  - 2 retail units at ground floor, both accessed via the archway.
  - 4 flats at upper floor levels, accessed via stairways as described above.
  - 3 storeys in height with pitched roof, positioned to rear of existing archway frontage to be retained.
  - Upper storeys of building would be set back from archway and finished in white render and standing seam metal roof.
- **Block of Flats** (on site of Jailhouse and rear of 57 – 61 South Street)
  - 24 flats arranged in a linear arrangement running parallel to rear of buildings on eastern side of Batchen Street.
  - 4 storey in height with pitched roof.
- **Block of Flats** (on site of Newmarket Bar)
  - 6 flats in a three storey block.

- **Public Realm Works**
  - Formation of a through route between High Street and South Street, utilising the Newmarket Close, running between the two blocks of flats and connecting to the pend formed as part of the mixed use building at 53 – 55 South Street.
  - Hard Landscaping – a mix of aggregate granite paving with Caithness paving along the proposed close, and a mix of asphalt with whin setts to the courtyard and access lane.
  - Soft Landscaping – area of rain garden and planters around close to be planted with a variety of species.

## 2. THE SITE

- A block of buildings, three of which front to South Street in Elgin Town Centre as follows:
  - 51 South Street (formerly Junner’s Toy Shop).
  - 53 – 55 South Street (Elgin Furniture and Carpet Centre and residential flats).
  - 57 – 61 South Street (latterly Junner’s Toy Shop).
  - Jailhouse (130 High Street).
  - Newmarket Bar (130 High Street).
- The site is located in the Elgin High Street Conservation Area, and 57 South Street (former market entrance) is a category C listed building.
- All buildings apart from 53-55 South Street have lain vacant for some time, with significant fire damage to the Jailhouse and Newmarket Bar.
- The surrounding area comprises a mix of uses typical of a dense, historic town centre.

## 3. HISTORY

The following pending applications are being considered alongside this application:

- **24/00301/LBC** – Listed Building Consent associated with this application for 57 – 61 South Street (for works adjacent to category C listed market entrance).
- **24/00302/CON** – Conservation Area Consent for complete demolition of 59 – 61 South Street (former market), The Jailhouse and Newmarket Bar buildings.
- **24/00303/CON** – Conservation Area Consent for complete demolition of 53-55 South Street.
- **24/00304/CON** – Conservation Area Consent for complete demolition of 51 South Street.

### **Related consents**

**17/00963/APP** – Change of use of nightclub to 14 apartments at 130 High Street, Elgin (Jailhouse) granted planning permission under delegated powers on 1 March 2018, subject to legal agreement for developer obligations.



## **4. POLICIES**

### National Planning Framework 4

- 1 - Tackling the climate and nature crises
- 2 - Climate mitigation and adaptation
- 3 - Biodiversity
- 4 - Natural places
- 7 - Historic assets and places
- 9 - Brownfield, vacant and derelict land and empty buildings
- 12 - Zero waste
- 13 - Sustainable transport
- 14 - Design, quality and place
- 15 - Local living and 20 minute neighbourhoods
- 16 - Quality homes
- 18 - Infrastructure first
- 19 - Heating and cooling
- 20 - Blue and green infrastructure
- 22 - Flood risk and water management
- 23 - Health and safety
- 25 - Community wealth building
- 26 - Business and industry
- 27 - City, town, local and commercial centres
- 28 - Retail

### Moray Local Development Plan 2020

- PP1 Placemaking
- PP2 Sustainable Economic Growth
- PP3 Infrastructure and Services
- DP1 Development Principles
- DP2 Housing
- DP5 Business and Industry
- DP7 Retail/Town Centres
- EP1 Natural Heritage Designations
- EP2 Biodiversity
- EP5 Open Space
- EP8 Historic Environment
- EP9 Conservation Areas
- EP10 Listed Buildings
- EP12 Management and Enhancement of the Water Environment
- EP13 Foul Drainage
- EP14 Pollution, Contamination & Hazards
- Elgin Settlement Statement - Elgin Town Centre

## **5. ADVERTISEMENTS**

- 5.1 Advertised as an application affecting character or appearance of a conservation area under section 65 of the Planning (Listed Buildings and Conservation Areas (Scotland) Act 1997.

