Agenda Item	7.11
Report No	PLN/036/22

#### HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 26 April 2022

**Report Title:** 21/05642/S42: Campbell Dickson

Rosedale Hotel, Beaumont Crescent, Portree

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

# **Purpose/Executive Summary**

**Description:** Application under section 42 to remove condition 1 of planning

permission 21/00146/FUL

Ward: 10 - Eilean A' Cheò

**Development category:** Local Development

Reason referred to Committee: More than five 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 **GRANT** the application as set out in section 11 of the report

### 1. PROPOSED DEVELOPMENT

- 1.1 Planning consent 21/00146/FUL granted temporary planning permission for the siting of a raised decking area with seven greenhouse-type seating shelters to provide extra outdoor dining provision for the Rosedale Hotel.
- 1.2 Condition 1 of this permission states;

Planning permission is hereby granted for a temporary period only and shall cease to have effect on 31 October 2021 (the 'cessation date'). Within one month of the cessation date, the application site shall be cleared of all development approved under the terms of this permission.

The reason for this condition was given as;

Reason: In recognition of the temporary nature of the proposed development and its Covid-19 justification and to enable the Planning Authority to secure removal and restoration of the site.

The condition and reason reflected government guidance aimed at supporting hospitality business responses to the social distancing requirements of pandemic legislation.

1.3 This application seeks a further permission for the same development but with Condition 1 removed so that the development can be retained in perpetuity.

#### 2. SITE DESCRIPTION

- 2.1 The application site is located on the eastern side of Beaumont Crescent fronting the harbour and immediately opposite the Rosedale Hotel. To the east of the site is the existing line of railings and sea wall with a slipway located beyond this. To the north of the hotel and application site Beaumont Crescent continues as a row of about half a dozen two and three storey residential properties fronting the harbour.
- 2.2 The site and surrounding wider harbour area are located within the designated Conservation Area. Several of the properties in the harbour area are listed.

# 3. PLANNING HISTORY

3.1 28.04.2021 21/00146/FUL: Provision of external seating and Application dining pods adjacent to existing hotel premises permitted

### 4. PUBLIC PARTICIPATION

4.1 Advertised: Affects a Conservation Area and Unknown Neighbour

Date Advertised: 14 January 2022

Representation deadline: 4 February 2022

Timeous representations: 8 from 7 households (inc. CC not acting as statutory

consultee

Late representations: 0

- 4.2 Material considerations raised are summarised as follows:
  - Visual impact not in keeping with the conservation area
  - Construction has effectively narrowed the road so the width is tight for larger vehicles and emergency vehicles.
  - Pedestrians have no room to escape traffic when alongside the structure.
     Particular danger to disabled pedestrians. Jumping onto open decking (as now) will not be possible with greenhouse pods in place
  - Danger to staff crossing road to the decking from the hotel
  - Danger to customers stepping off decking into the road
  - There is a degree of overlooking from the structure to the garden of 2 Beaumont Crescent
  - Road is often blocked by guests unloading vehicles outside the hotel –
    decking makes this worse by occupying 5 public parking spaces. Promised
    'park and ride' provision by the applicant has not materialised
  - Permanent permission would in effect 'give-away' part of the public road to a private use
  - Planning authority has already indicated that permanent permission would not be granted
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet <a href="https://www.wam.highland.gov.uk/wam">www.wam.highland.gov.uk/wam</a>.

### 5. CONSULTATIONS

- 5.1 Historic Environment Team (HET) Conservation
  - Objection
  - Disappointing that the applicant has not taken heed of the objection to the permanent siting of this development in this location submitted by HET as part of the previous application

# The previous objection is repeated below;

The harbour is one of the key architectural and historical focal points of the conservation area. The harbour, and Quay Street in particular, already suffers from a number of issues that negatively affect the character of this important area, including excessive street clutter obscuring and/or damaging views and vistas of the harbour, lack of sufficient dedicated vehicular parking and a substandard public realm. It is therefore important that the current situation is not compounded by further ill-considered and visually inappropriate development and clutter. That being said, Beaumont Crescent remains of a higher quality and retains much of its historic character and appearance. The proposal to install greenhouse-style pods along this side of the harbour will not only adversely impact important views of the harbour generally, but also impact the harbour setting of three Listed Buildings (4, 5 and 6 Beaumont Crescent). This is an inappropriate development for an important, prominent and sensitive part of the conservation area and will be visually intrusive when entering and exiting the harbour, as well as when within harbour setting itself.

