

## The Highland Licensing Board

Meeting – 6 August 2019

Agenda Item	6.3
Report No	HLB/069/19

### Application for the grant of a premises licence under the Licensing (Scotland) Act 2005

Gun Ainm, 12 Harbour Street, Plockton, IV52 8TG

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to an application for the grant of a premises licence in respect of Gun Ainm, 12 Harbour Street, Plockton, IV52 9TG.

#### 1.0 Description of premises

1.1 Gun Ainm is situated in the village of Plockton and is a mid-terraced building. It comprises of a café on the ground floor with seating for 42 covers.

#### 2.0 Operating hours

2.1 The applicant seeks the following **on sale** hours:

##### On sales:

Monday to Saturday: 0900 hours to 2000 hours  
Sunday: 0900 hours to 1700 hours

The applicant seeks the following **off sale** hours:

##### Off sales:

Monday to Sunday: 1000 hours to 2200 hours

#### 3.0 Background

3.1 On 17 June 2019 the Licensing Board received an application for the grant of a premises licence from Baoighill Aoi gheachd Ltd.

The application was accompanied by the necessary section 50 certification in terms of Planning, Building Standards and Food Hygiene, together with a Disabled Access Statement.

3.2 The application was publicised during the period 27 June 2019 until 18 July 2019 and confirmation that the site notice was displayed has been received.

- 3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 3.4 Notification of the application was also sent to NHS Highland and the local Community Council.
- 3.5 Further to this publication and consultation process, the following timeous notices of objection have been received and are appended:
1. Letter dated 28 June 2019 from Planning and Development Service (Appendix 1);
  2. Objection form dated 12 July 2019 from Brian Harvey (Appendix 2);
  3. Objection form dated 16 July 2019 from Sheila Harvey (Appendix 3);
  4. E-mail dated 17 July 2019 from Charlie MacRae (Appendix 4).

### 3.6 **Late objections**

Two objections were received after the deadline. As such they cannot be considered automatically and have not been circulated. The Board may, having heard from the late objectors and the applicant, consider the late objections if satisfied that:

- (a) the failure is due to mistake, oversight or other excusable cause, and
- (b) the Board considers it appropriate in all the circumstances to relieve the failure to meet the deadline.

The late objections will be circulated if the Board agrees to consider it.

- 3.7 The applicant and the objectors have been invited to attend the hearing. Both have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:

[http://highland.gov.uk/hlb\\_hearings](http://highland.gov.uk/hlb_hearings)

## 4.0 **Legislation**

- 4.1 The Licensing Board must, in considering and determining the application, consider whether any grounds of refusal apply and, if none of them applies, the Board must grant the application.

Relevant grounds of refusal are: -

1. that the premises are excluded premises;
2. that the Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;

3. that the grant of the application would be inconsistent with one or more of the licensing objectives;
4. that having regard to;
  - (i) the nature of the activities proposed to be carried on in the subject premises,
  - (ii) the location character and condition of the premises, and
  - (iii) the persons likely to frequent the premises,the Board considers the premises are unsuitable for use for the sale of alcohol, or
5. that the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.

4.2 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

4.3 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

## **5.0 Licensing Standards Officer**

5.1 The LSO has provided the following comments:-

- (i) The premises in question are situated on Harbour Street, Plockton, in a mid-terraced building. The ground floor of the building functions as a 42 cover café, offering alcohol for sale by table service to customers, by way of off sales to customers and also by way of internet, postal and telephone orders.
- (ii) The premises are situated within a mainly residential area of a typical Highland village and as such strict regulations were imposed by Planning in order to preserve the tranquillity and ambience of the neighbouring area and, as such, fairly restrictive opening hours have been applied for on sales. Monday to Saturday on sales will be sold solely on a 0900 hours to 2000 hours basis and Sundays on sales will be sold on a 0900 hours to 1700 hours basis. This reflects that the premises is primarily food led and complies with the Board's current policy on "food led" premises in that alcohol on sales prior to 1100 hours will be as an accompaniment to food or as part of a formal tutored tasting carried out on the premises. Appropriate licensing conditions have been recommended by the LSO in this regard.

