

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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 21/02608/PP

Planning Hierarchy: Local

Applicant: Mr Keith Turner

Proposal: Use of Entire Ground Floor Premises as Food and Drink Establishment (Class 3) and Use of North-Eastern Part as an Ancillary Space for Events (Class 10)

Site Address: Five West, Royal Buildings, Tighnabruaich

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Use of entire ground floor premises as a food and drink establishment (Class 3) and use of north-eastern part as an ancillary space for events (Class 10)

(ii) Other specified operations

- Connection to existing private foul drainage system
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that Planning Permission be granted subject to the conditions, reasons and informative notes set out in this report.

(C) HISTORY:

Planning Permission (ref: 20/00227/PP) granted on 17th April 2020 for the use of the north-eastern part of the ground floor as a food and drink establishment (class 3) and multi-functional space (class 10).

(D) CONSULTATIONS:

Environmental Health Officer (memoranda dated 1st February 2022 and 31st May 2022)

Confirmation that a visit to Five West was carried out by the Environmental Health Service in April 2022 and, at that time, there were no issues identified with noise or odour nuisance from the premises.

No objections to the granting of Planning Permission subject to an informative note advising the applicant that, should they intend to make any structural alterations or to change the layout of the food preparation area, they should make contact with the Environmental Health Service prior to the starting of such works.

Area Roads Manager

No comments received and no request for an extension to the consultation period.

(E) PUBLICITY:

Neighbour Notification (closing date: 1st March 2022) and Regulation 20 Advert (closing date: 4th March 2022).

(F) REPRESENTATIONS:

Objections have been received from the following four sources:

Mr Scott Raeburn, Flat 3, Royal Buildings, Tighnabruaich (e-mails dated 10th February, 25th April and 8th August 2022 and an e-mail received on 7th March 2022, which incorporated a report from Highstreet Architects dated 18th February 2022)

Mrs Karen Raeburn, Flat 3, Royal Buildings, Tighnabruaich (e-mails dated 10th February, 25th April and 8th August 2022 and an e-mail received on 7th March 2022, which incorporated a report from Highstreet Architects dated 18th February 2022)

Bruce Godsmark – no address provided (comments dated 16th September 2022)

Rod Petrie, The School House, Kilfinan (comments dated 16th September 2022)

The points raised can be summarised as follows:

- i. It is stated as obvious that the Planning Authority considers that the previous application (ref: 20/00227/PP) is invalid and has sought the requirement of a fresh application. Legally, it would then appear that neither the Planning Authority nor the applicant accepts that Planning Permission for the present use on the site is valid on the basis that the current application relates to an extended site, not wholly owned by the applicant.

It is contended that this makes the current application a completely different site and, consequently, a completely different application. The view is expressed that the planning process is starting as if the previous application was not made so the Planning Authority should determine it on that basis even though the boundary remains incorrectly defined at the point of writing.

Comment: The current application has been submitted with the purpose of addressing issues relating to Planning Permission 20/02127/PP and a detailed assessment is undertaken in Appendix A below.

- ii. The applicant's previous application 20/00227/PP was for a different site encompassing the entire rear ground which belongs solely to the three flats above. This site was not in the applicant's "*sole ownership*" as was Certified in his application form, an offence at law.

Comment: This is one of the issues that has been identified with Planning Permission 20/00227/PP and which the current application seeks to address.

- iii. It is contended that the current application is procedurally invalid and, as such, the public cannot correctly assess it nor should it be granted permission.

The area outlined in red on the submitted plans is referred to as indicating "*area owned by the applicant*". However, it is put forward that this is not wholly owned by the applicant since the projection at the rear of the building carries the outside access stairs to the three flats on first and second floors.

Comment: Section 35 of the Town and Country Planning (Scotland) Act 1997 (as amended) places the onus on the applicant and/or agent to properly carry out notification to other parties that have an ownership interest in an application site and states that it is an offence to recklessly issue a certificate which "*contains a statement which (they) know to be false or misleading in a material particular.*"

The matter raised by the objectors was brought to the attention of the agent for the application and, in e-mail dated 21st April 2022, he confirmed that his position remained as stated in the application form dated 7th December 2021 i.e. that the applicant owns all of the land within the red line and there are no other parties that have an ownership interest in the delineated application site.

The Planning Authority is not in the position of adjudicating on land ownership but has properly sought confirmation from the agent on this issue.

- iv. It was pointed out that the deck outlined in the initial set of plans lay outwith the applicant's boundary and encroached onto neighbours' land although the applicant had neglected to define the extent of his ownership in this application as required by Regulation.

Revised plans were submitted by the agent on 7th April 2022 and it is contended that the "*decking area outlined in blue*" is not in the ownership of the applicant and that this is evidenced by Title plan information previously submitted by the objectors.

It is questioned whether the Council should now be taking action as the objectors claim that this is yet a further offence committed by the applicant in terms of the relevant Planning regulations concerning Ownership Certification.

Comment: Regulation 9 (3) (c) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 requires that, in situations “*where any neighbouring land is owned by the applicant*”, an application for Planning Permission must be accompanied by a plan identifying that land.

The validation guidance produced by Heads of Planning Scotland states that “*this requirement can assist the Local Authority when determining what neighbouring land requires to be notified of (the) application submission and reduces delays in assessing whether (the) application needs to be advertised.*”

It is considered that the alleged minor discrepancy in the route of the blue line on the submitted plans does not have a material bearing upon the assessment of the Planning aspects of the current application.

- v. Concern is expressed that the current application does not include the decking to the rear within the red line boundary. However, the plans state that its future use has yet to be determined and this is confirmation that the agent knows that this area should be within the red line boundary. It is very important that the council include the rear decking within the application as its future use could adversely impact on the privacy and Human Rights of the owners of the private land to the rear. Alternatively, the applicant should confirm that they have relinquished ownership of the decking area to the flats above.

Comment: This issue is addressed in the assessment contained in Appendix A below.

- vi. Revised plans were submitted by the agent on 7th April 2022 and it is contended that this information was not available to neighbours for comment within the consultation period. This is regarded by the objectors as clearly unfair in this situation where the application directly affects neighbouring properties detrimentally, interfering with Convention Rights stipulated in the Human Rights Act 1998. Mr and Mrs Raeburn are of the opinion that this delay was a deliberate action on the part of the applicant to avoid full scrutiny by those who had the right to do so.

Comment: The correspondence between the Planning Service and the agent and the plans that were subsequently submitted have been available for viewing on the Council's Public Access System since the end of April 2022 and the Council tends to accept written comments up until an application has been determined. In these circumstances, it is not considered that the rights of other parties to both view and comment on further information has been prejudiced to a significantly adverse degree.

- vii. Mr and Mrs Raeburn state that, contrary to the information contained in the submitted plans, none of the external surrounding ground is shared under common ownership between the ground floor commercial properties and the three flats. It is contended that the area labelled “*Common Access*” on the applicant's plans forms part of the private amenity area solely owned by the three flats on first and second floors. Furthermore, nowhere in the Titles for either of the ground floor premises or the three flats above is a “*common drying green*” mentioned.

