

## Marr Area Committee Report 30 August 2022

Reference No: APP/2022/0635

**Application under Section 42 For Erection of External Covered Seating Area Without Compliance with Condition 1 (Time) of Full Planning Permission Reference APP/2021/0456 at Clachan Grill, 5 Bridge Square, Ballater, Aberdeenshire, AB35 5QJ**

**Applicant:** Clachan Grill, 5 Bridge Square, Ballater, AB35 5QL  
**Agent:** Gerry Robb Architectural Design Services, Bridgend, Bridgeview Road, Aboyne, AB34 5HB

**Grid Ref:** E:337150 N:795723  
**Ward No. and Name:** W15 - Aboyne, Upper Deeside & Donside  
**Application Type:** Application under Section 42  
**Representations:** 1  
**Consultations:** 2  
**Relevant Proposals Map Designations:** Cairngorms National Park Local Development Plan 2021 Ballater Settlement and Conservation Area  
**Complies with Development Plans:** Yes  
**Main Recommendation:** Grant



**NOT TO SCALE**

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## 1. Reason for Report

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.3.1e of Part 2C Planning Delegations of the Scheme of Governance as the application is recommended for approval and there have been valid objections from third parties and 50% or a majority of responding Local Ward Members in the Ward in which the development is proposed have requested that the application be referred to the Area Committee.

Cllr Blackett – Committee should consider the impact of reducing to one parking space on neighbouring roads and any resulting amenity impacts as per 2.4a of Policy 2, CNPA LDP.

Cllr Brown – refer to Committee for further discussion in relation to the parking shortfall and associated impacts on neighbouring properties, in relation to Policy 2 and Policy 3.

- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## 2. Background and Proposal

- 2.1 Full planning permission is sought for the formation of a covered seating area, without complying with condition 1 of the previous grant of consent for the same development (APP/2021/0456), at Clachan Grill, 5 Bridge Square, Ballater, within the Ballater Conservation Area. APP/2021/0456 granted permission for covered seating area, with condition 1 limiting the consent to 20th April 2023 (two year period) which was attached as the proposal was viewed, at that time, as a response to the premises' continued operations during restrictions imposed during the early stage of the pandemic.
- 2.2 The site is located north of the A93, opposite the former Monaltrie Hotel (now flats) at the entrance and main thoroughfare through Ballater. The site comprises a restaurant premises, formerly known as La Mangiatoia, to the north western half of the site, with an existing outdoor ancillary garden/seating area to the south east of the restaurant, with submitted plans showing a tarmac parking area to the south east of that. A low level stone wall bounds the car park to the north east, with a neighbouring residential property, Monaltrie Lodge, beyond. The car park area is open to the passing roadway to the south west, which leads to Albert Road. A hostel and other residential properties are located across the passing road from the site.
- 2.3 The proposal seeks permission to erect a timber/log post supported covered seating area, with a square based pyramid corrugated roof, and a wood burning stove in the centre with its flue terminating near the central peak of the roof. The seating area and stove have been formed on site under the previous consent, however the canopy has yet to be erected. The applicant's agent has outlined that the temporary period given in the previous consent

makes it unviable to erect the canopy for such a short period – this application seeks to amend the time limiting condition to allow the canopy, and seating area, to remain in situ for a period of 5 years.

- 2.4 The canopy structure proposes a footprint of 7m by 7m, with the supporting log posts being 2.5m in height, and the peak of the roof and flue being approximately 5m in height. Between the supporting log posts, metal roller shutters are proposed to ensure the area can be securely locked when not in use. The covered area is proposed to sit in the north western part of the parking area, occupying 3 of the previously existing parking spaces. Now that the seating area has been formed, it appears that only a single car parking space remains adjacent to the bin stores and a single tree.
- 2.5 In support of the application, a Car Parking Survey was submitted to detail the parking availability on adjacent streets during various times of day on a Tuesday (11<sup>th</sup> May), Friday (6<sup>th</sup> May) and Saturday (7<sup>th</sup> May). The information obtained notes the number of customers at the Clachan Grill at each time. Further survey information was obtained during summer, on Saturday 16<sup>th</sup> July, Tuesday 19<sup>th</sup> July, and Friday 22<sup>nd</sup> July. The information submitted identifies available parking in surrounding streets whilst customers are within the application premises. Commentary from a director at Cameron & Ross Engineering has also repeated the findings of the surveys, noting the acceptance of roads development and identifies that those combined address the concerns raised by the objector.