- (iii) In respect of off sales these will be sold on a 1000 hours to 2200 hours basis. Off sales will be made to customers on the premises until 2000 hours on Monday to Saturday and 1700 hours on Sunday when, in effect, the premises will close. Off sales made between 2000 hours and 2200 hours on Monday to Saturday and between 1700 hours and 2200 hours on Sundays will solely be in response to internet, postal or telephone orders. This facet of operation has been recorded at section 5(f) of the operating plan and again has been reinforced through application of a relevant special licensing condition. The LSO believes this is relevant and proportionate in meeting the requirements of the third licensing objective.
- (iv) The off sales capacity requested is well under the 40 square metre threshold set by the Board in respect of their current policy relating to over provision.
- (v) Recently, through the summer months, the premises have been operating under the authority of occasional licences and have not attracted public complaint.
- (vi) The LSO has overviewed the application and considers that it is compliant with the licensing objectives.
- (vii) Following the public consultation phase, timeous letters of complaint have been received by the Licensing Board from the following persons/bodies.
  - (a) Brian and Sheila Harvey, 10 Harbour Street, Plockton;
  - (b) Charlie Macrae, Plockton Hall Committee;
- (viii) In summary, it is the view of the LSO that there is a mistrust of the applicant following various difficulties in securing the appropriate planning permission(s) and the imposition of planning conditions to restrict any community nuisance or disturbance. These planning restrictions have largely been replicated in the hours applied for and are indeed much less than other local alcohol licensed premises operating in Plockton.
- (ix) The LSO has visited the premises and finds them entirely suitable for the uses described in the operating plan; they are family friendly and have been warmly reviewed on the premises and Facebook account. Police (Scotland) have also conducted a site visit and are in agreement with the LSO's viewpoint.
- (x) Parking has been also introduced as a problem; parking issues exist all over Plockton with its constraining geography and this is not a matter which can be assessed in the granting or otherwise of an alcohol premises licence.

- (xi) The LSO has personally met with Brian and Sheila Harvey who live close to the premises and discussed their objection, which although patently genuine does not in the LSO's view meet the criteria necessary for refusing the application.

## **6.0 HLB local policies**

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2018-23
- (2) Highland Licensing Board Equality Strategy

## **7.0 Conditions**

### **7.1 Mandatory conditions**

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

### **7.2 Local conditions**

Should the Board grant the application as applied for, the Board may wish to consider attaching the following conditions from the schedule of local conditions:

- f. Alcohol may be sold on the premises prior to 1100 hours only to persons taking table meals.
- g. Alcohol may be sold prior to 1100 hours for consumption on the premises only during a formal or tutored tasting session and only to customers taking part in such a tasting session.

### **7.3 Special conditions**

The Board may wish to consider attaching the following special condition:

- (1) After 2000 hours on Monday to Saturday and after 1700 hours on Sunday all off sales of alcohol will only be by way of internet, postal and telephone orders to the premises and not by way of customers accessing the premises.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special conditions detailed at paras. 7.2 and 7.3 above.

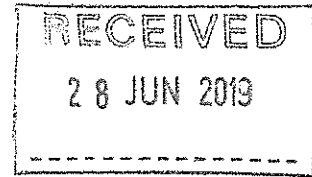
If the Board is minded to refuse the application, the Board must specify the ground for refusal and, if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/RSL/1908  
Date: 22 July 2019  
Author: Carol Nicolson

Appendix 1 - Letter dated 28 June from Planning and Development Service;  
Appendix 2 - Objection form dated 12 July 2019 from Brian Harvey;  
Appendix 3 - Objection form dated 16 July 2019 from Sheila Harvey;  
Appendix 4 - E-mail dated 17 July 2019 from Charlie MacRae.



**THE HIGHLAND LICENSING BOARD**  
**LICENSING (SCOTLAND) ACT 2005**



**REPRESENTATION ON APPLICATION FOR PROVISIONAL GRANT OF PREMISES LICENCE**

Police Scotland		Principal Environmental Health Officer	
Scottish Fire and Rescue Service		Principal Building Standards Surveyor	
Area Planning and Building Standards Manager	<b>X</b>		

Please complete the Form below in respect of the attached application for a Licence by:-

Reference:	HC/RSL/1908
Name and Address of Premises:	Gun Ainm 12 Harbour Street Plockton IV52 8TN
Applicant:	Baighill Aogheachd Ltd Dean Bank Lodge 10 Dean Bank Lane Edinburgh EH3 5BS

CLAIRE McARTHUR  
 Clerk to the Licensing Board

Date 24 June 2019

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In terms of Section 22 of the Act, please select **ONE** of the following options (a), (b) or (c), and sign and date form:

