

Agenda Item	6.9
Report No	PLS/40/25

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 18 June 2025

Report Title: 25/00684/FUL: Mr H Malik
Unit 1, Culduthel Avenue, Inverness, IV2 6JG

Report By: Area Planning Manager - South

Purpose/Executive Summary

Description: Change of use from Class 3 (food and drink) to Class 3 (food and drink) and hot food take away, installation of extract flue

Ward: 15 - Inverness Ness-Side

Development category: Local Development

Reason referred to Committee: Community Council Objection

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 The application is for the change of use from Class 3 (food and drink) to Class 3 (food and drink) and hot food takeaway and installation of an extraction flue.
- 1.2 The site had previously been granted planning permission (17/05216/FUL) for four retail units, specifically excluding Class 3 use hot food takeaway. This application seeks to add the use of hot food takeaway to an existing business at Unit 1.
- 1.3 Pre Application Consultation: None.
- 1.4 Supporting Information: None
- 1.5 Variations: None

2. SITE DESCRIPTION

- 2.1 The site is located in the Culduthel area of Inverness, north of Sir Walter Scott Drive (A8082) and is bounded on the east and north by Culduthel Avenue and to the west by Culduthel Woods. There is housing located to the east of the proposal at Culduthel Avenue and to the south at Culduthel Mains Crescent.
- 2.2 The existing building consists of a single storey block which accommodates two businesses – a Vets, and the café subject to this application. The footprint of the building will remain as existing.
- 2.3 Access is taken from a roundabout on Sir Walter Scott Drive at the junction of Culduthel Avenue with Culduthel Mains Road. Cycle and pedestrian access from neighbouring residential areas already exists. There is existing car parking for 23 cars in a shared car park adjacent and to the north of the unit.

3. PLANNING HISTORY

- | | | | |
|-----|-------------------|--|--------------------|
| 3.1 | 14 September 2010 | 09/00074/FULIN - Erect 3 retail units and one hot food take-away - amended to 4 retail units. | Permission Granted |
| 3.2 | 23 January 2018 | 17/05216/FUL - Erection of 4 retail units | Permission Granted |
| 3.3 | 28 August 2018 | 18/02822/ADV - Erection of sign | Permission Granted |
| 3.4 | 9 November 2021 | 21/02423/S42 - Section 42 submission requesting deletion of condition 5 on consent 17/05216/FUL for the Erection of 4 no. retail units on land to the North of the B8082 Distributor Road, Inverness | Permission Granted |
| 3.5 | 20 October 2022 | 22/03964/ADV - Erection of fascia sign | Permission Granted |

4. PUBLIC PARTICIPATION

4.1 Advertised: Inverness Courier – Unknown Neighbour

Date Advertised: 11 April 2025

Representation deadline: 25 April 2025

Timeous representations: 2 (2no. Households)

Late representations: 0

4.2 Material considerations raised are summarised as follows:

- a) Previous planning decisions
- b) Pedestrian access
- c) Parking and road safety
- d) Amenity – potential impact from litter, noise, vermin
- e) Protected species

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.

5. CONSULTATIONS

5.1 Lochardil & Drummond Community Council: Objects:

Air Pollution - Site adjacent to housing and recreational woods used by the local community. Notwithstanding the efficacy of the filtration system there will be residual odours emitted from the flue which due to the low level of the roofline will negatively impact on the amenity of the woods and houses alike.

Light Pollution - Local residents have already complained of light pollution from the premises late in the evening. This will remain - or even get worse - as the premises attracts greater custom, with potentially increased late-night activity.

Noise Pollution - Culduthel Avenue lies in a relatively secluded area. Similarly to light pollution, noise pollution will only increase from cars arriving and departing including delivery vehicles, the ventilation system and the noise occasioned by users of the facility. All will result in a significant negative impact to the amenity of the locale and particularly to residents.

Traffic - The road access is via a road to a dead end. If consent was given there is liable to be a significant increase in traffic to this mostly quiet locale. This will lead inexorably to additional pollution, annoyance to residents by headlights and cars idling in the car park and at the roundabout, with the effect of significant disamenity to the area.

