

OUR REF MAL96.1

YOUR REF LRB/10/0689/PP

Bill Walkinshaw  
Head of Democratic Services  
East Ayrshire Council  
Council Headquarters  
London Road  
Kilmarnock  
KA3 7BU

27 May 2011

Dear Mr Walkinshaw

**65 HIGH STREET, STEWARTON  
REVIEW OF APPOINTED OFFICER'S DECISION TO REFUSE PERMISSION FOR HOT FOOD  
TAKEAWAY  
REPRESENTATIONS BY MR ALEX MCKIE**

Thank you for sending me Mr Alex McKie's representations. Mr McKie is concerned about odour and disturbance from the proposed takeaway.

**1. Disturbance**

We stated in the notice of review that there is no intention to open the takeaway later than 10 pm. Mr McKie claims that the takeaway will be open until 11.30 pm. This is not correct, although we should add that Mr Malik would want to open the takeaway to 11 pm on Fridays and Saturdays. If the Local Review Body has any concerns about opening hours, we suggest that it attaches a condition to the permission that prevents opening later than 10 pm Sunday to Thursday and 11 pm on Friday and Saturday.

Mr McKie complains about disturbance from the existing shop. There is nothing unusual about Mr Malik's shop. It is a fact of life that deliveries must be made to local shops and sometimes must be made outside ordinary daytime hours. Mr Malik does what he can to ensure that delivery hours are restricted to ordinary daytime hours, for his own and his staff's sake as well as his neighbours, but this is simply not always possible. Mr Malik has never, since he took over the shop, received any complaint from Mr McKie about noise or disturbance from deliveries.

Someone who moves into a property by a shop must make allowances for its ordinary operations. The local review body also needs to consider whether there is really any significant difference between the ordinary

Edinburgh Office:  
Brodies LLP Solicitors  
15 Atholl Crescent Edinburgh  
EH3 8HA Scotland UK  
T: [+44] (0)131 228 3777  
F: [+44] (0)131 228 3878  
DX ED10, EDINBURGH-1

Aberdeen Office:  
Brodies LLP Solicitors  
23 Carden Place Aberdeen  
AB10 1UQ Scotland UK  
T: [+44] (0)1224 392 242  
F: [+44] (0)1224 392 244  
DX AB10, ABERDEEN

Glasgow Office:  
Brodies LLP Solicitors  
2 Blythswood Square Glasgow  
G2 4AD Scotland UK  
T: [+44] (0)141 248 4672  
F: [+44] (0)141 221 9270  
DX GW11, GLASGOW-1

[www.brodies.com](http://www.brodies.com)

operation of the shop and the operation of a takeaway, in terms of customers coming and going.

## 2. Odour

It is understandable that Mr McKie should be worried about kitchen smells from the takeaway. People are often concerned about changes in their immediate surroundings and assume the change will have a big effect on their living conditions. That does not mean these concerns are always well founded.

Mr McKie says that he has spoken with people who live above takeaways or who own takeaways and they say that you can't get rid of the smell. He has not said who he spoke with, or where they lived or what takeaways they owned, what measures were taken at those takeaways to deal with smell, whether they had ever complained to the council about any nuisance, or what steps the Council had taken to stop any nuisance. We do not know whether any smell actually caused anyone a problem. He could have provided statements from these people or evidence from an expert on ventilation. He has not done that. Without any specifics, there is very little for the local review body to go on or for us to respond to.

The fact is that technology now for dealing with kitchen smells is very good. Mr Speirs, the ventilation engineer, has said in his letter (document 7 in the members' packs) that the system he will install will emit hot air and some moisture but no odour, so long as it is well maintained.

Mr Gilchrist, the Council's environmental health officer, considers this system would be effective in odour control (see documents 8 and 10). He believes it would not remove all smell. However, if a problem arose with odour, the Council would have power under the Environmental Protection Act 1990 to investigate any nuisance, and put a stop to the nuisance.

Yours sincerely

Robert Seaton  
Associate  
On behalf of Brodies LLP  
Direct Line:  
E-Mail: