

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:**13/00731/PP

**Planning Hierarchy:** Local Application

**Applicant:** John Campbell

**Proposal:** Change of Use from Retail (Class1) to café and takeaway (Class 3 and sui generis)

**Site Address:** 13/00731/79 East Clyde Street Helensburgh

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**DECISION ROUTE (delete as appropriate)**

(i) **Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997**

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**(A) THE APPLICATION**

(i) **Development Requiring Express Planning Permission**

- Change of use to class 3 Café and Hot food Takeaway ( sui generis)

(ii) **Other specified operations**

- None

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**(B) RECOMMENDATION:**

It is recommended that planning permission be refused for reasons given overleaf.

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**(C) HISTORY: Y**

10/01518/PP - Change of use from class 1 shop to café (class 3) – Withdrawn

10/01996/CLWP – Use of premises under Class 1 to sell cold filled rolls, drinks, confectionary, warm drinks and rolls. Granted 14.12.10

12/00076/ENOF2 – Enforcement investigation on unauthorised change of use from Class 1 shop to Class 3 café and hot food takeaway – File remains open pending consideration of current planning application.

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**(D) CONSULTATIONS: Y**

Area Roads Engineer – Memo dated 14.5.13 -Objects to proposal (see section P)

Environmental Protection – No response received. Officer discussion confirms no nuisance complaints received.

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**(E) PUBLICITY: Y**

Press and site notice - Expired 6.5.13 and 9.5.13 respectively.

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**(F) REPRESENTATIONS: N**

**(i) Summary of issues raised**

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**(G) SUPPORTING INFORMATION**

Has the application been the subject of:

- (i) **Environmental Statement:** N
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** N
- (iii) **A design or design/access statement:** N
- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** N

**Summary of main issues raised by each assessment/report**

N/A

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**(H) PLANNING OBLIGATIONS**

- (i) **Is a Section 75 agreement required:** N
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- (I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** N
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- (J) **Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment  
LP RET 1 – Retail development in the towns  
LP TRAN 6 – Vehicle Parking Provision  
Appendix C – Access and Parking Standards

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**
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- (K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** N
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(L) **Has the application been the subject of statutory pre-application consultation (PAC):** N

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(M) **Has a sustainability check list been submitted:** N

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(N) **Does the Council have an interest in the site:** N

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(O) **Requirement for a hearing (PAN41 or other):** N

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**(P) Assessment and summary of determining issues and material considerations**

The proposal seeks the change of use of an existing class 1 retail unit to a class 3 café and hot food takeaway which is a sui generis use. The applicants have provided the following information in support of the application:

- Whilst only a small part of the business (a seating area for 6) it is essential to its survival
- The majority of trade comes from passing foot trade, and future trade from new Council offices is envisaged
- Informed previous application refused due to parking restriction and the café being on the main road to town. The cut off point for double yellow lines is not a fair balance in comparison to the west end of town where there is zonal parking and no double yellow lines on Clyde Street
- The café has passed the Environmental Health Inspection (copy certificate attached dated 14.5.12)
- Café employs 2 full time staff and closes at 2.30pm
- There have been no issues with businesses either side of the café with regards to food smalls, litter or obstructions. Café has a high standard of cleanliness both inside and out.
- Operators pick up and dispose of litter, mainly takeaway containers and late night revellers

In granting a certificate of Lawfulness under application 10/01996/CLWP the report of handling clarified the following matters in relation to the historic use of the premises:

*“From 2009 - 2010 the premises were used as a Pole training /fitness centre and sales of related products. It is considered that this use falls within Class11, Assembly and Leisure of The Town and Country Planning (Use Classes) (Scotland) Order 1997, with the sale of related products being ancillary to the main use. No application was received for this use and as such the use was unlawful.*

*The applicant has submitted a supporting statement indicating that the premises have been used for retail purposes since before 2000 and that there was a retail element within the last use and citing case law outlining that as this use was unlawful the lawful use of the premises remains as Class 1 and that legally no abandonment of the premises has occurred.*

*In considering these points I concur with the view that the last lawful use was as Class 1 and that the test of abandonment of this use cannot be reasonably established. Circular 1/1998 of the Town and Country Planning (Use Classes) (Scotland Order 1997 indicates that -*

*Shops selling cold food, such as sandwiches, for consumption off the premises fall within Class 1. A sandwich bar does not cease to be in the shops class merely because it also sells hot drinks, or if a few customers eat on the premises. Shops whose primary purpose is the sale of hot food for consumption off the premises have been taken out of Class 3 (Food and Drink) and are now sui generis.*

*The supporting statement indicates that the proprietor will not be operating a hot food takeaway. The statement also indicates that the shop will primarily be selling cold food with ancillary sales of hot drinks and hot rolls. This would be similar in scope and scale to other outlets in Helensburgh and shops such as Greggs the Bakers and Subway. Case law and appeal decisions have established that these uses with the ancillary sale of hot products can be considered as falling within Class 1, Shops of The Town and Country Planning (Use Classes) (Scotland) Order 1997.*