Litter - An increase in litter has been noticed and commented on by local residents ever since the premises have been occupied. The expectation is that this will only get worse with an increased food offering. Additionally, the Inverness Royal Academy is at the end of the road and, no doubt, fast-food options will attract pupils - this will clearly impact on the potential for increased littering and scavenging by gulls and potentially by rodents (both being potential sources of zoonotic infections) from the woods thereby introducing them to the built environment.

Beyond the School Gate & Obesity - Given the IRA's location in relation to the shop it is questionable whether the café should have been given planning consent in the first place. Therefore, given levels of obesity amongst this cohort and the Scottish Government's policy statements regarding the prevention of overweight and obesity and particularly the "Beyond the School Gate" initiative. It is clear that any further loosening of consent for these premises will have a significantly detrimental effect on the diets of a significant number of school children thereby countering efforts by the school, parents and government (and presumably the community planning partnership) in tackling childhood obesity and the habit of fast-food consumption.

- 5.2 **Environmental Health Officer:** Installation of a new kitchen extraction system has the potential to result in the release of cooking odours which may impact on neighbouring residents and businesses. Therefore, the extract system will be required to ensure that no loss of amenity to nearby residents is caused by odour or fumes. The system should be designed and installed by a competent person with specialist knowledge of ventilation and filtration systems. There may also be potential for noise disturbance to nearby properties arising from the operation of the new extraction system.

- 5.3 **SSE – Overhead Lines:** No concerns with proposed development.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 National Planning Framework 4 (2023) (NPF4)

Policy 1 - Tackling the Climate and Nature Crises

Policy 2 - Climate Mitigation and Adaptation

Policy 3 – Biodiversity

Policy 14 – Design Quality and Place

Policy 15 - Local Living and 20 Minute Neighbourhoods

6.2 Highland Wide Local Development Plan 2012 (HwLDP)

28 - Sustainable Design

29 - Design Quality and Place-making

34 - Settlement Development Areas

6.3 Inner Moray Firth Local Development Plan 2 (2024) (IMFLDP2)

No specific policies apply.

6.4 Highland Council Supplementary Planning Policy Guidance

Not applicable

7. OTHER MATERIAL POLICY CONSIDERATIONS

- 7.1 None

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) Planning history
 - c) Impact on residential amenity
 - d) Parking and pedestrian access
 - e) Any other material considerations

Development plan/other planning policy

- 8.4 The statutory development plan comprises NPF4, Highland-wide Local Development Plan (HwLDP) and the Inner Moray Firth Local Development Plan 2 (IMFLDP2). The proposed development is located within the Settlement Development Area (SDA) of Inverness as identified in IMFLDP2. Developments can be supported within SDAs provided it can be demonstrated that it is compatible with public service provision, makes use of existing brownfield land, will not adversely impact on individual or community residential amenity, and demonstrate sensitive siting and high-quality design in keeping with local character and the historic and natural environment. Consequently, the principle of development is supported thorough HwLDP Policy 34 (Settlement Development Areas). However, this is subject to the proposal meeting the requirements of HwLDP Policy 28 (Sustainable Design) and all other relevant polices in the Development Plan.
- 8.5 NPF4 Policies 1-3 apply to all development proposals. When considering all development proposals, significant weight will be given to the global climate and nature crises. Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible. Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
- 8.6 The key NPF4 policies for this proposal are Policy 14 (Design, quality and place) and Policy 15 (Local Living and 20 Minute Neighbourhoods). Policy 14 supports development proposals which are consistent with the 6 qualities of successful places – healthy, pleasant, connected, sustainable and adaptable, and does not support

development proposals which are poorly designed or detrimental to the amenity of the surrounding area. Policy 15 seeks to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

- 8.7 These policy aspects are already reflected within the Highland-wide Local Development Plan, notably Policy 28 (Sustainable Design) which assesses proposals against a number of criteria, including their compatibility with public service provision; transport; impact on individual and community residential amenity; demonstration of sensitive siting and high quality design in keeping with local character; and contribution to the economic and social development of the community.
- 8.8 The proposal is situated within the settlement of Inverness. The unit is already in existence and operating as a café, as such it is consistent with the established settlement pattern and character of the area. Subject to the proposal having no demonstrable adverse impact on residential amenity; no adverse impact on the character and appearance of the neighbourhood; and the access and car parking arrangements being acceptable, the proposal would comply with the Development Plan.

