

APPENDIX I

Notice of Review



NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN
RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS
THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)
(SCOTLAND) REGULATIONS 2008
THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form.
Failure to supply all the relevant information could invalidate your notice of review.**

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name AETAB MALIK

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be
through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail?

Yes No

Planning authority EAST AYRSHIRE COUNCIL

Planning authority's application reference number 10/0289/PP

Site address 65 HIGH STREET, STEWARTON

Description of proposed development CHANGE OF USE FROM SHOP TO
HOT FOOD TAKEAWAY

Date of application 26 JULY 2010 Date of decision (if any) 26 JAN 2011

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

SEE ATTACHED WRITTEN SUBMISSIONS
(SECTION 9)

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

IF THEY WISH TO SEE INSIDE THE SHOP PREMISES, MR MALIK WILL HAVE TO BE ON HAND TO GIVE THEM ACCESS.

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE SEE ATTACHED WRITTEN SUBMISSIONS AND DOCUMENTS.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

N/A

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

PLEASE SEE ATTACHED INDEX OF DOCUMENTS

Notes.

1. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.
2. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.
3. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Please complete and return this form to Head of Democratic Services, East Ayrshire Council, Council Headquarters, London Road, Kilmarnock, KA3 7BU.

Declaration

I the ~~applicant~~/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

Date

26/4/2011

AFTAB MALIK

APPLICATION FOR REVIEW

of

Refusal of planning permission for a hot food takeaway at

65 High Street, Stewarton, Application number 10/0689/PP

Decision of East Ayrshire Council

1 Introduction

- 1.1 This is an application for review of a decision by Alan Neish, the Head of Planning and Economic Development, to refuse planning permission for a proposed change of use of 65 High Street, Stewarton, from a shop (class 1 retail) to a hot food takeaway. We are making the application on behalf of our client, Mr Aftab Malik. Mr Malik submitted the planning application 10/0689/PP on 26 July 2010 (Document 1). On 26 January 2011, Alan Neish, refused the application on the following ground (Document 2):

The proposed development would be contrary to Policy RTC 15 of the Adopted East Ayrshire Local Plan as:

- (a) The proposed extraction system is in close proximity to residential property and will have a detrimental effect on the amenity of the adjacent properties by reason of odour.
- (b) The proposed use is in close proximity to residential property and will have a detrimental effect on the amenity of the adjacent properties by reason of noise.
- (c) The proposal is not compatible with surrounding land uses given the likely detrimental impact caused by noise and smell from the takeaway on the amenity of the surrounding residential properties.

- 1.2 We request that the Local Review Body review the decision and grant permission on the following grounds:

- 1.2.1 The proposed extraction system will not have a detrimental effect on the amenity of adjacent properties by reason of odour;
- 1.2.2 The proposed use will not have a detrimental effect on the amenity of adjacent properties by reason of noise; and
- 1.2.3 The proposed use complies with Policy RTC15 of the East Ayrshire Local Plan, and
- 1.2.4 There are no other material considerations that would justify refusal.

2 Background

2.1 Initial purchase of the property

2.2 Mr Malik bought the shop at 65 High Street, Stewarton in 2005. The previous owner had sold hot take-away food from it, including burgers, fish and chips, grills, hot filled rolls, and fries. The solicitors who acted for Mr Malik in the purchase did not highlight to him the fact that there was no hot food planning permission in place. The previous owner told Mr Malik that he had sold hot food from the shop for about 8 years (Document 3). Mr Malik therefore believed when he bought the shop that it had existing permission for use as a hot food take-away – in fact, he had no reason to doubt it.

2.3 Hot Food Consent

2.4 After operating the shop as an off-licence and grocers for several years, Mr Malik decided to start selling hot food again. The first point at which he became aware that the Property did not have existing hot food planning permission was when he was required by the Council to stop the use. Mr Malik ceased selling hot food immediately upon receipt of the Council's Temporary Stop Notice. So far as Mr Malik is aware, the Stop Notice served on him arose as a result of a complaint from a neighbour, though no direct complaint was made to him.

2.5 First application for planning permission

2.6 Mr Malik made an application himself for planning permission for the change of use of the shop to a hot food takeaway on 16 December 2009 - reference number 09/0903/PP. At that time, Mr Malik proposed to use the existing extraction system in place at the shop. Craig Iles, the Council's planning officer, advised that the Environmental Health Department had objected to the application due to concerns about odours and fumes from the extraction system (Document 4). The Environmental Health Department recommended that Mr Malik should reconsider proposed ventilation arrangements, in consultation with a professional ventilation engineer. Revised plans could then be submitted (see Environmental Health Department memo of 7 April 2010 – Document 5).

2.7 On the basis of this objection, the planning officer then refused the application on 4 May 2010 on the sole ground that the proposed extraction system was unsatisfactory and would have a detrimental effect on the amenity of adjacent properties because of odour (Document 6).

2.8 Mr Malik engaged Carruthers Curdie Sturrock (CCS), solicitors in Kilmarnock, to carry out further work in submitting a new planning application.

2.9 Second planning application: pre-submission steps

2.10 In accordance with the advice of the Environmental Health Department, CCS consulted Mark Spiers of W Spiers & Sons Limited, who has 27 years' experience in installing ducting and extraction systems (Document 7). CCS also obtained advice from Craig Iles in the Council's

planning department, and William Gilchrist of the Environmental Health Department with regard to what they would consider to be an acceptable extractor system.

- 2.11 By letter dated 31 May 2010 (Document 8), William Gilchrist confirmed that the proposed system is effective in odour control when properly maintained but suggested that the extract louvre for the proposed ventilation system for the Property be moved as far away as possible from the adjoining property.
- 2.12 By letter dated 31 May 2010 (Document 9), Craig Iles of the Planning Department wrote to CCS to advise that although the information submitted appeared of a better quality than for the previous application, the planning department would consult with the Environmental Health Department on its operational acceptability. The planning department's sole concern was the visual impact of the flue, and they had no concerns as to any visual impact of the proposed system using an extract louvre rather than a traditional flue.
- 2.13 By letter dated 10 June 2010 (Document 10), William Gilchrist of the Environmental Health Department advised that the new proposals would be acceptable to the Department. The Department would, however, retain the right to commence investigations should the extraction system in fact produce an odour sufficient to cause a nuisance under the Environmental Protection Act 1990.
- 2.14 Having received this advice, CCS submitted the planning application which is the subject of this application for review on 26 July 2010, application number 10/0689/PP.

3 Description of the location

- 3.1 The shop for which the change of use is proposed is at 65 the High Street, Stewarton. While this is not in the defined town centre of Stewarton, it is in an area that historically is part of the town centre, and stands on a main street of the town. The area has a mixed use, there being dwellings along Springwell Place, but other shops and a pub, the Smugglers Inn, along the High Street travelling in a direction out of Stewarton. The shop is at present an off-licence open until 10 pm at night. There is no proposal to open the hot-food takeaway any later than the shop is open at present.

4 Development plan policy:

- 4.1 Policy RTC15 in the recently adopted East Ayrshire Local Plan is relevant to the development. This states:

Policy RTC15

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.

- 4.2 The proposed development is not within the defined town centre of Stewarton. Therefore to be compatible with the local plan the proposed change of use should meet the policy criteria. No questions arise with regard to criteria (i) and (ii), and the only questions that have been raised by the Council or objectors relate to criteria (iii) and (iv). Specifically, the Council's reasons for refusal relate solely to noise and odour, and their consequences for compatibility of the proposed use as a takeaway with the surrounding land uses.

5 Objections

- 5.1 The Council received three objections to the proposed change of use. These raised issues of nuisance from cooking smells, litter, waste storage, and noise caused by people visiting the premises.
- 5.2 Waste from the shop will be stored in bins to the rear of the shop, which will be brought out for collection and removed once the waste has been collected. If the Local Review Body has any concerns about this arrangement, it is invited to place a condition on the proposed change of use preventing storage of bins for commercial waste from the shop on the pavement.
- 5.3 As regards litter, there is a litter bin positioned in front of the shop, and the Council's planning officer did not consider that litter would present a significant problem.
- 5.4 The question of noise and smells are dealt with below.

6 Noise:

- 6.1 **The proposed extraction system will not have a detrimental effect on the amenity of adjacent properties by reason of odour**
- 6.2 Our client consulted Council departments to ensure that his application accorded with their advice.
- 6.3 The Environmental Health Department recommended that Mr Malik consult a professional ventilation engineer about the dispersal of cooking fumes and odours via the extraction system. He consulted Mark Spiers of W Spiers and Sons Limited. Mr Spiers redesigned the extraction system to ensure that the system complied with advice from Environmental Health and planning officers. Craig Iles from the Council's Planning Department advised that the planning officer would rely on advice from Environmental Health as regards the operational acceptability of the flue, and his only other concern was about the design of the flue. William Gilchrist from the Council's Environmental

Health Department advised that the proposals were acceptable in terms of the operation of the flue.