Comment: The significance of this issue as a material Planning consideration is addressed in the assessment contained in Appendix A below.

- viii. Concern is expressed that the applicant does not have a Completion Certificate; that the Building Warrants that were submitted in 2017 have lapsed; and that Building Standards have written to the applicant "*to inform them that they should not be operating without the completion certificate*". It is contended that the illegal activity taking place in the premises presents risks for co-proprietors in the building and the adjoining neighbours.

The applicant should also submit a new Building Warrant application as the uses and requirements have changed. This planning application is not for an "*Internal fit-out of unit to install small café and community space*" as previously submitted to Building Standards and the kitchen area has changed since.

Comment: These issues do not have a material bearing upon the assessment of the Planning aspects of the current application and would be more appropriately addressed under Building Standards legislation.

- ix. It is put forward that the applicant's buildings insurance in the event of a claim would be null and void where the premises has no Completion Certificate or planning consent and where there has been no scrutiny of all structural alterations, electrical installation, fire safety or noise transmission measures to issue a Completion Certificate. Similarly, any public liability insurance and employer's liability insurance required by law would also be null and void.

Comment: This issue does not have a material bearing upon the assessment of the Planning aspects of the current application.

- x. There are environmental issues that the council is required to investigate during the application and during the operation of the business by the Environment Health Service. These include confirming the catering equipment; ensuring that the ventilation extraction system is appropriate; and requiring that internal noise satisfy the various recommended levels. It is considered that validation measurements should be carried out to demonstrate compliance with the aforementioned noise conditions and that full details of the measurements should be submitted to the Planning Authority for approval after the development is finished and prior to trading.

The opening hours for the property are to be from 8 a.m. to 9 p.m. 7 days per week. The Council are required to determine if the opening hours are suitable in the context of their impact on those living within the immediate vicinity. Supplementary Guidance policies in the Local Development Plan relate to '*Bad Neighbour development*' and it is incumbent on the Planning Authority to protect neighbours from the issues that they are currently experiencing specifically relating to odour, privacy and sound pollution.

Comment: The significance of these issues as material Planning considerations is addressed in the assessment contained in Appendix A below.

- xi. As far as Mr and Mrs Raeburn are aware, all of the other legitimate businesses in the village/local area operate correctly within the law and regulations. However, Five West is currently operational, based on a Planning application made in 2020 which the council and the applicant have agreed is invalid. It is contended by Mr and Mrs Raeburn that the café does not have planning approval and is, therefore, operating illegally. Consequently, the café should be closed until correct consents are in place.

Comment: Planning enforcement is not a statutory duty and, as such, it is not incumbent upon the Planning Authority to take action but only to do so where it is

identified to be expedient. The Council has recognised that a breach of planning control has occurred in this instance and the determination of this current application represents the Council's view on whether the development is either acceptable; acceptable subject to appropriate mitigation; or unacceptable. As this report contains a recommendation of approval, it is not considered expedient for the Council to take formal enforcement action.

- xii. Mr and Mrs Raeburn state that the Council has a legal obligation to ensure that its decisions and enforcement actions are compatible with the Human Rights Act 1998 and Convention Rights.

They contend that they, and the other two flats above the proposed café/events space, have Rights in respect of the privacy and peaceful enjoyment of their property which includes the private amenity space and garden solely owned between the three flats. By granting planning consent and subsequently not taking enforcement action, the Council not only offended the Convention Rights of the objectors but facilitated the applicant to deprive them of their property, peace and privacy.

Comment: The significance of these issues as material Planning considerations is addressed in the assessment contained in Appendix A below.

- xiii. Mr and Mrs Raeburn state that the plans make no mention of how the Convention Rights of others will be respected, namely the peaceful and private enjoyment of the private amenity space of the three residential properties. Those Rights will be interfered with detrimentally by the overlooking of the flat's private amenity space by staff and the general public in the commercial properties from two full height clear glazed doors and the clear glazed kitchen window on the rear elevation along with noise and odours caused by extraction into the residential private amenity space from a commercial kitchen and the two existing customer WC's.

Comment: The significance of these issues as material Planning considerations is addressed in the assessment contained in Appendix A below.

- xiv. Mr and Mrs Raeburn seek the Council's assurances that action will be taken now to ensure that their Convention Rights are protected since they have experienced interference with those Rights, particularly invasion of privacy and noise nuisance, continually during their ownership of Flat 3. They allege that they were abused by a staff member when they entered their property to find a large group partying in their private space - the entire back garden - which lasted until 11.00 pm with loud music and the applicant and his family participating. They and their witnesses gave statements regarding the abuse and nuisance to the Police who attended.

Comment: This issue does not have a material bearing upon the assessment of the Planning aspects of the current application and is a matter for Police Scotland.

- xv. It is contended that the submitted plans lack detail regarding facilities already installed by the applicant, particularly denying full comment and input from SEPA or the Environmental Health Service on drainage; the layout of a commercial kitchen; and the fumes and odour extraction from the two WC's and commercial kitchen where these would expel noisily to the residential private amenity space and close to the windows and access of the residential properties.

Comment: The significance of this issue as a material Planning consideration is addressed in the assessment contained in Appendix A below.

- xvi. It is contended that the council and SEPA are required to ensure that the drainage from the site is fit for purpose and includes a suitable grease trap where appropriate. The drainage that is installed needs to be in accordance with SEPA's current policy and discharge into the sea would be monitored by SEPA. Due to the sea discharge, SEPA should be included within the consultations for this application.

Comment: The significance of this issue as a material Planning consideration is addressed in the assessment contained in Appendix A below.

- xvii. Drawing No. 574/05A submitted by the agent contains a hatched area showing "*Possible area for storage of refuse bins by all owners*" and this area is shown on the "*access path*" that is solely owned by the upper floor flats.

Mr and Mrs Raeburn state that Flat 3 and the other two flats, which solely own all external ground to the side and rear of the building, already have their 6 waste bins to the rear of their access path against the opposite wall which is the most convenient place for them all.

They state that any other properties wishing to site their refuse/waste on their land would require to have such permission conferred by all three flats as Burdens on their Titles. Mr and Mrs Raeburn confirm that they would not give any such permission or concession in their Title Burdens.

Comment: The significance of this issue as a material Planning consideration is addressed in the assessment contained in Appendix A below.

- xviii. It is contended that the applicant has no external area outwith his titles for the storage of commercial or other waste bins and Mr and Mrs Raeburn regard his continued use of their land for the siting of 7 commercial waste bins as aggravated trespass and an interference with our Convention Rights. Furthermore, they consider that there is no location for the commercial bins that would not cause interference with their privacy and peaceful enjoyment of their property or that of their neighbours.

Comment: The significance of this issue as a material Planning consideration is addressed in the assessment contained in Appendix A below.

- xix. Mr Godsmark states that he doesn't recognise most of the names of the supporters and that more than a few are not full-time residents in the area. He contends that all of these supporters would object to customers and staff of a commercial development looking over their private property when they are sitting in their garden and experience constant kitchen noise and cooking smells in their own gardens 7 days a week. He states that they should be ashamed of their hypocrisy.

Comment: The issue of the impact of the development on the privacy and amenity of neighbouring properties is addressed in the assessment contained in Appendix A below.

- xx. Mr Godsmark explains that he has owned his flat in the building next door to the application site since 2004 and has lived and worked in the area since 1981. He is the person who is wholly responsible for the display of flowers on the main street incorporating the planters opposite the shops plus the hanging baskets outside the shops. He has done this for more than a decade during which the

applicant has left derelict and an eyesore those premises that he bought around 2010/11.

Comment: Mr Godsmark's role in the appearance of the commercial part of Tighnabruaich is acknowledged.

- xxi. Mr Godsmark has permission to use the water tap to fill his watering cans in the private garden behind the café that belongs to the flats upstairs. Over the past 2 years when Five West has been operating, he alleges that he has seen how the owner of the café has incited intimidation of co-owners in the building and tried to assert and force his use and possession of their private access and garden and sheds by telling all customers and locals he could that he owned and had access to the back garden. Mr Godsmark contends that this is not the case.

Comment: This is essentially a legal matter between the parties concerned and does not have a material bearing upon the assessment of the Planning aspects of the current application.

- xxii. Mr Godsmark has seen, even now, customer's bikes, prams, scooters, etc. parked on the garden area to the rear of Five West and even on the grassed area with customers walking across it to the sea wall. He alleges that customers' children have played in that private garden and their dogs have been allowed to use it. He contends that staff have used the area for breaks leaving their cigarette ends on the gravel beside the commercial bins where they also placed things which did not fit into the café bins.

Comment: The issue of the impact of the development on the privacy and amenity of neighbouring properties is addressed in the assessment contained in Appendix A below.

- xxiii. Mr Godsmark alleges that, when he was going on holiday abroad this summer, he asked the applicant and his wife to water his hanging baskets that enhance their shop. He contends that they agreed to do this but he returned home to dry baskets and wilted plants.

Comment: This issue does not have a material bearing upon the assessment of the Planning aspects of the current application.

- xxiv. Mr Godsmark alleges that the café staff use the benches between his planters opposite on the village street for their cigarette breaks and put them out on the benches and leave them littering the pavement as they did on the gravel behind the café. Once over the past fortnight, he lifted all these cigarette ends and returned them to the café by leaving them on the doorstep which he photographed.

Comment: This issue does not have a material bearing upon the assessment of the Planning aspects of the current application.

- xxv. Mr Godsmark contends that he experiences similar problems with his peace and privacy in the building next door where strangers use a commercial holiday property accessing over his residential private space and he has asked solicitors for advice. He states that the Council has still to reply meaningfully to his recent e-mail about these issues that he experiences at his flat.

Comment: This issue does not have a material bearing upon the assessment of the Planning aspects of the current application.

- xxvi. Mr Petrie contends that no Councillor on the Planning Committee would sanction a commercial development that intruded so grievously on their residential property to the degree that this application does at Royal Buildings in Tighnabruaich.

Comment: The issue of the impact of the development on the privacy and amenity of neighbouring properties is addressed in the assessment contained in Appendix A below.

- xxvii. Mr Petrie states that he is utterly astonished that this matter is even being considered at all. He contends that there are so many grounds for objection and so many regulatory breaches that it's a wonder the owner of Five West has not been served with an Enforcement Notice demanding the immediate cessation of his operations. Mr Petrie queries the level of unacceptability that the various activities have to reach before the Planning Department intervenes to prevent the type of abuse being perpetrated by the applicant.

Comment: Planning enforcement is not a statutory duty and, as such, it is not incumbent upon the Planning Authority to take action but only to do so where it is identified to be expedient. The Council has recognised that a breach of planning control has occurred in this instance and the determination of this current application represents the Council's view on whether the development is either acceptable; acceptable subject to appropriate mitigation; or unacceptable. As this report contains a recommendation of approval, it is not considered expedient for the Council to take formal enforcement action.

Expressions of support have been received from the following fifty four sources:

Colin Slinger, Hillside, Tighnabruaich (comments dated 26th July 2022)

Steven Wallis, Upper Flat, Appin Cottage, Tighnabruaich (comments dated 1st September 2022)

Stephen Williamson, The Manse, Tighnabruaich (comments dated 2nd September 2022)

Terry Whitelaw – no address provided (comments dated 2nd September 2022)

Sheila Semple, Flat 1-2, 47 Havelock Street, Glasgow (comments dated 2nd September 2022)

Yvonne Blair – no address provided (comments dated 2nd September 2022)

Jane Anderson – no address provided (comments dated 2nd September 2022)

Nathan Mobeck – no address provided (comments dated 2nd September 2022)

Gilly Dean, Fairwinds, Tighnabruaich (comments dated 2nd September 2022)

George Watson, Tighnabruaich District Development Trust, Rockville, Tighnabruaich (comments dated 2nd September 2022)

Elaine Smith – no address provided (comments dated 2nd September 2022)

Susan Rogers – no address provided (comments dated 2nd September 2022)

Susan Mutch – no address provided (comments dated 2nd September 2022)

Lucie Cooney – no address provided (comments dated 2nd September 2022)

Chris Trainer, Allt Mor, Tighnabruaich (comments dated 2nd September 2022)

Andy Pownall, Overlook, Kames (comments dated 2nd September 2022)

Mary Stephenson, Ardlamont Schoolhouse, Kames (comments dated 2nd September 2022)

Rob Killow, Ardlamont Schoolhouse, Kames (comments dated 2nd September 2022)

John Gavin Hamilton, Dunmar, Tighnabruaich (comments dated 2nd September 2022)

Janet Lange, Dunsyre Villa, Tighnabruaich (comments dated 3rd September 2022)

Eric Lange, Dunsyre Villa, Tighnabruaich (comments dated 3rd September 2022)

Phyllis Burns, Drum Farmhouse, Kilfinan (comments dated 5th September 2022)

Rod McLean, Beau Dubh, Tighnabruaich (comments dated 5th September 2022)

Tricia Shaw – no address provided (comments dated 5th September 2022)

Jim Carruthers – no address provided (comments dated 5th September 2022)

Mhairi Carruthers – no address provided (comments dated 5th September 2022)

Ronnie Irvine – no address provided (comments dated 5th September 2022)

Fiona Irvine – no address provided (comments dated 5th September 2022)

Hugh Cowley, The Former Church, Tighnabruaich (comments dated 5th September 2022)

Alastair Torbet – no address provided (comments dated 5th September 2022)

Graham Smart – no address provided (comments dated 5th September 2022)

Morven Walker – no address provided (comments dated 5th September 2022)

Rajinder Kumar – no address provided (comments dated 5th September 2022)

Georgina Boyle, Kames Hotel, Kames (comments dated 5th September 2022)

Alan Wilson – no address provided (comments dated 5th September 2022)

Manus Quigg, Glenelg, Tighnabruaich (comments dated 6th September 2022)

Brenda Millar – no address provided (comments dated 6th September 2022)

