

**Argyll and Bute Council**  
Comhairle Earra Ghaidheal agus Bhoid

*Customer Services*  
*Executive Director: Douglas Hendry*



*Kilmory, Lochgilphead, PA31 8RT*  
*Tel: 01546 602127 Fax: 01546 604444*  
*DX 599700 LOCHGILPHEAD*  
*e.mail –douglas.hendry@argyll-bute.gov.uk*

31 March 2011

## **NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **GIBSON COMMUNITY CENTRE, GARELOCHHEAD** on **THURSDAY, 7 APRIL 2011** at **10:45 AM**, which you are requested to attend.

Douglas Hendry  
Executive Director - Customer Services

## **BUSINESS**

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**
- 3. JD WETHERSPOON PLC: APPLICATION FOR CHANGE OF USE OF RETAIL PREMISES (CLASS 1) TO PUBLIC HOUSE (SUI GENERIS), FORMATION OF BEER GARDEN AND EXTERNAL ALTERATIONS IN CONNECTION WITH THE PROPOSED USE AND FORMATION OF TWO RETAIL UNITS: 19-29 JAMES STREET, HELENSBURGH (REF: 10/01892/PP)**  
Report by Head of Planning and Regulatory Services (Pages 1 - 14)

**PROCEDURE NOTE** (Pages 15 – 20)

## **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE**

Councillor Gordon Chalmers  
Councillor Robin Currie  
Councillor Mary-Jean Devon  
Councillor David Kinniburgh  
Councillor Donald MacMillan  
Councillor Alister McAlister  
Councillor Alex McNaughton  
Councillor Al Reay

Councillor Rory Colville  
Councillor Vivien Dance  
Councillor Daniel Kelly  
Councillor Neil Mackay  
Councillor Bruce Marshall  
Councillor Roderick McCuish  
Councillor James McQueen

Contact: Melissa Stewart

Tel. No. 01546 604331

This page is intentionally left blank

**Argyll and Bute Council  
Development and Infrastructure Services**

**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**

---

**Reference No:** 10/01892/PP

**Planning Hierarchy:** Local Application

**Applicant:** J D Wetherspoon PLC

**Proposal:** Change of use of retail premises (Class1) to public house (sui generis), formation of beer garden and external alterations in connection with the proposed use and formation of two retail units

**Site Address:** 19-29 James Street Helensburgh

**SUPPLEMENTARY REPORT NO. 1**

**1.0 ADDITIONAL INFORMATION**

- 1.1 The purpose of this report is to advise Members that a further representation has been received in association with the above proposal, from Gordon and Diane White, 3 Scott Court, James Street (email dated 14/03/2010). This application has been recommended for approval and is under consideration at this Committee.
- 1.2 This letter of representation questioned why one of the vacant shop units is currently being refurbished internally and has a notice in the window advertising that a new shop is opening soon. It is asked if this is a breach of planning.
- 1.3 The application under consideration is for change of use to a public house (sui generis), but also includes two shop units which will remain as retail (Class 1). Since the existing unit benefits from Class 1, no planning permission is required to re-open one of these units and internal alterations are not classified as development. Therefore no breach of planning has taken place and the status of these units does not affect the determination of the current application.

---

**2.0 RECOMMENDATION:**

- 2.1 It is recommended that, subject to a discretionary local hearing, Members grant planning permission is subject to the conditions and reasons set out in the original report

**Author of Report:**  
**Contact Point:**

**Stephanie Glen 15/03/2011**  
**Howard Young 15/03/2011**

**Angus Gilmour**  
**Head of Planning and Regulatory Services**

This page is intentionally left blank

**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**

---

**Reference No:** 10/01892/PP

**Planning Hierarchy:** Local Application

**Applicant:** J D Wetherspoon PLC

**Proposal:** Change of use of retail premises (Class1) to public house (sui generis), formation of beer garden and external alterations in connection with the proposed use and formation of two retail units

**Site Address:** 19-29 James Street, Helensburgh

---

**DECISION ROUTE**

**Local Government Scotland Act 1973**

---

**(A) THE APPLICATION**

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

- Change of use of retail (Class 1) to public House (sui generis)
- Formation of beer garden
- Formation of two retail units

**(ii) Other specified operations**

- None
- 

**(B) RECOMMENDATION:**

It is recommended that, subject to a discretionary local hearing, planning permission is granted subject to the conditions and reasons set out overleaf.