- 6.4 When Mr Malik's fresh application was submitted, William Gilchrist for the Environmental Health Department responded that they had no objection regarding odour. Mr Gilchrist suggested that a vapour barrier may be appropriate to prevent percolation of fumes and odours (Document 11). This suggestion was referred to in the Planning Officer's Report of Handling (Document 12), but his decision to refuse the application on the grounds of odour was noted to have been 'notwithstanding this response' (from the Environmental Health Department). If the change of use is permitted, the installation of a vapour barrier could be made a condition of planning permission.
- 6.5 The Planning Officer has given no basis for his belief that odour nuisance will cause such a problem. Mr Spiers states that the extractor system will eliminate odour nuisance, and Mr Gilchrist indicated that odour would not be a problem if the system is properly maintained. Mr Gilchrist presumably took the position he did because he did not envisage any likelihood of there being nuisance caused by odour. The planning officer had no evidence before him that would indicate there would be a nuisance arising from odour.
- 6.6 If for any reason odour did become a nuisance, i.e. more than reasonably tolerable, the Council's Environmental Department would be required under Section 79(1)(d) of the Environmental Protection Act 1990 (Document 13), the Environmental Health Department to take enforcement action. This enforcement action would require the abatement of the nuisance.
- 6.7 Considerable expense will be incurred in the installation of the extraction system. Although the previous owner of the Property sold hot food, an extraction system of the sophistication proposed was not in place. Our client would not be willing to risk this level of expenditure if he was not satisfied with assurances from ventilation experts that levels of odour would not cause a nuisance to neighbouring proprietors.
- 6.8 **Odour conclusions**
- 6.9 The basis on which planning decisions are made should be sufficiently clear such that the applicant and other users of the system may understand what is required of them in relation to future applications at the same site or elsewhere in similar situations. The reason for refusal states that the proposed extraction system "will have a detrimental effect on the amenity of adjacent properties by reason of odour". The evidence is that there will be no nuisance to neighbouring residential properties caused by odour from the extraction system. The planning officer has provided no explanation for his conclusion that odour would be a problem within private properties adjacent to the proposed takeaway.
- 6.10 **The proposed use will not have a detrimental effect on the amenity of adjacent properties by reason of noise**
- 6.11 Although odour was highlighted by the Environmental Health Department in conjunction with our client's resubmitted planning application of March 2010, no mention was made of noise pollution.

The Environmental Health Department did not object to the proposed change of use on noise grounds. They did suggest that the extraction system should be acoustically isolated to minimise potential noise disturbance to neighbouring properties. However, the system proposed by Mark Spiers has already been designed to accord with current noise levels, and will not be heard against background noise outside the shop premises. Accordingly, noise from the vent would not exceed the levels recommended in technical guidance provided by the trade association. The Local Review Body is invited to impose a condition on any grant of planning permission requiring acoustic isolation of the extraction system.

6.12 treatment of noise by the planning officer

6.13 In his Report of Handling, the Planning Officer states that 'the proposed use will bring a degree of noise disturbance to the area which is likely to extend beyond other sources of background noise'. The basis for this statement is unclear. If Mr Malik had been given any indication that noise might be a problem, he could have addressed the issue with the planning officer to see if there was any means of mitigating the impact. However, we do not believe there would be any significant impact.

6.14 Although the proposed development is outside Stewarton town centre (Document 14), it is in retail premises on the High Street, a main street in the town. The area already has a mixed use. A takeaway is not an unusual use in such an area.

6.15 The Report of Handling refers to objections because of noise late in the evening. Mr Malik's business currently operates between the hours of 6am and 10pm and customers come and go between these hours already. There is no proposal to open the takeaway any later than the existing shop. There is therefore unlikely to be any change in the degree of disturbance experienced as a consequence of customers coming and going. Noise during this period can hardly be considered unusual at these times on a main street in Stewarton. We would also note that the shop apparently sold hot food previously for eight years to 2005 apparently without complaint.

7 Other material considerations

7.1 Existing use

7.2 No consideration was given by the Planning Officer to the existing use of the Property. This will, in itself, cause a degree of disturbance. The existing use has been discussed above. The likely minimal difference between the impact of the existing use and the proposed use should be taken into account in determining the acceptability of the proposed use.

7.3 Takeaways and residential property

7.4 It is not unusual anywhere in Scotland for takeaways to be located below residential property. In Stewarton, for instance, the Piolis Café, the Lucky House Chinese Restaurant, the Village Balti House, the Zayka Indian Restaurant, the Oriental Palace Chinese Restaurant and the Chip Box are all located below residential property. The Chip Box, the Village Balti and the Lucky House all

have extractor vents in their frontage. If the Local Review Body considers the application should be refused on the grounds stated by the Head of Planning and Economic Development, we would ask for an explanation of the criteria by which the Council will determine applications for takeaways in a similar proximity to residential property in future. The reason for this is that applicants may wish to consider what locations for takeaways would be acceptable and what mitigation strategies they could pursue to make such a use acceptable.

8 Conclusion on the application for review

8.1 In summary, and for all of the reasons stated above, this appeal should be upheld and planning permission granted in respect of application 10/0689/PP for the following reasons:

8.1.1 The proposed extraction system will not have a detrimental effect on the amenity of adjacent properties by reason of odour;

8.1.2 The proposed use will not have a detrimental effect on the amenity of adjacent properties by reason of noise;

8.1.3 The proposed use will therefore comply with policy RTC15 of the East Ayrshire Local Development plan and with other policies in the development plan, and

8.1.4 There are no further material considerations which otherwise justify refusal.

9 Procedure for determination of the review

9.1 Mr Malik requests that the Local Review Body (LRB) take evidence at a hearing before determining this application and also consider carrying out a site visit. The reasons for having a hearing are as follows:

9.1.1 Evidence on noise and odour can be relatively technical. The evidence on the effectiveness of an extractor system in dealing with odour is likely to be relatively technical. In such circumstances, it is best if the Local Review Body has an opportunity to question experts from the Council and for the appellants directly. For instance, it may be that technical difficulties can be overcome by the LRB imposing a condition, but they may wish to discuss the form of the condition with the experts.

9.1.2 A hearing would also provide an opportunity for Mr Alan Neish (or the planning case officer who recommended the decision to him) to explain why he considered that there would be a problem arising with noise and odour, and to set out what criteria he applied in determining the degree of the problem, and how he concluded that any impact would be unacceptable, in circumstances when the Council's Environmental Health Department considered that there was no reason for them to object to the application.

9.1.3 A hearing would also provide an opportunity for a representative of the Council's Environmental Health Department, such as Mr William Gilchrist, to explain the Department's reasons for not objecting to the proposed change of use, and to set out how the Department exercises its powers to abate noise or odour nuisance.

9.2 Although the site on Stewarton High Street is one some members of the Local Review Body may be familiar with, we would recommend a site visit since an understanding of the site is important to determining the application.

AFTAB MALIK

APPLICATION FOR REVIEW

Of

Refusal of planning permission for a hot food takeaway at

65 High Street, Stewarton, Application number 10/0689/PP

INDEX OF DOCUMENTS

- 1 Planning Application 10/0689/PP dated 26 July 2010 (including plans)
- 2 Refusal of Planning Permission dated 26 January 2011
- 3 Statement from Aftab Malik
- 4 Letter from Craig Iles, Planning Department, dated 15 April 2010
- 5 Memo from Environmental Health Department dated 7 April 2010
- 6 Refusal dated 4 May 2010
- 7 Statement from Mark Spiers, W Spiers & Sons Limited
- 8 Letter from William Gilchrist, dated 31 May 2010
- 9 Letter from Craig Iles, dated 31 May 2010
- 10 Letter from William Gilchrist, dated 10 June 2010
- 11 Environmental Health response to consultation on application 10/0689/PP
- 12 Report of Handling on application 10/0689/PP
- 13 Sections 79 and 80 of the Environmental Protection Act 1990
- 14 East Ayrshire Local Plan – Settlement Map

10/06891PP

APPLICATION FOR PLANNING PERMISSION

FOR OFFICIAL USE ONLY

Reference No(s):

Registration Date

Town and Country Planning (Scotland) Act 1997
The Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008

Please refer to the accompanying Guidance Notes when completing this application

1

Applicant's Details

Title Forename Surname

Company Name Building No./Name

Address

Postcode

Telephone (inc. STD Code) Mobile

Fax Email

2

Agent's Details

Company Name Co Agent Ref No.

Forename Surname

Building Number Building Name

Address

Postcode

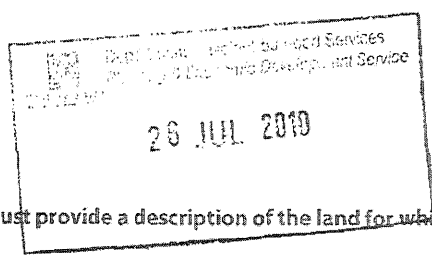
Telephone Extension Mobile

Fax Email

3

Postal Address or Location of the Proposed Development (please include postcode)

Postcode



NB. If you do not have the full postal address, you must provide a description of the land for which the development is proposed.

4

Type of Application

What is this application for? Please select one of the following:

- Planning Permission
- Application for Approval of Matters Specified in Conditions*
- Planning Permission in Principle
- Application for Mineral Works**
- Further Application*

NB. A 'further application' may be, e.g. development that has not yet commenced and where a time limit has been imposed; a renewal of planning permission or a modification, variation or removal of a planning condition.

* Please provide the reference number of the previous application and date when permission was granted:

Reference No: _____ Date: _____

** Please note that if you are applying for planning permission for mineral works, please check with the planning authority whether they have an alternative form to be submitted or if they require additional information.

5

Description of the Proposal

Please describe the proposal including any change of use:

Change of use to form Hot Food Takeaway

Is this a temporary permission? Yes No

If yes, please state how long permission is required for and why:

Have the works already been started or completed?

Yes No

If yes, please state date of completion, or if not completed, the start date: Work has not started.

If Planning Consent is granted a new extraction system to deal with cooking odours will be installed. See design plans enclosed.

Date: _____

If yes, please explain why work has already taken place in advance of making this application.

When the Applicant bought the shop the then occupier was selling hot food to take out. He thought the shop had consent for this.

6

Pre-Application Discussion

Have you received advice from the planning authority in relation to this proposal?

