

Agenda item	6.4
Report no	PLN/035/19

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 5 April 2019

Report Title: 18/03878/S42 - 5 Cadboll Place, Tain

Report By: Acting Head of Development Management – Highland

1. Purpose/Executive Summary

1.1 Applicant: Sids Spice per Colvin Designs

Proposed Development: Application under Section 42 to amend Condition 1 of planning permission 17/02242/FUL (increase openings hours to *7am to 10pm* Monday to Thursday, 7am to 11pm Friday to Saturday, 11am to 10pm on Sunday)

Ward: 7 - Tain and Easter Ross

Category: Local

Reasons Referred to Committee: More than 5 objections

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.

2. Recommendation

2.1 Members are asked to agree the recommendation to grant as set out in section 11 of the report.

3. PROPOSED DEVELOPMENT

3.1 The application seeks consent to amend Condition 1 of planning consent 17/02242/FUL; this permission relates to a change of use to a cold and hot food takeaway and was granted in August 2017. Condition 1 states:

The development hereby approved shall not be open to customers, and no customer shall be allowed on the premises, outwith the hours of:

- i. 07:00 to 17:00 Monday to Friday;*
- ii. 07:00 to 17:00 on Saturdays; and*
- iii. Closed on Sundays.*

This application seeks to vary this to:

The development hereby approved shall not be open to customers, and no customer shall be allowed on the premises, outwith the hours of:

- i. 7am to 10pm Monday to Thursday;*
- ii. 7am to 11pm Friday to Saturday;*
- iii. 11am to 10pm on Sunday;*

3.2 No pre-application advice was sought in advance of the submission of the application.

3.3 There are no supporting documents lodged with the application.

3.4 **Variations:** None

4. SITE DESCRIPTION

4.1 The site concerns an existing small building which was occupied by a cold and hot food takeaway (essentially a snack shop); however this has now been taken over and re-opened as an Indian Street Food Takeaway. The site is located on the east side of Cadboll Place within the town centre of Tain. The building formerly housed a bike shop however the change of use to hot food takeaway was granted in August 2017. The building is located adjacent to the library and a Chinese takeaway is located within an adjacent building to the north west. There are houses to the rear of the building and to the south west and south east of the building. The area generally is of relatively high density, owing to its town centre location however the building itself is single storey with no residential properties above it. There is no dedicated parking for the building; on-street parking is currently utilised.

5. PLANNING HISTORY

5.1 17/02242/FUL: Change of use from non-food retail shop to takeaway hot and cold food shop (in retrospect). Permitted 07.08.2017

6. PUBLIC PARTICIPATION

6.1 Advertised: Unknown Neighbour/Schedule 3 Development - 31.08.2018
Representation deadline: 21.09.2018

Timeous representations: 12 objections from 12 separate addresses

Late representations: 0

6.2 Material considerations raised are summarised as follows:

- Noise impact - disturbance
- Increased odours
- Limited parking
- Concern regarding inadequate ventilation
- Impact on residential amenity
- Growth in traffic - safety implications

Non-material considerations

- Concerns regarding the blocking of private access
- No fire exit doors
- Too many takeaways and cafes in the town
- If an Indian takeaway was applied for initially, it would have been refused
- Insufficient space for customers within the premises
- Applicant did not sufficiently advertise the planning application
- Concern regarding increased use of private ground for parking
- No details of bin storage

6.3 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.

7. CONSULTATIONS

7.1 **Tain Community Council:** No objections. The Community Council have considered this planning application and are happy to support it.

7.2 **Environmental Health:** No objections however note that an improved ventilation system is required (specifically the installation of carbon filters) – the building has been inspected by Environmental Health and a suitable system has been identified.

8. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

8.1 Highland Wide Local Development Plan 2012

28	Sustainable Design
29	Design Quality and Place Making
34	Settlement Development Areas

8.2 Inner Moray Firth Local Development Plan (2015)

1 Promoting and Protecting Town and City Centre

9. OTHER MATERIAL CONSIDERATIONS

9.1 Highland Council Supplementary Planning Policy Guidance

Not applicable

9.2 Scottish Government Planning Policy and Guidance

Scottish Planning Policy (June 2014)

10. PLANNING APPRAISAL

10.1 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.

10.2 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.

10.3 Development Plan Policy Assessment

The application is concerned solely with the extension of opening hours at an existing building. Although concern is noted in objections regarding the change from a snack shop to an Indian food takeaway, both these uses fall within the same Use Class therefore the existing permission ref: 17/02242/FUL covers this change. As such, the building has an established use as a hot food takeaway and therefore this Section 42 application is concerned solely with the extension of opening hours to facilitate late evening opening. Notwithstanding this position, a Section 42 application is an opportunity to revisit any conditions attached to the previous consent and to assess whether any additional conditions are required. This is discussed further in the following sections.