---

**(C) HISTORY:** 99/00110/DET - Alterations and part demolition of premises including installation of new shop front (permitted 01.03.1999)

---

**(D) CONSULTATIONS:**

Scottish Water 20.12.2010 - No objections

Roads	10.01.2011 -	No objections
Environmental Health	11.01.2011 -	No objections
Helensburgh Community Council	17.01.2011 -	Object for the following reasons: - We have canvassed local residents and they are largely against it. - The Wetherspoon application is an inappropriate development for the site, instead it should be used for housing  Results of local opinion: <i>Helensburgh Community Councillors</i> Support: 2; Oppose 9; Not Sure 2  <i>Adjacent Businesses</i> Support 2; Oppose 2  <i>Adjacent residents</i> Support 6; Oppose 10; Not Sure 2

---

(E) **PUBLICITY:** Listed Building/Conservation Advert (expires 14.01.2011)

---

(F) **REPRESENTATIONS:**

3 letters of support have been received from the following:

Hilary Williams, 13 Millerslea Gardens, Helensburgh (email dated 23/12/2010)  
Mr and Mrs McDougall (email dated 10/01/2010)  
Edna McGhee, Flat 6, 9 Cairndhu Gardens, Helensburgh (letter received 24/01/2011)

29 letters of objection have been received from the following:

Gordon and Diane White, 3 Scott Court, James Street, Helensburgh (letter dated 24/12/2010)  
Crawford Foster, 8 Scott Court, Helensburgh (letters dated 23/12/2010 and 02/01/2010)  
Mr and Mrs Vallance, 5 Scott Court, Helensburgh (letter dated 29/12/2010)  
E Cordner and D Nicolson, 9 Scott Court, Helensburgh (letter dated 03/01/2011)  
Mrs E Perella, flat 2/2, Princess Court, Helensburgh  
Christopher Wilson, 2/2, 5 James Street, Helensburgh (email dated 05/01/2011)  
David Smeeton, Flat 2/1, 15 James Street, Helensburgh (email dated 07/01/2011)  
Marie Londie, 11 Princes Court, Helensburgh (letter received 10/01/2011)  
Helen Gilchrist, Flat 18 Princes Court, 55 West Princes Street, Helensburgh (letter received 10/01/2011)  
Mr and Mrs Burt, 10 Princes Court, West Princes Street, Helensburgh (letter received 10/01/2011)  
Mrs A Meikle, 6 Princes Court, Helensburgh (letter received 11/01/2011)\*

