

**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**

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**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

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## **SUPPLEMENTARY REPORT NO. 1**

### **1.0 INTRODUCTION**

The attention of Members is drawn to the main Report of Handling dated 20<sup>th</sup> September 2022 that is currently before them for consideration in respect of the above application.

Since the writing of this report, the following have been received:

- Objection from Mrs Karen Raeburn, Flat 3, Royal Buildings, Tighnabruaich (e-mail dated 20<sup>th</sup> September 2022)
- Expression of support from Anne Slinger, Hillside, Tighnabruaich (letter dated 20<sup>th</sup> September 2022)
- Expression of support from Neil Smith – no address provided (comments dated 22<sup>nd</sup> September 2022)
- A copy of the Title Plan in relation to title ARG8236 submitted by the applicant, Keith Turner (e-mail dated 23<sup>rd</sup> September 2022)
- Expression of support from Sue Philp – no address provided (comments dated 27<sup>th</sup> September 2022)
- Withdrawal of objection from Mr Bruce Godsmark (e-mail dated 27<sup>th</sup> September 2022)

The receipt of comments from Anne Slinger, Neil Smith and Sue Philp takes the number of expressions of support to fifty seven.

The withdrawal of Mr Godsmark's objection means that the number of objectors is now three.

Note: All of the above documents are published in full on the Council's website: [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

## 2.0 SUMMARY OF POINTS RAISED

A summary of the points made by Mrs Raeburn, and the comments thereon, are as follows:

- i. Mrs Raeburn's solicitors, Eversheds Sutherland, instructed Counsel Opinion and their position has already been tested in Court. Counsel is in no doubt that the back ground (garden and access lane) and outbuildings are wholly in the ownership of the flats above and that access thereto is conferred on the shops for repair and maintenance purposes only and in the case of one half of the premises access also to an outside WC and store, now ceded by the applicant with access altered to be from the interior.

The title in relation to Land Certificate ARG 8236 includes: "... *a right to the water closet lying immediately behind the shops and with access thereto.*" It is contended that this is now historical as the access to the water closet over the back ground has been ceded and blocked off by the applicant where a new access has been formed from within the premises to provide a customer WC, one of two new WC's within the premises.

In terms of the ownership of the back ground - "*The titles to the shops do not include ownership of the back ground outside the areas delineated in red on the title plans. Nor do they include any right to the outbuildings located there.*"

Mrs Raeburn notes that the applicant is still persistent in his attempt to obtain the sanction of the Council to gain rights he does not have as he did with his previous Certification of Ownership to make use of others' land for his commercial purposes.

Mrs Raeburn advises that the applicant previously appraised her of his legal advice from Harper Macleod but at no point has he produced or shown advice from any solicitor that he specifically has the right to site a commercial waste facility on others' land.

**Comment:** As referred to in the main Report of Handling dated 20<sup>th</sup> September 2022, there is a clear difference of opinion between Mr and Mrs Raeburn and Mr Turner in relation to the legal rights associated with the usage of the side access lane and the land and buildings to the rear of Royal Buildings.

It is not for the Council to adjudicate on these legal matters and, in terms of the issue of waste storage and collection, it is important that Five West maintain contact with Amenity Services in respect of the point of uplift for their refuse.

- ii. The deck that was detailed previously in application 20/00227/PP is persistently shown again on the submitted plans in this application 21/02608/PP as encroaching on land in the ownership of the flats above although said deck is detailed on the current plans as "*Decking not part of current application*". It is contended that this deck continues in use as an integral part of the commercial premises.

**Comment:** It is a legal matter between the parties concerned as to whether the deck encroaches onto land in other ownership. As mentioned in the main Report of Handling, the current use of the deck for the storage of a relatively small number of items such as

crates, boxes and containers is considered to be '*de minimis*' in the context of the overall operation of Five West.

