

24/0013/LRB Application to vary condition

Description of site

The site comprises a small ground floor commercial unit at 81 West Clyde Street, Helensburgh. There are dwelling ~~1370043/15049/29522410~~ TfTo

The commercial unit at 81 West Clyde Street is situated both directly below a residential dwelling, and two residential entrances are sited within close proximity to the entrance of the unit. In turn planning permission is required to change the use from Class 1A to Class 3.

The planning permission is associated with the unit, not the Applicant. If the Applicant were to terminate their tenancy and a third party take control of a Class 3 use, the unit would remain subject to the applied Conditions unless modified.

In a supporting statement submitted for the planning application the Applicant stated the opening times for the Tea Room were 11:00hrs to 16:00 and closed on Wednesdays, and that these hours are to reflect consideration for the immediate neighbours.

During the Application a number of representations were made regarding noise, smells, vibrations, and privacy concerns from neighbours.

In approving the application, the following Planning Conditions were

2. The condition is **relevant to planning** as the Change of Use has the potential to impact upon residential amenity, which is why the change is excluded from permitted Use Class change when attached to, or in close proximity to a residential dwelling.
3. The condition applies to the use of the unit and responds to

The planning history of neighbouring cafes and restaurants (Class 3) and hot food takeaways (Sui Generis) were not considered in the assessment of this application. The application relates to this site only, which as described, has dwelling flats above and to the side, with the front doors of two dwellings sited in close proximity to the unit. The proposed Change of Use from Class 1A to Class 3 raised concerns for the amenity of the immediate neighbours, which is addressed by the condition.

- 3. There are over 117 other eateries in Helensburgh all have no restrictions on closing times, and they have multiple residents above them. The whole of Helensburgh is built with commercial properties on the ground floor and residents above.*

I am unable to comment on the planning history of every café/restaurant (Class 3), and Public House and Hot Food Takeaway (Sui Generis) listed by the Appellant. Each application is determined on its own merits. In this case, the proposed Change of Use to a Class 3 use was deemed acceptable, with a planning condition applied to help safeguard existing residential amenity.

- 4. I am being unfairly singled out. I pose no threat or noise, or smells or drunks at late hours. I'm a Tearoom, serving mainly elderly and people who love to*

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Telephone: 01436 658712

: 24/00570/PP
: Local
: ~~DECISION ROUTE~~

Delegated - Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997
Committee - Local Government Scotland Act 1973

Change of use from Class 1A to Class 3

None

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted subject to the conditions and reasons appended to this report.

(C) CONSULTATIONS:

Environmental Health

Consulted: 27.03.2024

Response: 19.04.2024

The Applicant should contact Environmental Health to discuss a suitable kitchen layout and an application for registration of a food business should be completed prior to commencing food operations. The Applicant should ensure suitable means of ventilation. A Ventilation System Design for commercial kitchen should be submitted to the Planning Authority and approved in writing prior to the commencement of development.

Roads Authority

Consulted: 17.04.2024

Response: 27.03.2024

No objections. The site is within the Main Town Centre and there are no requirements to alter existing parking provision.

(D) HISTORY:

23/00559/PREAPP – Change of use enquiry [20.03.2023]
23/02487/CLWP – Change of Use enquiry [returned] [03.01.2024]

(E) PUBLICITY:

Helensburgh Advertiser Published 11.04.2024 - Expired 02.05.2024

(F) REPRESENTATIONS:

(i) Representations received from:

Pamela Korzeniewski, 74 Dennistoun Crescent, Helensburgh 15.04.2024
Michael McCann, 80 West Clyde Street, Helensburgh, 03.04.2024, 19.04.2024
Tina McCann, 80 West Clyde Street, Helensburgh, 02.04.2024 & 17.04.2024
Alison Newbon, NO ADDRESS, 08.04.2024
Andrew Newbon, NO ADDRESS, 08.04.2024
Angela Reitano, 83 West Clyde Street, Helensburgh, 25.05.2024, 26.05.2024

Representations are published in full on the planning application file and are available to view via the [Public Access](#) section of the Council's website.

(ii) Summary of issues raised:

The access lane to the side of the premises is regularly obstructed by vehicles and outdoor seating associated with the Tearoom.

There is regular use of a disabled parking bay on the public road by customers of the Tearoom, including those without a Blue Badge. If the café were to operate in the evening, the disabled parking bay would never be available.

The Tearoom has caused an increased demand for roadside parking spaces.