- (a) ~~I HAVE NO OBJECTION TO THE APPLICATION BEING GRANTED AND I DO NOT WISH TO MAKE REPRESENTATIONS IN RESPECT OF THE APPLICATION.\*~~ or
  - (b) ~~I HAVE NO OBJECTION TO THE APPLICATION BEING GRANTED. I ATTACH REPRESENTATIONS IN RESPECT OF THE APPLICATION (Section 22(1)(b)).\*~~ or
  - (c) I WISH TO OBJECT TO THE APPLICATION AND ATTACH DETAILS OF THE OBJECTION (Section 22(1)(a)) (continue on separate sheet).\*
- (OBJECTIONS AND REPRESENTATIONS MUST BE LODGED BY 5PM ON THURSDAY 18 JULY 2019)**

*This section to be completed by Police Scotland only, select EITHER (1) or (2):*

- (1) *In terms of Section 21(4) of the Act, I declare that neither the applicant nor any connected person has been convicted of a relevant or foreign offence\* or*
- (2) *In terms of Section 21(4) of the Act, I append a notice giving details of convictions\**

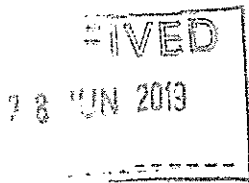
\* Delete as appropriate

Signature: ..... Date .....28.06.19.....

Designation: .....Principle Planner.....

**PLEASE RETURN TO THE CLERK, HIGHLAND LICENSING BOARD,  
 TIGH NA SGIRE, PARK LANE, PORTREE, ISLE OF SKYE, IV51 9GP**

**E-mail – licensing@highland.gov.uk**



Please ask for: Chris Hallas  
Direct Dial: 01478 613847  
E-mail: [Chris.Hallas@highland.gov.uk](mailto:Chris.Hallas@highland.gov.uk)  
Our Reference:  
Your Reference:  
Date: 28.06.19

Dear Sir/Madam

The Planning Permission relating to this premises was granted for the following development: Change of use of shop (Class 1) to shop (Class 1) and café (Class 3) (Retrospective). The Permission is subject to a number of conditions, as imposed by a Reporter of the Scottish Government

- (1) The ground floor (Class 3) premises shall not be open for customer's out with the hours of 08:00- 20:00 (Monday to Saturday) and 09:00-17:00(Sunday)
- (2) No deliveries to the ground floor Class 3 premises shall take place out with the hours of 08:00- 18:00.( Monday to Saturday) and 10:00-17:00 (Sunday)

The reason that these conditions were attached was to protect the amenity of the neighbouring residents properties for the impact of noise and disturbance. It is clear from the Reporters Decision letter that no differentiation was made between the shop and café element both of which occupy the ground floor. The applicant is fully aware of the terms and the need to operate the business in accordance with the conditions.

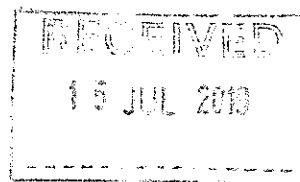
The grant of a licence with different hours as currently requested, which would allow retail sales until 22:00, would breach the Planning Permission , it would also lead to confusion, would be extremely difficult to manage and would almost certainly results in complaints from residents.

For the reasons set out above the Planning Service object to the application for a premises licence.

Yours sincerely,

**Erica McArthur**  
Skye and Lochalsh  
Planning & Development Service





**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes or emailed to [licensing@highland.gov.uk](mailto:licensing@highland.gov.uk). Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

BRIAN HARVEY	
Telephone Number:	
Email Address:	

**2. Address of Premises in respect of which objection / ~~representation~~ is made:**

Nº 12 HARBOUR ST PLOCKTON

**3. Details of any OBJECTION: (complete only if you consider one of the ground for refusal apply)**

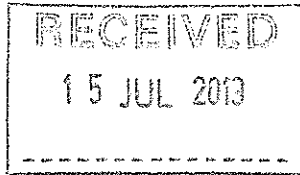
State ground of objection (refer to ground of objection by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. Excluded Premises	2, 3, 4.
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**4. Details of any REPRESENTATION: (complete only if you wish to make a representation in respect of the application)**

State details of any representation (refer to representation by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature:..

..... Date... 12/7/19 .....