## 6. CONSULTATIONS

**Contaminated Land** – No objections.

**Environmental Health** – No objections subject to conditions requiring a detailed scheme of the proposed heating system for the residential flats, along with detail on noise emissions, limits on noise and construction hours and provision of Construction Environment Management Plan.

**Transportation Manager** – No objections subject to conditions in respect of cycle parking, and lining/reconfiguration of loading bays on South Street.

**Moray Access Manager** – No objections.

**Developer Obligations** – No obligations sought due to proposal being a town centre development.

**Scottish Water** – No objections, sufficient capacity in local network for water and sewerage connections.

**Moray Flood Risk Management** – Following amendments to surface water drainage arrangement, no objections.

**Housing, Moray Council** – No objections, advise that condition should be placed limiting development to affordable housing and to agree delivery with Housing section.

**Aberdeenshire Archaeology** – Request condition be applied requiring a written scheme of investigation to be undertaken, as well as recording of existing buildings on site.

**Police Scotland Architectural Liaison Officer** – No objections, noting that applicant/developer has already been in touch with ALO and have considered concerns previously raised. Informative notes provided for developer in respect of secured by designed standards.

**Strategic Planning and Development** – The proposal complies with all relevant planning policies. Its town centre location supports a concept of 20-minute neighbourhoods. The proposal would utilise an existing redundant site and supplement this with additional residential accommodation and business units to create a new distinct living/working area.

## 7. OBJECTIONS-REPRESENTATIONS

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

Mr Campbell Murray - No Address Provided. - R

**Issue:** Query about bats on site and where they will be accommodated.

**Comment (PO):** A survey undertaken details no bats are present in the remains of the Jailhouse/Newmarket Bar building. Further correspondence was undertaken with the ecologist following receipt of this comment and they have confirmed that no habitats are present, and the building is unlikely to be suitable for a bat habitat. Bats were noted flying over the site during the survey but were not present in any buildings subject to this proposal.

## **8. OBSERVATIONS**

- 8.1 Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan, namely the adopted National Planning Framework 4 (NPF) and adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.
- 8.2 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to preserve or enhance the character or appearance of conservation areas.
- 8.3 Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.
- 8.4 The main planning issues are considered below:
- 8.5 **Town Centre Development – Retail, Business and Residential**  
This site is located in Elgin Town Centre, as zoned in the Elgin Settlement Statement of the MLDP. The associated designation text states that a diverse mix of uses is encouraged/supported within the town centre including (but not limited to) retail, commercial and residential uses.
- 8.6 With specific reference to the retail elements of this proposal, NPF Policy 28 (Retail) and MLDP Policy DP7 (Town Centres/Retail) both continue the theme that town centres are the sequentially preferential location for retail development. This is referred to as the “Town Centre First” approach in NPF. By virtue of this sites location in the town centre, the proposal is compliant with the aforementioned policies.
- 8.7 Whilst there would be an overall loss of retail floor space within Elgin Town Centre as a result of this development, two of the buildings forming part of this proposal have been vacant for a number of years and the number of retail units would remain the same (3) albeit with a smaller floor space. Noting that a mix of uses is deemed necessary to ensure the vibrancy and vitality of town centres, the proposed retail offering subject to this application is suitable and not at odds with the retail planning policies.
- 8.8 Whilst not retail, the Business Enterprise Hub is a significant footfall generating use that is sequentially preferred to be located in a town centre, as directed by MLDP Policy DP5 (which requires office development that will attract significant numbers of people to comply with MLDP Policy DP7 Retail/Town Centres).