In conservation terms it is clear that the proposed development will not preserve or enhance the character and appearance of the conservation area and therefore does not satisfy the statutory test set out in S.64 of the Planning (Listed Buildings and conservation Areas) (Scotland) Act 1997, and by virtue of poor siting, design, materials and impacts does not accord with Policy 57(1) of the HwLDP. Furthermore, the proposal will adversely impact the harbour setting of 3 Listed Buildings and does not therefore satisfy Section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (referred to in Section 37(3) of the Town and Country Planning (Scotland) Act 1997) which states that In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The development, located forward of the established building line, affecting views to and from the listed buildings, and departing from the established grain and rhythm of the historic built and plan form does not preserve the setting of these buildings. Furthermore, the development is considered to not comply with Historic Environment Policy for Scotland, specifically policies HEP2 and HEP4.

### 5.2 Transport Planning Team

- Objection to permanent permission
- Transport Planning object to the removal of the condition requested by the applicant. The development is on land which is not within the developer's control but is part of the public road. If the development was proposed on a permanent basis, it would present an obstruction to the rights of the public and statutory undertakers regarding use of the public road. Although this is not considered a high-risk location for a temporary development (due to reasonable visibility, low traffic volumes and speeds) the proposal does not meet the necessary requirements to allow the standard street café permit to be issued by the Roads Authority.
- Planning Permission was issued for a temporary period under 21/00146/FUL notwithstanding the previous objection raised by Transport Planning. This was justified as a temporary permission to support

businesses through the pandemic. The Chief Planning Officer has given further advice regarding an extension of the temporary relaxation of control to support the national response to COVID-19 to the end of September 2022.

 If planning officers are minded to grant a temporary extension in line with the Chief Planning Officer's consideration, Transport Planning request that the cessation date be no later than the end of September 2022. Transport Planning do not expect any further extension will be permitted; this should be made clear to the applicant to ensure prompt removal of the obstruction to the public road on the expiry of any extended permission.

### 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 & Place-making
- 34 Settlement Development Areas
- 43 Tourism
- 57 Natural, Built & Cultural Heritage

# 6.2 West Highland and Islands Local Development Plan 2019

Placemaking Priorities for Portree include;

- Encourage town centre expansion that respects the architectural, cultural and natural heritage of the conservation area, the Lump, other greenspaces and public vistas notably to the Cuillin mountains.
- Diversify the tourism offer of the historic, central part of the village, including land at Bayfield and the harbour.

# 6.3 Highland Council Supplementary Planning Policy Guidance

Highland Historic Environment Strategy (Jan 2013) Special Landscape Area Citations (June 2011)

#### 7. OTHER MATERIAL CONSIDERATIONS

### 7.1 Scottish Government Planning Policy and Guidance

- Scottish Planning Policy (as amended December 2020)
- National Planning Framework 3
- Scottish Planning Policy (The Scottish Government, Revised 2020)
- Coronavirus (Scotland) Act 2020 (as amended)
- The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (as amended)

 Joint "PLANNING PROCEDURES AND COVID-19" letter from the Chief Planner and the Minister for Local Government, Housing and Planning dated 29 May 2020 as updated by joint letter from the Chief Planner and the Minister for Public Finance, Planning and Community Wealth dated 8 November 2021

# 7.2 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- S.59 General duty as respects listed buildings in exercise of planning functions.
- s.64 General duty as respects conservation areas in exercise of planning functions

### 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) Impact on the Portree Conservation Area/Listed Buildings
  - c) Impact on Amenity, Road Safety, Parking and Harbour Users
  - d) The current Covid-19 context
  - e) S.42 powers to vary the wording of conditions

### Compliance with the development plan and other planning policy

8.4 The application site is located within the settlement boundary for Portree. Policy 34 supports development proposals within SDA's if they meet the Design for Sustainability requirements of Policy 28 which seeks 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 this emphasis on good design in terms of compatibility with the local settlement pattern.

- 8.5 The site is also located within the designated Conservation Area for Portree. Policy 57 of the HwLDP, sets out the tests against which developments that affect natural, cultural and built heritage features must be assessed. Policy 57(1) states that for features of local/regional importance developments will be allowed if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.
- 8.6 The above policy should be read in the context of the statutory duty imposed on the planning authority by s.64 and s.59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. S.64 states;
  - "...In the exercise, with respect to any buildings or other land in a conservation area, of any powers under [the planning Acts] special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area...".

