

APPENDIX 3

EAST AYRSHIRE COUNCIL

REPORT OF HANDLING

Application Number : 10/0689/PP

Applicant Name: Mr Aftab Ahmed Malik

Development : Change of use to form Hot Food Takeaway

Location : 65 High Street
Stewarton
Kilmarnock
East Ayrshire
KA3 5DX

Type : Planning Permission

1. Development Description

Change of use to form Hot Food Takeaway

2. Site Description

Application site is a corner unit on terraced rows on High Street and Springwell Place. The unit is 1.5 storey in height and set within a mixed use area of dwellings over shops and retail units. The adjacent use is a class 1 retail use (newsagent) with dwellings (flats) adjacent on the Springwell Place elevation.

3. Representations Summary

Three letters of objection from four objectors have been received, the key issues of which are summarised below.

1. Entrance is adjacent to the frying area – concerned with smell and fire risk.

Environmental Health has not objected to the development subject to the provision of a vapour barrier and the ventilation system being acoustically isolated. Notwithstanding this response however, the proposed development sits immediately below residential property with a flue extract point in close proximity to windows of these residential properties. This is considered to have a likely impact on these residential properties by reason of smells, no matter the type of extraction system venting onto this location.

2. The premises was open for two days prior to being closed. The strong smell of cooking throughout the property was unacceptable.

See response to 1, above.

3. The surrounding area was strewn with rubbish.

There is a bin currently located on the public footway immediately outside the site therefore this is not considered to be a significant issue.

4. Frying waste is of great concern as within 12-15 yards of the River Annick, the attraction of vermin is highly eminent.

The River Annick is 60-65 metres from the site and is therefore unlikely to be affected by the proposal. Vermin control is a matter for Environmental Health.

5. Devaluation of my property.

This is not a material planning consideration.

6. Having viewed the latest alterations of extractors, we find no alteration of smells from the various items.

See response to point 1 above.

7. Storing their waste bins through private entrance to "2, 4, 4a, 4b Springwell Place" this situation has already been addressed, but ignored. On the new proposal where his bins are stored this area is completely wrong as they are stored at the back entrance and windows to number 6 Springwell Place where his place of entrance is refused and has no access to this area of back door to this block of flats.

No clear details of bin storage location or route to the public highway have been shown however a condition could be attached to any consent to ensure that clear details of storage location and route to pick up point are submitted.

8. Noise and residential amenity. This is out with the commercial sector of the town and is in a residential area,

See response to point 1 with regard to smells. In terms of noise generation, it is agreed that the proposed use will bring a larger degree of noise disturbance to the area which is likely to extend beyond other sources of background noise. Given the close proximity with residential property this is considered to be unacceptable.

9. This proposed venture would bring people going through our street

creating noise disturbance and litter. Already at weekends I find there is increased litter in the street with people going to the corner shop and on Friday and Saturday nights youngsters already loiter in Springwell Place and make a lot of noise.

See response to point in relation to noise impact. The bin currently located on the public footpath is considered to be sufficient to address potential litter concerns.

10. It is already a bit of an eye sore at the end of the street. It does take away some of the character of the building, Stewartons refurbished mill.

The development itself only proposes the use of two extract louvers externally therefore this will not have an adverse impact on the setting of the area. The signage on the building is subject to separate legislation.

11. I am unsure if any smells will carry into the street, I have a feeling it will as the site looks very small and I assume the door will be kept open.

See response to point 1 above.

12. I don't feel there is any need for a further takeaway in Stewarton. There are already plenty on the High Street and this site has much more residential properties around it. I am of the opinion it would attract the wrong kind of clientele and with them bother.

This is not a material planning consideration.

4. Consultations Summary

Environmental Health has no objection in principle however they do advise that the proposed ventilation system should be acoustically isolated to minimise potential noise disturbance to the dwellinghouse on the upper floor, and a vapour barrier should be installed on the ceiling of the takeaway to minimise the potential for percolation of fumes and odours to the dwellinghouse.

Furthermore they advise that should the proposed ventilation arrangements prove unsatisfactory and as a result complaints are received regarding nuisance from fumes and/or odours, this office will require to investigate and take appropriate action under the provisions of the Environmental Protection Act 1990.