Elena Gildea, 19 Princes Court, 55 West Princes Street, Helensburgh (letter received 11/01/2010)  
E Beaton, Flat 12 Princes Court, 55 West Princes Street, Helensburgh (letter dated 10/01/2011)  
C Gardner, Flat Basement/1, 34 East Argyle Street, Helensburgh (email dated 11/01/2011)  
Margaret MacDonald, 5 Princes Court, Helensburgh (letter received 12/01/2010)  
Cynthia B Green, 2 Princes Court, West Princes Street Helensburgh (letter dated 08/01/2011)  
M Kinloch, 17 Princes Court, Helensburgh (letter received 12/01/2011)  
Mrs M Evans, Flat 20 Princes Court, 55 West Princes Street, Helensburgh (letter received 13/01/2011)  
Anne Donnachie, 12 - 14 West Clyde Street, Helensburgh (email dated 14/01/2011)  
H Catterson Ltd T/A, The Ashton, 74 West Princes Street, Helensburgh (letter received 14/01/2010)  
Mr and Mrs J Green, 57 West Clyde Street, Helensburgh (letter dated 11/01/2011)  
Steven Dunn, 15 James Street, Helensburgh (email dated 13/01/2011)  
Stephen Tudhope, 5 James Street, Flat 2/1, Helensburgh (email dated 13/01/2011)  
Catriona Malan, 36A James Street, Helensburgh (letter dated 16/01/2011)  
Nigel Millar, 29 George Street, Helensburgh (letter dated 14/01/2011)  
Cara Nikolic, 41/42 West Clyde Street, Helensburgh (email dated 14/11/2011)  
Mr and Mrs A K Johnson, DFlat 1/2, 15 James Street, Helensburgh (letter received 13/01/2011)  
Mark Tyson, Royal Bar, 8 West Clyde Street, Helensburgh (email dated 14/01/2011)  
Councillor George Freeman, Ward 9 – Lomond North (email dated 25/01/2011)

One anonymous letter has been received and cannot therefore be included.

## (i) Summary of issues raised

### **Support:**

Helensburgh is in steep decline at the moment and people choose to go elsewhere for a night out or a nice meal, namely Glasgow, Dumbarton or Balloch. A pub like this would boost the economy with people staying in Helensburgh and spending their money here.

Wetherspoons is a popular chain. With the impending influx of submariners to the town, I feel the addition of a pub of this nature will be welcomed.

Wetherspoons is a reasonable priced, family orientated pub – something we do not have at the moment.

### **Objections:**

There will be issues with regards to parking.

*Comment: The site is within the town centre and as such zero parking provision is required. The Area Roads Manager has no objections to the proposal.*

The residents of Scott Court and James Street already have to deal with excessive noise at nights and weekends and a new pub and beer garden here will exacerbate the problem.

*Comment: This is a town centre location where some noise is to be expected. The Area Environmental Health Officer has no objections to the proposal.*

At night and weekends the area is full of drunk people urinating in public and vomiting up and down the street. A new pub will intensify this problem.

*Comment: Anti-social behaviour is a police matter, not a material planning consideration. The site is within the town centre where these types of development are expected.*

A chain like this with cheap food and drink promotions will put other smaller local businesses out of business.

*Comment: This is down to market forces and not a material planning consideration.*

The owners should be encouraged to use the site for housing.

*Comment: No pre-application discussions had taken place with the applicant with regards to this application. Each application is required to be judged individually and on its own merit. It is considered that a public house is an acceptable use within this town centre location. It is necessary to determine the application at hand regardless of any other potential use for which permission has not been sought.*

There is already a proliferation of public houses in the vicinity and another one is not needed.

*Comment: This is not a planning consideration as the number of licensed premises in the area is a matter determined by market competition and licensing considerations.*

The residents of Scot Court, a number of who are elderly and adjacent properties will suffer loss of privacy due to the beer garden.

*Comment: The beer garden will be enclosed within the site. It will not have views to the residents and as such it is not considered that it will adversely affect privacy.*

Property prices have fallen below the national average and will continue to do so.

*Comment: Property prices are not a material planning consideration.*

The extraction flues and inevitable smells from kitchen and air conditioning.

*Comment: The Area Environmental Health officer has no objections.*

The emptying of glassware to bins at night and in the morning will be a nuisance.

*Comment: Should noise nuisance arise from unacceptable practices, it will be a matter to be dealt with at the time by Environmental Health.*

---



**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) **Environmental Statement:** No
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
- (iii) **A design or design/access statement:** Yes
- (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**

Design/Access Statement

JD Wetherspoon plc plan to completely upgrade and refurbish the existing building to form a traditional public house with an all day restaurant. This includes the introduction of a new shop front main entrance and a beer garden to the rear. A portion of the building is to be set aside for 2 individual sublet units.