Razia Dean – no address provided (comments dated 6th September 2022)

Robert Borruso, Alderhouse, Tighnabruaich (comments dated 6th September 2022)

Eve MacFarlane – no address provided (comments dated 7th September 2022)

John Whiston, Ashcliffe, Tighnabruaich (comments dated 7th September 2022)

Nickie Lister, Ashcliffe, Tighnabruaich (comments dated 7th September 2022)

Janie Boyd, Appin Cottage, Tighnabruaich (comments dated 7th September 2022)

Susan Frize, Allt Beag, Tighnabruaich (comments dated 8th September 2022)

Roberta Wallace – no address provided (comments dated 9th September 2022)

Graham Kerr – no address provided (comments dated 10th September 2022)

Paul Sinclair, Corran Cottage Store, Tighnabruaich (comments dated 12th September 2022)

Patricia Jones – no address provided (comments dated 13th September 2022)

Graeme Hogg – no address provided (comments dated 14th September 2022)

Elizabeth Catterson – no address provided (comments dated 14th September 2022)

Joanne Douglas, Flat 2, Royal Buildings, Tighnabruaich (comments dated 15th September 2022)

H B Collier, Flat 1, Royal Buildings, Tighnabruaich (comments dated 16th September 2022)

Heather Nevay, Hafton Barn, School Road, Tighnabruaich (comments dated 19th September 2022)

Morag Macdonald, Burnbank, Tighnabruaich (comments dated 19th September 2022)

The views expressed can be summarised as follows:

- The owners, Bridget and Keith Turner, have turned what was a bit of an eyesore on the main street of the village into a beautiful and welcoming establishment. They employed local tradesmen on the refurbishment and now employ a healthy roster of local people serving quality local produce
- The upgrade of the façade has kept faith with the traditional shop fronts of the row of buildings and is well maintained
- The menu is commended and it serves award-winning coffee, locally roasted and supplied by Argyll Coffee Roasters. There are homemade soups; sandwiches; fresh seafood; and creative salads as well as homemade cakes, tray bakes and buns that are baked by Leoma
- Five West has supported fledgling businesses (for example, Argyll Coffee Roasters and Wild Kitchen) and those who started them are known by villagers. The community is delighted that Five West got behind these businesses and gave them a platform and it is asserted that all of these initiatives make a difference to the village
- There is a play area where children are entertained with various games; activities; and a large doll's house whilst dogs are welcomed too with fresh water and biscuits

- The walls are covered with maps and interesting eclectic artefacts so there is always something interesting to look at
- With the loss of Susy's Tearoom, it is mentioned that the '*Lochs and Glens*' tour buses would appreciate Five West and this would also apply to the tourists who disembark '*The Waverley*' regularly during the summer months
- It is contended that the owners should be rewarded for investing so much of their time and money into the village in addition to the employment opportunities they create

Comment: The contents of these expressions of support are noted.

(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: | No |
| (iv) A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
| (v) Supporting Information | Yes |

A Supporting Planning Statement has been submitted by the agent, Design Practice, which can be summarised as follows:

- Planning Permission (ref: 20/00227/PP) was granted on 17th April 2020 for the use of the ground floor premises as a food and drink establishment (class 3) and multi-functional space (class 10). The premises are now operating as a café after reopening in early 2020 after a period of refurbishment
- It would appear, however, at the time of the application there was some dubiety in the site delineation on the location plan which has resulted in a question of the validity of the uses within the premises. This new application, therefore, has been submitted to clarify the boundary situation with the extent of the operation clearly defined within the red application boundary line around the whole building as specified on the submitted plans and also to clarify the usage
- This delineation indicates that the whole ground floor use of the building is for use as a café as existing. However, an area to the north east of the building is for use as a possible community space. This is ancillary to the overall use as a café and is aimed at occasional events mainly in relation to the tourist industry of the village. This could include, for example, the "*Write by the Sea*" Book Festival in March and during the Fife Regatta in June and could also include local producers market and the RNLI boat

jumble sale. There may also be intermittent use of the space for small community activities which would be of benefit to the local community

- It is anticipated that the premises would accommodate around some 25 persons for small tourist oriented activities or small community events and for the daily use as a café. The seating accommodation in relation to the counter uses is fairly indicative and of course could be slightly changed due to the usage in the café but it will not change how the premises are used but indicate possibly a more simple modification to the internal layout
- As was considered acceptable in the conditions for the use of the premises in the previous application, the operational hours will be from 08.00 hours to 21.00 hours for the full premises on any given day
- If and when any events are being held in the premises, the café area will remain available for the convenience of participants
- As in most cafés, especially in tourist areas, there is a slight demand for some take-away facilities due to transient tourists. This is catered for in Five West by the provision of tea / coffee, soup and hot rolls for consumption off the premises. This is only a minor component of the operation as a café and can, therefore, be considered as '*de minimis*' as advocated in Circular 1/1998 on the introduction of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended)
- The small additional area to the rear of property that is currently used as a timber deck has not been included within the boundary of the unit. The question of the use of this area will be considered in the future
- As in the previous application, it is considered that the scale and operation of the premises are compatible with activities in this central location within the village and would not be detrimental to the overall amenity of the area. It is assumed, therefore, that the usage of the premises would comply with the relevant Policies and Supplementary Guidance of the Local Development Plan

E-mails dated 17th September 2022 from the applicant, Keith Turner, have also been submitted, which contain information that he wishes to be taken into account. This can be summarised as follows:

- A letter from Harper Macleod Solicitors dated 15th September was enclosed, which referred to a review that had been carried out on Mr Turner's title deeds and that of his neighbours in the Royal Buildings. The letter contained the opinion that all proprietors have the same right to use the access path / common passage that lies between Royal Buildings and Kyles Convenience Store at 15 Main Street
- The application that was approved in 2020 contained a mistake in the location plan with the omission of part of the building's ground floor and the purpose of the current application is to remedy this error. It is contended that this was a simple mistake on the part of the architect and was not picked up by the applicant or by the Council during the validation process

- There have been about 50 separate messages of support from the public for this application which is encouraging, given the time that has needed to be spent on this application. Notably, these messages of support include those from the owners of two of the three flats above Five West – Bruce Collier (Flat 1) and Joanne Douglas (Flat 2)
- The commercial premises are on the ground floor of a 140-year-old tenement building with three flats above. There is a side access lane which provides access to the back ground; to the back doors of the commercial units; to the stairs to the flats; and to the washhouse and the store. The lane has traditionally been the location of all waste bins for the building and all title holders have the same rights to the lane
- There is also communal ground to the rear of the building, between the main building and the sea wall, which is a communal drying green. It is contended that this is not a private garden, nor is it exclusive to the owners of the flats, and it has never been a particularly private space. It is communal to the owner of the ground floor commercial units and the owners of the three flats. Mr Turner contends that it is important that the commercial units have always had and continue to have a legal right of access to the back of the building for all necessary purposes
- The access to the back of the building, the former drying green, and its use over the years has been an integral part of the operation of the ground floor commercial units, whether tearoom, gift shop, fishmonger, butcher or baker. This has included, for example, deliveries in and out of the rear of the buildings and the use of the wash house and the drying green
- It is contended that all four of the objections at this stage include a number of similar but fundamentally inaccurate statements in relation to the ownership of the ground and the outbuildings. For example, various assertions are included that the ground associated with the building is exclusive to the flats. It is put forward that these assertions are legally incorrect and a copy of Title Sheet ARG8236 for the commercial premises has been forwarded which refers to *“the ground at the rear of the said tenement and the whole erections thereon”*