Planning history

- 8.9 Planning permission was granted on 23 January 2018 for the erection of four retail units (17/05216/FUL), specifically excluding Class 3 use hot food takeaway. The proposal seeks to add the use of hot food takeaway to the existing business at Unit 1.
- 8.10 Condition 1 of planning permission 17/05216/FUL identified that "...the permission does not allow the retailing of Town and Country Planning Use Classes Order - Use Class 3 - hot food -takeaway."
- 8.11 Use of the premises for hot food takeaway was previously excluded due to concerns raised by Lochardil and Drummond Community Council. This is therefore a material consideration in the determination of the proposal under consideration.
- 8.12 The unit has now been operating as a cafe for a number of years. It is open 7 days a week until 11pm. It is considered that hot food takeaway could operate alongside the existing café business. To alleviate concerns and ensure that the unit does not become solely a hot food takeaway, a condition (No.2) is added to ensure that the hot food takeaway use is ancillary to the Class 3 Use – this means that the ancillary hot food takeaway cannot operate outwith the principal Class 3 Use business hours.

Impact on residential amenity

- 8.13 Residential amenity is a key consideration to this proposal. Representations have raised concerns over potential impact on residential amenity and community amenity (Culduthel Woods) from noise, light pollution, air pollution/odour, litter and increase in vermin. It is noted that the closest residential properties are 52m to the northeast,

separated from the site by Culduthel Avenue. This degree of separation is considered sufficient to provide for an appropriate degree of amenity within an urban setting between commercial and residential properties.

- 8.14 The business in the unit is currently operating as a café and already opens until 11pm every night.
- 8.15 It is to be expected that with any commercial use, there will be an element of noise from customers entering and exiting premises and from deliveries. Notwithstanding this, if there are issues around excessive noise, then this would be assessed as a statutory noise complaint by Environmental Health. A condition has been included restricting delivery hours.
- 8.16 The proposal includes the installation of an extraction flue. Environmental Health were consulted on the application due to the potential for noise disturbance to nearby properties arising from the operation of the new extraction system. They advised that it would be appropriate to include a condition to control noise levels.
- 8.17 The inclusion of an extraction flue has also raised concerns over potential residual odours emitted from the flue. Environmental Health have advised that the extraction system should be designed and installed to ensure that no loss of amenity to nearby residents is caused by odour or fumes. A condition has been added to control this.
- 8.18 No additional lighting is being proposed at the site. There will be times when car headlights will shine on individual properties, but this is true of all developments and not individual to this proposal.
- 8.19 Representations refer to the potential for an increase in litter and vermin with the introduction of a hot food takeaway use to the unit. Commercial bins are already provided to the rear of the unit, and the proposal does not change this. A customer bin is already located within the carpark.
- 8.20 The additional use of the premises would not be expected to create additional noise or disturbance beyond what could be expected outside any commercial unit adjacent to a main road. The inclusion of an extraction flue has the potential to be detrimental to residential amenity through noise and odour. However, conditions have been added to control this. As such it is considered that the proposal does comply with the requirements of Policy 28 (Sustainable Design) on community and residential amenity.
- 8.21 Furthermore, the proposal would accord with NPF4 Policy 14 (Design, quality and place) and Policy 15 (Local Living and 20 Minute Neighbourhoods). Policy 14 seeks to ensure that all new developments demonstrate compliance with the six qualities of a successful place and does not support development proposals which are poorly designed or detrimental to the amenity of the surrounding area. Policy 15 seeks to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

It is considered that this proposal will have no detrimental impact on the quality of the area and with the footprint of the unit not changing it will continue to respect the amenity of the surrounding area. It will also provide an additional facility for the local community, thereby promoting connected neighbourhoods.