JD Wetherspoon offers a friendly service that is responsive to needs of customers. We intend to comply with current regulations and good practice. The premises will be accessible as possible in all areas. Under ongoing management obligations under the DDA, the company undertake regular staff training in order to ensure a continued accessible service.

The redevelopment proposals should:

- Reinststate the life and vitality of the building back to its original condition.
- Use materials and finishes which are sympathetic with the existing building to reinforce the original aesthetic concepts.
- Create employment.
- Utilise existing service routes.

The site is within the town centre therefore represents an opportunity for sustainable development. The proposed works will not in any way adversely impact upon the neighbouring properties or the local environment.

The use of existing faculties and drainage is a priority. The management of fume extraction is particularly important. A vertical extract duct from the kitchen through the flat roof is proposed to discharge, well away from dwellings adjacent to the site.

Appearance: The proposed buildings overall aesthetics will not change apart from redecoration of existing features. Internally, it will be comfortable and welcoming. Materials where possible, will be locally sourced. Local historical artwork will be displayed. Internal areas are also decorated with commissioned artwork by locally sourced artists.

Landscaping: It is essential to create an outdoor area which looks attractive all year for the use and enjoyment of all customers. It is essential that these areas are maintained to a very high standard.

Access: The site is located within walking distance of several bus services, the train station, existing cycle routes and well maintained footways.

The proposal presents an opportunity to bring a viable, sustainable use to this current vacant building. The contribution this site makes to the quality of the area can therefore be considerably enhanced by this redevelopment. It is able to address a range of townscape and urban design issues dramatically and improve the coherence and legibility of this area. The proposals will regenerate the building and meet the needs of modern leisure businesses which will promote future investment in Helensburgh.

---

**(H) PLANNING OBLIGATIONS**

(i) **Is a Section 75 agreement required:** No

---

**(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

---

**(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 Structure Plan' 2002

STRAT DC 1 – Development within the Settlements

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment

LP ENV 19 – Development Setting, Layout and Design

LP BAD 1 – Bad Neighbour Development

Appendix A – Sustainable Siting and Design Principles

Appendix B – Shop Front/Advertising Design Principles

(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.**

---

**(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No

---

**(L) Has the application been the subject of statutory pre-application consultation (PAC):** No

---

**(M) Has a sustainability check list been submitted:** No

---

**(N) Does the Council have an interest in the site:** No

---

**(O) Requirement for a hearing (PAN41 or other):** Given the large number of representations, a discretionary local hearing is recommended.

---

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

Planning permission is sought for the change of use of a retail unit (Class 1) to a public house (Sui Generis). The proposed site is an old retail unit selling carpets which is currently lying vacant. The building is adjacent to flatted properties, but it is a separate unit.

The application site is situated within Helensburgh town centre as defined by the 'Argyll & Bute Local Plan' where there is a general presumption in favour of commercial and retail development. The proposal complies with Local Plan policy particularly as it involves the reuse of a vacant premises which is fairly prominent within Helensburgh town centre.

---

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

---

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

The proposed development is acceptable at this location. Within town centres there is a presumption in favour of retail and commercial development and as such this is an ideal location for this change of use. The Area Environmental Health Manager and the Area Roads Manager have been consulted and neither have any objections to the proposal. It is therefore considered that the proposal accords with Policies LP ENV 1, LP ENV 19, LP BAD 1 and Appendix A of the 'Argyll and Bute Local Plan'.

---

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

N/A

---

**(T) Need for notification to Scottish Ministers or Historic Scotland:** No

---

**Author of Report:** Stephanie Glen

**Date:** 23/02/2011

**Reviewing Officer:** Howard Young

**Date:** 24/02/2011

**Angus Gilmour**  
**Head of Planning & Regulatory Services**

**CONDITIONS AND REASONS RELATIVE TO APPLICATION 10/01892/PP**

1. That the development to which this permission relates must be begun within three years from the date of this permission.