### 3. Representations

- 3.1 A total of 1 valid representation (objection) has been received as defined in the Scheme of Governance. All issues raised have been considered. The letter raises the following material issues:
- Currently unable to enter/exit neighbouring property due to parked cars
  - Parked cars block Albert Road
  - Lack of parking at the restaurant

### 4. Consultations

- 4.1 **Environment and Infrastructure Services (Roads Development)** raised initial concerns regarding the lack of available parking, stating the original temporary consent was granted on the basis of allowing the restaurant to function with outdoor seating in response to covid restrictions at that time. Following receipt and review of the parking survey, Roads Development state the spaces which were converted to create the external dining area have not been reinstated and the internal dining restrictions no longer apply. It may be considered that the capacity of the restaurant has increased. With this in mind the applicant has undertaken a parking survey within the area surrounding the restaurant. This submission shows that there is adequate parking to provide the necessary spaces for customer vehicles within a short walking distance. This service does not object to the development however should any further extension be granted beyond this application then a further parking

assessment will be required to consider the parking situation at that time. Upon receipt of the additional parking survey carried out in July, Roads Development provided additional commentary, having also visited the site and area themselves on three occasions. They reiterated that their own observations and supporting information suggests there is sufficient parking available in the vicinity, however they stated they would resist any extension beyond what is proposed as the initial permission was granted in line with Covid relaxations at a time when travel was restricted. There are known issues with parking in Ballater and this application is viewed as being a temporary measure related to a particular business requirement which was previously granted in special circumstances.

- 4.2 **Environment and Infrastructure Services (Environmental Health)** is not aware of complaints having been made, consequently, Environmental Health does not object to the approval of this application, to extend the term of the temporary approval.

## 5. Relevant Planning Policies

### 5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long-term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

### 5.2 Cairngorms National Park Authority Local Development Plan 2021

Policy 2 Supporting economic growth

2.1 Town centres first

2.4 Other economic development

Policy 3 Design and placemaking

3.3 Sustainable design

Policy 9 Cultural heritage  
9.3 Conservation areas

## 6. Discussion

- 6.1 This application seeks to extend the period already consented for a covered seating area at Clachan Grill in Ballater. The extant consent would expire in April 2023, however the applicant wishes gain consent for the covered seated area to a five year period to make it viable for them to erect the canopy.
- 6.2 The proposal, described above, seeks to deliver an additional ancillary outdoor seating area associated with the restaurant on site. A patio/outdoor area already existed to the north west of this proposed location, and the seating area and stove previously consented are now in place.
- 6.3 The nature of the proposal, to provide an additional ancillary seating area associated with an existing restaurant, is appropriately located in terms of the sequential testing within Policy 2 part 2.1, whilst not within the defined town centre it is well within the built form or the settlement, and forms part of an expansion of an existing facility. Part of this acceptability, and as required in part 2.4 of Policy 2, is reliance upon the proposal not having an adverse impact on neighbouring properties and supporting the vitality and viability of the town centre or settlement. The amenity impacts shall be discussed further below, but the proposed additional ancillary restaurant space shall enhance the vitality and viability of the restaurant. As an ancillary function, the proposal is considered acceptable in principle, and is compliant with Policy 2 parts 2.1 and 2.4.
- 6.4 In relation to amenity considerations, an outdoor seating area already existed adjacent, and whilst this proposal would allow for additional outdoor seating, this will not necessarily create nor overly add to any potential amenity issues due to the existing situation on site. Neighbouring objections previously raised concerns about pre-existing noise concerns. Such noise and amenity concerns should be raised with Environmental Health to investigate. In relation to the previous proposal, Environmental Health do not consider the proposal to raise any potential amenity concerns, and through their licensing of the outdoor space sufficient controls on hours of operation can be exerted. Environmental Health are satisfied with the proposal to extend the temporary period of the consent.
- 6.5 The loss of, and lack of parking spaces has been cited as a significant concern within the submitted representation. Policy 3 part 3.3 i) states development must be designed to protect the amenity enjoyed by neighbours including minimisation of disturbance caused by access to the development site. The proposal will reduce the dedicated off-street parking for the restaurant; however, Roads Development are satisfied, following review of the submitted parking survey, that ample opportunist parking can be found on local streets, and nearby formal car parks exist within a reasonable walking distance of the site. The availability of parking in the surrounding streets for customers, coupled with a consent being for a temporary period to allow for

review of any potential impacts, is acceptable to Roads Development, and is considered appropriate in this instance and compliant with Policy 3 part 3.3 i). The concerns about parking are noted, and those raised prior to approval of the existing consent for the seating area related to existing issues. Provision exists for parking in the local area, but the Planning Service cannot control the individual actions of any visitor to the area, whether they are a restaurant customer or not.