Parking and pedestrian access

- 8.22 Access is taken from a roundabout on Sir Walter Scott Drive at the junction of Culduthel Avenue with Culduthel Mains Road. Cycle and pedestrian access from neighbouring residential areas already exist. There is existing car parking for 23 cars in a shared car park with an adjacent Vets business. No additional car parking spaces are proposed.
- 8.23 Representations refer to the increase in traffic on Sir Walter Scott Drive (A8082) due to the opening of the 'Westlink' Road and considers that a revised Traffic/Transport Assessment should have been provided. Representations also refer to additional traffic being generated by the additional use of hot food takeaway being added. The unit already operates as a Class 3 Uses (food and drink – on the premises) cafe with sit-in provision. The other 3 units within the building have been merged into one unit with a Vets (Highland Vet Referrals) operating from it. Details on their website indicate opening hours of Monday to Friday 8am – 5pm and closed on Saturday and Sunday.
- 8.24 It is not considered that the proposal will generate a significant volume of additional traffic such that it would require a Transport Appraisal or be unacceptable in terms of road safety and it is also considered unlikely to have significant adverse impact on parking in the area. Any unsafe parking in the local area should be reported to Police Scotland.

Other material considerations

- 8.25 The proposal generally accords with NPF4 Policies 1, 2 and 3. When considering all development proposals, significant weight will be given to the global climate and nature crises. Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible. Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats, and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions where possible.
- 8.26 Representations refer to a lack of any ecological or habitat survey due to the presence of red squirrels in nearby Culduthel Woods. As this application is for a change of use, these assessments are not considered to be proportionate to the nature of the proposal on an existing business unit.
- 8.27 Lochardil and Drummond Community Council referred to the link between childhood obesity and the habit of fast-food consumption. The planning system does not seek to control the lifestyle choice of individuals.

Non-material considerations

- 8.28 Representations refer to the opening hours of the proposed hot food takeaway. It should be noted that the potential for opening hours to increase (beyond 11pm) is not a material planning consideration and is for the Licensing Authority to control via the provisions of the Civic Government (Scotland) Act 1982.

Matters to be secured by Legal Agreement / Upfront Payment

- 8.29 None

9. CONCLUSION

- 9.1 The proposal involves the change of use from Class 3 (food and drink) to Class 3 (food and drink) and hot food takeaway and installation of an extraction flue. Extant permission currently provides for 4 retail units but specifically excludes hot food takeaway. This application seeks to add the use of hot food takeaway to an existing business. In order to provide a degree of control over this additional element, it is considered appropriate to condition this to be ancillary to the principal Class 3 use of the premises, and can operate only at the same hours as the cafe. This effectively means that the premises cannot be developed solely as a hot food takeaway.
- 9.2 It is not considered that the proposed change of use by adding hot food takeaway, will result in any significantly adverse impact on the character of the area, or on either individual or wider community residential amenity.
- 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 N

Notification to Scottish Ministers N

Conclusion of Section 75 Obligation N

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

1. The development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2. The permission hereby granted is for the use of the premises for Class 3(*) (food and drink) and ancillary hot food take away, installation of extract flue For the avoidance of doubt, the Class 3 (food and drink) use and ancillary hot food takeaway shall operate only at the same hours.

(*) as defined by the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended).

Reason: In order to clarify the terms of the permission hereby granted, and to enable the Planning Authority to retain effective control over future development within the application site so that it is carefully managed and does not result in an adverse impact on the amenity of the area.

3. No development shall commence until full details of an odour mitigation system designed to protect neighbouring properties from catering odour arising from this development, shall have been submitted to, and approved in writing by, the Planning Authority in consultation with the Environmental Health Authority. The system shall be designed and installed by a competent person with specialist knowledge of ventilation and filtration systems. Thereafter, development shall progress in accordance with these approved details.

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

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

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

5. All deliveries for each retail unit are restricted to between the hours: -

- 07.00 to 22.00pm Monday -Saturday; and

- 10.00 to 22.00pm Sundays.

Reason: To protect residential amenity of housing on Culduthel Avenue

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.

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.