Yes No

If yes, please provide details about the advice below:

In what format was the advice given?

Meeting Telephone call Letter Email

Have you agreed or are you discussing a Processing Agreement with the planning authority?

Yes No

Please provide a description of the advice you were given and who you received the advice from:

Name:

Reference Number:

Date:

7

Site Area

Please state the site area in either hectares or square metres:

Hectares (ha)

Square Metres (sq. m.)

30 sq. m.

8

Existing Use

Please describe the current or most recent use:

Formerly used as a storage area. Now to be fitted out for the preparation and retail of hot food for takeaway. Presently subject to a Stop Notice Ref. DP 030/09/0368

9

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? Yes No

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? Yes No

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site?

0 on street parking

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total of existing and any new spaces or a reduced number of spaces)

0

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc.)

Water Supply and Drainage Arrangements

Will your proposals require new or altered water supply or drainage arrangements? Yes No

Are you proposing to connect to the public drainage network (e.g. to an existing sewer?)

- Yes, connecting to public drainage network
- No, proposing to make private drainage arrangements
- Not Applicable - only arrangement for water supply required

What private arrangements are you proposing for the new/altered septic tank?

- Discharge to land via soakaway
- Discharge to watercourse(s) (including partial soakaway)
- Discharge to coastal waters

Please show more details on your plans and supporting information

What private arrangements are you proposing?

- Treatment/Additional treatment (relates to package sewer treatment plants, or passive sewage treatment such as a reed bed)
- Other private drainage arrangement (such as chemical toilets or composting toilets)

Please show more details on your plans and supporting information.

Do your proposals make provision for sustainable drainage of surface water? Yes No
(e.g. SUDS arrangements)

Note:- Please include details of SUDS arrangements on your plans

Are you proposing to connect to the public water supply network?

- Yes No, using a private water supply

If no, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

11

Assessment of Flood Risk

Is the site within an area of known risk of flooding? Yes No Don't know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your planning authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? Yes No Don't Know

If yes, briefly describe how the risk of flooding might be increased elsewhere.

12

Trees

Are there any trees on or adjacent to the application site? Yes No

If yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal and indicate if any are to be cut back or felled.

13

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? Yes No
(including recycling)

If yes, please provide details and illustrate on plans.

If no, please provide details as to why no provision for refuse/recycling storage is being made:

Refuse will be contained in 2 x 240 ltr. bins kept at rear of premises. Copy Agreement and location plan enclosed.

14

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? Yes No

If yes, how many units do you propose in total?

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

15

For all types of non housing development - new floorspace proposed

Does your proposal alter or create non-residential floorspace? Yes No

If yes, please provide non residential details below:

Use type:

Gross (proposed) floorspace (sq. m.):

Number of new (additional) rooms:

Size of existing building/structure in total:

Please give details of internal floorspace:

Net trading space:

Non-trading space:

Total:

16

Schedule 3 Development

Does the proposal involve a class of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008? Yes No Don't know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in your area. Your planning authority will do this on your behalf but will charge you a fee. Please contact your planning authority for advice on planning fees.

17

Planning Service Employee/Elected Member Interest

Are you or is the applicant, or the applicant's spouse/partner, a member of staff within the planning service or an elected member of the planning authority?

Or, are you/the applicant/the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority? Yes No

If you have answered yes please provide details:

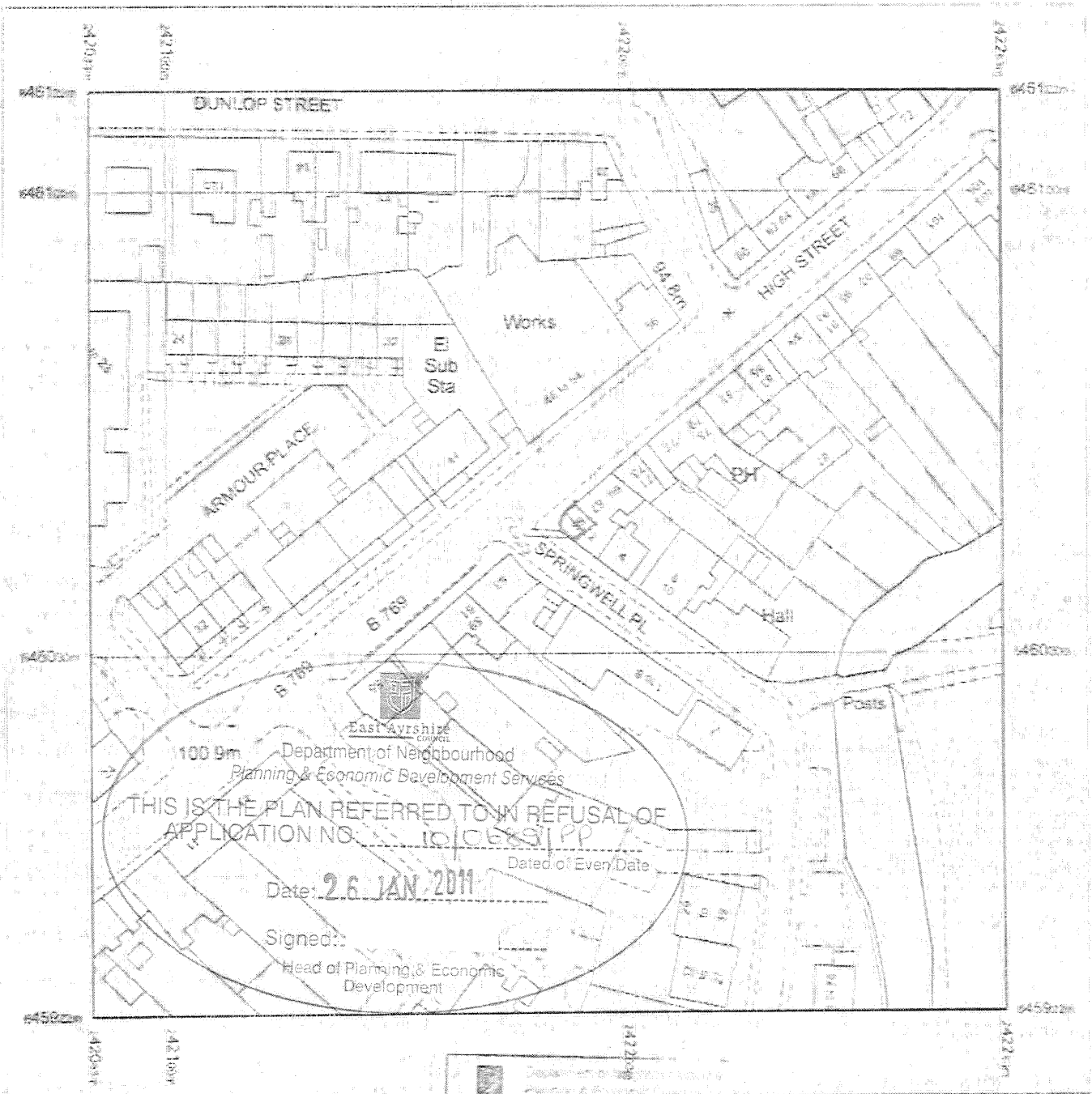
DECLARATION

I, the applicant/agent certify that this is an application for planning permission. The accompanying plans/drawings and additional information are provided as part of this application.

Signature:

Name:

Date:



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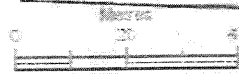
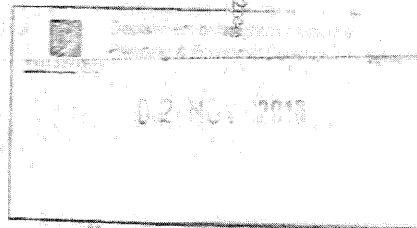
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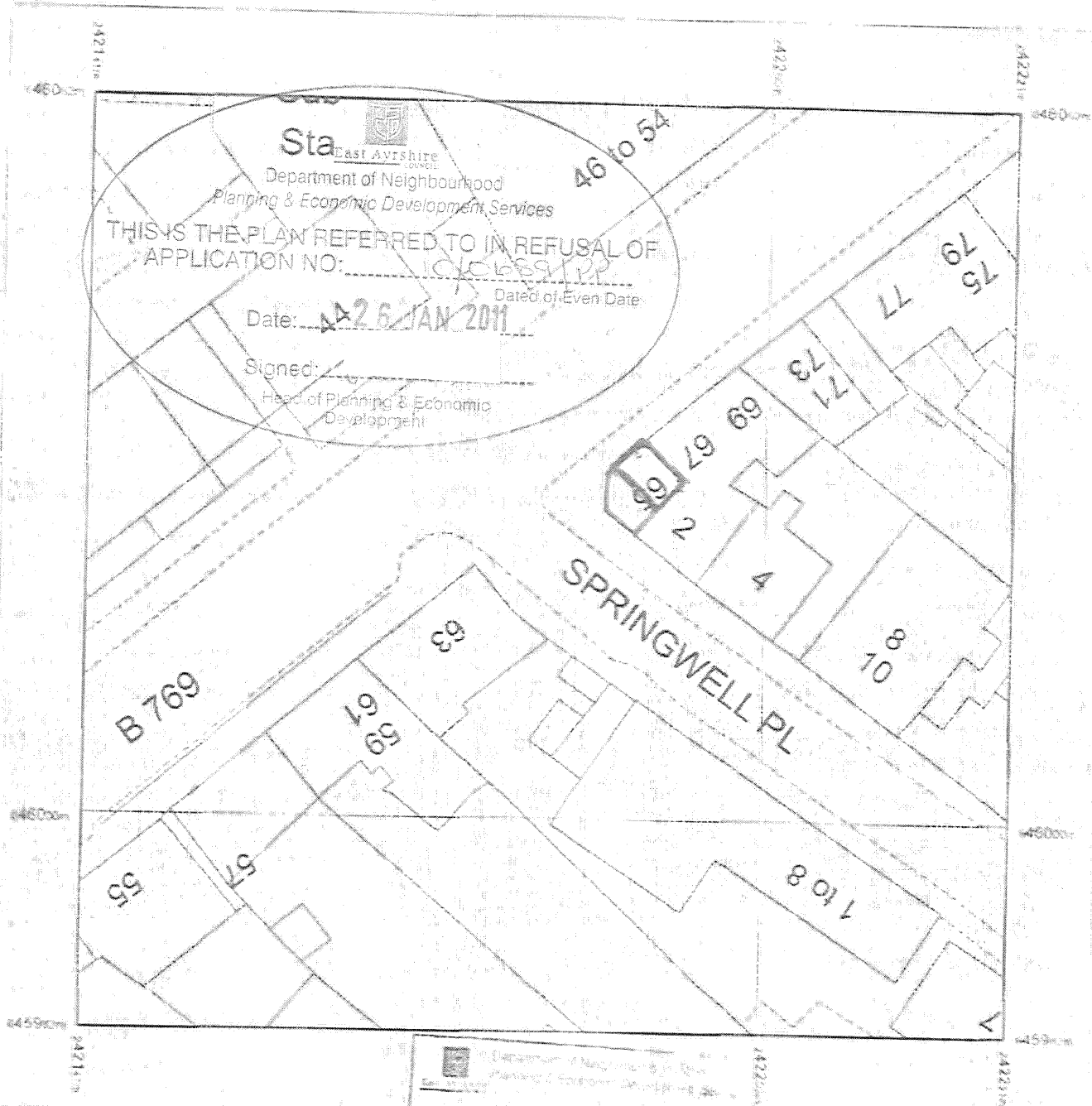