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

2. The development shall be implemented in accordance with the details specified on the application form dated 01/12/2010 and the approved drawing reference numbers AK01, AK02, AS01, AS02, AL01 revA, AL02 revB and AM01 unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

*Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.*

3. Development shall not begin until samples of materials to be used in construction of hard surfaces have been submitted to and approved in writing by the Planning Authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing, with the Planning Authority.

*Reason: In order to integrate the development into its surroundings.*

4. Details of any works of public art to be sited on the plinths or in the centre of the square shall be submitted to and approved in writing by the Planning Authority prior to being placed on site.

*Reason: In the interests of visual amenity.*

**NOTES TO APPLICANT**

1. In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
2. In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
3. The application is required to be submitted in accordance with the Roads Scotland Act 1984 to alter the road layout.
4. An application to promote the new Traffic Regulation Orders and amend the various existing TRO's is required.
5. Please see attached letter from Scottish Water dated 19 January 2011.

**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 10/01892/PP**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A. Settlement Strategy**

The proposed development is within the 'Main Town Centre' of Helensburgh as defined by the adopted Local Plan, but outwith the defined 'core shopping area'. Within the town centre there is a general presumption in favour of retail and commercial developments.

**B. Location, Nature and Design of Proposed Development**

The proposed application site is an unused retail unit which has been lying vacant. It sits adjacent to flatted properties, but the unit itself stands alone. It is single storey to the front with a two storey element to the rear. The ground floor will be used as the customer area, with the upper floor being used for customer toilets, with the remainder of the upper floor to be undeveloped. Two retail units will be formed with a frontage to James Street.

The proposal is to use the existing building and completely refurbish this in order to make best use of the internal space to accommodate a pub/restaurant. The main alterations to the building will include new timber windows to most openings and new timber doors. New signage is proposed but this will be dealt with under a separate application for advertisement consent.

The existing shop has outside space within the centre of the application site which is nestled inside the group of buildings. It is enclosed on three sides. It is proposed to enclose this with a further wall and use the area as a beer garden. Immediately adjacent to this area is further external space which will be used for deliveries.

**C. Road Network, Parking and Associated Transport Matters.**

The site is within the Helensburgh Town Centre and as such zero parking provision is required. The Area Roads Manager therefore has no objections. This is in accordance with Policy LP TRAN 6 and Appendix A of the adopted Local Plan.

**K. Other Key Policy Matters**

Change of use to a public house is regarded as a Bad Neighbour Development. As such Policy LP BAD 1 of the adopted Local Plan applies. This states that the proposed development should not have an adverse effect on the amenity of neighbouring residents and that the proposal should include appropriate measures to reduce the impact on amenity.