(H) PLANNING OBLIGATIONS

Is a Section 75 obligation 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 Local Development Plan' (2015)

LDP STRAT 1 – Sustainable Development
 LDP DM 1 – Development within the Development Management Zones
 LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
 LDP 5 – Supporting the Sustainable Growth of Our Economy
 LDP 8 – Supporting the Strength of Our Communities
 LDP 9 – Development Setting, Layout and Design
 LDP 11—Improving our Connectivity and Infrastructure

'Argyll and Bute Local Development Plan – Supplementary Guidance' (2016)

SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs)
 SG LDP ENV 21 – Protection and Enhancement of Buildings
 SG LDP RET 5 – Change of Use of Shops outwith Designated Town Centres
 SG LDP REC/COM 1 – Sport, Recreation and Community Facilities
 SG LDP BAD 1 – Bad Neighbour Development
 SG LDP Sustainable Siting and Design Principles
 SG LDP SERV 1 – Private Sewage Treatment Plants and Wastewater (i.e. drainage) Systems
 SG LDP SERV 5(b) – Provision of Waste Storage and Collection Facilities within New Development
 SG LDP TRAN 6 – Vehicle Parking Provision

- (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 3/2013.**

Scottish Planning Policy (2014)
 Consultee Responses
 Third Party Representations

Argyll and Bute Proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within PLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the PLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of PLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 14 – Bad Neighbour Development
 Policy 49 – Sport, Recreation and Community Facilities

(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: No

In deciding whether to hold a discretionary hearing Members should consider the following:

- How up-to-date the Development Plan is; the relevance of the policies to the proposed development; and whether the representations are on Development Plan policy grounds which have recently been considered through the development plan process
- The degree of local interest and controversy on material considerations, together with the relative size of community affected, set against the relative number of representations and their provenance

The application has attracted objections from 4 sources and expressions of support from 54 sources.

It is the opinion of officers that the representations received, together with officer assessment of the relevant planning issues contained within this report, provide all the information required to enable Members to make an informed decision based on all of the material planning considerations in this case, not least the fully adopted Argyll and Bute Local Development Plan 2015 and the direct relevance of key planning policies contained within it.

In this instance, it is not considered that the objections raise any complex or technical issues that have not been addressed in the current Report of Handling and, as such, it is not considered that a discretionary local hearing would add value to the planning process.

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

The application site is within the row of commercial properties situated at the centre of the village of Tighnabruaich. It is located on the ground floor of a two-storey building with attic accommodation that incorporates three residential flats (Flats 2 and 3 in the first floor and Flat 1 in the attic).

Planning Permission 20/00227/PP was approved on 17th April 2020 in relation to the “*use of ground floor premises as food and drink establishment (class 3) and multi-functional space (class 10)*” and, in early September 2020, the Planning Department was advised that the entire ground floor premises had opened as a Class 3 food and drink establishment. The current application has been submitted in order to regularise this use.

Based on the most recent active uses of the premises in the 2000s; the mixed commercial/residential uses in this part of Tighnabruaich; and the benefits of providing facilities that enhance the experience for both visitors and residents of the village, the principle of the development is considered to be appropriate.

The objectors (in particular the owners of one of the flats directly above part of Five West) contend that the development has an adverse impact on the privacy and peaceful enjoyment of their property, which includes the flat itself and the private amenity space and garden that they state is solely owned between the three flats.

They further state that the Council has a legal obligation to ensure that its decisions and enforcement actions are compatible with the Human Rights Act 1998 and Convention Rights.

The Environmental Health Service has confirmed that a visit to Five West was carried out in April 2022 and no issues were identified at that time relating to noise or odour nuisance from the premises.

It is considered that the level of noise created by the congregation and movement of people and vehicles would not affect the privacy and amenity of adjoining residential properties to a significantly adverse degree and that a condition will be attached restricting the hours of opening of the premises to between 8 a.m. and 9 p.m.

The row of commercial properties in the village centre within which the application site is located primarily relies upon on-street parking – there is very little off-street parking available in the backlands of these properties.

Supplementary Guidance policy SG TRAN 6 requires that car parking is provided in accordance with the standards set out within the Local Development Plan and, by applying these, the parking demand associated with the use identified in the current application would be two parking spaces more than with the previous use i.e. a shortfall of two spaces.

SG LDP TRAN 6 allows for flexibility to be exercised and, in this context, it is important to consider that the premises is located in a part of the village where there are relatively good public transport and pedestrian links and there is a car park associated with the Tighnabruaich Hotel situated approximately 30 metres to the north west.

It is understood that Five West is connected into the existing private foul drainage system that serves the whole building. There is a single foul drainage discharge and this is located at the bottom of the sea wall to the rear of the building and drying green.

The population of Tighnabruaich is between 500 and 600 people, which falls significantly short of the 2000 figure where the LDP states that connection to the public sewerage system would be a prerequisite of Planning Permission being granted.

It is understood that the owner of the top flat has been seeking to coordinate a way forward with all of the building owners. Discussions have also taken place between the Planning Service and SEPA over the last thirteen months and it is understood that there might be Scottish Water infrastructure located under the foreshore to the south-east of Royal Buildings. However, further investigation will be required to ascertain the logistics and economics involved in connecting into this infrastructure.

In drawing all of the above together, it is considered reasonable for an informative note to be attached to the Planning Permission that ensures there is an impetus in examining the connection of Royal Buildings into Scottish Water infrastructure.

SG LDP SERV 5(b) advocates that commercial development should make effective provision for the storage, recycling, separation and collection of waste from within the development site or, when appropriate, from an appropriate roadside or other specified collection point or points (for onward reuse and recycling).

It is understood that, in recent weeks, Five West have made alternative arrangements for the storage of their waste bins (which had been in the lane adjacent to the premises), which is outwith the land associated with Royal Buildings. Notwithstanding SG LDP SERV 5(b), the principal regulation of this aspect of Five West rests with the Council's

Environmental Health Service and Amenity Services through a commercial contract with the premises. Based on information to hand at the time of writing, the commercial waste associated with the Five West continues to be disposed of as part of the commercial contract.

(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 proposal is considered to be consistent with the relevant provisions of the Development Plan, and there are no other material considerations of sufficient significance to indicate that it would be appropriate to withhold planning permission having regard to s25 of the Act.

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

Not applicable.

