

Agenda Item	<b>6.3</b>
Report No	<b>PLN/082/21</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 19 October 2021

**Report Title:** 21/01620/FUL: Lobster Oyster Ltd  
Land 60M South Of Grianan, 1 Balmeanach, Struan

**Report By:** Area Planning Manager -- North

### **Purpose/Executive Summary**

**Description:** Siting of a catering trailer

**Ward:** 10 - Eilean A' Cheò

**Development category:** Local Development

**Reason referred to Committee:** Number of 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.

### **Recommendation**

Members are asked to agree the recommendation to **APPROVE** the application as set out in section 11 of the report

## **1. PROPOSED DEVELOPMENT**

- 1.1 The applicant seeks full planning permission for the siting of a moveable catering unit, for the sale of local seafood. The unit itself is a converted touring caravan. The application form states that the intended months of operation are April to October. In addition, parking and turning area for five vehicles is provided. The applicant has been trading from the unit during the summer months this year but appears to have moved from the site at the time of writing.
- 1.2 There is an existing vehicular access to the site from the A863 which serves the croft and two other properties.
- 1.3 Pre-Application Consultation: No formal pre-application was undertaken with the Planning Authority in advance of the application being lodged.
- 1.4 Supporting Information: Intended months of operation are detailed in the application.
- 1.5 Variations: Additional plans detailing the parking and turning on site have been submitted.

## **2. SITE DESCRIPTION**

- 2.1 The application site is located adjacent to the A863 and to the north-west of the junction to Balmeanach. The land is gravelled and as stated above, the unit has been sited on the land over the recent summer months. Access to the site is from an existing access from the A863 which is shared with two other properties and provides access to the wider croft land. There are existing residential properties to the north and east of the site.

## **3. PLANNING HISTORY**

- 3.1 No planning history on this application site.

## **4. PUBLIC PARTICIPATION**

- 4.1 Advertised: Unknown Neighbour – 14 days

Date Advertised: 11 June 2021

Representation deadline: 15 August 2021

Timeous representations: 6 objections from 5 households.

Late representations: 0

- 4.2 Material considerations raised are summarised as follows:

- Road safety – cars stopping on the road and inadequate visibility splays from the access.

- Access would be hindered to adjacent properties and emergency services due to vehicles blocking the access.
- Impact upon amenity of residents – loss of privacy,
- Blot on the landscape.
- Hygiene issues regarding water, drainage, litter (including shellfish remains).

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](http://www.wam.highland.gov.uk/wam).

## 5. CONSULTATIONS

5.1 **Environmental Health** have no objection to the proposal but make the following comments. The applicant will need a Street Trader's Licence which is administered by Environmental Health. Confirmed that the wastewater and refuse will need to be removed daily and disposed of in a responsible manner. The applicant will use mains water brought from their home address.

5.2 **Transport Planning:** following the submission of further information their objection has been removed.

- **First response received 24<sup>th</sup> June 2021:** objection due to a lack of information regarding access, parking and visibility splays.

**Second response received 27<sup>th</sup> August 2021:** no objection

- request that the access width is reduced.
- Confirm that the required visibility splays are 2.4m x 160m based on an assessment of safe speeds being 50mph.
- Unless a private waste company will be dealing with the waste produced at this development, a suitable collection point shall be provided out with the required visibility splays and close to the public road.
- Level of parking is adequate for the proposal.

5.3 **Struan Community Council** have commented but not in the capacity of a statutory consultee. They advise that they are not taking a stance either in favour or against the 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

29 - Design Quality and Place-making

36 - Development in the Wider Countryside

42 – Apportioned/inbye croft land

66 - Surface Water Drainage

## 6.2 **West Highland and Islands Local Development Plan 2019**

No specific policies apply

## 6.3 **Highland Council Supplementary Planning Policy Guidance**

Roads and Transport Guidelines For New Developments (May 2013)

Sustainable Design Guide (Jan 2013)

## 7. **OTHER MATERIAL CONSIDERATIONS**

### 7.1 **Scottish Government Planning Policy and Guidance**

Scottish Planning Policy (as amended December 2020)

## 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.

### **Determining Issues**

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.

### **Planning Considerations**

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) siting, design and visual impact
- c) amenity
- d) access and parking
- e) impact on croft land
- f) any other material considerations.

### **Development plan/other planning policy**

8.4 The application site is not located within a Main or a Growing Settlement as defined by the WestPlan 2019. As such the site is located within 'wider countryside' and so Policy 36 of the Highland-wide Local Development Plan applies. Policy 36 supports development proposals if they are not judged to be significantly detrimental in terms of the following matters: siting and design, pattern of development, landscape character, impact on locally important croftland

and servicing, particularly roads. For the reasons outlined in section 8.8 – 8.11 the proposal is considered to accord with the policy subject to a number of restrictive conditions.

