

THE HIGHLAND COUNCIL

**SOUTH PLANNING APPLICATIONS COMMITTEE –
27 September 2016**

Agenda Item	6.1
Report No	PLS 056/16

**16/01178/FUL : Mr David Smillie
Everest Restaurant, 141B High Street, Fort William, PH33 6EA**

Report by Area Planning Manager – South/Major Developments

SUMMARY

Description: Change of use from restaurant (Class 3) to nightclub (Class 11)

Recommendation - GRANT

Ward: 22 - Fort William and Ardnamurchan

Development category: Local Development

Pre-determination hearing: n/a

Reason referred to Committee: More than 5 timeous objections from separate addresses.

1. PROPOSED DEVELOPMENT

- 1.1 This application seeks full planning permission for the change of use of the vacant Everest Restaurant premises to a night club. No external alterations to the premises are proposed to facilitate the change of use. Windows to the north west and north east elevation are to be stopped up internally.
- 1.2 No preapplication advice given.
- 1.3 The site is accessed via a pedestrian footway from the Fort William High Street between the Spice Tandoori and Scottish Whisky Centre (vacant premises). Vehicular access to the rear of the property is taken from the High Street between Maryburgh Court and the Highland Star Chinese Restaurant. This access serves Maryburgh Court parking and the service yard for the High Street shop units and residential flats above. Existing public water supply and public foul drainage serve this site.
- 1.4 Noise report submitted 08.08.16.
- 1.5 **Variations:** none

2. SITE DESCRIPTION

- 2.1 The application site is the former Everest Indian Restaurant premises which has been vacant for a number of years. The premises are set to the rear of the Spice

Tandoori Restaurant at the western end of Fort William High Street. The premises are accessed via a pedestrian path and steps from the High Street between the Spice Tandoori Indian Restaurant and the former Scottish Whisky Centre which is now vacant. The premises are set between the High Street and the A82 trunk road. The main entrance to the premises is from the pedestrian walkway to the north east.

3. PLANNING HISTORY

- 3.1 11/00258/FUL: External alterations to Everest Restaurant : Granted 10.03.11
- 3.2 14/02389/FUL: Change of use from restaurant to 2 no. apartments: Refused 15.01.15 due to Environmental Health objection. Insufficient control over odour emissions from neighbouring properties to permit residential use.
- 3.3 16/03947/FUL: Demolition of former Scottish Whisky and Craft Centre and Erection of Flatted block consisting of 12 self-contained flats with shared circulation area containing lift access and stair access and associated car parking: application submitted and pending validation.

4. PUBLIC PARTICIPATION

- 4.1 Advertised : Section 34 Advertisement 07.04.16
Representation deadline : 09.04.16
Timeous representations : 8 timeous representations, from 7 separate addresses (commercial and residential)
Late representations : 0
- 4.2 Material considerations raised are summarised as follows:
 - Noise nuisance
 - Insufficient access to premises
 - Lack of parking
 - Increase in anti social behaviour
 - Insufficient lighting to rear of premises
 - Conflict with existing and future residential development in High Street
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

- 5.1 **Environmental Health** : No objections. Initial concerns overcome following receipt of noise report. Noise impacts to be controlled through recommended planning conditions and noise mitigation plan as part of licensing legislation.
- 5.2 **Lochaber Disability Access Panel** : Objection. Note that the application does not enable access for disabled persons and therefore represents a breach to current legislation.

5.3 **Transport Scotland** : No objection. Concerns raised regarding potential levels of signage which might be sought. Acknowledge that signage if sought would be considered under a separate application.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

28	Sustainable Design
34	Settlement Development Area
41	Business and Industrial Land
42	Previously Used Land
43	Tourism
72	Pollution

6.2 West Highland and Islands Local Plan 2010 (as continued in part, in force)

Policy 2	Development Objectives and Developer Requirements
Inset Map 30	Fort William
Policy 16	Commerce

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

7.3 Scottish Government Planning Policy and Guidance

Para 29. Decisions should support delivery of accessible housing, business, retailing and leisure development and make efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration policies.

7.4 Other

PAN 1/2011 Planning and Noise

PAN 52 Planning in Small Towns

PAN 59 Improving Town Centres

National Review of Town Centres Town Centre Action Plan - the Scottish

8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 Development Plan Policy Assessment

Planning permission is sought for the change of use of the vacant Everest restaurant site to a nightclub. The Everest premises have remained vacant for some years and are currently being marketed for let through a local estate agent. Change of use from restaurant to two residential apartments was sought in 2014, however, this application was subsequently refused on residential amenity grounds, as sufficient control of odour from the neighbouring restaurant could not be achieved.