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

Author of Report: Steven Gove

Date: 20th September 2022

Reviewing Officer: Howard Young

Date: 20th September 2022

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO: 21/02608/PP

1. The development shall be implemented in accordance with the details specified on the application form dated 7th December 2021; supporting information; and the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location Plan	Drawing No. 574_01	C	21/04/2021
Block Plan	Drawing No. 574_02	C	21/04/2021
As Proposed Plan	Drawing No. 574_03	E	21/04/2021

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

2. Unless otherwise agreed in writing with the Planning Authority, the opening hours of the premises for customers or patrons shall be between 0800 hours and 2100 hours on any given day.

Reason: In order to protect the privacy and amenity of the area.

NOTES TO APPLICANT

- It is strongly recommended that the applicant engage with all relevant parties with the objective of connecting the premises currently known as Five West into the Scottish Water foul drainage system. Such parties would include the other owners of the property known as Royal Buildings; Scottish Water; and the Scottish Environment Protection Agency (SEPA).
- The Environmental Health Service has stated that, should the applicant intend to make any structural alterations or to change the layout of the food preparation area, they should make contact with the Environmental Health Officer (Pamela Fraser on 01369 708686 or at pamela.fraser@argyll-bute.gov.uk) prior to starting works.

APPENDIX A – RELATIVE TO APPLICATION NUMBER 21/02608/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. PLANNING HISTORY & BACKGROUND TO CURRENT APPLICATION

The application site is within the row of commercial properties situated at the centre of the village of Tighnabruaich. It is located on the ground floor of a two-storey building with attic accommodation that incorporates three residential flats (Flats 2 and 3 in the first floor and Flat 1 in the attic).

An application for Planning Permission (ref: 20/00227/PP) was registered in February 2020 in relation to the “*use of ground floor premises as food and drink establishment (class 3) and multi-functional space (class 10)*”. The history of the premises has been explored, both prior to the 2020 application being submitted and in subsequent investigation, and the following is a summary:

- No applications for Planning Permission were submitted in relation to the premises between 1995 and 2020
- A Building Warrant (ref: 02/01531/MTP) was approved in November 2002 relating to ‘*alterations and change of use to form tearoom*’. The existing layout identified in September 2002 showed two separate units (physically divided by an internal wall) – the main floorspace of the north-eastern unit was a shop with a back shop and store located in the rear part of the building whilst the south-western unit had a shop to the front and a store and WC to the rear.

The layout approved in the Building Warrant showed the formation of an opening in the dividing wall; in the north-eastern part of the premises, the front shop was to be replaced with a tearoom and disabled toilet and the back shop was to be converted into a kitchen; and the shop, store and WC were to be retained in the south-western unit. The information on the Council’s website indicated that works commenced in January 2003 and that a Building Warrant Completion Certificate was issued on 14th March 2003.

Based upon the existing and approved layouts on the Building Warrant drawings, the change of use of the north-easternmost shop to a tearoom would have required Planning Permission although no permission was sought or obtained

- The Agent’s Supporting Statement that accompanied application 20/00227/PP stated that a Class 3 tearoom and shop (‘*Something Special*’) began operating in approximately 2002. Mr John Beadnall bought the premises (named ‘*Cranachan*’) in 2006 and operated it until approximately 2009 under the name ‘*Rachael’s*’ again continuing to function as a Class 3 (food and drink) unit.

Approximately between 2009 and 2011, it was not open for customers, but the window space was used for providing information on Ardlamont House and its various associated activities and community related facilities, albeit on an informal level. Between 2011 (when the premises was purchased by the current applicant) and 2020, it was not used as a retail shop and/or food and drink establishment but had been informally utilised by the Kyles Rowing Club to build two Ayles Skiffs

- There is evidence that the demolition of the back shop and store that were attached to the rear of the north-easternmost part of the premises and the installation of two door-sized openings took place at some point prior to the end of 2014. No Planning Permission was obtained for these works

- There is evidence that decking was erected on the rear of the building in October 2015 but no Planning Permission was obtained for this deck. Further information also suggests that the decking has been repaired/alterd at various times since October 2019

Planning Permission 20/00227/PP was approved on 17th April 2020 and, in early September 2020, the Planning Department was advised that the entire ground floor premises had opened as a Class 3 food and drink establishment. This initiated an investigation and part of this focussed on Planning Permission 20/00227/PP. The following is a summary of the findings:

- The package of information with the application included a Location Plan with a red line enclosing the north-easternmost part of the ground floor premises (coloured blue on the Proposed Ground Floor Plan and referred to as '*Multi-Functional Space*') and the land to the rear of that half of the premises, up to the word '*Waterside*'
- The south-western part of Five West was not within the red line and, therefore, did not benefit from Planning Permission under 20/00227/PP. There was evidence that this part of the ground floor did not have '*lawfulness*' for its use as a Class 3 food and drink establishment
- In terms of the north-easternmost part of the premises, it was shown as a '*Multi-Functional Space*' and this type of use was referred to in both the application form ('*Description of Proposal*') and Agent's Supporting Statement (Section 1.2) as falling within Class 10 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) i.e. as a non-residential institution. A case could be made, therefore, that its use for Class 3 purposes was not authorised by Planning Permission 20/00227/PP
- The deck on the proposed ground floor plan that was approved under Planning Permission 20/00227/PP was white in colour rather than blue, which indicated that it was not intended for use as part of the '*Multi-Functional Space*'. As such, there was a case to be made that its use as part of the Class 3 food and drink establishment was unauthorised
- There were apparent deficiencies in the Land Ownership certification supplied with application 20/00227/PP that might have rendered the permission open to challenge

The current application has been submitted in order to regularise the use of the entire ground floor premises as a food and drink establishment under Class 3 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended) with the use of the north-eastern part as an ancillary space for events to be held under Class 10 of the 1997 Order i.e. as a non-residential institution.

The application specifically does not include the decking to the rear within the identified red line. The submitted '*As Proposed Plan*' states that this is to be the subject of a separate application and it contains annotation that the decking will not be used for "*consumption of food or drink or congregation of people*".

B. SETTLEMENT STRATEGY

Tighnabruaich (in association with neighbouring Kames) is one of Argyll and Bute's Key Rural Settlements as identified in the Local Development Plan 2015. Under Policy LDP

DM 1, developments up to and including medium scale will be encouraged in this type of settlement. The current application relates to a small-scale development.

In view of the foregoing, it is considered that the principle of the development is consistent with the provisions of Policies LDP STRAT 1 and LDP DM 1 of the Argyll and Bute Local Development Plan 2015.

C. LOCATION, NATURE AND DESIGN OF PROPOSED DEVELOPMENT

The application seeks to continue the use of the premises known as Five West as a food and drink establishment under Class 3 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended). It also incorporates the use of the north-eastern part of the premises as an events space under Class 10 of the 1997 Order (i.e. a non-residential institution) with this activity being ancillary to the principal café use.

The premises is located in the row of commercial properties situated at the centre of the village of Tighnabruaich. This particular row of buildings is relatively unique in that it represents the most substantial built development on the shore side of the road in Tighnabruaich. It is characterised by commercial-type uses on the ground floor and upper floor residential units.