12-07-2019

Plockton IV52 8TG

### Letter of Objection

Objections IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005 □ Liquor Licence applications - Plockton, Gun Ainn, 12 Harbour Street, Grant of Premises Licence

Additional information required for the objection to the licence application for No12 Harbour Street Plockton.

#### **Ground for objection No 2 Hours**

The hours being requested by this applicant exceed those granted for operation under Highland Council planning permission ref : 18/02092/FUL

The Scottish Government Directorate for Planning and Environmental Appeals (DPEA) reporter under appeal ref: PPA-270-2207 has defined the hours of operation during the appeal brought by this applicant. The current hours of operation are “designed to protect the amenity” and the neighbours from the additional noise and disturbance that this Extension to operating hours would involve.

#### **Ground for objection No 3 Inconsistent with Licensing Objectives**

- **Preventing public nuisance,**  
Plockton has a population of 2-3 hundred residents so the vast majority coming to use this “off Licence” will drive to it, which will increase the traffic flow and the noise of cars arriving and leaving. The operators of the business at No 12 have little regard for the feelings of the neighbours or the people of Plockton and in granting them a licence will seal the fate of the people living here to continuous disturbance and upset.
- **Securing Public Safety,**  
The management of this business have demonstrated scant regard for the rules and regulations governing the planning process and behaving in an un-neighbourly fashion and on occasion using threatening behavior.

. is barred from a local hotel as he was involved in a disturbance to which the police had to be called in January of 2018. Although the licence application is not in name, he is on or about the premises most of the time. As the licence application is in the name of a company you will have to decide if this is relevant.

Can this business be relied upon to abide by the rules and regulation governing the sale of alcohol – what reassurance will the community have from the licensing authorities.

- **Protecting children from harm,**

No12 Harbour street is used as a bed and breakfast establishment in addition to a café and alcohol tasting business under a rolling licence arrangement, people with children arriving at the accommodation must walk through the off licence to get to the accommodation, The sale of alcohol to under age children and young adults is a problem that will be difficult to police. What steps will be in place to prevent such practices from taking place and how will we as a community cope with this when it happens.

**Grounds for objection No 4. Activities / Condition of Premises / Customers:**

The nature of the activities to be carried out at this premises, will be unknown as the business is still lit up to suggest it is open for business long after the planning restriction under 18/02092/FUL and modified under Directorate for Planning and Environmental Appeals (DPEA) PPA-270-2207 allow.

Visitors to the village on holiday are under the impression that the premises are open (after hours) as they are lit up when most normally run establishments extinguish their light when they “close” for business.

Customers of No12 regularly sit at tables outside on the public footpath which is not the property of No12 consuming drinks presumably coffee or tea but if they can buy alcohol will the licensing authority give permission for consumption of alcohol on the public footpath which is council property? This use of the footpath is in direct contravention of the planning permission under ref:18/02092//FUL,

We have appealed to the highland council to disallow this development in previous appeals, we ask that the licensing authority refuse this application for all our sakes and the good of our community

Brian Harvey



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Decision by Don Rankin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2207
- Site address: 12 Harbour Street, Plockton, IV52 8TG
- Appeal by Baoighill Aoigheachd Ltd against the decision by Highland Council to grant planning permission reference 18/02092/FUL dated 9 May 2018 subject to conditions.
- The development proposed: Change of use of shop (Class 1) to shop (Class 1) and cafe (Class 3) (Retrospective) and installation of external sign and formation of doorway.
- The conditions appealed against are: (1) The ground floor Class 3 premises shall not be open for customers outwith the hours of 09:00-18:00 (Monday to Saturday) and 10:00-17:00 (Sunday); and (2) No deliveries to the ground floor Class 3 premises shall take place outwith the hours of 09:00-18:00 (Monday to Saturday) and 10:00-17:00 (Sunday). The reason for both conditions (1 & 2) is: To protect the residential amenities of the locality having regard to policies 28 and 35 of the Highlandwide Local Development Plan.
- Date of site visit by Reporter: 18 March 2019

Date of appeal decision: 4 April 2019

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## Decision

I allow the appeal and vary the terms of the planning permission by deleting conditions 1 and 2 and substituting therefore the following conditions: (1) The ground floor (Class 3) premises shall not be open for customers outwith the hours of 08:00- 20:00 (Monday to Saturday) and 09:00-17:00(Sunday) (Reason: To protect local residents from the detrimental impact of noise and disturbance); and (2) No deliveries to the ground floor Class 3 premises shall take place outwith the hours of 08:00- 18:00.( Monday to Saturday) and 10:00-17:00 (Sunday) (Reason: To protect local residents from the detrimental impact of noise and disturbance).