Scale 1:1250

Supplied by: **East Ayrshire Council**
 (Genl number: 00023600)
 (Centre coordinates: 242183.25/646072)

Further information can be found on the OS Sitemap information leaflet or the Ordnance Survey web site www.ordnancesurvey.co.uk

ADDRESS
BN165 High Street
Stewerton
KA3 6BP



Sta East Ayrshire Council
 Department of Neighbourhood
 Planning & Economic Development Services
 THIS IS THE PLAN REFERRED TO IN REFUSAL OF
 APPLICATION NO: 10/10689/PP
 Date: 26 JAN 2011
 Signed: _____
 Head of Planning & Economic
 Development

Department of Neighbourhood
 Planning & Economic Development
 East Ayrshire Council
 012 NOV 2010

ADDRESS
63/65 High Street
Stewarton
KA5 5BP

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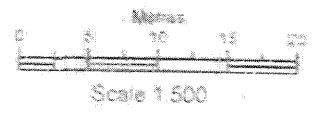
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The representation of features as lines is no evidence of a property boundary.

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 Series number: 00023700
 Centre coordinates: 242181, 25 646021 5

Further information can be found on the
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 Ordnance Survey website:
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East Ayrshire
 Department of Neighbourhood
 Planning & Economic Development Services

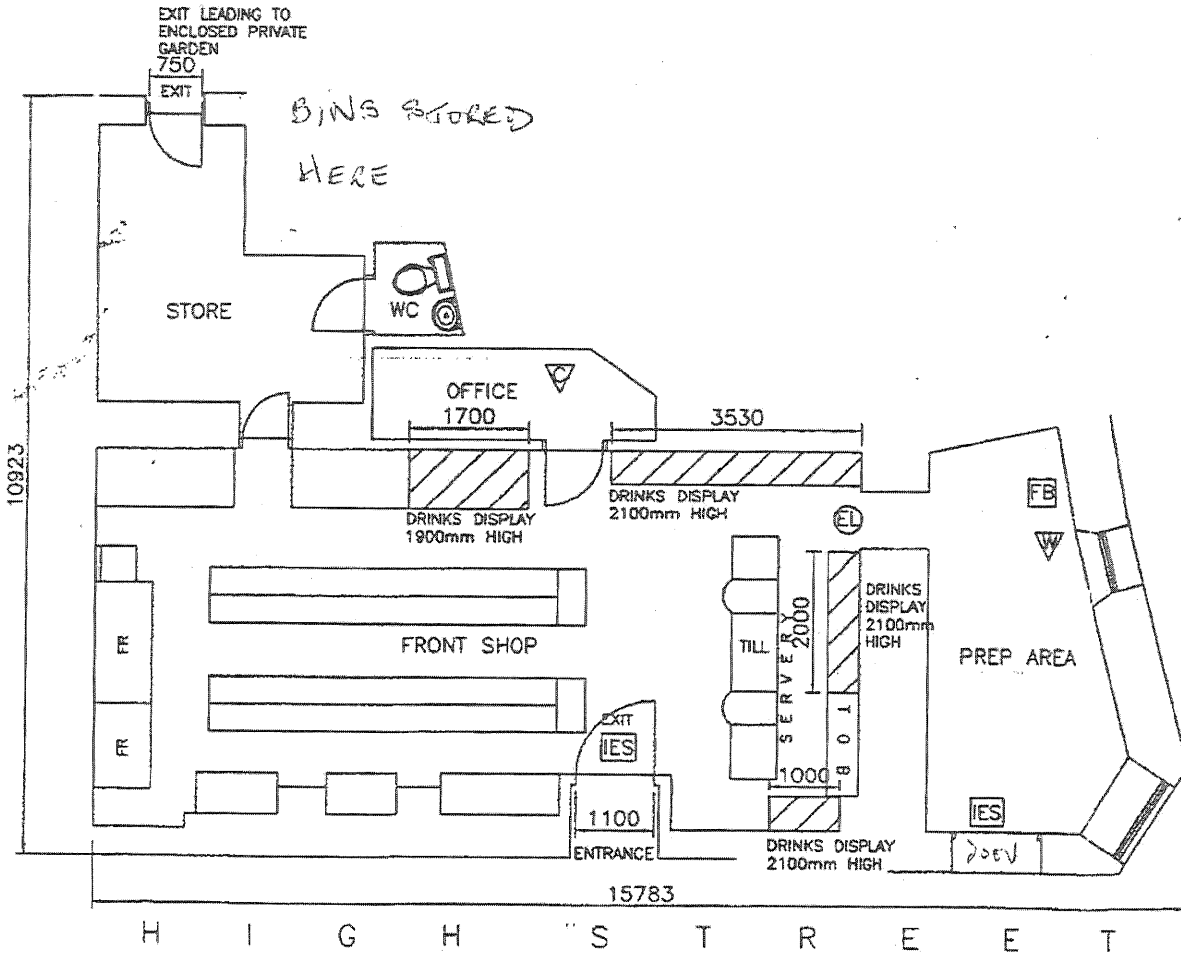
THIS IS THE PLAN REFERRED TO IN REFUSAL OF
 APPLICATION NO: 10/0689/1PP

Dated of Even Date

Date: 26 JAN 2011

Signed: _____

Head of Planning & Economic
 Development



GROUND FLOOR PLAN 1/100

This is
 Street

Deputy

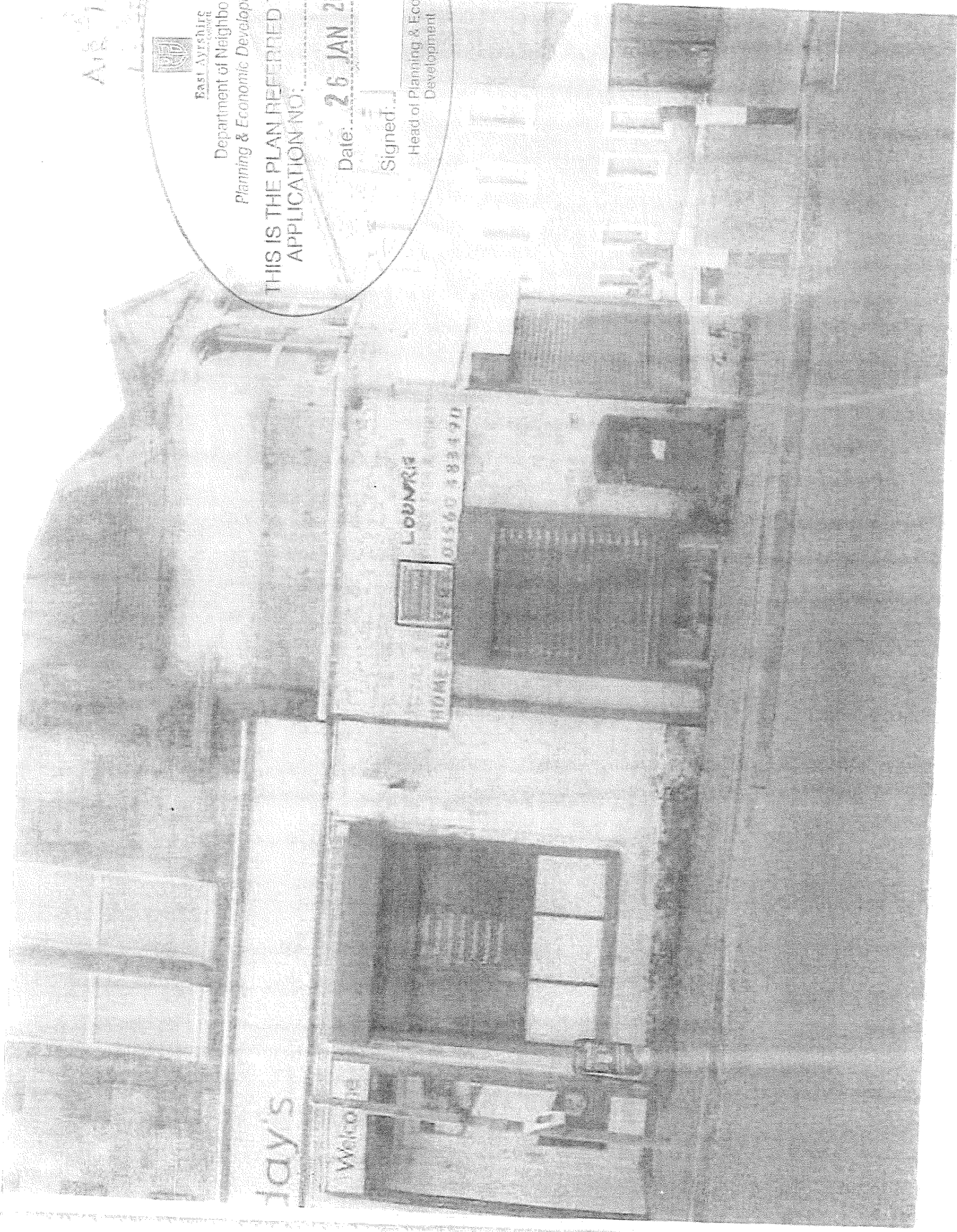
Air Street
L1 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100


East Ayrshire
Council
Department of Neighbourhood
Planning & Economic Development Services

THIS IS THE PLAN REFERRED TO IN REFUSAL OF APPLICATION NO. 10/01689/11
Dated of Even Date

Date: **26 JAN 2011**

Signed: _____
Head of Planning & Economic Development





East Ayrshire
Council

Department of Neighbourhood
Planning & Economic Development Services

THIS IS THE PLAN REFERRED TO IN REFUSAL OF
APPLICATION NO: 10/06891/P

Dated of Even Date

Date: 26 JAN 2011

Signed: _____

Head of Planning & Economic
Development

LOOVRZ

plasma clean

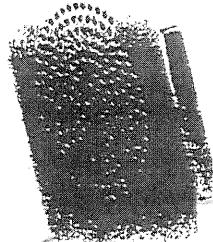
Xtract

TM

ODOUR NEUTRALIZER

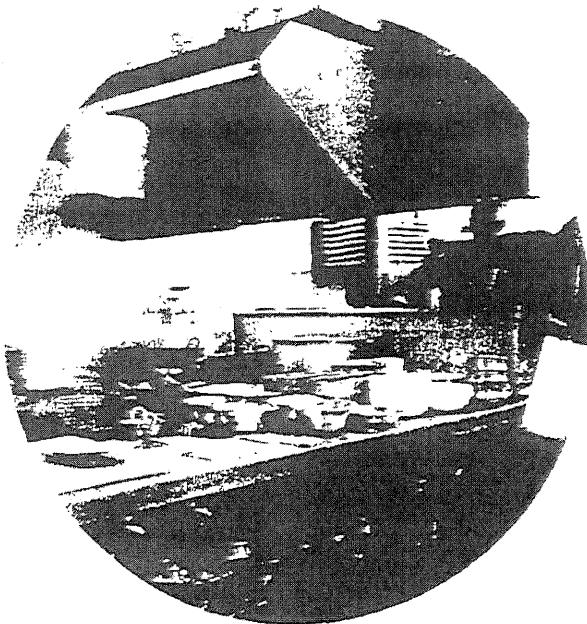
The Plasma Clean Xtract™ uses ozone - a well known disinfectant and odour neutralizer - which is released directly into the kitchen ventilation canopy. Here it immediately starts to act on cooking odours, grease and smoke.

Simple to install, with low maintenance and running costs, this versatile modular solution provides affordable and reliable odour control and grease reduction in one unit, making it the perfect partner for a wide range of kitchen canopies



Xtract™

- Low running costs
- Easier to maintain
- Inexpensive & simple to install



These compact and lightweight units have been designed for modern kitchens, where space is at a premium, and are an ideal solution for fast food bars, pubs and restaurants.

THIS IS THE PLAN REFERRED TO IN REFUSAL OF APPLICATION NO: 19/06891/2P

Dated of Even Date

Date: 26 JAN 2011

- More efficient high efficiency one
- More compact
- Ozone is injected at source

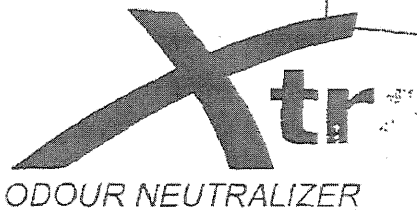
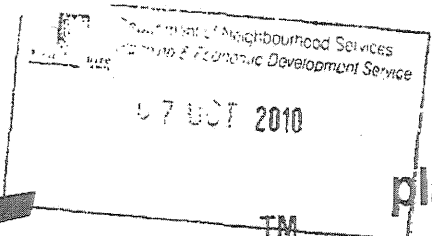
Other benefits include:

- Environmentally friendly
- Quiet operation
- Easily wired into fan electrics
- Locate within one metre of canopy
- Dampers for easy commissioning of flow on set-up
- For volume flow rates in excess of 4m³ per second this technology can be housed into the AAC system
- Higher volume flow rates can be handled by simply coupling up units.

For more information on this and any of our products, please contact

Tel: 08444 77 4884

Fax: 08444 77 4797



plasma clean

TECHNICAL INFORMATION

Oxidation using ozone and activated oxygen ions is used to treat odour emissions from commercial and industrial kitchen processes (DEFRA, 2005: *Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems*).

The Plasma Clean Xtract™ injects ozone into the kitchen extraction canopy where it reacts with odours, grease and smoke. These are oxidized in a chemical reaction which results in the production of carbon dioxide and water vapour. The ozone itself is consumed during the process and is converted back to oxygen.

Compact and Lightweight

The unit has been designed to be compact (343mm(L) x 185mm(W) x 307mm(H)) and lightweight (<12kg) so that it can be installed in kitchen areas where space is at a premium and/or where there is little load bearing capacity.

Installation

The unit has been designed to attach to the wall adjacent

to the kitchen canopy. The outlet is then connected into the kitchen canopy and the unit is plugged in or hardwired into mains electricity (230V/single phase/50Hz). Full installation instructions are provided.

Silent Operation

The unit sits outside of the kitchen extraction canopy and ozone is drawn into the kitchen canopy by the existing fans. There is no need to upgrade the existing fan and the unit operates silently.

Servicing

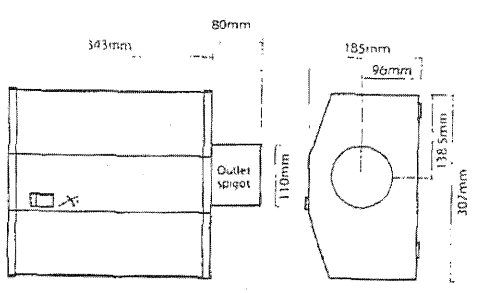
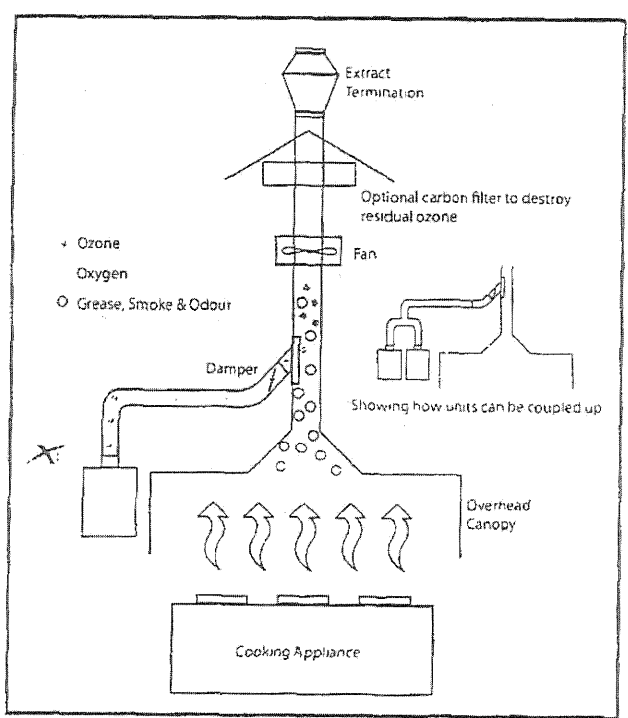
A planned maintenance contract is available upon request.

Additional Options

A fan can be fitted in the unlikely event that the kitchen extraction fan can not draw air through the unit. A site survey option is available upon request.

PCL 2100 Xtract™ Standard model
Technical Specification

Volume Flow Rate	Up to 2m ³ /s per Unit
Power Consumption (W)	250
Power Supply	230V/1ph/50Hz
Size (mm)	307Hx185Wx343L
Weight (kg)	12
Safety	<ul style="list-style-type: none"> • Circuit breaker 5A required.* • Air flow proving switch installed. • Fan power supply interlock.*
Operation	Fully automatic
On supply wiring	



AAC Eurovent is a proprietary trademark of AAC Eurovent Ltd. AAC Eurovent Ltd. reserves the right to alter designs without prior notice.