Based on the most recent active uses of the premises in the 2000s; the mixed commercial/residential uses in this part of Tighnabruaich; and the benefits of providing facilities that enhance the experience for both visitors and residents of the village, the principle of the development is considered to be appropriate.

In terms of the impact upon the built environment, the opening of Five West in September 2020 has resulted in the freshening up of the frontage of a premises that had largely been vacant for the previous nine years. As such, the overall effect upon the wider Area of Panoramic Quality is relatively positive.

On the basis of the foregoing, the application is considered to accord with Policies LDP 3, LDP 5, LDP 8 and LDP 9 and Supplementary Guidance policies SG LDP ENV 13, SG LDP ENV 21, SG LDP RET 5, SG LDP REC/COM 1 and SG LDP Sustainable Siting and Design Principles of the Argyll and Bute Local Development Plan 2015.

D. IMPACT UPON RESIDENTIAL PRIVACY AND AMENITY

The objectors (in particular the owners of one of the flats directly above part of Five West) contend that the development has an adverse impact on the privacy and peaceful enjoyment of their property, which includes the flat itself and the private amenity space and garden that they state is solely owned between the three flats.

They further state that the Council has a legal obligation to ensure that its decisions and enforcement actions are compatible with the Human Rights Act 1998 and Convention Rights.

It is considered that the assessment of these impacts can be detailed as follows:

- i. Concerns have been raised regarding the noise and odours caused by extraction from a commercial kitchen and the two existing customer WC's into residential private amenity space.

Comment: The Environmental Health Service has confirmed that a visit to Five West was carried out in April 2022 and no issues were identified at that time relating to noise or odour nuisance from the premises.

- ii. The noise and activity associated with the operation of the premises until 9 p.m. in the evening.

Comment: This issue was examined in the Report of Handling on the previous application (ref: 20/00227/PP) and it was mentioned that the Environmental Health Service had raised no objections to the particular proposal at the time.

Whilst no objections were raised in relation to the impact of the proposal on residential amenity, the report acknowledged that there are domestic properties in the upper floors of the subject building and adjacent buildings and that consideration should be given to the potential impact of the proposal upon the privacy and amenity of these residences.

The Supporting Statement submitted with 20/0227/PP indicated that the premises would *“accommodate approximately 20 persons for small community events and for the daily use of a café. The operating hours on a regular basis would be 08:00-19:00 with the community space operating to a later time of 21:00 should a local function or event take place on a less frequent basis.”*

The Supporting Statement associated with the current application states that *“the operational hours will be from 08.00 hours to 21.00 hours for the full premises on any given day”*.

As referred to in Section (F) above, the owners of Flat No. 3 have specifically expressed concern in relation to the opening hours although the owner of the other flat on the first floor and the owner of the attic flat have expressed their support for the application.

Whilst taking into account the points that the objectors have made, it is not considered either necessary or reasonable to come to a different conclusion than the one reached in relation to application 20/00227/PP i.e. that there is a relatively modest number of customers involved and that 21.00 hours in the evening is not unreasonably late.

On this basis, it is considered that the level of noise created by the congregation and movement of people and vehicles would not affect the privacy and amenity of adjoining residential properties to a significantly adverse degree and that a condition will be attached restricting the hours of opening of the premises to between 8 a.m. and 9 p.m.

- iii. The overlooking of the flat's private amenity space by staff and the general public in Five West from the two full height clear glazed doors and the clear glazed kitchen window on the ground floor of the rear elevation.

Comment: Based on all information to hand, the window that serves the kitchen has been in existence for many years (since at least 2002) whilst the two door-sized openings were installed at some point prior to the end of 2014. No Planning Permission was obtained for these works but, having regard to Section 124 of the Town and Country Planning (Scotland) Act 1997 (as amended), it is considered highly likely that no enforcement action could be taken due to the expiry of 4 years since the substantial completion of the operations.

The rear elevation of the building contains an external stair that provides access into a porch which leads to the upper floor flats; a window and two doors on the ground floor; a deck on the ground floor that is accessed from the two doors; a number of windows on the first floor; and two dormer windows in the roof slope.

Occupying the land to the rear of the building is the following:

- A drying green measuring approximately 160 square metres that is between the rear of the building and the sea wall
- A single storey outbuilding that joins with the property to the north-east
- An area of hardstanding measuring approximately 22 square metres between the end of the single-storey building and the sea wall that is occupied by tables and chairs and is presumably used as an external amenity space

In terms of the potential for overlooking, none of the ground floor glazed apertures have an uninterrupted view over the entire drying green given the presence of the solid external stair. In addition, the north-easternmost door faces towards one end of the single-storey outbuilding. The hardstanding on which the tables and chairs are situated is largely out of sight of all of the ground floor glazed apertures.

Whilst the external decking would provide a greater potential for overlooking onto a larger part of the drying green due to its projection outwards from the rear elevation of the building up to the edge of the external stair, Planning Permission is not being sought for its use as a seating area in conjunction with the Class 3/Class 10 uses of the interior.

As mentioned previously in this report, the submitted '*As Proposed Plan*' states that the decking is to be the subject of a separate application and it contains annotation that the decking will not be used for "*consumption of food or drink or congregation of people*".

In view of the foregoing, whilst the comments of the objectors are noted, it is not considered that the position of the glazed apertures relative to the rear area of the building results in the privacy and amenity of residents being affected to a significantly adverse degree.

It is recognised that the issue of Human Rights is a material consideration in the determination of Planning applications and enforcement issues. In carrying out a robust assessment of the development in terms of its impact upon the privacy and amenity of residential properties, it is considered that the Council is properly carrying out its obligations as Planning Authority.

On the basis of the foregoing, **the application is considered to accord with Supplementary Guidance policy SG LDP BAD 1 of the Argyll and Bute Local Development Plan 2015.**

E. ROAD NETWORK, PARKING AND ASSOCIATED TRANSPORT MATTERS

The row of commercial properties in the village centre within which the application site is located primarily relies upon on-street parking – there is very little off-street parking available in the backlands of these properties.

Supplementary Guidance policy SG TRAN 6 requires that car parking is provided in accordance with the standards set out within the Local Development Plan. Section 1.12 of the standards states the following:

“In normal circumstances, adequate off-street parking or communal parking should be provided adjacent to all new development to ensure that vehicles are not parked on the road where they may impede traffic flow or cause a hazard. A degree of flexibility will be available where: -

- 1. It can be shown by the applicant that the parking requirement can be met by existing car parks and that the demand for parking in connection with the development will not coincide with the peak demand from the other land uses in the area.*
- 2. The development is a straight replacement that can use the existing parking provision. It should be noted that there may also be a requirement to provide additional parking spaces if there was a shortfall in the original provision.*
- 3. The development is adjacent to, and well served by, good public transport and pedestrian links.*
- 4. The development, due to special characteristics, is likely to generate a significantly lower demand for parking than the standards would imply.*
- 5. Environmental considerations are of prime importance e.g. the development is proposed within a Conservation Area.*
- 6. There is a need for additional disabled parking to serve the needs of the users of the building.”*

The most recent uses of the premises prior to Five West opening in 2020 are outlined in Part (A) of this Appendix. Based upon this, it would appear that the last relatively active and continuous use was as a tearoom and shop in 2009. The lawfulness of the premises from a Planning perspective has not been tested in any formal manner; however, it could be reasonably argued that, if it had been proposed to re-commence exactly the same arrangement of uses from 2009, Planning Permission might not have been required given the passage of only 11 years and the lack of any substantial deterioration in the condition of the property.