## Reasoning

1. The determining issues in this appeal are: (1) whether operating the premises as a shop and café outwith the permitted hours, including the taking of deliveries, would result in undue noise and disturbance to surrounding residents; and (2) whether other material considerations warrant the alteration or retention of the planning conditions relating to hours of operating.
2. The planning application to which this appeal against conditions relates was approved on 16 October 2018 granting permission for a change of use from a shop

(Class 1) to a shop (Class 1) and a café (Class 3) as defined in the Town & Country Planning (Use Classes) (Scotland) Order 1997. The application for permission was retrospective and the permission granted regularised what was perceived by the council to be a breach of planning control. There was considerable local concern over the proposed change of use and its effect on the living conditions of neighbouring residents and on the character of the village. Discussions between the applicant and the officers of the council resulted in an officer recommendation in favour of the grant of permission but with the imposition of 2 conditions designed to ameliorate any noise and disturbance which may arise from the operation of the business in a predominantly residential area. Condition (1) imposed a restriction on operating hours to prevent the premises being open for customers outwith the hours of 08:00 and 20:00 (Monday to Sunday), while condition (2) imposed the same restriction of hours on deliveries to the café business.

3. There were more than 5 objections from local people, the community council and from other local interests. The proposal was therefore considered by the North Planning Applications Committee of The Highland Council. The committee resolved to approve the proposal, thereby regularising the breach of planning control. Notwithstanding the planning officer's advice and recommendation on opening hours, the committee decided that to avoid noise and disturbance to nearby residents required the hours of operation should restrict access by customers and deliveries to the cafe to 09:00 to 18:00 (Monday to Saturday) and 10:00 to 17:00 (Sunday).

4. Circular 4/1998 *The use of conditions in planning permissions* sets 6 tests which planning conditions must meet, namely: that they must be necessary; relevant to planning; relevant to the development permitted; enforceable; precise; and reasonable in all other respects. It is the contention of the appellant that the two conditions imposed unreasonably restrict the operation of the business and are unnecessary to safeguard an acceptable standard of amenity for neighbouring residents.

5. Turning first to the issue of amenity the appeal property is in the middle of a largely residential terrace where the dwellings access directly onto the street. They are modest houses which are narrow, often only one room deep as at No.10 next door. Some of the bedrooms are located on the street frontage. The rear gardens rise steeply up from the back of the terrace and are, in several nearby cases, the location of garden sheds and what appears to be additional accommodation utilising the lane across the rear of the gardens for access. On the other side of Harbour Street is a community hall with some adjacent parking. Harbour Street is narrow and whilst there are other commercial premises operating as cafes and hot food outlets further along Harbour Street the appeal property is the only business operating in this part of the terrace. This business, the adjacent residential property and the surrounding houses and the community hall are all in close proximity to one another and there is therefore clearly the potential for the access to the appeal property both by staff, customers and for deliveries to result in noise and disturbance.

6. The appellant appears to recognise that this is an issue. The original supporting statement accompanying the application describes it as serving locals, AirB&B and other self-catering visitors with breakfasts, operating as a café during the day and as a continental style pintxo style café/bar in the evening open for business up to 23:00 hours.

The appeal statement is however asking for more limited operating hours for customers and deliveries, namely 08:00 to 22:00 Monday to Sunday. This whilst being less than they originally envisaged is more than that recommended by planning officers where the closing time was specified as 20:00 hours. It is very different from that permitted by the council.