Officer Comment: *81 West Clyde Street is within the Main Town Centre and benefits from roadside parking spaces and footfall of town centre users. Given the small size of the unit, the change of use to Class 3 is not expected to place significant demand on parking spaces. The Roads Authority has been consulted and have highlighted no concerns or objections to the proposed change of use. The Tearoom utilises the public footpath immediately in front of the premises for additional customer seating in line with The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023. An Informative can be added to the Decision Notice to highlight the Council's Street Café Guidance to ensure the*

public road is not obstructed by street café furniture. Concerns regarding inappropriate use of Blue Badges and unauthorised occupation of disabled parking bays are outwith the scope of this application and can be reported to the Roads Authority via the Council's website.

An expansion of business activities will lead to increased smells of cooking and noise levels.

Extraction will cause smells into neighbouring garden.

Since the café has opened cooking smells have pervaded bedroom and living areas.

Officer comment: *The requirements for kitchen ventilation are considered below. During the course of the application process the Applicant has installed a window fan to aid ventilation. There is no proposed installation of extractor fan system or external flue. To minimise undue harm to residential amenity through smells/odours, a planning condition can be applied to ensure no intensification of cooking by restricting use of deep fat fryers.*

Customers stand directly outside the front door of the neighbouring residential units. This presents an invasion of privacy as customers can look directly into the home when residents enter or exit.

Customers of the Tearoom frequently obstruct access to adjoining homes by standing on the pavement, waiting to be served.

Officer Comments: *Two residential properties (Nos 79 & 80) have main doors opening directly on to the public footpath. The residential doors are sandwiched between the shop door for the Tearoom (No. 81) and the shop door for the shop at No 77.*

The Applicant has installed a commercial cooker. Residents are concerned that the building is not compliant with fire regulations.

Officer Comment: *The kitchen equipment comprises a large oven with electric hob, an Air Fryer, and baking equipment. There is no apparent apparatus for deep fat cooking, and the risk of fire through largely domestic cooking apparatus is considered no higher than within the adjoining residential units. The Area Building Standards office has confirmed that no additional structural fire safety measures are required.*

No sound proofing. Constantly disturbed by customer and staff loud conversations as well as movement of furniture and cooking equipment. No soft closure of external door which slams shut.

Officer Comment: *The main door does not appear to have changed since the previous tenants of the unit, operating as an electronics retail store. The cafe café is likely to attract more customers/ higher volume of customers and therefore use of the main door than the previous use. During the course of the application process the Applicant has installed insulation panels to the ceiling of the unit, which should help to mitigate any noise disturbance. A planning*

condition can be applied to ensure reasonable daytime operating hours to minimise harm to residential amenity in terms of noise disturbance.

The Scotland Use Order June 2023 (Litchfields UK) states that a Class 3 establishment must not be situated within 1m of a dwelling.

Officer Comment: *The Litchfields Use Order Guide referred to provides an easy to use guise to the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended). The Guide outlines that a change from Class 1a to Class 3 is permitted (without planning permission) unless the unit is below any part of a dwelling or within 1m of a dwelling. As the unit subject to this application is situated below a residential dwelling, the permitted change of use does not apply and planning permission is required rather than change not being allowed.*

The café has been in operation for 1 year without planning permission, fire safety, building warrant and mechanical ventilation.

The Applicant has not complied with regulations and has operated as a Class 3 unit for the past year.

Officer Comment: *This application is made retrospectively in response to planning enforcement action. During the course of the application process the Applicant has installed a window fan to aid ventilation. There is no requirement to obtain permission from Building Standards for the changes proposed.*

Inadequate toilet facilities for those with disabilities or using a wheelchair

Officer Comment: *The Applicant has advised that they offer no toilet facilities to customers. One toilet is available for use by staff only. It does not appear that the unit reaches the threshold to require toilet provision for customers. This is not a material planning consideration.*

Adequacy of sewerage and drainage with increased level of activity

Officer Comment: *There is no proposed increase in the use of sewerage infrastructure. The Applicant has stated that the toilet on site is for staff use only. There are no identified impact on drainage at the site.*

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | | |
|---------------------------------------------------------------------------------------------------|-----|----|
| (i) Environmental Impact Assessment Report: | Yes | No |
| (ii) An Appropriate Assessment under the Conservation (Natural Habitats) Regulations 1994: | Yes | No |
| (iii) A Design or Design/Access statement: | Yes | No |
| (iv) A Sustainability Checklist | Yes | No |

Would the development result in fragmentation of croft / better quality agricultural land? Yes No N/A

(O)(iii) Woodland

Will the proposal result in loss of trees/woodland? Yes
No

Design

The previous shop front is largely retained, with no changes proposed to doors and windows. The change of use involves internal alterations including the installation of

residents. The change of use class within the designated Main Town Centre is supported by the Local Development Plan. For the reasons set out in this report, it is