- 8.5 Policy 28 requires sensitive siting and high-quality design in keeping with local character and historic and natural environments, and the use of appropriate materials. This Policy also requires proposed developments to be assessed on the extent to which they are compatible with service provision, as well as their impact on individual and community residential amenity. Policy 29 repeats the emphasis on good design in terms of compatibility with the local landscape setting.
- 8.6 Under policy 47, proposals should where possible avoid: siting on the better part of a croft in terms of its agricultural value; and avoid impeding use of the remaining croft land by virtue of its location.
- 8.7 Policy 65 requires surface water drainage to meet standards that minimise the risk of pollution and flooding.

#### **Siting, Design and Visual Impact**

- 8.8 Catering units such as this have very little design quality and so the planning assessment in such cases is focussed upon minimising their visual impact and ensuring compatibility with their surroundings. The site does not fall within any landscape designations.
- 8.9 In this case the unit is set some 39m back from the road frontage which, for a unit of this size, is considered to be visually beneficial and reduces the prominence of such a design when seen from the public road. This is important because the A863 is a relatively busy road with a large number of potential visual receptors. Given the curvature and alignment of the road coupled with its setback this ensures that visibility of the caravan is limited to very short sections when traveling in either direction.
- 8.10 The 5 parking spaces proposed are located between the catering unit and the road frontage. As such, when in use, parked cars will have some visual impact. However, the parked vehicles will be seen in the context of the two nearest houses – about 50m to the east and north – and a number of other residential and agricultural buildings in the area. In such a setting it is not considered that the parked cars will have a detrimental visual impact on public amenity.
- 8.11 As stated above, the catering unit/caravan does not possess limited visual qualities and if a permanent permission were to be granted for the use on this site, the planning authority would want to see a unit or building of higher design quality. Among other reasons below, this is why a time limited permission of two years is being recommended.

## **Amenity**

- 8.12 As stated above, the separation distance between the unit and the nearest dwellings is some 50m and concerns have been raised about a loss of private amenity associated with the introduction of increased human activity at the site.
- 8.14 The orientation of the two nearest dwellings helps mitigate any such impacts to some degree. The house to the east faces the road frontage and so presents a blank side elevation to the proposal. This is considered likely to minimise disturbance to occupants inside the building. A significant proportion of its garden land is positioned on the opposite side of the dwelling which would effectively screen people in the garden from the site.
- 8.15 The bungalow to the north is, perhaps, more exposed to the human activity associated with the site because it shares the access to the public road and has a large front garden which appears to end roughly in line with the proposed unit. However, the unit is offset by some 15m from the nearest boundary of this garden and the property has further private garden area to its rear – again screened by the house from the use.
- 8.16 The use is not inherently noisy or intense in terms of generated activity and it is noted that the use of the site during the summer of 2021 has not resulted in any complaints to Environmental Health who have no objection to the proposal. However, given the proximity of the use to these neighbours, the potential for disturbance is considered to be another reason to limit the consent to two years. This will allow any impacts on neighbouring properties to be monitored with the potential for mitigation to be incorporated into any further permission if granted.
- 8.17 Concerns have been expressed about the possibility of outside seating and tables being provided for customers to eat their seafood purchases at. It is considered that such provision would fundamentally alter the character of what is essentially a ‘take-away’ food retail activity and would greatly increase the potential for unacceptable noise and disturbance of neighbours. Accordingly, a condition is recommended to ensure that no such tables and chairs are provided at the site.
- 8.18 The application form states that the use of the site will be limited to the period of the year between April and October. This will obviously reduce visual, and amenity impacts overall and a condition is recommended to ensure that the unit is removed from the site outwith this period.

## **Access and Parking**

- 8.19 Access to the site is via a shared access from the A863. Third parties have raised concerns with regards to road safety in terms of visibility splays and the intensified use and parking at this access. Transport Planning have assessed the application and following the submission of further information have no objection to the scheme subject to the following matters being satisfactory addressed.
- 8.20 Access width and surfacing – although the shared access with the neighbouring property is visually delineated from the area cleared for parking, it would still be possible for vehicles to both enter and leave the site over the parking area

frontage as this has not been formally delineated from either the public road or the access running alongside it. A satisfactory shared access arrangement with hard surfacing adjacent to the public road can be achieved but will require some physical separation between it and the frontage of the parking area, with a continuation of this feature also restricting access to the public road from the front of the parking area. This can be secured by condition.

- 8.21 Visibility splays - Transport Planning consider that although this road is the subject of the national speed limit (60mph), the alignment and bend in the road to the south east means that the assessed safe speed is likely to be 50mph. This equates to visibility splays of 160m in either direction. This is currently achieved in the north-west direction but there is a deficiency when looking to the south-east. There is currently vegetation which is restricting visibility on the inside of the bend which is on the other side of the road to the application site and is adjacent to No. 5 Caroy. From a site inspection the vegetation in question is located either within the highway boundary or from lower branches overhanging the land. Consequentially, it is considered that the visibility splays can be opened up to the distance required by the Transport Planning Team. A planning condition is recommended which will secure these works and maintenance of them for the duration of the planning permission.
- 8.22 Parking and turning – Transport planning consider that the 5 parking spaces provided is an adequate provision for this use and that the access and parking layout allows for safe manoeuvring. There is some potential for conflict between manoeuvring vehicles and access to the neighbouring property, but the probability of such incidents is considered low and unlikely to impact upon the free movement of other vehicles on the public road. It is noted that notices have been erected to ensure the access to the neighbouring dwelling is not directly obstructed. A condition is recommended to ensure these spaces and suitable demarcation are retained throughout the lifetime of the use.
- 8.23 Waste and Recycling storage and collection – on the assumption that the operator of the site will not use a private contractor to deal with the waste from the use a suitable collection point needs to be provided outwith the required visibility splays and close to the public road. This can be secured by condition.

