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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