The site is located within the Fort William Town Centre which is allocated as a Commerce Centre, and Settlement Development Area within current development plan policy. Policy 16 : Commerce - West Highland and Islands Local Plan, 2010 is continued in force by the Highland wide Local Development Plan, 2012 and states that the Council will encourage retail, office and leisure development including Class 11 assembly & leisure use (including discotheque use) within an identified network of centres which include Fort William Town Centre.

Planning policy at both national and local level is generally supportive of the principle of development which prioritises town centre sites and encourages vibrancy and diversity within the town centre setting. Whilst the principle of reuse of vacant buildings within town centres is accepted, the main considerations are whether the proposal is compatible with neighbouring land use and can be adequately serviced, as set out in Policies 28 (Sustainable Design) and 34 (Settlement Development Area). Policy 72:- Pollution - requires proposals that may result in significant pollution (noise) to only be approved where a detailed assessment report on the pollution has been provided by the applicant to show how it can be appropriately avoided and if necessary mitigated.

Policy 34 : Settlement Development Areas seeks to support existing communities and make best use of existing infrastructure and services. Policy 28 : Sustainable Design requires proposals to be assessed to the extent they are compatible with public service provision and proposals must be assessed to ensure individual and community residential amenity is not significantly adversely affected. The re-use of vacant buildings is supported by this policy to promote varied, lively and well used environments, enhancing community safety and security and reducing fear of crime. The policy includes objectives to accommodate needs of all sectors including disabled people.

The Scottish Government in response to the Town Centre Action Plan review aims to target available resources to prioritise town centre sites and encourage vibrancy and diversity, bringing long term vacant premises back into use.

8.3.1 Existing and Approved Adjacent Land Uses

A number of objections have been received which highlight potential conflict between the proposed use and existing land uses, which include existing residential properties above neighbouring restaurants and shops, proposed residential units at the former whisky centre, neighbouring restaurants and businesses and the church premises nearby.

The concerns raised relate primarily to loss of residential amenity through noise, impact on parking to the rear of the High Street, lack of adequate access and an increase in anti social behaviour, late at night.

Given the town centre location and current use as a Class 3 restaurant it is accepted that there will be activity in the High Street during the evening and night time. The restaurant premises have been vacant for a number of years and it is acknowledged that bringing the building back into use will increase activity in this locale.

The noise report submitted identifies mitigation measures including noise insulating of the existing windows and active management of the main entrance and vestibule doors while the club is trading. The report states that the fire doors to the rear of the property will remain closed at all times during operation of the club. This information has been considered by Environmental Health and considered acceptable to safeguard neighbouring residential amenity, subject to planning conditions. The nightclub would be subject to separate licensing legislation, including control over hours of operation and a formal noise management plan.

Anti-social behaviour and damage to neighbouring property are concerns raised by neighbours which would be managed by the proprietor and controlled through licensing and police in line with other businesses within the Fort William Town Centre.

A lack of security lighting to the neighbouring car park and service bay area to the north west has been raised as an issue. The doors to this side of the building will not be used by patrons other than in case of emergency. Given the current use of the premises as a restaurant and the limited use of these exits it is not considered reasonable to seek security lighting to this area.

8.3.2 Access and Servicing

There is no dedicated parking area or vehicular access which serves the existing premises. Given the town centre location, the current lawful use as a restaurant and the proposed use which potentially would reduce the number of patrons driving to the venue, the access and parking arrangements are considered acceptable for the proposed change of use.

The premises are accessed via a pedestrian walkway, which Community Services confirm does not form part of the Council's public footpath network. The Access Officer has advised that the pathway is not catalogued as a public right of way but is likely to meet the prescriptive use for a public right of way. No built development is proposed which would alter the current situation and the proposed access is considered acceptable given the current use of the premises.

The proximity to the trunk road has been raised by an objector as a potential issue. There is an area of banking and fencing which separate the business premises

from the trunk road boundary and the club will be managed by staff on the door. Transport Scotland have been consulted on this application and raise no objections to the proposal and no additional fencing has been sought. Transport Scotland have commented regarding the potential for an increase in signage which might distract drivers on the bypass, however, no additional signage is proposed within this application and additional signage would be subject to consideration through a subsequent advertisement consent.

The premises are to be served by the existing public water supply and public foul drainage.

8.3.3 Disabled Access

The Lochaber Disability Access Panel have objected to the proposed change of use on the basis that no improvements to the existing premises and associated access have been incorporated to improve access for disabled persons. The Panel consider the application to be in breach of current legislation in regards to creating an accessible facility.