Mrs Slinger states that she is the manager of Five West and the letter that she has submitted is relatively lengthy. A summary of the points that she has made, and the comments thereon, are as follows:

- a) There has been a suggestion that many of the letters of support are from spurious sources who do not use the café. Mrs Slinger states that she has lived in the area for 12 years, owning the Wellpark Hotel for seven of these years, and she confirms that she personally knows at least 90% of those who have written in support and who use the café regularly. She mentions that she may know the others but doesn't recognise their surname.

**Comment:** These views are noted but this is not an issue that has a significantly material bearing upon the Planning aspects of the case.

- b) Two of the four objectors are a husband and wife, who own Flat 3 located above Five West. Mrs Slinger queries why, if the couple didn't wish to live above a café, they bought a flat directly above the said premises which had, at the time of purchase in May 2021, been established for at least 14 months.

**Comment:** This query is noted but it is not an issue that has a significantly material bearing upon the Planning aspects of the case.

- c) She points out that the owners of both Flats 1 and 2 within Royal Buildings, who have been in situ for some years, have supplied letters in support of Five West.

**Comment:** This is noted.

- d) She contends that one of the other objectors, Mr Godsmark, has enjoyed the hospitality of Five West and, by his own admission, was at the party which he is now complaining about.

She contends that ten of the hanging baskets referred to by Mr Godsmark do not belong to him but were '*borrowed*' from a private house. After returning to Tighnabruaich, the owners removed the baskets from outside the shops and placed them back outside their own property.

She advises that the Tighnabruaich Development Trust donated £200 towards the display of flowers and the owners of Five West donated £20.

**Comment:** These views are noted but they are not issues that have a material bearing upon the Planning aspects of the case.

- e) The fourth objector, Mr Petrie, does not live in Tighnabruaich and, as far as Mrs Slinger is aware, has never been in or near Five West. She contends that he knows nothing of the business other than what he has been told, presumably by the owners of Flat 3.

**Comment:** These views are noted but this is not an issue that has a material bearing upon the Planning aspects of the case.

- f) She contends that Five West has been operating legally since March 2020 otherwise it would have been closed down.

**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 contained in the main Report of Handling dated 20<sup>th</sup> September 2022.

- g) She contends that the lane, washhouse and gardens to the rear are for the communal use of all occupants of Royal Buildings, including the ground floor occupied by Five West.

**Comment:** As advised elsewhere, this is essentially a legal matter between the parties concerned and it does not have a material bearing upon the Planning aspects of the case.

- h) Mrs Slinger contends that the assertion that staff encourage customers to use the lane and rear garden is untrue. She advises that, whenever anyone strays into the lane or the rear of the premises, they are immediately requested to relocate. She states that this is mainly for their own good as there have been occasions when the owners of Flat 3 have approached unsuspecting members of the public including small children, who are clearly unaware they are doing anything untoward.

**Comment:** These views are noted but this is not an issue that has a material bearing upon the Planning aspects of the case.

- i) It has been asserted that the ground floor of the building was left in disrepair for some time after being purchased by the current owners. Mrs Slinger mentions that, shortly after purchase, the owners repaired and repainted the fascia and allowed Tighnabruaich Rowing Club to occupy the whole of the ground floor to build their rowing skiffs. Once the second skiff was completed, she advises that the owners set about the task of finishing repairs to the building and turning the ground floor into the premises that now operates.

**Comment:** These views are noted but this is not an issue that has a significantly material bearing upon the Planning aspects of the case.

### **3.0 RECOMMENDATION**

It is considered that the points that have been made by the above contributors are addressed appropriately in Section 2.0 and they do not alter the recommendation contained in the main Report of Handling dated 20<sup>th</sup> September 2022; namely, that the application be **granted** subject to the conditions, reasons and informative notes contained therein.

**Author of Report:** Steven Gove

**Date:** 27<sup>th</sup> September 2022

**Reviewing Officer:** Peter Bain

**Date:** 27<sup>th</sup> September 2022

**Fergus Murray**  
**Head of Development and Economic Growth**