- 8.9 The residential elements of this proposal would see 38 town centre affordable residential units created. NPF Policy 27 supports town centre living, with MLDP Policy DP7 supporting town centre living above ground floor level. NPF Policy 16 (Quality Homes) part (f) states that development of new homes on sites not allocated for housing in the LDP will only be supported in limited circumstances specified in the policy. This proposal is considered to be in accordance with these requirements, noting the residential elements of this proposal:
- have an agreed timescale for build out (targeting March 2026 completion);
  - are consistent with the MLDP's spatial strategy and all other relevant planning policies; and
  - are for the delivery of less than 50 affordable homes that forms part of the Council's affordable housing plan (as well as the Housing Mix Project of the Moray Growth Deal).
- 8.10 NPF Policy 15 (Local living and 20 min neighbourhoods) requires development proposal to contribute to local living and requires consideration to be given to existing settlement pattern and the interconnectivity of new residential development with the surrounding area to ensure there is local access to various amenities. The town centre location of this site means there is easy access for residents to a multitude of amenities and services (shops, employment, health, childcare/education, green space/playgrounds, etc.) that would ensure the proposed flats accord with the ideals of this policy.
- 8.11 The uses forming part of this proposal would therefore not be at odds with the designation requirements and are considered suitable in principle.
- 8.12 **Brownfield Land**  
NPF Policy 9 supports the sustainable reuse of brownfield land including vacant and derelict land and buildings. This proposal would see the redevelopment of a site that has largely lain vacant for a number of years. Whilst hidden to the rear of buildings, the Jailhouse and Newmarket bars are in a very poor state following a fire over 20 years ago. This proposal would provide significant regeneration of this portion of the town centre and contribute to its overall vitality and viability. Consideration is given to the sustainability of the proposal, including embodied carbon under Carbon Emissions and Climate Change below.
- 8.13 **Elgin City Centre Masterplan**  
The Elgin City Centre Masterplan (ECCMP) was adopted by Moray Council in 2021 and is intended to create a land use framework to help support the economic recovery of Elgin City Centre. It identifies projects to prioritise the City Centre while making significant moves toward reducing its carbon footprint. Project CR3 (Bringing Vacant/Derelict Sites and Properties into Reuse) specifically refers to this site and contains a number of requirements for redevelopment of the site. These will be considered under pertinent topic headings in the foregoing observations, however overall the proposal is considered to satisfy the requirements of CR3.
- 8.14 This proposal is also supported by project CR6 (South Street) which proposes the transformation of South Street, including by means of redevelopment of redundant buildings and sites for a mix of uses.

- 8.15 The proposal therefore contributes to the vision and aspirations of the ECCMP.
- 8.16 **Moray Economic Strategy and Moray Growth Deal**  
This proposal forms part of two projects identified in the Moray Growth Deal – namely the Business Enterprise Hub and Housing Mix Delivery projects. The Moray Growth Deal is identified as a key opportunity in the Moray Economic Strategy. Development proposals that support the Moray Economic Strategy to deliver sustainable economic growth will be supported under MLDP Policy PP2 where the quality of the natural and built environment is safeguarded, there is a locational need, and all impacts of the development are mitigated satisfactorily. The following evaluation gives consideration to the suitability of the project in terms of design and siting as well as impacts of the proposal and any necessary mitigation. The town centre location of this proposal is in accordance with the aims of the Housing Mix Delivery to provide affordable housing as well as town centre regeneration. Taking account of these considerations the proposal complies with MLDP Policy PP2.
- 8.17 **Placemaking, Design and Siting**  
NPF Policy 14 (Design Quality and Place) seeks to ensure that development is well designed and makes successful places by adopting a design led approach and applying the place principle.
- 8.18 MLDP Policy PP1 (Placemaking) contains design criteria which all residential development must meet, with significant emphasis on placemaking, biodiversity and promoting health and well-being through good urban design. MLDP Policy DP1 (Development Principles) sets out the need for the scale, density and character of development to be appropriate to the surrounding area.
- 8.19 The applicant has submitted a detailed and comprehensive Design and Access Statement which considers the sites context and the design approach to this proposal. The proposal is made up of a number of units, and the design and siting of each one will be considered in turn:
- 8.20 59-61 South Street – this block would be developed to the rear of the category C listed archway/market entrance. It would be finished in a light white render and set back so that the sandstone archway remains the dominant feature on the street scene. Set next to a four storey stone and slate block, this building (alongside 53 & 55 South Street) would begin a stepping down of building heights from the corner of South Street and Batchen Street towards smaller two storey buildings at Harrow Inn Close. This building would be prominent from Culbard Street, however amongst the context of higher buildings in this area, can be adequately accommodated. A number of rooftops compete for the skyline in this area, and therefore the block would not be out of character with the scale and density other buildings in the location.
- 8.21 At ground floor level the frontage would utilise existing openings, preserving the special interest of the listed structure. To the side, windows on to the new close formed at no. 53-55 would provide a degree of natural surveillance to the close.