- 6.6 Turning to the remaining relevant parts of Policy 3, the scale and design of the proposal is considered appropriate for the site, being of a traditional design that does fit the local vernacular of the adjacent buildings. The site is reasonably well screened from the passing road to the south east, posing no wider issue in terms of visual amenity. The design of the proposal, with the traditional appearance and appropriate siting, is considered to comply with Policy 3 part 3.3, and through the appropriate siting and design is not considered to pose any impact on the Conservation Area, compliant with Policy 9 part 9.2
- 6.7 The proposal is therefore considered to be fully compliant with the relevant policies of the CNPA LDP, subject to a condition restricting the life of the development to 5 years. This will allow a review of the potential impacts of the development, and should an application be received to extend the period of consent it shall be reviewed at that time on its own merits, with an updated parking survey. The applicant will be encouraged, via an informative, to undertake regular parking surveys during the operation of the outdoor covered seating area, which in turn may help inform any decision in the future to extend the life of the covered seating area. The application is recommended for approval.

## **7. Area Implications**

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

## **8. Implications and Risk**

- 8.1 An integrated impact assessment is not required because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.

- 8.4 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

## **9. Departures, Notifications and Referrals**

### **9.1 Local Development Plan Departures**

None

- 9.2 The application is not a Departure from the Local Development Plan and no departure procedures apply.
- 9.3 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 9.4 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

## **10. Recommendation**

### **10.1 GRANT Application under Section 42 subject to the following conditions:-**

01. Planning permission is hereby granted for a temporary period only and shall cease to have effect on 2<sup>nd</sup> September 2027. Prior to the cessation date, the application site shall be cleared of all works and development approved under the terms of this permission (including any subsequent ancillary works, infrastructure, fixtures, fittings and any temporary developments permitted under Class 14 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) and reinstated to be an area of hardstanding for use as car parking spaces to serve the restaurant on site.

Reason: To enable the impact of the temporary development on the amenity of the surrounding area to be reviewed and to ensure the appropriate restoration of the site.

### **10.2 Reason for Decision**

The proposal is considered by the Planning Authority to comply with the Cairngorms National Park Authority Local Development Plan 2021. The temporary consent for an ancillary outdoor covered seating area, of appropriate design and minimal impact on the amenity of the surrounding area, complies with Policies 2 Supporting economic growth, 3 Design and placemaking, and 9 Cultural heritage.

**Alan Wood**  
**Director of Environment and Infrastructure Services**  
**Author of Report: Neil Mair**  
**Report Date: 6 June 2022**

From: [Claire Penman](#)  
To: [Planning Online](#)  
Subject: FW: Planning proposal Ref APP/2022/0635  
Date: 21 April 2022 08:58:12

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Hello,

Please can you log this as a rep for the above application.

Thank you,

Claire

-----Original Message-----  
From: Winifred [REDACTED]  
Sent: 21 April 2022 00:26  
To: Claire Penman <claire.penman@aberdeenshire.gov.uk>  
Subject: Planning proposal Ref APP/2022/0635

Further to the neighbour notification I received regarding this proposal, I would like to Submit one or two concerns.

I live on Albert Road, beside the proposed continued development. And I have strong objections as I, on numerous occasions, have been unable to enter or exit my home  
Owing to there being cars parked opposite my driveway. This is a narrow part of Albert Road, with double yellow lines on both sides of the road. As most people who are inconsiderate often park half on the pavement and half on the road as they realise it is a very narrow road and their car could be scraped or wing mirrors bashed so they

Pull their mirrors in and abandon!

This situation is caused BY there being only one car park space at the restaurant next door. There are "no parking signs" the full length of their private road

And no one parks there! The impossibility of entering or attempting to leave my drive when there are one or two cars parked opposite my home is most annoying and frustrating for myself.

When I created the restaurant - many years ago - we had approx 50 seats And planning insisted I had to provide 8 car park spaces, this has been Reduced over the years, but now with a 50 seater restaurant, a 20? Seater Restaurant at the rear of the property and now an outside eating area for 20+ seats

The need for parking should have been increased not removed! With the Restaurant areas now accommodating possibly over 100 people and only parking for one car!

Food appears to be served from a new rear kitchen then served by walking down the lane to the outside eating area. Health and hygiene?

This area is within the conservation area in Ballater, also the restaurant is surrounded 100% by residential properties.

Within the restaurant I feel there may be only 2 toilets for over 100 people.

As you will realise I am extremely annoyed by the lack of parking being provided by A restaurant with the capacity it has as it encroaches on the surrounding Neighbours suffering unnecessarily. I do not know what the solution is other than returning the original car park to off street car parking thus enabling my self and Others being unable to use our driveways at times we wish - not only when the restaurant is closed to customers.

This situation should not have arisen had due consideration been made of the Surrounding residents.

Winifred H Hepburn  
Monaltrie Cottage  
Albert Road,  
Ballater. AB35 5QN