Roads And Transportation have advised that as waste will be contained in 2 x 240 litre bins and stored to the rear of the premises, they will not permit

bins of this size to be positioned on the footway on the day of collection either. When collection is made bins must be returned to the rear of the property immediately to prevent obstruction to the public footway.

Stewarton And District Community Council has not responded at the time of writing.

East Ayrshire Access Panel North District have asked that level access be considered if it does not already exist.

5. Development Plan Summary

East Ayrshire Local Plan 2010

RTC 15 advises that development proposals for public houses and hot food take-aways will be considered acceptable uses within town centres and may be considered appropriate in other locations where the proposals:

- (i) meet with the Council's design and layout policies;
- (ii) meet with the requirements of the Council as Roads Authority;
- (iii) do not have a detrimental effect on the amenity of adjacent properties by reason of noise, litter, odour or any other disturbance; and
- (iv) are compatible with surrounding land uses.

The proposed development is generally acceptable in terms of design etc for the purpose proposed and has not attracted any objections from the Roads Division. Given the close proximity of residential property which is immediately above and also to the sides of the unit, it is considered that these properties will experience an adverse impact by way of smells and noise in particular. The extract vent is located high on the ground floor level facing onto Springwell Place. This vent is in close proximity to two windows of residential property, one directly on the corner elevation about 1.5 metres above and to the side of the vent and one approximately 5 metres above and to the side of the vent, further along Springwell Place. Whilst the extract system proposed has no objections in principle from Environmental Health, the close proximity to these windows is likely to lead to a degree of smell affecting residential property which in this case is judged to be unacceptable. On this basis it can also be seen that the proposal is not compatible with the surrounding land uses as it will have an adverse impact on residential property.

6. Material Considerations

Planning history

Application 09/0903/PP for a Hot Food Takeaway was refused on 4/5/10.

This application was refused on the basis of the impact on residential property by reason of odour.

Enforcement Notice D/4/85/7 was served on the property on 22/5/85 and was subsequently closed.

Consultation responses

The comments of the Environmental Health section are pertinent and indicate no objections in principle provided various works are undertaken. Notwithstanding this recommendation they caveat the response by advising that if complaints are received they will investigate and take action as necessary under the Environmental Protection Act 1990.

Letters of objection

The objections received tend to focus on the impact of smells and noise that will occur should consent be granted as well as waste disposal. Given the close proximity of residential property to this unit and indeed windows of such property, it is considered to be reasonable that such concerns exist. No matter how good the extraction system is, it is highly likely that smells will affect the residential property due to the sheer proximity of the extract to the windows. There will also be a detrimental impact in terms of noise as the windows of the residential properties are directly above the shop and due to the nature of a takeaway, are likely to experience noise impact from customers coming and going late in the evening.

Impact on the amenity of the area

As noted above, it is highly likely that there will be a noise and smell impact in the immediate surrounding area that will have a detrimental impact on residential amenity.

7. Financial and Legal Implications

None

8. Application Assessment

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Adopted East Ayrshire Local Plan (2010).

As noted at section 5 above, the development is considered to be contrary to the terms of the development plan by way of detrimental affects on neighbouring property by way of smells and noise and is also therefore out of character with the surrounding area.

The extract louvre is located in close proximity to windows of residential property immediately above and also to the side of the site. Despite claims that no smells will emanate from the system it is considered to be unlikely that no impact will occur given this close proximity. The close proximity of these residential properties and windows to the use is likely to see the residents experience a degree of noise disturbance also given the nature of a hot food takeaway.

The letters of objection raise these particular points amongst other more minor matters and these are considered to be pertinent and carry significant weighting. Whilst the comments of Environmental Health do not raise an objection in principle, they do caveat the response concerning future smells etc. Notwithstanding this, the close proximity of the windows and general residential properties to the extract louvre is considered to be unacceptable and will likely lead to future investigation by Environmental Health should consent been granted.

9. Recommendation

Refused

10. Reasons for the Decision

The proposal does not comply with the development plan and the material considerations do not indicate that the application should be approved contrary to the development plan.

Case Officer : David Wilson

Signature:

Date:

Principal Planner:

Signature:

Date:

Development