# s.59(1) states;

"...In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses..."

# 8.7 Policy 43: Tourism states;

- "...Proposals for tourist facilities will be assessed as to whether: the scale of the proposal is proportionate to its location/settlement; the site is within a settlement boundary and whether it will complement existing/allocated tourist facilities within that settlement; the proposal will increase the length of peoples stay, increase visitor spending or promote a wider spread of visitors; the proposal will safeguard, promote responsible access, interpretation and effective management or enhancement of natural, built and cultural heritage features..."
- 8.8 The permanent retention of the proposal is not considered to meet the policy and legislation requirements above. However, a further temporary period is considered acceptable when other material considerations are taken into account see below.

# Impact on the Portree Conservation Area/Listed Buildings

8.9 The Council's Historic Environment Team (HET) have stated that the harbour is one of the key architectural and historical focal points of the conservation area. Beaumont Crescent remains of a high quality and retains much of its historic character and appearance. HET consider that the proposed development will be visually intrusive when entering and exiting the harbour, as well as from within the harbour setting itself. As such the proposal will not only adversely impact important views of the harbour generally, but also impact the setting of three Listed Buildings (4, 5 and 6 Beaumont Crescent).

As such the HET consider that the proposed development will not preserve or enhance the character and appearance of the conservation area and therefore does not satisfy the statutory test set out in S.64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and does not accord with Policy 57(1) of the HwLDP.

Furthermore, the proposal will impact on the harbour setting of 3 Listed Buildings. As such the HET object to the proposal as it does not satisfy the statutory test set out in S.59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Concerns regarding the impact upon the historic environment have also been raised by third parties.

8.10 Given this very negative assessment it is not considered that a recommendation for approval could be made in respect of the permanent retention of the decking and pod structure applied for. However, it is considered that, as before, these heritage objections could be outweighed by the other material consideration of government guidance relating to supporting business recovery from the Covid pandemic for a temporary period whilst that guidance remains valid.

# Impact on Amenity, Road Safety, Parking and Harbour Users

- 8.11 As with the previous application, concerns have been raised with regards to a loss of amenity to an existing garden area which is situated next to the development. However, given the location of the garden area in relation to the existing road, the parking area and the surrounding land uses, this land is not considered to normally enjoy a very high level of privacy. As such the introduction of this development on a temporary basis is not considered to have so significant an impact upon residential amenity as to justify a refusal of this temporary permission.
- 8.12 As before, concerns have also been raised with regards to a loss of parking and safety of pedestrians and users as there is no pavement along Beaumont Crescent. Whilst these concerns are noted it must be acknowledged that the proposed site is usually occupied by vehicles, so there is already an existing level of conflict between cars and pedestrians along this road. The units are glazed so there will be visibility from them and through them to the road. In addition, vehicle speeds are low and there is space between five of the seven units to allow pedestrians to move off the road and onto the low platform in the event of an oncoming vehicle. It is recognised that the continuous form of the decking makes this situation marginally worse from a pedestrian safety point of view than when the area is occupied by vehicles.

It is noted that the drawings submitted with this application have been amended from those previously submitted in accordance with the requirements of condition 2 of 21/00146/FUL. The rotation of ridgelines of two of the pods to run parallel with the road helps prevent staff and customers from stepping directly out of the pods onto the road.

- 8.13 The loss of parking is considered to raise important issues of amenity for local residents, harbour users and visitors alike and is recognised to already be in short supply within the wider harbour area. Again, this would not be an acceptable situation if the decking were to be retained on a permanent basis.
- 8.14 Third party comments have again raised concerns that a number of the units block pedestrian and vehicular access to the slipway for harbour users. However, the site layout plan shows that the southern end of the proposed development will be sited in line with the end of the existing harbour wall railing at the entrance to the slipway, as such it is not considered that access to the slipway would be materially hindered.
- 8.15 Transport Planning object to the proposal for the reasons given at paragraph 5.2 above but recognise that justifications for a further period of temporary consent until the end of September 2022 still exist.