- 8.22 53-55 South Street – this block would be a full redevelopment, with the existing building demolished (considered under separate application for Conservation Area Consent). The proposed replacement building would be three storey, with a roof tying into to the adjacent building at no. 59-61. Its frontage would be formed of brickwork and would sit slightly behind the building line of the adjacent listed archway in Block 1. The use of brick provides a reference to the rear of the existing building (which largely comprises brickwork), whilst also introducing a new material that compliments the established pallet of materials in the surrounding conservation area (in particular sandstone).
- 8.23 This building would see a close/vennel formed in the western side at ground floor level, with a shop frontage forming the bulk and remainder of the ground floor façade. This arrangement copies that of the existing building, whilst also providing an active frontage to the ground floor level. At upper floors the formation of flats would see a symmetrical window arrangement, with Juliet balconies formed on all flats. Whilst this is not strictly a traditional window arrangement, it is considered suitable on the context of a modern building within a Conservation Area. Amendments have been made to the frontage to introduce a corbelled cornice at the head of the façade, recessed panels of blockwork between windows, as well as a smaller window arrangement at ground floor level. These amendments have result in a degree of relief to what was previously a relatively flat frontage.
- 8.24 51 South Street – this block would also be a full redevelopment, with the existing building demolished and a three storey building erecting to replace it, forming a Business Enterprise Hub. The building on site has an art deco style frontage and again, demolition is considered under the relevant application for Conservation Area Consent. The proposed replacement building would be finished in standing seam metal cladding on its frontage and upper floor, whilst the side and rear of the building would be finished in white render. Detailing on the frontage would create a clear entrance to the building, whilst also acknowledging the corning on the original building. Together with the slight recessing of the second (top) floor window and provision of a protruding rendered wall to the side, the overall arrangement of the building as now presented is considered to be a suitable modern building within the context of the historic conservation area. It would not detract from the surrounding older buildings.
- 8.25 Flats (Jailhouse and Newmarket) – The proposed blocks of flats would replace the fire damaged buildings at the centre of this site (to the rear of the High Street, Batchen Street and South Street), though part of four storey block of flats would overlap the footprint of the existing building at 59 – 61 South Street. The flats would be modern buildings, finished in mainly white render with area of different coloured rendered/brick detailing and a standing seam metal roof. Whilst relatively tall, the four and three storey blocks would not be out of place in a dense historic town centre. They would be largely screened by the proposed developments fronting to South Street as well as other buildings on Batchen Street and High Street. Although modern in appearance, the use of different coloured material details against a backdrop of white render would pay homage to the mix of different colours in the town centre.

- 8.26 **Public Realm Works** – In developing the site, in particular the provision of flats at the rear, the opportunity to form a close running between High Street and South Street has been taken. This area would be open to the public, enhancing permeability within the town centre whilst also reinforcing the historic settlement pattern of Elgin Town Centre. A variety of material finishes, and landscaping elements are proposed, alongside public art, to create an attractive public space in the town centre, whilst also providing a safe and pleasant access for residents of the proposed flats. Public artwork is indicated in the form of gates, as shown in the submitted Placemaking Statement. Final detail of this will be controlled by condition.
- 8.27 Overall, the collective elements of this proposal represent a significant redevelopment of a long-neglected part of Elgin Town Centre. New development in historic conservation areas does not have to mimic or replicate what previously existed, which in some respects can lead to poor imitations of traditional design. Difference and variety in new buildings can establish their own character, adding another layer of interest to the historic fabric of an area. The design approach of this proposal is a distinctive and modern design coherent with the wider urban environment and of a scale and density that is appropriate within the confines of the site. The development would enhance the overall appearance of the Elgin High Street Conservation Area in which it sits compared to the current condition of the site. The proposal is therefore considered to comply with NPF Policy 14, MLDP Policies PP1 and DP1 as well as the requirements of the ECCMP.
- 8.28 **Open Space**  
NPF Policy 20 (Blue and green infrastructure) supports new development that incorporates green space, whilst MLDP Policy EP5 (Open Space) contains open space standards for new development to meet (in this case at least 15% of a site area should be open space). The site subject to this application is constrained, though an area of courtyard covering approximately 20% of the site area has been formed within the site. This will contain hard landscaping that will form public open space, with areas of planting proposed. This area meets with the numeric requirements of MLDP Policy EP5.
- 8.29 In terms of the quality of the open space provision, the space is well connected and accessible considered to create an attractive and appealing place to be as well as safe and welcoming and provides a suitable level of landscaping and planting to enhance biodiversity. Whilst the elements of the open space are not to a level that would be found and expected in a more suburban setting, the benefits of this development in terms of town centre regeneration outweigh this. The necessity for emergency and refuse vehicle access to the courtyard area has limited the extent to which planting, and street furniture could have been provided in the area.
- 8.30 Overall, the open space provision proposed as part of this development accords with NPF Policy 20 and MLDP Policy EP5.
- 8.31 **Impact on Historic Environment**  
As prescribed in legislation, development within conservation areas must preserve or enhance its character. This is reflected in NPF Policy 7 (Historic assets and places) and MLDP Policy EP9 (Conservation Areas). In this case,