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

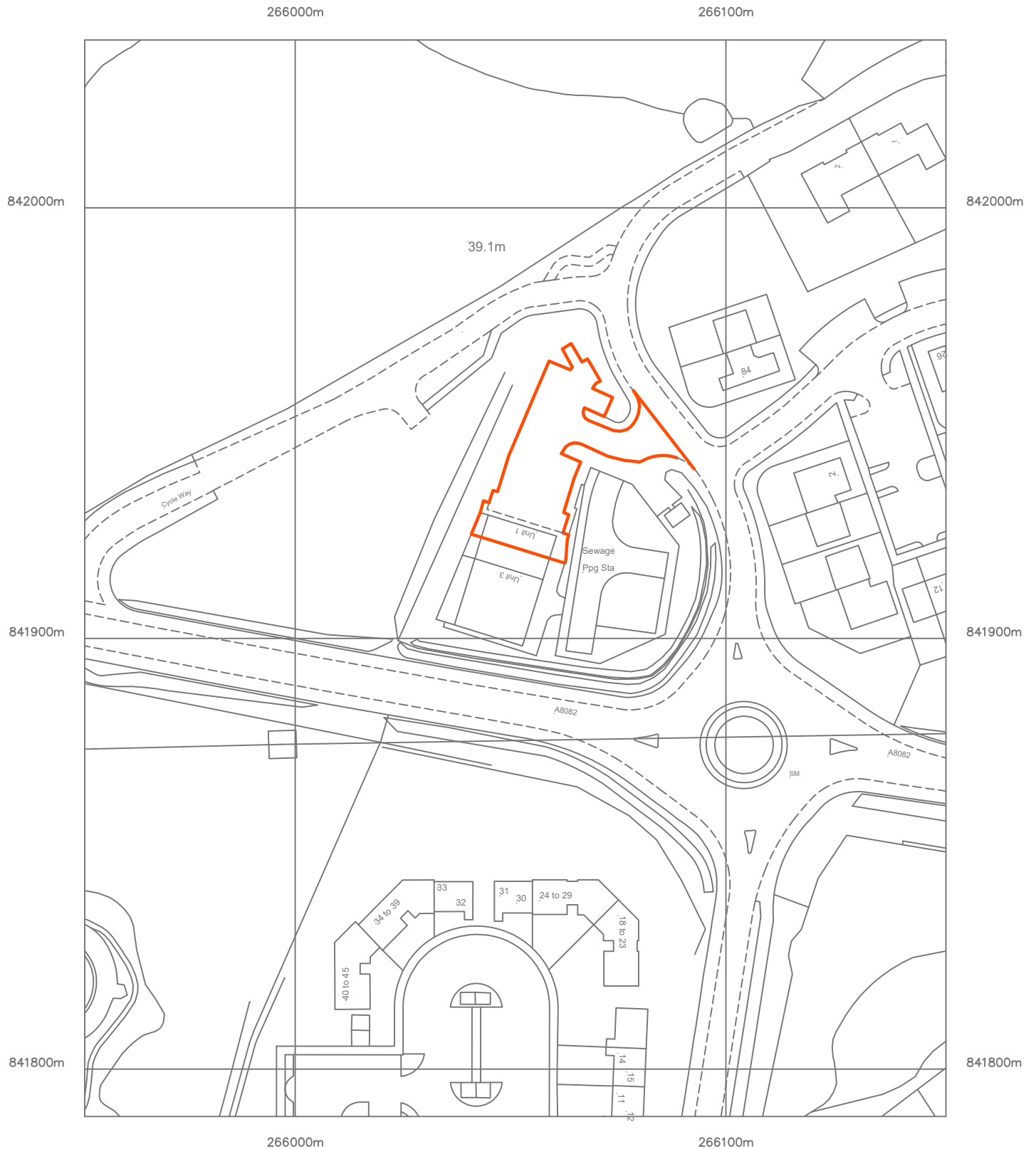
Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

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.