*If, as the applicant states, the primary use of the shop is to sell cold foods for consumption off the premises then the use of the shop would be considered as falling within Class 1, the same category of use as the existing Lawful Use. To comply with this use class therefore the sale of hot food would require to be subsidiary and ancillary to the sale of cold foods. This would be a matter of fact and degree and would require on-going monitoring from the Council as to the operation of the premises.*

*Having considered the above points it is considered that on the balance of probability that the proposed use as a shop for sale of cold foods off the premises with ancillary sale of hot food would constitute a lawful use.”*

Officers are content that the scale of seating inside the unit, the extent of the hot food offer and the on-site cooking of food (ie frying griddle) for consumption both on the premises at the seating area, and as take away, goes beyond the ancillary nature of the use granted a certificate of lawfulness under 10/01996/CLWP (the terms of which are set out above), and an unauthorised change of use has taken place. Therefore an application for a retrospective grant of planning permission was sought by the applicants as part of Enforcement Investigation 12/00076/ENOF2.

In respect of Policy ENV 1 Environmental Health Officers have confirmed that they received no complaints over smell or other nuisance from the operation of the unit and therefore the nature and scale of the hot food related operations, although not commensurate with a class 1 retail use, do not cause harm to surrounding amenity and the proposal is therefore considered, having regard to current scale of operations and hours of opening, to comply with policy LP ENV 1.

The site is located within the town centre, but outside the Core Shopping Area and therefore policy LP RET 1- Retail development in the Towns – The sequential Approach. This policy presumes in favour of small scale class 1, 2 and 3 uses and therefore no conflict with this policy occurs. Although the Hot food Takeaway component is not specifically addressed in this policy it is considered that limiting hours of operation would address any potential conflict with the amenity of surrounding occupiers and therefore no conflict with policy LP RET 1 occurs. It is noted that the current use closes at 2.30pm and does not operate into the evening when noise nuisance would be more likely to occur.

The primary concern in relation to both the current application relating to a café and Hot Food takeaway use, is the conflict with policy TRAN 6. In objecting to the current application the Area Roads Engineer has stated:

“ *This application was the subject of an earlier pre planning application enquiry which I expressed concern with regards to parking associated with this type of*

use. However, a follow up application was submitted in 2010 and subsequently withdrawn. I enclose my previous response recommending refusal for ease of reference.

From a roads perspective I continue to express my concern, the circumstance have changed with the proposal to convert the old school into new council offices becoming a more certain development. This will add further traffic movements on the A 814 thus further confirms the requirement to minimise obstruction, keeping the road clear and not encouraging additional adhoc parking.

The applicant has submitted along with their application a supporting statement suggesting that their operation is no different to that of the Riverhill café in Sinclair Street.

While the proposed operation may be similar, Sinclair Street is within the designated town centre and the Council's local plan acknowledges a zero parking provision in this location. The proposed Café is located out with the designated town centre therefore the parking should be in accordance with the local plan policy LP TRAN 6.

In accordance with the Council's local plan policy and in the interest of road safety. I would recommend refusal as there is no provision for car parking proposed

Policy LP TRAN 6 states that off street car parking should be provided in accordance with the standards set out in Appendix C, which specifies a requirement for 4 parking spaces for the development proposed. The existing premises have no parking provision and the proposal makes no provision for two spaces required by the Area Roads Manager. This would therefore create increased traffic hazards and congestion at this locality which would adversely affect vehicle and pedestrian safety. The development is therefore contrary to Policy LP TRAN 6 and Appendix C of the Argyll and Bute Local Plan in that it does not conform to road guidelines.

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**(Q) Is the proposal consistent with the Development Plan: N**

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**(R) Reasons why planning permission or a Planning Permission in Principle should be Refused.**

Policy LP TRAN 6 states that off street car parking should be provided in accordance with the standards set out in Appendix C, which specifies a requirement for 4 parking spaces for the development proposed. The existing premises have no parking provision and the proposal makes no provision for two spaces required by the Area Roads Manager. This would therefore create increased traffic hazards and congestion at this locality which would adversely affect vehicle and pedestrian safety. The development is therefore contrary to Policy LP TRAN 6 and Appendix C of the Argyll and Bute Local Plan in that it does not conform to road guidelines.

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**(S) Reasoned justification for a departure to the provisions of the Development Plan**

N/A

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**(T) Need for notification to Scottish Ministers or Historic Scotland: N**

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**Author of Report:** David Moore

**Date:** 30.5.13

**Reviewing Officer:** Howard Young

**Date:** 30.5.13

**Angus Gilmour**  
**Head of Planning**

#### **GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REF. NO.13/00731/PP**

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#### **NOTE TO APPLICANT**

For the purpose of clarity it is advised that this decision notice relates to the details specified on the application form dated 4.4.2013 and the refused drawing reference numbers:

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DMB13478 Location Plan (1 of 3)

Existing Floor Plans (2 of 3)

Amended Floor plans (3 of 3)

## APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **13/00731/PP**

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- (A)** Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing?

N

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- (B)** The reason why planning permission has been refused.

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