The significance of this in relation to assessment under SG LDP TRAN 6 is as a basis for comparing the parking demand of the lawful use with the intended use under point (2) above. The Car Parking Standards referred to in the Supplementary Guidance allocate one parking space for every 30 square metres of gross retail floor area and two parking spaces for every 22 square metres of gross tearoom floor area. Having regard to the layout of the premises shown in Building Warrant 02/01531/MTP, the tearoom took up 35 square metres and the shop (including the ancillary rear store) took up 42 square metres. Based on the standards in SG LDP TRAN 6, this would equate to four-and-a-half car parking spaces.

In terms of the current development, it is considered reasonable to base the calculation of the number of car parking spaces on the primary tearoom use of the entire ground floor and this floor area (77 square metres) equates to six-and-a-half spaces.

By applying the Car Parking Standards contained within the LDP Supplementary Guidance, the parking demand associated with the use identified in the current application would be two parking spaces more than with the previous use i.e. a shortfall of two spaces.

It is important, however, to consider that the premises is located in a part of the village where there are relatively good public transport and pedestrian links and there is a car

park associated with the Tighnabruaich Hotel situated approximately 30 metres to the north west.

In the above circumstances, it is considered reasonable to exercise the flexibility that is allowed for and to conclude that, on balance, **the application accords with Policy LDP 11 and Supplementary Guidance SG LDP TRAN 6 of the Argyll and Bute Local Development Plan 2015.**

F. INFRASTRUCTURE

It is understood that Five West is connected into the existing private foul drainage system that serves the whole building. No information had been submitted in relation to the previous application (ref: 20/00227/PP) in 2020 to suggest that these arrangements would be an issue.

Supplementary Guidance policy SG LDP SERV 1 of the Local Development Plan states that connection to the public sewer as defined in the Sewerage (Scotland) Act 1968 will be a prerequisite of Planning Permission for all development proposals in the main settlements identified in the LDP with a population equivalent of more than 2000 and wherever significant development (large scale) is proposed.

It goes on to state that, in other situations, connection to the public sewer will be required unless the applicant can demonstrate that:

- (i) connection is not feasible, for technical or economic reasons, or
- (ii) the receiving waste water treatment plant is at capacity and Scottish Water at that time has no programmed investment to increase that capacity; and
- (iii) the proposal is not likely to result in or add to existing environmental, amenity or health problems.

Planning Permission for development with private waste water systems will only be allowed where proposals satisfy (i) or (ii) above, and satisfy (iii).

In this particular case, the population of Tighnabruaich is between 500 and 600 people, which falls significantly short of the figure referred to above with the consequence that connection to the public sewerage system is not a prerequisite of Planning Permission being granted.

As referred to in Section (E) above, it could be reasonably argued that, if it had been proposed to re-commence the same arrangement of uses from 2009 (which included a tearoom containing toilet facilities), Planning Permission might not have been required given the passage of only 11 years and the lack of any substantial deterioration in the condition of the property. In this hypothetical situation, there would have been no involvement from the Planning Service.

It is believed that there is a single foul drainage discharge serving all of the properties in the block known as Royal Buildings (Five West and three residential flats) and this is located at the bottom of the sea wall to the rear of the building and drying green. It is understood that the owner of the top flat has been seeking to coordinate a way forward with all of the building owners.

Discussions have also taken place between the Planning Service and SEPA over the last thirteen months and it is understood that there might be Scottish Water infrastructure located under the foreshore to the south-east of Royal Buildings. However, further

investigation will be required to ascertain the logistics and economics involved in connecting into this infrastructure.

In drawing all of the above together, it is considered reasonable for an informative note to be attached to the Planning Permission that ensures there is an impetus in examining the connection of Royal Buildings into Scottish Water infrastructure.

On the basis of the foregoing, and with the inclusion of a suitably-worded informative note, **the application is considered to accord with Supplementary Guidance policy SG LDP BAD 1 of the Argyll and Bute Local Development Plan 2015.**

G. WASTE STORAGE AND REFUSE COLLECTION FACILITIES

Supplementary Guidance policy SG LDP SERV 5(b) of the Local Development Plan states that commercial development “*shall make effective provision for the storage, recycling, composting where appropriate, separation and collection of waste from within the development site or when appropriate, from an appropriate roadside or other specified collection point or points (for onward reuse and recycling)*”.

At the time of the submission of the application in December 2021, the waste bins associated with Five West were stored (along with the bins for the upper floor flats) at the south-western edge of the lane that provides access to the rear of the building from the main street. The agent submitted Drawing No. 574/05A Rev A on 21st April 2022, which identified the location of a possible area for the siting of waste bins in association with all properties and this was at the opposite edge of the access lane closest to the building.

As mentioned in Section (F) above, Mr and Mrs Raeburn have stated that, if Five West wish to site their refuse/waste on this land, they would require to have such permission conferred by all three flats as Burdens on their Titles. The objectors confirm that they would not give any such permission or concession in their Title Burdens.

As mentioned in Section (G), Part (v) above, the applicant has submitted a letter from Harper Macleod Solicitors, which refers to a review that has been carried out on Mr Turner’s title deeds and that of his neighbours in the Royal Buildings. The letter contains the opinion that all proprietors have the same right to use the access path / common passage that lies between Royal Buildings and Kyles Convenience Store at 15 Main Street.

It is understood that, in recent weeks, Five West have made alternative arrangements for the storage of their waste bins, which is outwith the land associated with Royal Buildings. It has been drawn to the attention of the Planning Service that items are being stored on the deck to the rear of Five West and that some of these items may relate to commercial waste (e.g. bread crates).

Whilst there is Supplementary Guidance relating to waste disposal arrangements (SG LDP SERV 5(b) referred to above), the principal regulation of this aspect of Five West rests with the Council’s Environmental Health Service and Amenity Services through a commercial contract with the premises. Based on information to hand at the time of writing, the commercial waste associated with the Five West continues to be disposed of as part of the commercial contract.

The submissions of Mr and Mrs Raeburn and of Mr Turner during the processing of this application indicate that there is a difference of opinion as to the legitimacy of the storage of waste bins by Five West in the lane next to the premises. This is essentially a legal matter between the parties concerned and the principal issue for the Council is to ensure that Five West maintain contact with Amenity Services in respect of the point of uplift for their refuse.

The storage of a relatively small number of items such as crates, boxes and containers on the deck is considered to be '*de minimis*' in the context of the overall operation of Five West.

On the basis of the foregoing, **the application is considered to accord with Supplementary Guidance policy SG LDP SERV 5(b) of the Argyll and Bute Local Development Plan 2015.**