Signature:	Bob Robertson
Designation:	(Acting) Planning Manager South
Author:	Julie-Ann Bain
Background Papers:	Documents referred to in report and in case file.
Relevant Plans:	Plan 1 000001 – Location Plan Plan 2 100 – Proposed floor/elevation plan

Ordnance Survey[®]

Superplan Data[®]

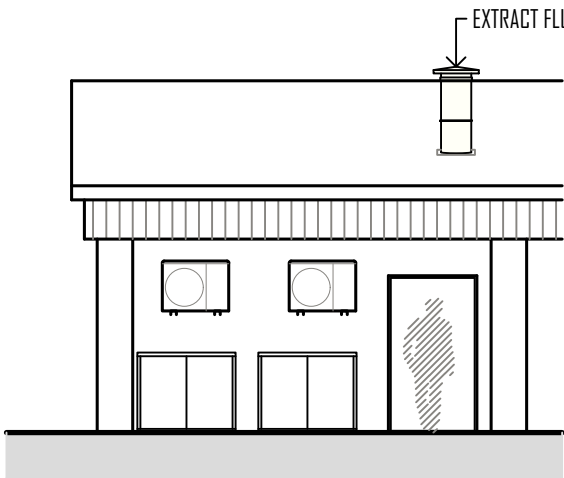


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Location Plan [scale 1 : 1250]