#### The current Covid-19 context

- 8.16 The justifications for a further temporary consent referred to by Transport Planning focus on the Scottish Government guidance provided in the joint letter from the Chief Planner and the Minister for Public Finance, Planning and Community Wealth dated 8 November 2021. This letter updated the previous advice provided in May 2020 which, in itself, was considered to be the material consideration justifying the original temporary consent for this seating area and others in the village and elsewhere.
- 8.17 It is noted that the November 2021 advice differs significantly from that provided in May 2020. The original advice letter from the Chief Planner was predicated on supporting planning decisions that assisted businesses to overcome the indoor capacity constraints imposed on them by national pandemic social distancing requirements. Consenting seating areas outside hospitality businesses was seen as an obvious method of achieving this goal.
- 8.18 These social distancing requirements have now been lifted. However, notwithstanding this, the Chief Planner's 8 November 2021 letter maintained support for such temporary seating areas as part of a new emphasis on economic recovery from the pandemic. The letter stated that planning authorities should extend the same positive approach to such developments until the end of September 2022.

# S.42 powers to vary the wording of conditions

8.19 Having followed the advice and guidance of the Scottish government via the Chief Planner for the original 21/00146/FUL temporary permission, it is considered that it would be inconsistent not to follow it in respect of this application also. However, the emphasis in the guidance is on temporary consents until the impacts of the pandemic have passed and this is incompatible with the request of the application for conversion of the original consent to permanent approval.

- 8.20 However, s.42 of the 1997 Planning Act, under which this application is made, allows a planning authority some flexibility in its decision stating;
  - "...(2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly..."

In other words, rather than remove the condition altogether, the authority is also empowered to substitute a differently worded condition addressing the same material considerations.

In this case, as explained above, it is not considered that the removal of the condition altogether can be justified, but it's rewording so that the expiry of the permission is extended to 30 September 2022 can be supported.

8.21 It is also noted that the previous planning permission included a second condition requiring the reorientation of the two southernmost greenhouse units. This current application has been submitted with an amended drawing showing compliance with this requirement (see 8.12 above). It is, therefore, considered that this second condition can be deleted from any further permission.

#### Other material considerations

8.22 None

#### Non-material considerations

8.23 None

### Matters to be secured by Section 75 Agreement

8.24 None

### 9. CONCLUSION

- 9.1 The development raises a number of concerns and are not considered to be desirable or suitable as permanent features within the location and under normal circumstances granting planning permission would not be recommended. However, there remain significant extenuating circumstances that have led to the recommendation to grant temporary planning permission. There remain very real concerns about the sustainability of businesses throughout the Highlands.
- 9.2 The concerns set out in the report are acknowledged, however, it is recognised that this proposal is a specific and legitimate response to the constraints imposed by legislation aimed at assisting economic recovery from the pandemic. As such it

is considered acceptable on a temporary basis only whilst the pandemic justification remains and until the end of September 2022. Assuming economic recovery continues and no return to social distancing occurs, it is considered very unlikely that any further extension to this temporary permission will be granted.

9.3 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

**GRANT** the application subject to the following conditions and reasons

Planning permission is hereby granted for a temporary period only and shall cease to have effect on 30 September 2022 (the 'cessation date'). Within one month of the cessation date, the application site shall be cleared of all development approved under the terms of this permission.

**Reason**: In recognition of the temporary nature of the proposed development and its Covid-19 economic recovery justification and to enable the Planning Authority to secure removal and restoration of the site.

#### 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

n/a

#### **INFORMATIVES**

#### 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: <a href="http://www.highland.gov.uk/yourenvironment/roadsandtransport">http://www.highland.gov.uk/yourenvironment/roadsandtransport</a>

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

### Mud & Debris on Road

Please note that it 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 for more information.

### **Protected Species – Halting of Work**

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <a href="https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species">https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species</a>

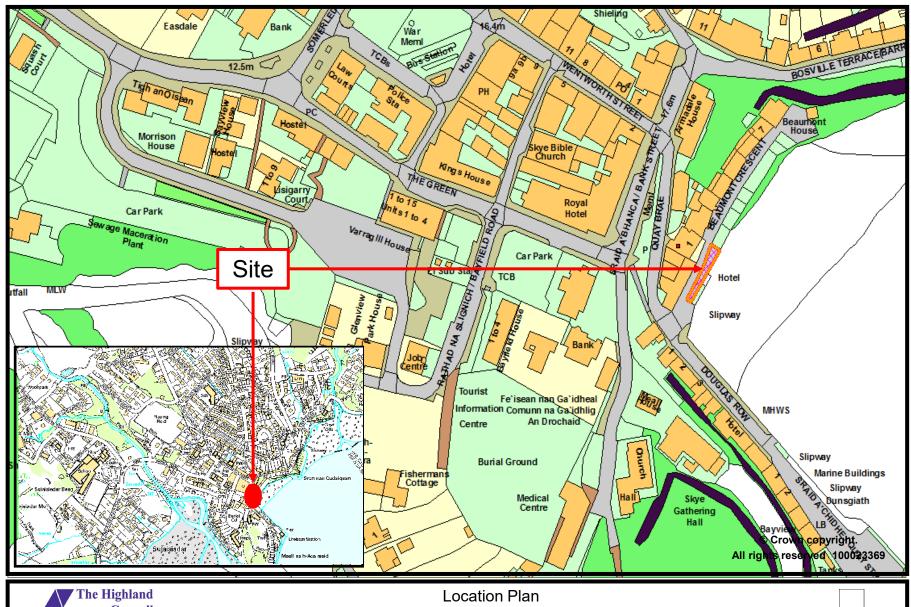
Designation: Area Planning Manager - North