10.4 Policy 28 of the Highland-wide Local Development Plan, which is concerned with residential and community amenity is the most relevant policy in the assessment of the application. In this instance, the assessment is focused on an *overall increase in activity* at the building and material considerations are detailed in the following sections.

Material Considerations

10.5 Parking

As this is a town centre location, proposals are assessed on their own merits. As a change of use has already been granted, it is considered that the Planning Authority have already accepted that the current arrangements are satisfactory however the assessment of this Section 42 application must take into account increased usage of the building. There are a number of flats and houses in the general area which means that parking can be busy however there is no restriction on on-street parking and a reasonably sized car park is located within walking distance at King Street. In

addition, due to the residential nature of the area, a number of people are likely to walk to the premises. The nature of the site's use, and its location, therefore should not have an unacceptable impact on resident parking.

10.6 **Residential Amenity**

The area is characterised by a number of residential properties within the vicinity, and the proposal will result in an increase usage of the building until considerably later into the evening than is currently allowed. The floor plans approved as part of the associated FUL application (for change of use) show that the building includes a customer waiting area therefore any associated noise impacts would be contained within the building itself. Determination of the application has however been delayed to allow discussion to take place between the Planning Authority, the applicant and Environmental Health with regard the ventilation system in place at the building and whether this would be sufficient to deal with the change in food type and an overall increase in hot food production.

10.7 The site has been visited by Environmental Health who have advised that an upgraded ventilation system would be required (specifically the installation of carbon filters) and a further plan has been received from the agent demonstrating how this would be provided. Environmental Health have confirmed this proposed upgraded system which would be acceptable. As noted above, a Section 42 application provides an opportunity to attach additional conditions therefore a condition is added which requires full details of the upgraded ventilation system to be installed prior to the new opening hours being implemented. Overall, in terms of noise and odour, it is not considered that the proposal would result in any adverse impacts on adjacent properties. As noted in the application, the adjacent Chinese takeaway operates on the evening opening hours currently sought by the applicant. Neither the Planning Authority nor Environmental Health are aware of any adverse issues arising as a result from this premises; it is considered reasonable to allow the applicant an opportunity to extend his operating hours in line with another adjacent business.

10.8 **Other Considerations – not material**

- *Blocking of private access/use of private parking*

Planning response - Although these concerns are understood, they are outwith the remit of the planning system. Any unauthorised use of private parking areas is a civil issue and would be a matter for the individual landowner to pursue.

- *Oversupply of takeaways*

Planning response - The amount of takeaways in the Tain area is not a material planning consideration in the assessment of the application.

- *Advertisement of planning application*

Planning response - Concern is noted that the applicant did not post a notice of the application on the premises however a site notice would not have been required in this instance.

- *Bin storage*

Planning response - There are existing arrangements for bin storage which the application does not propose to alter.

11. CONCLUSION

- 11.1 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.

12. IMPLICATIONS

- 12.1 Resource – Not applicable
- 12.2 Legal –Not applicable
- 12.3 Community (Equality, Poverty and Rural) – Not applicable
- 12.4 Climate Change/Carbon Clever – Not applicable
- 12.5 Risk – Not applicable
- 12.6 Gaelic – Not applicable

13. RECOMMENDATION

Action required before decision issued N

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

1. All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that any associated operating noise does not exceed NR 20 when measured or calculated within any noise sensitive premises with windows open for ventilation purposes.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

2. Prior to the amended opening hours specified in Condition 3 being implemented, details of a suitable and sufficient ventilation/filtration system, to ensure that no loss of amenity to nearby properties is caused by odour or fumes, shall be submitted to and approved in writing by the Planning Authority, in consultation with Environmental Health. The agreed system shall thereafter be installed in accordance with the approved details prior to the opening hours specified in Condition 3 being implemented. For the avoidance of doubt, the system shall be designed and installed by a competent person with specialist knowledge of ventilation and filtration systems.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

3. The development hereby approved shall not be open to customers, and no customer shall be allowed on the premises, outwith the hours of:
 - i. 7am to 10pm Monday to Thursday;
 - ii. 7am to 11pm Friday to Saturday;
 - iii. 11am to 10pm on Sunday

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

4. Any external signage on the building shall at no time be illuminated (either internally or externally)

Reason: In the interest of visual amenity and to ensure that the signage remains sympathetic to Tain Conservation Area.