the foregoing evaluation notes that the overall impact of this proposals is considered to enhance the appearance of the Elgin High Street Conservation Area in which it sits, and therefore complies with these requirements.

- 8.32 Planning legislation also states that any development proposal must preserve or enhance the special interests of listed buildings and again, this is reflected in NPF Policy 7 and MLDP Policy EP10 (Listed Buildings). In this case, the category C listed archway/entrance will not be lost and incorporated into the scheme. The proposal would see new development to the immediate rear of this, however it is considered to be of a suitable scale and finish that ensure the listed feature remains the prominent element of this part of the development. The position of it relative to other frontages proposed on South Street as part of this proposal means it occupies the most forward and prominent position in the scheme. On this basis, the proposal is considered to preserve its special interest.
- 8.33 This proposal is also considered not to adversely affect the setting of listed buildings in close proximity to this site, in particular the buildings on Harrow Inn Close (all category C listed), the former Gordon Arms Hotel (category C listed), 128 – 136 High St (category B listed) and 56 – 68 South St (Gordon and MacPhail, category B listed).
- 8.34 **Archaeology**  
The Archaeology service note that this proposal affects archaeological sites - namely the buildings subject to this application, a findspot of a medieval cross slab found in 1996, as well as the site being in the historic medieval core and conservation area of Elgin High Street. NPF Policy 7 and MLDP Policy EP8 (Historic Environment) both require archaeological surveys to be undertaken where development has the potential to impact on non-designated buried archaeology and/or historic buildings that may have archaeological significant that is not understood. In this case the Archaeology service have requested a written scheme of investigation and recording of existing buildings on site to be included in the local historic environment register. Subject to conditions requiring this, the proposal is considered to comply with these historic environment policies.
- 8.35 **Access and Parking**  
NPF Policy 13 (Sustainable Transport) seeks to encourage, promote and facilitate development that prioritises sustainable travel. Part (d) of the policy states that proposals with 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 parking. MLDP Policies PP3 (Infrastructure and Services) and DP1 (Development Principles) require the provision of a safe entry/exit from new development, with appropriate infrastructure, parking, cycle parking and Electric Vehicle (EV) charging facilities.
- 8.36 The provisions of the ECCMP are also noted, with project CR3 identifying that there are limited opportunities for parking on this site and that priority will be given to cycle parking and storage facilities.