Author: Mark Harvey

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

Relevant Plans:

Document Type	Document No.	Version No.	Date Received
SITE LAYOUT PLAN	02	REV A	30 Nov 2021
FLOOR PLAN/ELEVATION	03		30 Nov 2021
LOCATION PLAN	04		30 Nov 2021





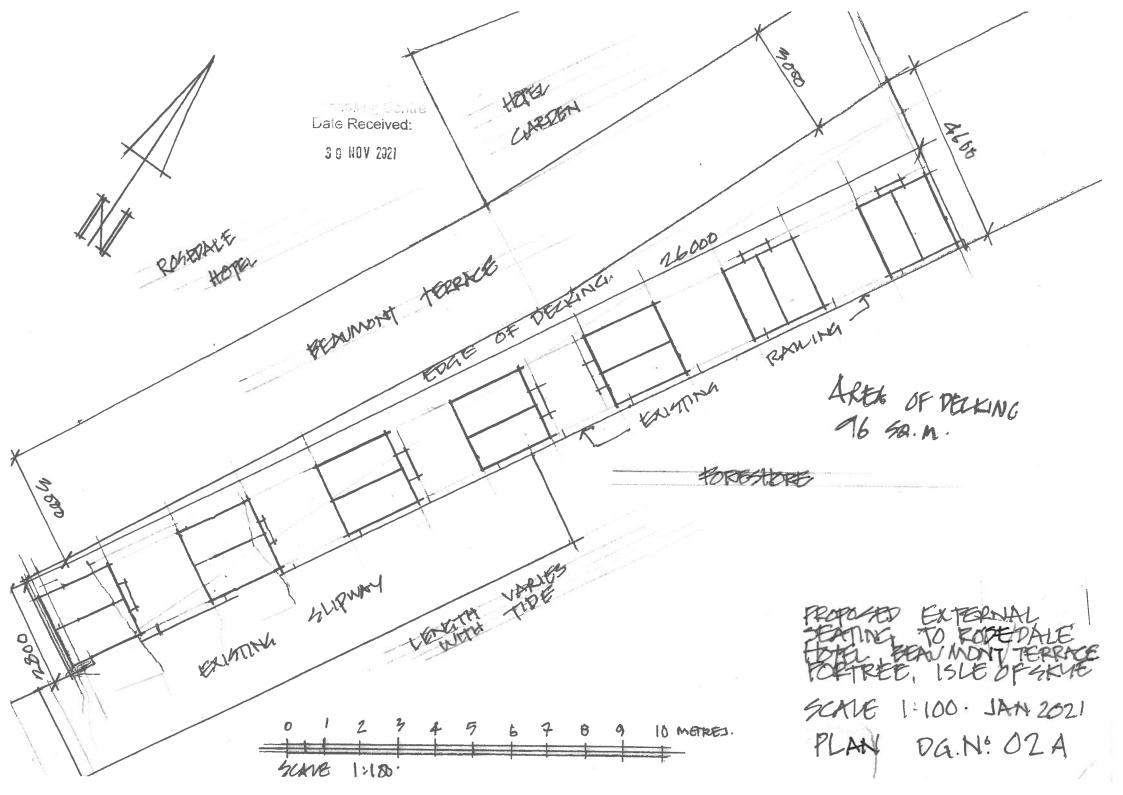
**Development Service** 

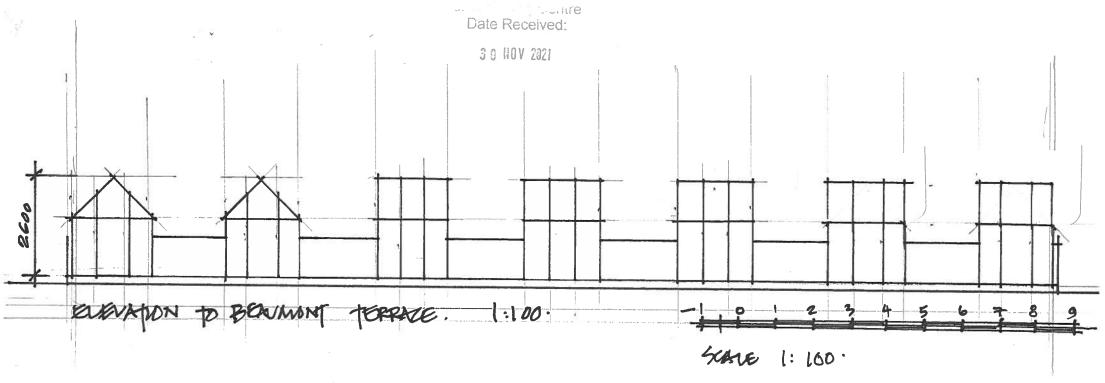
21/05642/S42

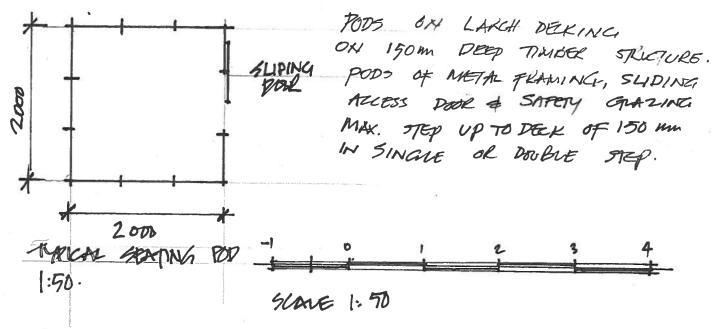
Application under section 42 to remove condition 1 of planning permission 21/00146/FUL

April 2022