AAC Eurovent Ltd,
 AAC House, Unit K, Maybrook Road, Brownhills, West Midlands WS8 7DG. UK
 Email: sales@aaceurovent.co.uk Website: www.aaceurovent.co.uk
 Tel: 08444 77 4884 Fax: 08444 77 4797

DN3 - PP(Local Development)(Refusal)

Department of Neighbourhood Services
Head of Planning and Economic Development Service
Alan Neish Dip TP



Postal address: EAC Planning & Economic Development, PO Box 26191,
KILMARNOCK, KA1 9DX

E-mail address: submittoPlanning@east-ayrshire.gov.uk

Office locations: Kilmarnock 6 Croft Street, Kilmarnock, KA1 1JB
(if calling in person) Phone 01563 576790 Fax 01563 576774

Lugar Council Offices, Lugar, Cumnock KA18 3JQ
Phone 01563 555320 Fax 01563 555270

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(as amended by The Planning etc. (Scotland) Act 2006)**

**Town and Country Planning (Development Management Procedure)
(Scotland) Regulations 2008**

Application Reference Number: 10/0689/PP

TO: Mr Aftab Ahmed Malik
per
Carruthers Curdie Sturrock & Co
1 Howard Street
Kilmarnock
East Ayrshire
KA1 2BP

REFUSAL OF PLANNING PERMISSION

With reference to your application validated on **2nd November 2010** for planning permission under the above-mentioned Act and Regulations for the following development:

Change of use to form Hot Food Takeaway as indicated in the plans:

Plan Type	Reference	Version No	Received Date
Location Plan			02.11.2010
Block Plan			02.11.2010
Ground Floor Plan			26.07.2010
Other	AIR INPUT LOUVRE PICTURE		26.07.2010
Other	EXHAUST LOUVRE PICTURE		26.07.2010
Other	EXTRACT SYSTEM DETAILS REF 172		07.10.2010
Other	EXTRACT SYSTEM MANUFACTURER INFO		07.10.2010

AT

65 High Street, Stewarton, Kilmarnock, East Ayrshire, KA3 5DX

Elizabeth Morton, Depute Chief Executive/Executive Director of Neighbourhood Services

East Ayrshire Council in exercise of their powers under the above mentioned Act hereby **REFUSE** planning permission for the said development. The reasons for the Council's decision are:-

1. The proposed development would be contrary to Policy RTC 15 of the Adopted East Ayrshire Local Plan as;
A The proposed extraction system is in close proximity to residential property and will have a detrimental effect on the amenity of the adjacent properties by reason of odour. B. The proposed use is in close proximity to residential property and will have a detrimental effect on the amenity of the adjacent properties by reason of noise. C. The proposal is not compatible with surrounding land uses given the likely detrimental impact caused by noise and smell from the takeaway on the amenity of the surrounding residential properties.

Dated this 26th January 2011

Signed...

Alan Neish

Head of Planning and Economic Development

Notes to Applicant

1. If the applicant is aggrieved by the decision of the Planning Authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the Planning Authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 **within three months from the date of this notice**. A Notice of Review form for this purpose is available for download from the Councils website (<http://www.east-ayrshire.gov.uk/devsør/planandbuild/online.asp>) or on request by contacting the offices listed above. The completed Notice of Review form should be sent to the **Head of Democratic Services, East Ayrshire Council, Council Headquarters, London Road, Kilmarnock, KA3 7BU**.
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

STATEMENT by AFTAB AHMED
MALIK,

I am 38 years of age. I own six convenience stores in North, East and South Ayrshire. I purchased number 65 High Street, Stewarton about May/June 2005. I have not retained any correspondence from the solicitor who acted for me at that time. When I bought this shop the seller opened it from 6.00a.m. until 9.00p.m. He was selling a lot of hot take-away food e.g. burgers, fish and chips, grills, hot filled rolls and fries from the main shop. He told me had a "hard food" consent. I thought this covered the hot food take-away but I was not too concerned as at the time I purchased I was more concerned with simply buying the shop which had an off-sale licence under the 1976 Act. The seller told me he had been selling hot food for about eight years. The seller never mentioned to me that he had any complaints or warnings about the sale of hot food.

When I bought the shop there was no canopy cover over the cooking area or any louvres in the walls or odour extraction machinery.

After I bought the shop I discontinued hot food. I did sell cold filled rolls.

I restarted selling hot food a few months before I was served with a "Stop Notice". I was telephoned by East Ayrshire Environmental Health Department telling me that the sale of hot food was not authorised. I think there had been a complaint about the smell. I think the complainer was Mr. Dempster who had a flat above the shop entering from Springwell Place. He never complained to me but he did complain to my brother who runs the shop.

The shop is open from 6.00a.m. until 10.00p.m.

At present my busiest evenings are Friday and Saturday largely for the sale of alcohol.

Department of Neighbourhood Services
Planning & Economic Development Division

Head of Planning and Economic Development: Alan Neish, DipTP

If telephoning or calling
please ask for:



East Ayrshire
COUNCIL

David Wilson (01563) 576779

Our Ref: 09/0903/PP (DW/FR)

Date: 15 April 2010

Carruthers Curdie Sturrock and Co
1 Howard Street
KILMARNOCK
KA1 2BW

Dear Sirs

**PROPOSED CHANGE OF USE TO HOT FOOD TAKEAWAY
AT: 65 HIGH STREET, STEWARTON**

I refer to the above planning application by your client Mr Malik which is currently under consideration by this Planning Authority. The application has attracted comments from various consultees and has resulted in a number of objections from third parties.

) I have received comments from our Environmental Health Department with regard to the extract flues for the hot food takeaway use which I have enclosed for your attention. They have recommended refusal of the application given the unsatisfactory performance specification for the extract system.

7/5 Given this situation I would recommend that the application be withdrawn within 14 days of the date of this letter to allow your client to consider his position and provide further information to address these concerns if he wishes. Should the application not be withdrawn within this time period I shall proceed to determine the application as it stands and can confirm that a recommendation based on the current information will be for refusal.

- For the avoidance of doubt, any resubmission for a similar proposal before 18 March 2011 will not attract a further planning fee. Given the prominence of this location I would also not be supportive of a standard metal flue extraction arrangement at the front or side of the property on visual amenity grounds.

6 I look forward to hearing from you in respect of the above however do not hesitate to contact David Wilson on the above telephone number should you have any further queries.

Yours faithfully

 Craig Iles
PRINCIPAL PLANNING OFFICER

HighStreet65StewartonCarruthersCurdie3FR

COUNCIL OFFICES
6 CROFT STREET
KILMARNOCK KA1 1JB
TEL: 01563 576790
FAX: 01563 576774
www.east-ayrshire-council.gov.uk

Department of Corporate Support
Depute Chief Executive/Executive Director : Elizabeth Morton

Environmental Health
Western Road
Kilmarnock KA3 1LL

Tel: (01563) 554022/23
Fax: (01563) 554040

If telephoning or calling
please ask for: Mr. W. Gilchrist
01563 554007

MEMORANDUM

TO: HEAD OF PLANNING AND DEVELOPMENT CONTROL
Croft Street, Kilmarnock

FAO: David Wilson, Planning, Croft Street

FROM: PAUL L TODD
REGULATORY SERVICES MANAGER

REF: WG/SMCD - 274128

YOUR REF: 09/0903/PP

DATE: 07 APRIL 2010

Planning Application : 09/0903/PP
Proposed Development: HOT FOOD TAKEAWAY, 65 HIGH STREET, STEWARTON

I refer to my previous memo of 29th March 2010 and can now advise that having scrutinised the plans accompanying the application, I would recommend refusal of the application for the undernoted reason

1. The proposed flue arrangement is unsatisfactory and is unlikely to provide for adequate dispersal of cooking odours and fumes. It is suggested that the applicant re-consider the proposed arrangement, take appropriate advice from a professional ventilation engineer, and re-submit amended plans.

COUNCIL HEADQUARTERS
LONDON ROAD
KILMARNOCK KA3 7BU
TEL: 01563 576000
FAX: 01563 576500
www.east-ayrshire.gov.uk

DN3 - PP(Local Development)(Refusal)

Department of Neighbourhood Services
Head of Planning and Economic Development Service
Alan Neish Dip TP



Postal address: EAC Planning & Economic Development, PO Box 26191,
KILMARNOCK, KA1 9DX

E-mail address: submittoPlanning@east-ayrshire.gov.uk

Office locations: Kilmarnock 6 Croft Street, Kilmarnock, KA1 1JB
(if calling in person) Phone 01563 576790 Fax 01563 576774

Lugar Council Offices, Lugar, Cumnock KA18 3JQ
Phone 01563 555320 Fax 01563 555270

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(as amended by The Planning etc. (Scotland) Act 2006)**

**Town and Country Planning (Development Management Procedure)
(Scotland) Regulations 2008**

Application Reference Number: 09/0903/PP

TO: Mr Aftab Malik
per
Carruthers Curdie Sturrock And Co.
1 Howard Street
Kilmarnock
East Ayrshire
KA1 2BP

REFUSAL OF PLANNING PERMISSION

With reference to your application validated on **18th March 2010** for planning permission under the above-mentioned Act and Regulations for the following development:

Hot Food Takeaway as indicated in the plans:

Plan Type	Reference	Version No	Received Date
Location Plan			18.03.2010
Block Plan			18.03.2010
Photo	1		17.03.2010
Photo	2		17.03.2010
Floor Plans			17.03.2010
Specification Sheet	EXTRACTIO N		17.03.2010

AT


65 High Street, Stewarton, KA3 5BP

East Ayrshire Council in exercise of their powers under the above mentioned Act hereby **REFUSE** planning permission for the said development. The reasons for the Council's decision are:-

properties by reason of odour.

2. The proposed development would be contrary to Policy RTC 15 of the Alteration to the Adopted East Ayrshire Local Plan as the proposed extraction system is unsatisfactory and will have a detrimental effect on the amenity of adjacent properties by reason of odour.