- 8.37 In this case the proposal does not include any car parking. This is considered suitable in this instance, taking into consideration the town centre location of this site, with subsequent proximity to services and amenities, as well as public transport links (including Elgin Bus and Train Stations). Space for cycle parking is proposed (although a condition is requested to requiring submission of further details of this parking).
- 8.38 Sufficient space is provided within the site for refuse vehicles to service the internal courtyard and access the bin stores. Conditions have been recommended by the Transportation Manager to requiring suitable alterations to the access area and lining on South Street to accommodate turning of refuse vehicles into the site.
- 8.39 Subject to conditions as recommended, the proposal is considered to be suitable in terms of NPF Policy 13 and is also not at odds with MLDP Policies PP3 and DP1.
- 8.40 **Waste**  
NPF Policy 12 (Zero waste) requires all development that generates waste including residential properties, to detail how much waste will be generated and how it will be dealt with including means of segregation. This proposal shows space for bin storage provision for the residential flats, with bins provided to local authority standards including provision for segregation of recyclables. The submitted planning statement also states that each flat will be provided with internal recyclable waste containers in addition to general waste storage.
- 8.41 As part of the submitted Construction Environment Management Plan, construction waste will be managed in line with the waste hierarchy, ensuring the suitable storage (including segregation).
- 8.42 Subject to condition requiring the development to proceed in accordance with these details, the proposal is considered to comply with NPF Policy 12.
- 8.43 **Water and Drainage**  
Scottish Water have confirmed that there is sufficient capacity in the local network for water supply and foul drainage connection. Connection to the Scottish Water Network ensures NPF Policy 22 (Flood risk and water management) and MLDP Policy EP13 (Foul Drainage).
- 8.44 All development must be served by a suitable drainage arrangement under the requirements of NPF Policy 22 and MLDP Policy 12 (Management and Enhancement of the Water Environment). NPF Policy 20 supports development that incorporates new blue infrastructure (which includes porous paving, sustainable urban drainage systems and rain gardens).
- 8.45 A Drainage Impact Assessment that accompanies this application notes the existing condition of the site is fully impermeable. The proposed surface water drainage scheme would see the introduction of attenuation and control of surface water run off which currently drains freely to the Scottish Water combined sewer. The retention schemes comprise bioretention systems including rain garden incorporate shallow landscaped depression in the site that allow for filtration through vegetation and underlying soils for collection, as well

as evaporation from temporary pooling of water at surface. The overall run off rate at present is 43.59 litres per second to the sewer during a 1 in 30 year storm event. The proposed attenuation within the site would decrease this run off rate to 5.3 litres per second, which is approximately 8 times less than the current rate. This will offer significant betterment to the existing sewers in Elgin.

8.46 Moray Flood Risk Management have raised no objections to this arrangement. The proposal is therefore considered to comply with NPF Policy 22 and MLDP Policy 12.

8.47 **Noise and Amenity**

NPF Policy 23 (Health and safety) states development proposals that are likely to raise unacceptable noise levels will not be supported, with MLDP Policy EP14 (Pollution, Contamination and Hazards) taking a similar position. The main consideration for noise is likely to be from the proposed communal heating system for the residential element of this scheme. A condition will be placed requiring a detailed scheme of heating to be submitted, alongside an assessment of the noise emissions of the system to ensure that residential amenity of the proposed residential flats will not be adversely affected. Limitations on noise of other plant and the substation will also be controlled by condition.

8.48 A Construction Environment Management Plan (CEMP) will be requested by condition to agree the proposed working methods to ensure any adverse impacts on the amenity and environment of the surrounding area are suitably mitigated. Construction hours will be restricted by condition limiting works to 0800 – 1900 weekdays, and 0800 – 1300 on Saturdays (excluding national holidays).

8.49 The Environmental Health service raised no objections subject to these conditions, and on this basis the proposal is considered to comply with NPF Policy 23 and MLDP Policy EP14.

8.50 **Carbon Emissions and Climate Change**

NPF Policy 1 (Tackling the climate and nature crises) requires all development to give significant consideration to the global climate and nature crises. In addressing the policy, the supporting Sustainability and Energy Statement notes that the buildings on site have been designed to meet current building regulations and ensure low u-values and airtight construction. Residential development be served by a local heat network to provide a highly efficient heating and hot water system via a centralised heating system utilising air source heat pumps. The system will also be designed to accommodate a future connection to a district heat network in Elgin should it progress. This approach to heating also ensures compliance with NPF Policy 19 (Heat and cooling) – which would enable future cost-effective connections to district heat network.

8.51 NPF Policy 2 (Climate mitigation and adaptation) requires new development to be sited and designed to minimise lifecycle greenhouse gas emissions and adapt to current and future risks from climate change. The Above evaluation under NPF Policy 1 is pertinent to these points. The low u-values and low air permeability of the proposed development will ensure a steady internal temperature, meaning that heat generated in the buildings will be very slow to

escape in the winter, and outdoor heat will be equally slow to enter the buildings in the summer. This reduces the risk of overheating in the buildings.