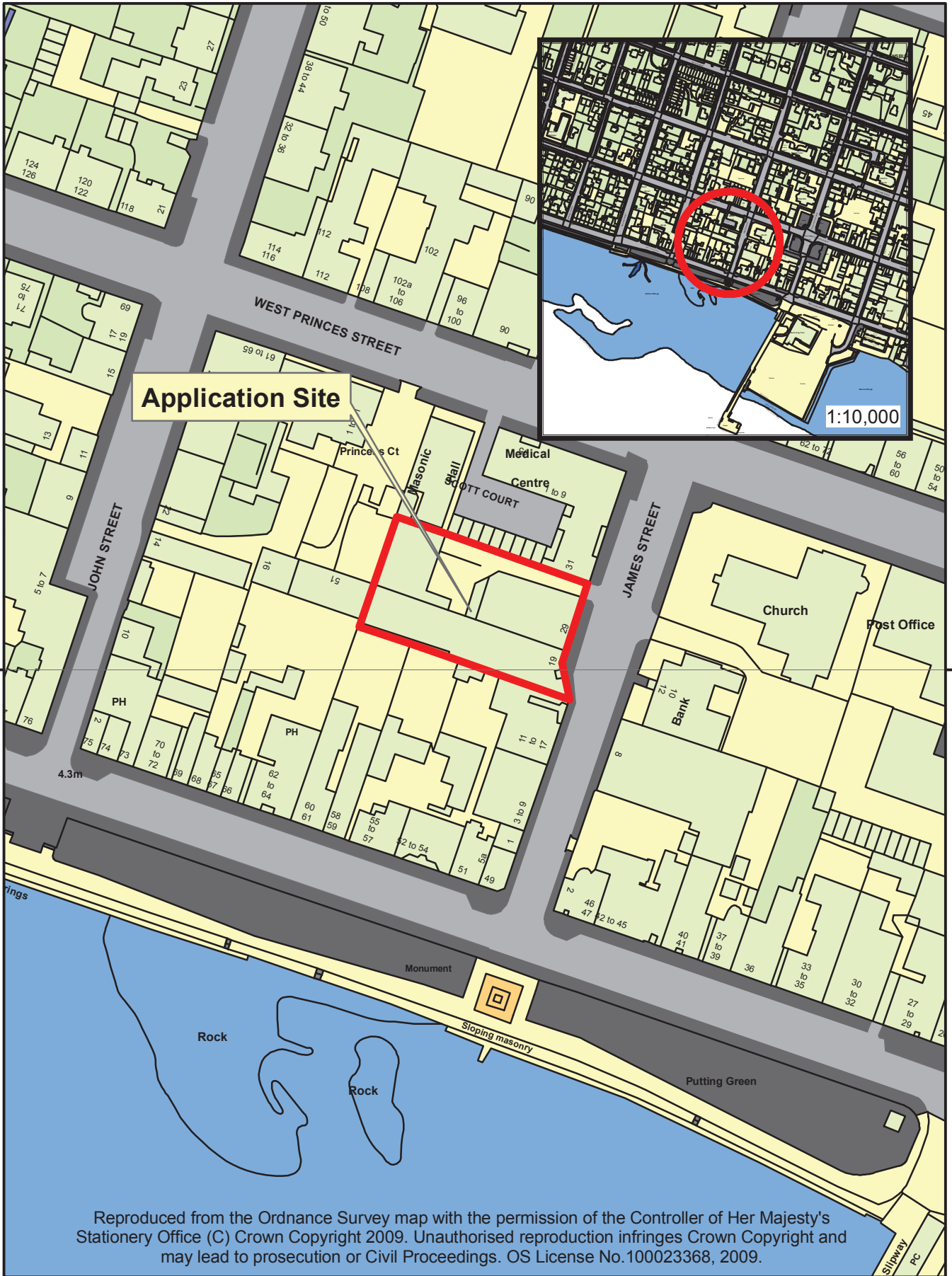
The Area Environmental Health Manager was consulted regarding the application. Some concerns were raised with regards to noise, especially within the beer garden. This was raised with the agents and information has been received showing measures which will be taken to mitigate against this. This will include the beer garden being monitored by CCTV, along with signage which will state the restrictions on the hours that alcohol can be consumed within the beer garden as well as asking that patrons leave the premise with due consideration for neighbours without shouting or slamming car doors. The Environmental Health Manager is content with these measures and has advised that he has no objections to the proposal. Permitted hours of operation would be appropriately controlled under licensing provisions.

When considering all applications the residential amenity of surrounding residents must be taken into consideration. It is inevitable that residents in this area already experience a certain amount of noise and disturbance the busy street location within the town centre and within close proximity to existing licensed premises. This noise and disturbance is higher than experienced in quiet residential streets and is outwith the control of the applicant.