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

LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

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 and 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

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

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.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_or_working_on_public_roads/2

Mud and Debris on Road

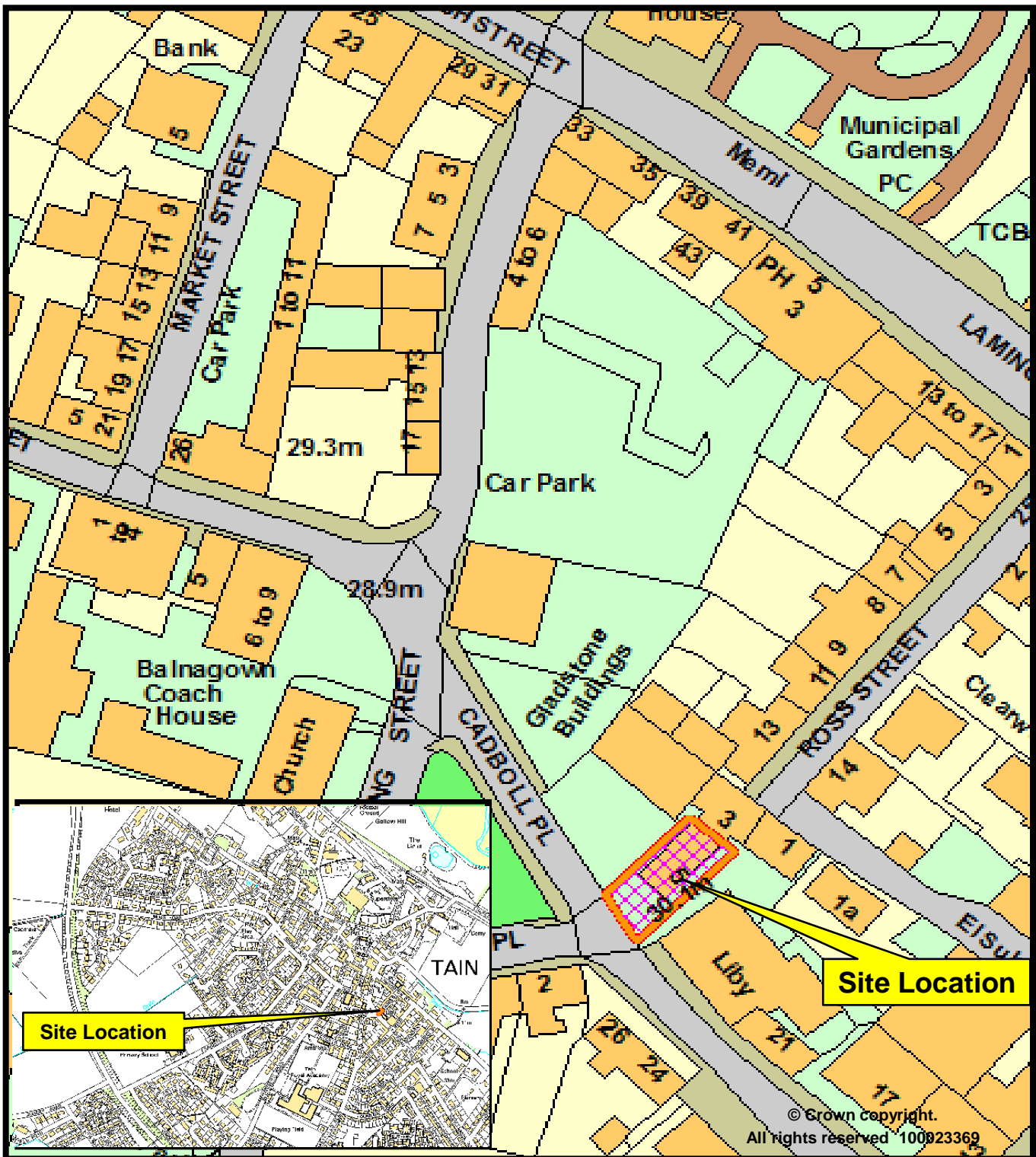
Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.


Designation: Acting Head of Development Management – Highland

Author: Gillian Pearson

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – Location Plan





The Highland Council
Comhairle na Gàidhealtachd


Development & Infrastructure Service

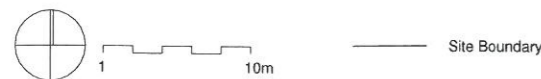
18/03878/s42

Application under Section 42 to amend Condition 1 of planning permission 17/02242/FUL (increase openings hours to Sun-Thurs 11.00am-10.00pm and Fri & Sat 11.00am-11.00pm) 5 Cadboll Place, Tain.

April 2019

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