- 8.52 A Carbon Reduction Statement has been submitted to address Policy 2 of NPF4. The document includes details of the methodology, the embodied carbon impacts, operational carbon, and carbon management and reporting. Further detail is provided on carbon sequestration, renewable energy and decarbonisation.
- 8.53 Following consultation with the Climate Change team, it is deemed that the submitted carbon statement is a competent response and satisfies the policy requirements and the associated guidance.
- 8.54 **Biodiversity**  
Under NPF Policy 3 (Biodiversity) and MLDP Policy EP2 (Biodiversity), there is a requirement for all development to contribute to the enhancement of biodiversity, and this is echoed under MLDP Policy EP2. It is acknowledged that the site is currently a derelict site with a number of vacant buildings and limited biodiversity value. Therefore, any new landscaping features will enhance the current provision and should allow for limited but important biodiversity opportunities within this town centre site, ensuring compliance with NPF Policy 3 and MLDP Policy EP2.
- 8.55 **Bats**  
Historic buildings can harbour roosts for bats a protected species under wildlife legislation. This is recognised under NPF Policy 4 (Natural places) and MLDP Policy EP1 (National Heritage Designations), both of which require developers to demonstrate development proposal do not adversely affect protected species and their habitats. A bat survey accompanying this proposal demonstrates there are no bats present in the buildings, though some bats were observed flying in the area during the survey period. This proposal is therefore not at odds with the aforementioned policies in respect of protected species.
- 8.56 **Housing/Affordable Housing**  
Under NPF Policy 16 (Quality homes) and MLDP Policy DP2 (Housing), there is a requirement for all housing developments to contribute at least 25% of units towards affordable housing. In this case, all residential flats forming part of this proposal would be affordable housing. Subject to condition ensuring the development is retained as affordable housing in perpetuity, the proposal complies with NPF Policy 16 and MLDP Policy DP2 with regards to affordable housing requirements.
- 8.57 **Developer Obligations**  
NPF Policy 18 (Infrastructure first) and MLDP Policy PP3 (Infrastructure and Services) alongside the Council's Supplementary Guidance on Developer Obligations, identify instances where developer obligations are necessary to mitigate the impact of a proposal on local services and infrastructure. The guidance states that development within town centres is not liable to provide any developer obligations. The Developer Obligations team have therefore not identified the need for any obligations to be sought as part of this proposal.

- 8.58 **Community Wealth Building**  
NPF Policy 25 (Community wealth building) supports proposals that contribute to local or regional community wealth building strategies and those that are consistent with local economic proprieties. Guidance has also been prepared locally to ascertain instances where Community Wealth Building will be sought for a project, and this proposal falls within the realms of this guidance.
- 8.59 A Community Wealth Building Statement has been submitted by the applicant to demonstrate the economic impacts of the proposed development. This provides an overall picture of the applicant's approach to their social impact, and the overall procurement strategy including utilising the local supply chain, reporting mechanisms, investment in the workforce, local business support, and several work fair initiatives. There is detail contained within the report about community benefits including local projects that have benefited from the applicant's expertise and a statement on potential community ownership.
- 8.60 Following internal consultation with the Council's Community Wealth Building Officer, it is deemed that the submitted Community Wealth Building Statement is a competent response and satisfies the policy requirements and the associated guidance.

### **Conclusion**

This proposal represents a significant investment for a wholesale redevelopment of part of Elgin Town Centre that has lain vacant for some years, and to some degree the fire damaged section have been a blight on its immediate surrounds. By creating a mix of uses that will add to the vitality and viability of the Town Centre and a form of development that its suitable for its historic context, this proposal complies with relevant planning policies, as well as the Elgin City Centre Masterplan, and is accordingly recommended for approval subject to conditions.

### **REASON(S) FOR DECISION**

The Council's reason(s) for making this decision are: -

The proposal complies with the development plan (namely National Planning Framework 4 and the Moray Local Development Plan 2020). It also accords with the aims of the Moray Economic Strategy and the Elgin City Centre Masterplan, both of which are material planning considerations. There are no other material considerations that indicate otherwise.

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