Dated this 4th May 2010

Signed. 

Alan Neish

 Head of Planning and Economic Development

Notes to Applicant

1. If the applicant is aggrieved by the decision of the Planning Authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the Planning Authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 **within three months from the date of this notice**. A Notice of Review form for this purpose is available for download from the Councils website (<http://www.east-ayrshire.gov.uk/devser/planandbuild/online.asp>) or on request by contacting the offices listed above. The completed Notice of Review form should be sent to the **Head of Democratic Services, East Ayrshire Council, Council Headquarters, London Road, Kilmarnock, KA3 7BU**.
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

STATEMENT of MARK SPEIRS, W.
SPEIRS & SONS LIMITED,

I am aged 47. I am the sole director of W. Speirs & Sons Limited. My company installs ducting and extraction systems. I have worked in the business for 27 years.

I was asked to design an extraction system for a hot food take-away at 65 High Street, Stewarton which I did. The system was never installed because the owner was unable to obtain planning consent for use as a hot food utility.

The particular system which was designed was one which I consider would not have emitted any odour from the shop through the extraction system. The system is designed to emit hot air and some moisture but no odour. It will not be heard against ordinary daytime and evening background noise. However, any system is only as good as the maintenance carried out on it. The particular system has a drain installed in it to remove most of the water.

On the drawing which I supplied, the manufacturers web page is noted and for a technical explanation if the website is accessed then the technical data can be read.

I do not consider that the air emitted from the system would have any adverse effect on surrounding windows.

The particular system is so designed that any noise emitted should not exceed 50 decibels from a distance of 3 metres from the fan, which is located inside the shop. This is in accordance with technical guidance DW172 produced by the Heating and Ventilating Contractors' Association – the main UK trade association for companies involved with heating and ventilation work.

My company has installed only one previous system to this as is it new on the market. There have been no complaints regarding its functioning.

Department of Finance and Corporate Support

Executive Director: Alexander McPhee ACMA

Head of Legal, Procurement and Regulatory Services

Solicitor to the Council : David Mitchell

Environmental Health Service
Western Road
Kilmarnock
KA3 1LL

Direct Dial: (01563) 554007

Email: bill.gilchrist@east-ayrshire.gov.uk

If telephoning or calling please ask for: Mr. W. Gilchrist

Fax (01563) 554040



East Ayrshire
COUNCIL

WG/SMcD

31 MAY 2010

CARRUTHERS, CURDIE, STURROCK AND CO.
1 HOWARD STREET
KILMARNOCK
KA1 2BW

FAO MR. A REID HAMILTON

Dear Sir,

AFTAB AHMED MALIK,
65 HIGH STREET, STEWARTON

I refer to your letter of 26th inst., and to our discussion on 28th May regarding the above, and write to confirm that I would suggest the extract louvre for the proposed ventilation system be moved from the indicated position to a point on the elevation of the premises as far from the door and window of the adjoining property as possible. In addition, I can also confirm that I have spoken to colleagues in other authorities who advise that the proposed system is, when properly maintained, effective in odour control, however they add that the system is, as any other would be, not (in their opinion) 100% effective in removing all odours.

Yours faithfully

WILLIAM GILCHRIST
TEAM LEADER (POLLUTION CONTROL/CEU)

COUNCIL HEADQUARTERS
LONDON ROAD
KILMARNOCK KA3 7BU
TEL: 01563 576000
FAX: 01563 576500
www.east-ayrshire.gov.uk

Department of Neighbourhood Services
Planning & Economic Development Service
Head of Planning and Economic Development: Alan Neish, DipTP

Department of Neighbourhood Services
Planning & Economic Development Service
Head of Planning and Economic Development: Alan Neish, DipTP

David Wilson (01563) 576779



East Ayrshire
COUNCIL

Our Ref: 09/0903/PP (DW/CL)

Date: 31 May 2010

Carruthers Curdie Sturrock and Co
1 Howard Street
KILMARNOCK
KA1 2BW

Dear Sirs,

PROPOSED CHANGE OF USE TO HOT FOOD TAKEAWAY AT 65 HIGH STREET, STEWARTON

I write with regard to your recent correspondence following the refusal of the above planning application by your client Mr Malik.

I note that your client is considering resubmitting a planning application with a revised extraction system to take account of the key concerns raised during the previous application. The submitted information appears to be of a better quality than that previously considered however the Planning Authority cannot provide you with detailed comments on the operational acceptability of the system. During application consultation the Environmental Health section would provide such expert comment to the Planning Authority and as such I would suggest that you look to that section for detailed operational specifications. Notwithstanding this I would remain cautious given the close proximity of the extraction to residential property.

In terms of visual amenity, I have no particular concerns over an extract louvre type system as this is not an unusual feature on a building and I note that the existing property has such features, albeit of a different size. Should you look to a more traditional flue system I would highlight my early concerns over the visual prominence of such a system at this highly visible corner site.

Please note that the opinion given in this letter is without prejudice to the future consideration of any planning applications on this site.

Please do not hesitate to contact David Wilson on the above telephone number should you have any further queries.

Yours sincerely,

Craig Iles
PRINCIPAL PLANNING OFFICER

Department of Finance and Corporate Support
Executive Director: Alexander McPhee ACMA

Head of Legal, Procurement and Regulatory Services
Solicitor to the Council : David Mitchell

Environmental Health Service
Western Road
Kilmarnock
KA3 1LL

Direct Dial: (01563) 554007
Email: bill.gilchrist@east-ayrshire.gov.uk
If telephoning or calling please ask for: Mr. W. Gilchrist

Fax (01563) 554040



East Ayrshire
COUNCIL

WG/SMcD

10 JUNE 2010 BY FAX AND POST

CARRUTHERS, CURDIE, STURROCK AND CO.
1 HOWARD STREET
KILMARNOCK
KA1 2BW

FAO MR. A REID HAMILTON

Dear Sir,

AFTAB AHMED MALIK,
65 HIGH STREET, STEWARTON

I refer to your letter of 8TH inst with enclosures and note the contents thereof.
In response I can advise that the revised extract louvre position would be acceptable to this Department, with the proviso that should complaints of nuisance from smell etc. arise this Department would require to investigate under the relevant provisions of the Environmental Protection Act 1990.

Yours faithfully

WILLIAM GILCHRIST
TEAM LEADER (POLLUTION CONTROL/CEU)

COUNCIL HEADQUARTERS
LONDON ROAD
KILMARNOCK KA3 7BU
TEL: 01563 576000
FAX: 01563 576500
www.east-ayrshire.gov.uk

Department of Finance and Corporate Support

Executive Director: Alexander McPhee ACMA

Head of Legal, Procurement and Regulatory Services

Solicitor to the Council : David Mitchell

Environmental Health Service
Western Road
Kilmarnock
KA3 1LL

Direct Dial: (01563) 554007

Fax (01563) 554040

Email: bill.gilchrist@east-ayrshire.gov.uk

If telephoning or calling please ask for: Mr. W. Gilchrist

TO: HEAD OF PLANNING AND DEVELOPMENT CONTROL
Croft Street, Kilmarnock

FROM: PAUL L TODD
REGULATORY SERVICES MANAGER

REF: WG/SMCD

YOUR REF: 10/0689/PP

DATE: 24 NOVEMBER 2010

APPLICATION NO: 10/0689/PP

PROPOSAL: Change of use to form Hot Food Takeaway

ADDRESS: 65 High Street Stewarton Kilmarnock East Ayrshire

I refer to your recent communication regarding the above, and can advise that I have no objections in principle to the proposed development.

I would, however, comment 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.

Finally, 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.

COUNCIL HEADQUARTERS
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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: 24/1/11

Principal Planner: 

Signature:

Date:

Development

Status: Law In Force / Amendment(s) Pending

Environmental Protection Act 1990 c. 43

Part III STATUTORY NUISANCES AND CLEAN AIR

Statutory nuisances

This version in force from: **October 1, 2009** to **present**

(version 19 of 19)

[

79.— Statutory nuisances and inspections therefor.

(1) ^[43-10]~~[1]~~ Subject to subsections (1A) to (6A) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

[

(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;

]¹²

[

(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;

]¹³

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

(1B) Land is in a "contaminated state" for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

(a) harm is being caused or there is a possibility of harm being caused; or

(b) pollution of controlled waters is being, or is likely to be, caused;

and in this subsection "harm", "pollution of controlled waters" and "substance" have the same meaning as in Part IIA of this Act.

(2) Subsection (1)(b) [, (fb)]¹³ and (g) above do not apply in relation to premises—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

[

(5A) Subsection (1)(fa) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

] ¹²

[

(5B) Subsection (1)(fb) does not apply to artificial light emitted from—

(a) an airport;

- (b) harbour premises;
- (c) railway premises, not being relevant separate railway premises;
- (d) tramway premises;
- (e) a bus station and any associated facilities;
- (f) a public service vehicle operating centre;
- (g) a goods vehicle operating centre;
- (h) a lighthouse;
- (i) a prison.

] ¹³

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(6A) Subsection (1)(ga) above does not apply to noise made—

- (a) by traffic,
- (b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or
- (c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.