7. I consider that the close proximity of the residential properties in the terrace would mean that the operation of the shop and café, as permitted, would inevitably result in some increase in noise and disturbance for these residents. However, the operation of the café would be confined to the interior of the premises. I note the council's informative on the decision notice reminding the appellant that the permission does not extend to the use of the rear garden. Harbour Street not only serves the terrace in question but continues as access to the remainder of the village. It is therefore a road which is in constant use throughout the day. Vehicles and pedestrians using the street would not be unusual from 08:00, or earlier, on weekdays though I accept that Sundays are traditionally a quieter time. Similarly access until 20:00, particularly during the busy summer period would not be unusual along this main access road. The limited additional use of the street resulting from the customers of the 16 seat café would not in my view result in a significant deterioration of the residents' weekday living conditions or amenity.
8. Given that, with the exception of the community hall across the street, there are no other commercial premises or visitor attractions further along Harbour Street, the arrival and departure of customers after this 20:00 hours closure would inevitably introduce a disruptive element into the quiet residential environment which is absent at present and would therefore result in a deterioration of local amenity. Any comparisons with the use of the community hall which is an accepted community facility, not in everyday use, are inappropriate.
9. Similarly, whilst access to a café is not unusual on a Sunday there needs to be a recognition that this is traditionally a quieter day. Given the close proximity of the café to the surrounding residential properties I consider that continued comings and goings to the café early on Sunday morning and late into the evening on Sunday would result in a noticeable deterioration of the amenity of those residents. Compliance with policies 28 and 35 of the Highland Wide Local Development Plan (HLDP) which seek to protect the amenity of residents requires that this be controlled.
10. I conclude therefore with respect to customer opening hours (condition 1) that the appeal should be upheld and the weekday opening hours amended to permit opening from 08:00 to 20:00 hours. The need for a more restricted customer opening period on Sundays to preserve the traditionally quieter living environment of the neighbourhood requires retention of the more restrictive 09:00 to 17:00 customer opening hours.
11. Regarding deliveries (condition 2) I note particularly the concerns of local residents regarding the narrow width of the street, the direct access from the café to the pavement and the proximity of bedrooms on the street side of the terrace properties. All these factors result in an increased sensitivity to noise and disturbance to local residents from large delivery vehicles. Whilst I note the appellant's assertion that deliveries would utilise only cars and small vans this is by no means guaranteed. Any condition restricting the size of vehicles would be unenforceable and therefore contrary to the tests in Circular 4/1998.

12. It is possible that deliveries, possibly involving larger delivery lorries and vans, could arrive early in the morning and continue deliveries late into the evening, particularly during the busy summer period. Those deliveries would be from the kerbside and in consequence very close to the living and bedroom accommodation of the neighbouring residents. As a result of this I consider that deliveries to the shop/café business would result in a loss of amenity to nearby residents and that there is therefore justification for a more restrictive control on the hours of operation. I have accepted above that on weekdays and on Saturdays it would be normal for people to be up and about by 08:00 hours and I therefore see no reason why deliveries should not commence at this time. In the evening however there is a justified expectation by local residents that quiet should return to the street and that commercial deliveries should cease. I consider therefore that there is justification for restricting commercial deliveries to the period before 18:00 hours Monday to Saturday. As with customer access to the café I consider that there needs to be a recognition that Sunday is a quieter day and that the later start of 10:00 and the earlier finish of 17:00 hours should apply to deliveries.

13. The appellant's second concern about the council's conditions is that they are too restrictive for the appellant's business operating from the appeal site. The relevant test in circular 4/1998 is that planning conditions must be reasonable. This is generally taken to mean that any conditions imposed must not be so onerous as to negate the value of the permission. In this case to prevent the use of the appeal property as a café (class 3). The appellant describes the business as providing a basic offer of breakfast, café style food prepared off the premises during the day and an evening snack menu again presumably only serving food prepared off the premises and reheated where necessary. This would be served to customers in a limited area comprising no more than 16 covers. Other similar business in the village closes at 21:00 though the appellant wishes to enable people to enter the premises at this time and leave when finished by 22:00 hours.

14. There are inconsistencies in the appellant's description of the business, its target market and the requirements for viability in these differing contexts. I identify the key features as being to provide a basic breakfast offer to passing trade and the appellant's own B&B customers. It would then provide a basic café offer of coffee, cakes and light meals through the day, and to carry this into the evening offering light snacks. This is not a full restaurant with a business model dependant on a full evening dinner menu. The appellant concedes that the premises are neither of sufficient size nor in the right location for this. In the context of the offer intended I can find no convincing evidence that the restriction of opening hours in the interest of preserving residential amenity is unreasonable nor would prevent a viable café operation in line with the Class 3 permission.

15. Turning to other matters raised whilst I note the contribution which the permitted business would make to the tourist offer of the village and the potential which it offers for tourist related employment, that does not outweigh the need to preserve residential amenity. The fact that other cafes, restaurants, pubs and hotels in the village offer food at a variety of locations and over very different timescales has no direct bearing on the need for opening hours and delivery hours restrictions at the appeal site. Nor is any perceived shortfall in the available restaurant or other hot food offer in the village a justification for extended opening hours which would harm residential amenity. The members of the council are entitled to take into consideration all matters before them and to apply their own

experience when reaching a decision. I have no convincing evidence that the committee were unduly influenced by non-material considerations or were concerned by anything other than residential amenity when applying the planning conditions on customer opening hours and deliveries.