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 24/00570/PP

Standard Time Limit Condition (as defined by Regulation)

Additional Conditions

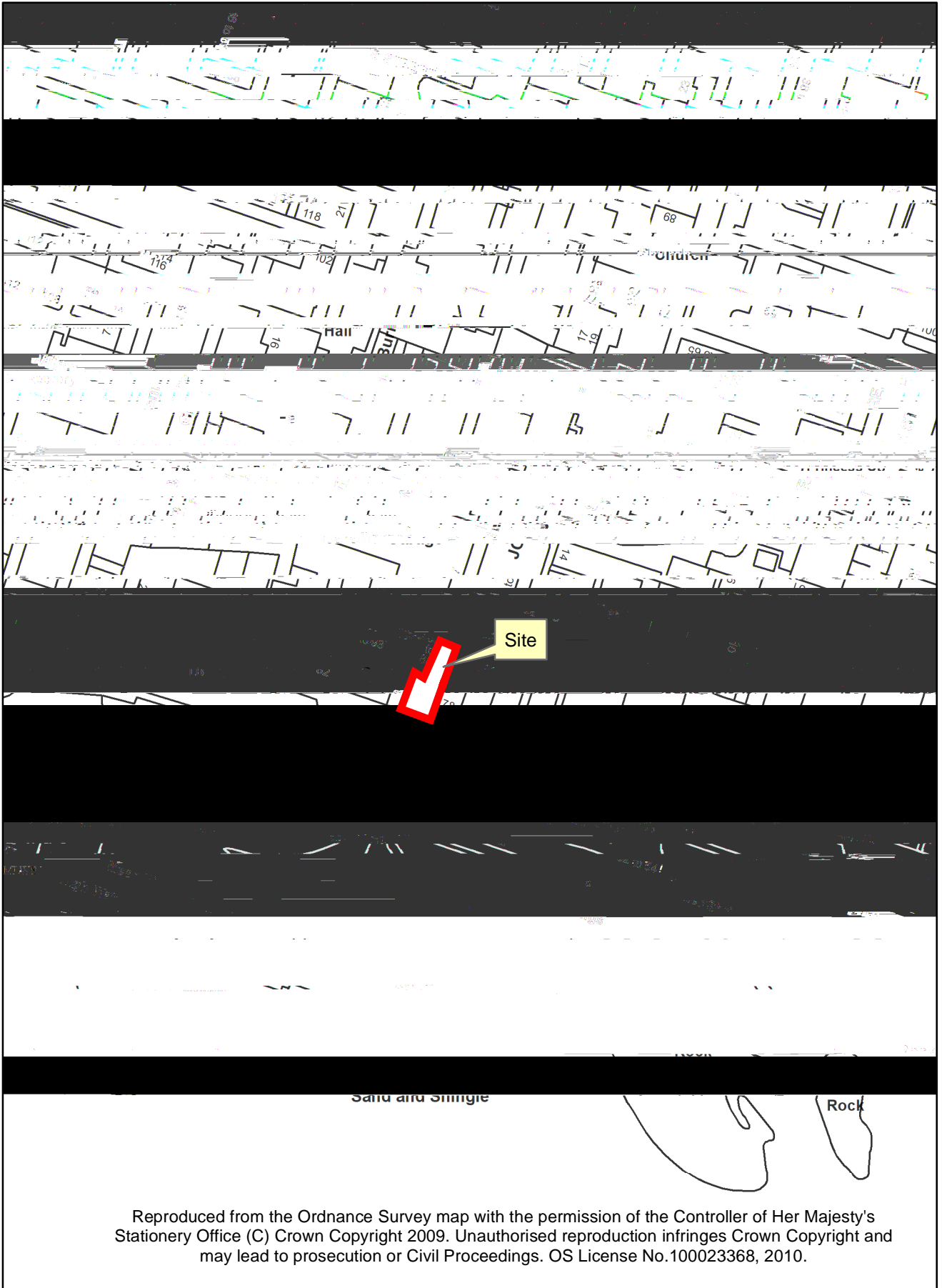
ADDITIONAL NOTES TO APPLICANT

1. In line with guidance from Environmental Health, the Applicant should ensure suitable ventilation system within the kitchen in accordance with the Health and Safety Executive Catering Information Sheet No.10 (Ventilation in catering kitchens).
2. Under s.59 of the Roads (Scotland) Act 1984 Roads Authority Consent may be required to place tables, chairs, or other temporary furniture outside the premises for customer use. Please see Argyll and Bute's Street Café Guidance for compliance details.

APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application 24/00570/PP

(A)



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