#### **Impact on croft land**

- 8.24 Although the site is located on croft land, it is not considered to result in the loss of inbye or apportioned land and will not impede access to the rest of the croft. It is not considered, therefore, to be at odds with the requirements of Policy 47 of the Highland-wide LDP.

#### **Other material considerations**

- 8.25 The application states that no connection is required to the public water supply. Environmental Health have confirmed that mains water will be brought to the site and that is acceptable for a use of this type and scale.

## **Non-material considerations**

- 8.26 The issue of whether the proprietor has the appropriate qualification for the handling and preparation of raw sea food or whether they meet applicable hygiene standards are not material planning considerations. These matters are covered by the Environmental Health and the Street Traders Licence regulations and requirements.

## **Matters to be secured by Section 75 Agreement**

- 8.27 None

## **9. CONCLUSION**

- 9.1 The Authority recognise the concerns raised by third parties in relation to amenity and road safety concerns. There are no outstanding objections from Transport Planning or Environmental Health. However, it is considered prudent given these concerns to time limit this permission for two years to monitor the impact of the development and to bring forward any potential mitigation measures beyond those outlined in the recommended conditions.

- 9.2 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. IMPLICATIONS**

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

## **11. RECOMMENDATION**

### **Action required before decision issued**

Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	N
Revocation of previous permission	N



**Subject to the above actions**, it is recommended to  
**APPROVE** the application subject to the following conditions and reasons

1 Planning permission is hereby granted for a temporary period only and shall cease to have effect on 1 November 2023 (the 'cessation date'). Prior to the cessation date, the application site shall be cleared of all development approved under the terms of this permission other than access works required by condition 4 below.

**Reason:** To allow the planning authority to assess the impacts of the proposal on neighbour amenity and consider the effectiveness of mitigation in respect of any subsequent permission.

2 The planning permission hereby approved shall only enure in respect of the converted caravan catering unit present on site at the time this application was made. This unit shall not trade from or be stored at the site other than between the 1 April and the 31 October each year.

**Reason:** In accordance with the application details, to minimise the visual and amenity impacts of the use and to define the permission.

3 No customer seating or tables shall be provided on the site at any time.

**Reason:** in the interest of minimising the amenity impacts of the use

4 Prior to the 1 April 2022 the site access shared with the neighbouring property shall be constructed in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule (06.10.2021) with:

i. the junction formed and hard surfaced to comply with drawing ref. SDB2 and including a suitable barrier to prevent vehicles entering or exiting the foremost part of the parking area between the public road frontage and the first delineated parking space.

ii. visibility splays of 160m x 160m (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction.

Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05m positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension. It is considered that this can only be achieved through the removal and maintenance of roadside vegetation adjacent to the property "5 Caroy" on the southern side of the road.

**Reason:** In the interests of road safety

5 Prior to 1 April 2022 and in conjunction with the works required by condition 4 above, a suitable barrier shall be installed along the frontage of the parking area to prevent vehicles entering or exiting the public road from that point. The 5 parking spaces shown on the approved plans (and their demarcation) shall be retained for that use only during the lifetime of this permission.

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**Reason:** In the interest of road safety

Prior to 1 April 2022 a waste and recycling bin storage area shall be provided close to the site frontage with the public road but outwith the visibility splays required by condition 4 above, unless otherwise first agreed in writing by the Planning Authority.

**Reason:** In the interest of road safety and to ensure waste from the site is disposed of sustainably

### **REASON FOR DECISION**

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.

### **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

The Highland Council hereby makes the following Direction under Section 58(2) of the Town and Country Planning (Scotland) Act 1997 (as amended). The development to which this planning permission relates must commence on or before 1<sup>st</sup> November 2023, failing which this planning permission shall lapse.

### **INFORMATIVES**

#### **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.

## **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 (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

## **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\\_f\\_or\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_f_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.

**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](mailto:env.health@highland.gov.uk) for more information.

Designation: Area Planning Manager - North

Author: Alison Harvey

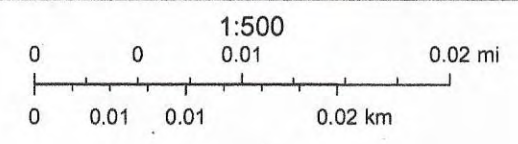
Background Papers: Documents referred to in report and in case file.

Relevant Plans:

<b>Document Type</b>	<b>Document No.</b>	<b>Version No.</b>	<b>Date Received</b>
Site layout plan	000003		14 <sup>th</sup> July 2021
Visibility Splays	000004		14 <sup>th</sup> July 2021



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