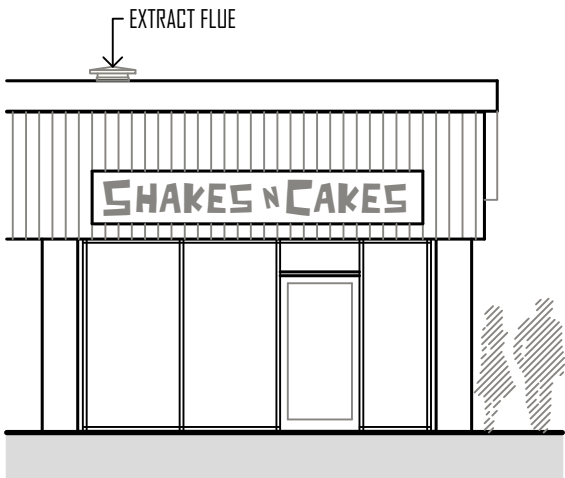


0m 10m 50m 100m

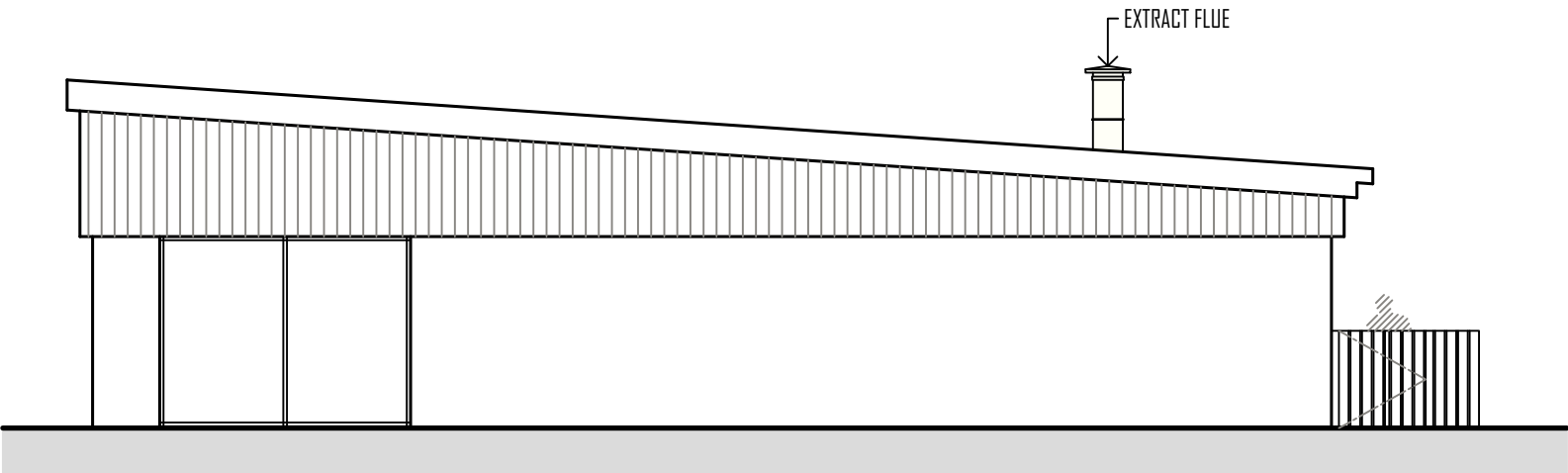


WEST ELEVATION
SCALE 1:100

0m 1m 2m 3m 4m 5m

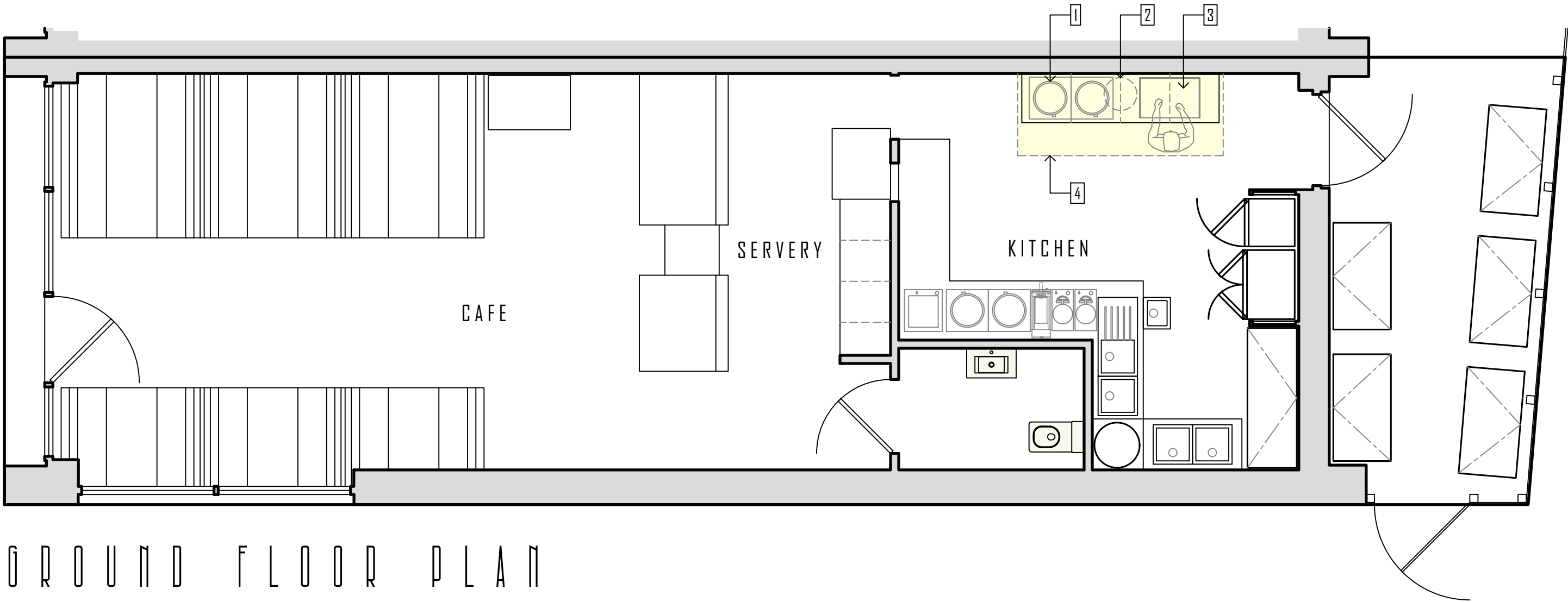


EAST ELEVATION
SCALE 1:100



NORTH ELEVATION
SCALE 1:100

- 1 CANOPY
- 2 PANCAKE - COOKIE MAKER
- 3 BURGER GRIDDLE
- 4 COOKING EXTRACT FLUE



GROUND FLOOR PLAN

Client :	Sakes N' Cakes	Description : Planning Details Floor Plan + Elevations	Drawn By :	Scale : A3=1-50	Date : Jan 2025
Project :	Cafe Alterations Unit 1 Culduthel Mains Ave, Culduthel, Inverness IV2 6JG		Project No : 4014	Drawing No : 100	Rev :