This application seeks change of use of existing premises where toilets, main floor and fire exit are located at different levels. The Panel's comments have been relayed to the applicant who advises that there are significant obstacles to providing access for disabled people given the current building configuration. The applicant has advised that he will seek advice with a view to improve all abilities access as part of the licensing process.

The Principal Building Standards Surveyor for Lochaber has advised that the conversion of the premises and internal works will be subject to building warrant and compliance with relevant legislation will be considered at this stage. This will include an onsite assessment of the barriers to access and consideration of improvements. An informative note to this effect is recommended.

8.3.4 Conclusion

Taking into account the existing use class for restaurant use, the position of the premises within the Town Centre and the mitigation measures proposed to control noise breakout from the premises, the proposed change of use is considered to accord with policies 28, 34 and 72 of the Highland wide Local Development Plan, 2012 and granting of permission subject to planning conditions, is recommended.

8.4 **Material Considerations**

Eight letters of representation and an objection from the Disability Access Panel have been received in relation to the proposal. The points raised are summarised in sections 4.2 and 5.2 above and the issues raised considered in section 8.3 above.

8.5 **Other Considerations – not material**

- The lane from the High Street towards Everest is included in the application. If this lane is a right of way it should be removed from the application.

Comment : The status and impact on public access is considered in section 8.3.3 above. The path has been excluded from the application site

boundary.

- Conflict of interest as Council is interested party to development of neighbouring Whisky Centre for residential use

Comment : This application has been assessed on its own merits against current development plan policy. A planning application for the Whisky Centre has recently been received and is pending validation/consideration. Future residential development will be subject to the same due process.

- Effect on future value of house prices
Comment : The impact on neighbouring residential amenity has been assessed as part of the consideration of this proposal. The effect of change of use on house prices is not a material planning consideration.

- There are public toilets at the far end of the car park to the rear of the church where people urinate against the wall late at night. There is potential for this to increase and foul odour to affect neighbouring property.

Comment : Anti-social behaviour at neighbouring premises cannot be treated as a material consideration of this application. The existing premises include toilet facilities and potential conflict of neighbouring land uses is considered above.

- A neighbouring chip shop is open until 2am on Sunday morning and a night club will increase build up of noise, movement of people, litter and drinking in residential area.

Comment : The operation of a neighbouring business premises cannot be treated as a material consideration of this application. The impact of the proposed change of use on neighbouring land use has been assessed as part of this application in accordance with current development plan policy.

8.6 Matters to be secured by Section 75 Agreement

None

9. CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. RECOMMENDATION

Action required before decision issued	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons:

1. All mitigation measures outlined in the Report on Sound by Charlie Fleming Associates received on 1 August 2016 together with sound insulation of the party wall between the vestibule and dance floor area, shall be fully implemented, prior to the first use of the premises for Class 11 leisure and assembly use. Thereafter the noise mitigation measures identified shall be fully implemented and maintained in perpetuity.

Reason : In order to safeguard the amenity of neighbouring properties and occupants; in accordance with policies 28, 34 and 72 of the Highland wide Local Development Plan, 2012.

2. No development shall commence until full details of the sound insulation (required by Condition 1 above) between the party wall between the vestibule and main open area (referred to as 'dance floor' and 'bar area' on the approved plan) has been submitted to and approved in writing by the Planning Authority.

Reason : In order to safeguard the amenity of neighbouring properties and occupants; in accordance with policies 28, 34 and 72 of the Highland wide Local Development Plan, 2012.

3. Any noise originating from the operation of the premises shall be inaudible within any noise sensitive premises. For the avoidance of doubt operating noise shall not exceed NR 15 when measured or calculated within any noise-sensitive premises with windows open for ventilation purposes. For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan).

Reason : In order to safeguard the amenity of neighbouring properties and occupants; in accordance with policies 28, 34 and 72 of the Highland wide Local Development Plan, 2012.

4. Any music, singing, speech, electronic video games or other amusement machines (whether amplified or not) originating from the operation of the premises shall be inaudible within any noise sensitive premises. For the avoidance of doubt such noise shall not exceed NR 15 when measured or calculated within any noise-sensitive premises with windows open for ventilation purposes. For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan).