16. For the reasons given above I conclude that the appeal should be upheld and the planning condition No.1 replaced to permit customer access from 08:00 to 20:00 hours on weekdays and Saturdays and 09:00 to 17:00 hours on Sundays. Planning condition No.2 should also be replaced to permit deliveries from 08:00 to 18:00 hours on Weekdays and Saturdays and from 10:00 to 17:00 hours on Sundays. There are no other material considerations which lead me to a contrary view.

*Don Rankin*  
Reporter



# Appendix 3



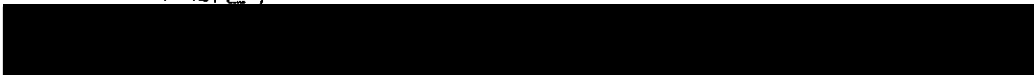
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17 JUL 2019

## REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes or emailed to [licensing@highland.gov.uk](mailto:licensing@highland.gov.uk). Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

SHEILA HARMY	
	
Telephone Number:	
Email Address:	

**2. Address of Premises in respect of which objection / representation is made:**

GUN AIMM, 12 HARBOUR STREET PLOCKTON IV52 8TG
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**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

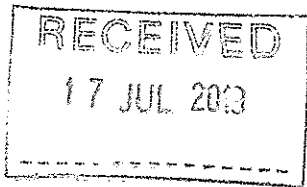
<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. Excluded Premises	3, 4
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature: 

Date: 16<sup>th</sup> July, 2019



## OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION –

Gun Ainm, 12 Harbour Street, Plockton IV52 8TG

### 3: Licencing Objectives Preventing Public Nuisance –

12 Harbour Street is in a residential area of Plockton, which until very recently has consisted entirely of private homes and, further along on the corner of Cooper Street, the village hall. 12 Harbour Street was granted permission to change to a hairdresser and delicatessen and consideration was given at the time to the residential nature of the area. This application is the latest in a number of steps towards a very different commercial operation. It ignores the spirit in which the extended hours were granted in a recent appeal. The application exceeds in hours the opening hours granted to the operation of the café. The sale of alcohol will extend the hours of noise – cars, the voices of visitors etc – directly outside neighbouring house windows.

#### Protecting children from harm

There is no way of segregating the sale of alcohol and tasting sessions from children either visiting the café or staying in the unsupervised B& B facilities at the same address, introduced by the same management applying for the licence for on and off sales.

### 4: The nature of activities proposed to be carried on at the premises

The B & B, which shares the same front door as the café premises, cannot be shut off from the retail premises both for access to the street and presumably as escape route in the event of fire. Alcohol is displayed and left in the café rooms.

#### Location

The area is predominantly residential; 12 is the only commercial address in this part of Plockton and has been in operation as such for fewer than three years.

Families staying in the B&B area – formerly the ‘manager’s flat’ – have no option but to cross through the café area, which already holds regular alcohol tastings and sales.

#### Persons likely to frequent the premises

The licencing of the premises and the hours requested will attract those who are already barred from other licenced premises – making them undesirable frequenters of the area - and others who wish to purchase alcohol in the evening. It would not be unlikely for groups to gather with their purchases on the benches outside the village hall, or on the chairs outside the café itself, until late into the evening. Customers will almost certainly comprise visitors, driving and with the noise of cars. The proposed Sunday hours are especially problematic and ignore the reasons for the granting of the recent Appeal, which acknowledged that Sundays are traditionally a day of rest.

The granting of a licence for these premises in the village would be almost impossible to police and we ask you to refuse the application.

Appendix 4.

**Carol Nicolson**

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**From:** charlie macrae  
**Sent:** 17 July 2019 16:14  
**To:** Licensing  
**Subject:** Liquor licence Applications Plockton Gun Airm 12 harbour st. Plockton

Ref18/02092/FUL

Sent from Mail for Windows 10

On behalf pf Plockton Hall Committee I wish to object to the granting of this licence as the premises hours have already been restricted due to its location also there is no parking and it has already caused problems and congestion at the main turning area in the village. Yours Sincerely Charlie M. MacRae Secty. Plockton Hall