The site itself is a vacant retail unit. To the south is a tenement building with retail units at ground level and residential properties above. To the north is Scott Court, which has Council offices at ground floor level, with residential accommodation above. To the rear is a Masonic hall and flats at Princes Court. There are no residential properties across the road, only a bank, a church and a public house. Most letters of objection have been received from these residential properties. While it is understandable that there will be concerns with increased level of noise, this is a town centre location where this is to be expected. The main concern is noise from the beer garden which is situated within an outside area within the existing retail unit. This is situated between 21 and 25 metres from the residential properties at Scott Court, 30 metres from the properties at Princess Court and 16 metres from the nearest flats at James Street. As previously mentioned, this beer garden will be enclosed on 3 sides by buildings and has a high stone wall at the boundary with Scott Court. The Council's Area Environmental Health Manager is satisfied that any noise issues can be addressed by correct signage and stewarding of this area. The issue of unsocial behaviour associated with this is a police matter.

It should be noted that it is inevitable that residents already experience a certain amount of noise and disturbance in this area given the busy street location within the town centre and within close proximity to existing licensed premises. This noise and disturbance is higher than experienced in quiet residential streets and is outwith the control of the applicant.

Given the proposed location is within the town centre and the Area Environmental Health Manager is satisfied with the proposals, It is considered that the development accords with this policy.



# Location Plan relative to Application Ref: 10/01892/PP

Date: 16.03.2011

Scale: 1:1,250



This page is intentionally left blank



**ARGYLL AND BUTE COUNCIL**

**PROCEDURE NOTE FOR USE AT**

- |  |                          |
|--|--------------------------|
| <b>(1) Statutory Pre Determination Hearing</b> | <input type="checkbox"/> |
| <b>(2) Pan 41 Hearing</b>                      | <input type="checkbox"/> |
| <b>(3) Council Interest Application</b>        | <input type="checkbox"/> |
| <b>(4) Discretionary Hearing</b>               | <b>X</b>                 |

**HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE**

1. The Director of Customer Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.
2. The Director of Customer Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
3. The hearing will proceed in the following order and as follows.
4. The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.
5. The Director of Development and Infrastructure's representative will present their report and recommendations to the Committee on how the matter should be disposed of.
6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors.
7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.
8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

Ref: ABH1/2009

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's representative, the applicant, the consultees, the supporters and the objectors in that order.
10. At the conclusion of the question session the Director of Development and Infrastructure's representative, the applicant, any consultees present, the supporters and the objectors (in that order) will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case.
11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.
13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.
14. A summary of the proceedings will be recorded by the Committee Services Officer.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.
- (4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

Ref: ABH1/2009

The Director of Development Services' representative – not more than half an hour

The Applicant - not more than half an hour.

The Consultees - not more than half an hour.

The Supporters - not more than half an hour.

The Objectors - not more than half an hour.

- (4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.
- (5) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development and Infrastructure which is attached hereto.

I:data/typing/planning/procedure note

## COMPETENT MOTIONS

- Why is there a need for a competent motion?
  - Need to avoid challenge by “third party” to local authority decision which may result in award of expenses and/or decision being overturned.
  - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
  - The process that should be followed should Members be minded to go against an officer’s recommendation is set out below.
- The key elements involved in formulating a competent motion:
  - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
  - A motion should relate to material considerations only.
  - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy or justified as a departure to the Development Plan. Departure must be determined as being major or minor.
  - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Planning’s recommendation must be clearly stated and minuted.
  - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
  - A motion should also address planning conditions and the need for a Section 75 Agreement.
  - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.

## DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision,
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
  - Consider whether or not the proposal accords with the development plan.
  - Identify and consider relevant material considerations for and against the proposal, and
  - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
  - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy, and UK Government policy on reserved matters
  - The National Planning Framework
  - Scottish planning policy, advice and circulars
  - European policy
  - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

Ref: ABH1/2009

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
  - A National Park Plan
  - The National Waste Management Plan
  - Community plans
  - The Environmental impact of the proposal
  - The design of the proposed development and its relationship to its surroundings
  - Access, provision of infrastructure and planning history of the site
  - Views of statutory and other consultees
  - Legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.