Scale:







PROPOSED EXTERNAL
SEATING AT ROSEDALE
HOTEL BEALMONT TERRACE
TORTREE, KILE & SKYE
SCALE 1:100. JAN 2021

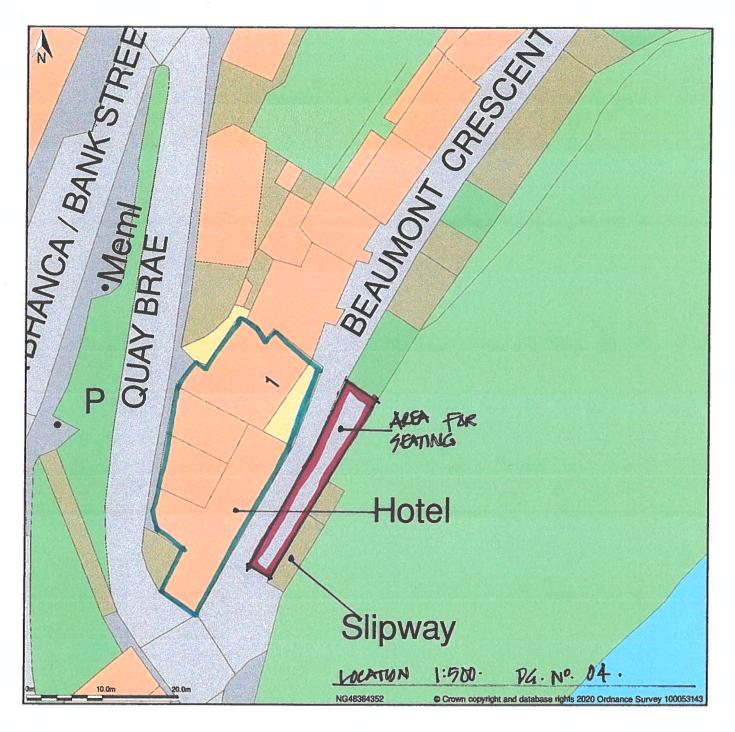
DENATION 4 UNITS DANO.034



eProcession in Date Received:



# Rosedale Hotel, Beaumont Crescent, Portree, Highland, IV51 9DF



Block Plan shows area bounded by: 148319.12, 843482.46 148409.12, 843572.46 (at a scale of 1:500), OSGridRef: NG48364352. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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