Reason : In order to safeguard the amenity of neighbouring properties and occupants; in accordance with policies 28 and 34 of the Highland wide Local

Development Plan, 2012.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Building Standards

The Principal Building Standards Surveyor for Lochaber has advised that the conversion of the premises and internal works will be subject to building warrant

and compliance with relevant legislation will be considered at this stage. This will include an onsite assessment of barriers to access and consideration of improvements for disabled persons.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Signature: Nicola Drummond
Designation: Area Planning Manager – South/Major Developments
Author: Christine Millard
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Location Plan 000001 Rev A
Plan 2 – General Plan 101

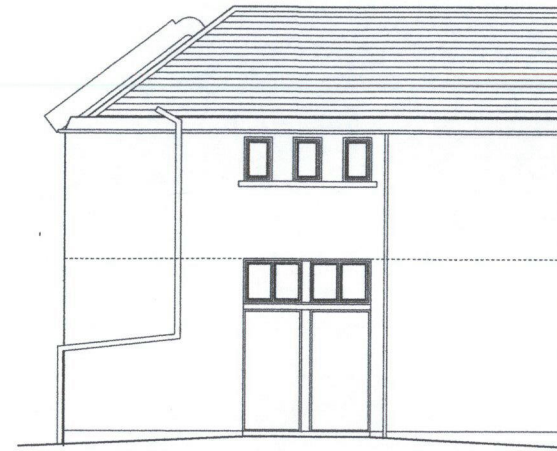


LOCATION PLAN

scale 1:2500



ELEVATION FROM LANE

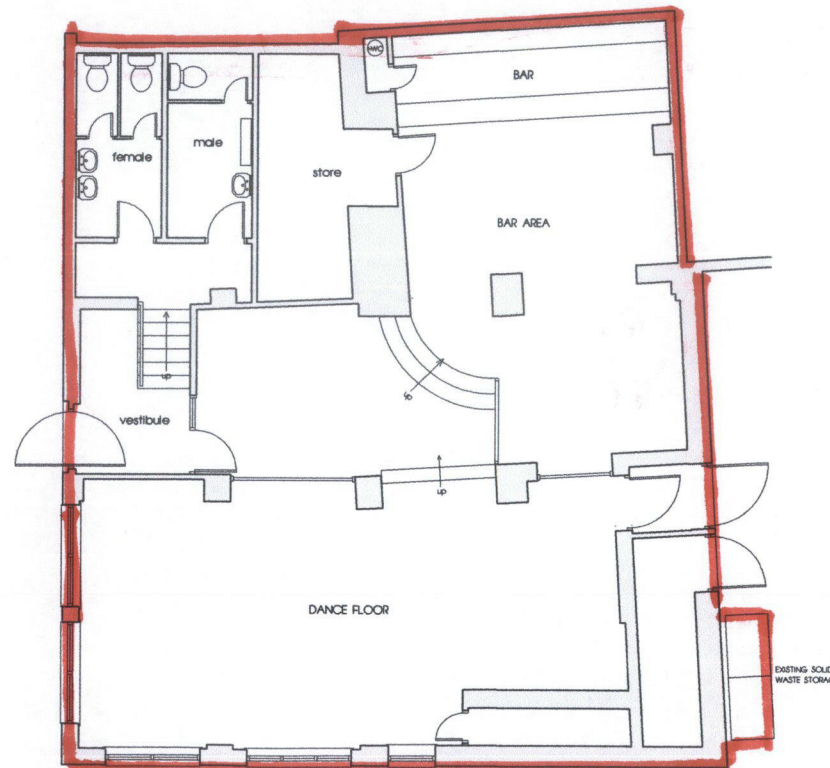


SIDE ELEVATION

INVERNESS PLANNING &
 BUILDING CONTROL SERVICES
 14 MAR 2016
 RECEIVED



ELEVATION FROM DUAL CARRAIGEWAY



GROUND FLOOR PLAN

Notes
 The contractor will be held to have checked all dimensions before commencing work with any works and, in the event of discrepancies, to refer them directly to this office for clarification prior to commencement of work.
 Written dimensions are to be taken in all cases. Drawings should not be scaled for dimensions. In case of doubt refer to this office.
 This drawing is copyright and all rights are reserved. No unauthorised copying of this drawing is permitted.

and Council
 eProcessing Centre
 Date Received:

15 MAR 2016

NOTES
 1 EXTERNAL ELEVATIONS ARE UN-AFFECTED BY THE PROPOSALS

project
 PROPOSED CHANGE OF USE FROM RESTAURANT TO NIGHT CLUB

client
 MR. D. SMILLIE

detail
 DESIGN SKETCH - GROUND FLOOR PLAN & ELEVATIONS

DKD
 D. KELLY DESIGN
 Architectural Consultant
 Queen Anna House - 111 High Street
 Fort William PH33 6DQ
 Tel: 01397 700999 - Fax: 01397 700888

scale
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