(7) In this Part—

[

[

“airport” has the meaning given by section 95 of the Transport Act 2000;

] ¹³

“appropriate person” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the National Assembly for Wales;

] ¹²

[

“associated facilities”, in relation to a bus station, has the meaning given by section 83 of the Transport Act 1985;

“bus station” has the meaning given by section 83 of the Transport Act 1985;

] ¹³

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

[

“goods vehicle operating centre”, in relation to vehicles used under an operator's licence, means a place which is specified in the licence as an operating centre for those vehicles, and for the purposes of this definition “operating centre” and “operator's licence” have the same meaning as in the Goods Vehicles (Licensing of Operators) Act 1995;

“harbour premises” means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition “harbour area” and “harbour operations” have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990;

] ¹³

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

[

“lighthouse” has the same meaning as in Part 8 of the Merchant Shipping Act 1995;

] ¹³

“local authority” means, subject to subsection (8) below,—

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) in England outside Greater London, a district council;

(bb) in Wales, a county council or county borough council;

(c) the Council of the Isles of Scilly; and

(d) in Scotland, a district or islands council or a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;

“noise” includes vibration;

“person responsible”—

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the Vehicle Excise and Registration Act 1994 and any other person who is for the time being the driver of the vehicle;

(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land and, subject to subsection (12) and, in relation to England and Wales, section 81A(9) below, any vessel;

[

“prison” includes a young offender institution;

]¹³

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

[

“public service vehicle operating centre”, in relation to public service vehicles used under a PSV operator’s licence, means a place which is an operating centre of those vehicles, and for the purposes of this definition “operating centre”, “PSV operator’s licence” and “public service vehicle” have the same meaning as in the Public Passenger Vehicles Act 1981;

“railway premises” means any premises which fall within the definition of “light maintenance depot”, “network”, “station” or “track” in section 83 of the Railways Act 1993;

“relevant separate railway premises” has the meaning given by subsection (7A);

]¹³

“road” has the same meaning as in Part IV of the New Roads and Street Works Act 1991;

“smoke” includes soot, ash, grit and gritty particles emitted in smoke;

“street” means a highway and any other road, footway, square or court that is for the time being open to the public; [;]¹³

[

“tramway premises” means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of “light maintenance depot”, “network”, “station” or “track” in section 83 of the Railways Act 1993;

]¹³

and any expressions used in this section and in the Clean Air Act 1993 have the same meaning in this section as in that Act and section 3 of the Clean Air Act 1993 shall apply for the interpretation of the expression “dark smoke” and the operation of this Part in relation to it.

[

(7A) Railway premises are relevant separate railway premises if—

(a) they are situated within—

(i) premises used as a museum or other place of cultural, scientific or historical interest, or

(ii) premises used for the purposes of a funfair or other entertainment, recreation or amusement, and

(b) they are not associated with any other railway premises.

(7B) For the purposes of subsection (7A)—

(a) a network situated as described in subsection (7A)(a) is associated with other railway premises if it is connected to another network (not being a network situated as

described in subsection (7A)(a);

(b) track that is situated as described in subsection (7A)(a) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in subsection (7A)(a));

(c) a station or light maintenance depot situated as described in subsection (7A)(a) is associated with other railway premises if it is used in connection with the provision of railway services other than services provided wholly within the premises where it is situated.

In this subsection "light maintenance depot", "network", "railway services", "station" and "track" have the same meaning as in Part 1 of the Railways Act 1993.

] ¹³

[

(7C) In this Part "relevant industrial, trade or business premises" means premises that are industrial, trade or business premises as defined in subsection (7), but excluding—

(a) land used as arable, grazing, meadow or pasture land,

(b) land used as osier land, reed beds or woodland,

(c) land used for market gardens, nursery grounds or orchards,

(d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person, and

(e) land included in a site of special scientific interest (as defined in section 52(1) of the Wildlife and Countryside Act 1981),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond.

(7D) For the purposes of subsection (7C)—

"agricultural" has the same meaning as in section 109 of the Agriculture Act 1947;

"agricultural unit" means land which is occupied as a unit for agricultural purposes;

"drain" has the same meaning as in the Water Resources Act 1991;

"lake or pond" has the same meaning as in section 104 of that Act;

"sewer" has the same meaning as in that Act.

] ¹²

(8) Where, by an order under section 2 of the Public Health (Control of Disease) Act 1984, a port health authority has been constituted for any port health district or in Scotland where by an order under section 172 of the Public Health (Scotland) Act 1897 a port local authority or a joint port local authority has been constituted for the whole or part of a port, the port health authority, port local authority or joint port local authority, as the case may be shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph [(fb),]¹³ (g) or (ga) of subsection (1) above and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

(9) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

(a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under [section 71](#) of the [Control of Pollution Act 1974](#) (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d), (e) [, (fb)]¹³ or (g) and in relation to Scotland, paragraph (ga), of subsection (1) above if proceedings in respect thereof might be instituted under [Part I](#) or under regulations under [section 2](#) of the [Pollution Prevention and Control Act 1999](#).

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) and , in relation to England and Wales, section 81A(9) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

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1. Modified by Environment Act 1995 c. 25 [Sch.22 para.89](#) (September 15, 2001 as SI 2001/3211)
 2. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 [Pt 9 s.101](#) (March 16, 2006 as SI 2006/768 and SI 2006/2797)
 3. Substituted by Contaminated Land (Scotland) Regulations 2005/658 (Scottish SI) [reg.2\(12\)](#) (April 1, 2006)
 4. In relation to Scotland:

79.— Statutory nuisances and inspections therefor.

(1) Subject to subsections [(1ZA)]⁵ to (6A) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;

[

- (ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;

]⁶

- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

[

- (faa) any insects emanating from premises and being prejudicial to health or a nuisance;

]⁴

(fba) artificial light emitted from—

- (i) premises;
- (ii) any stationary object,

so as to be prejudicial to health or a nuisance;

]⁸

- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;

- (h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under [section 80](#) below or [sections 80 and 80A](#) below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

[

(1ZA) The Scottish Ministers may by regulations—

- (a) amend this section so as to—
 - (i) prescribe additional matters which constitute statutory nuisances for the purposes of this Part;
 - (ii) vary the description of any matter which constitutes a statutory nuisance;

(b) in relation to an amendment under paragraph (a), amend this Act and any other enactment to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(1ZB) Before making regulations under subsection (1ZA) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (1ZC) below.

(1ZC) Those persons are—

- (a) such associations of local authorities; and
- (b) such other persons,

as the Scottish Ministers consider appropriate.

5

(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

(1B) Land is in a "contaminated state" for the purposes of sub section (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused;

and in this subsection "harm", "pollution" in relation to the water environment, "substance" and "the water environment" have the same meanings as in Part IIA of this Act.

(2) Subsection (1)(b) [, (fba)]² and (g) above do not apply in relation to premises [(or, in respect of paragraph (fba)(ii) above, a stationary object located on premises)]⁶—

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

[

(5ZA) For the purposes of subsection (1)(ea) above, "land"—

(a) includes structures (other than buildings) in, on or over land;

(b) does not include—

(i) mains or other pipes used for carrying a water supply;

(ii) any part of the public sewerage system;

(iii) any other sewers, drains or other pipes used for carrying sewage;

(iv) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

(v) the seabed.

(5ZB) In subsection (5ZA) above—

"drain", "sewage" and "sewer" have the meanings given by section 59 of the Sewerage (Scotland) Act 1968 (c.47);

"main" has the meaning given by section 109(1) of the Water (Scotland) Act 1980 (c.45);

“pipe” includes a service pipe within the meaning of that section of that Act;

“public sewerage system” has the meaning given by [section 29](#) of the Water Services etc. (Scotland) Act 2005 (asp 3).

1⁶[

(5AA) Subsection (1)(faa) above does not apply to insects that are wild animals included in [Schedule 5](#) to the Wildlife and Countryside Act 1981 (c.69).

(5AB) For the purposes of subsection (1)(faa) above, “premises” does not include—

(a) a site of special scientific interest (within the meaning of [section 3\(6\)](#) of the Nature Conservation (Scotland) Act 2004 (asp 6));

(b) such other place (or type of place) as may be prescribed in regulations made by the Scottish Ministers.

(5AC) Before making regulations under subsection (5AB)(b) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (5AD) below.

(5AD) Those persons are—

(a) such associations of local authorities; and

(b) such other persons,

as the Scottish Ministers consider appropriate.

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(5BA) Subsection (1)(fba) above does not apply to artificial light emitted from a lighthouse (within the meaning of [Part 8](#) of the Merchant Shipping Act 1995 (c.21)).

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(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(6A) Subsection (1)(ga) above does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.

(7) In this Part—

“chimney” includes structures and openings of any kind from or through which smoke may be emitted;

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“equipment” includes a musical instrument;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“local authority” means [...] —

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) in England outside Greater London, a district council;

(bb) in Wales, a county council or county borough council;

(c) the Council of the Isles of Scilly; and

(d) in Scotland, a district or islands council or a council constituted under [section 2 of the Local Government etc \(Scotland\) Act 1994](#);

"noise" includes vibration;

"person responsible"—

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the [Vehicle Excise and Registration Act 1994](#) and any other person who is for the time being the driver of the vehicle;

(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land [(subject to subsection (5AB) above)]² and, subject to subsection (12) and, in relation to England and Wales, section 81A(9) below, any vessel;

"private dwelling" means any building, or part of a building, used or intended to be used, as a dwelling;

"road" has the same meaning as in Part IV of the [New Roads and Street Works Act 1991](#);

"smoke" includes soot, ash, grit and gritty particles emitted in smoke;

"street" means a highway and any other road, footway, square or court that is for the time being open to the public;

and any expressions used in this section and in the [Clean Air Act 1993](#) have the same meaning in this section as in that Act and [section 3 of the Clean Air Act 1993](#) shall apply for the interpretation of the expression "dark smoke" and the operation of this Part in relation to it.

(8) Where, by an order under [section 2 of the Public Health \(Control of Disease\) Act 1984](#), a port health authority has been constituted for any port health district [...]³ the port health authority [...]³ shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph (g) or (ga) of subsection (1) above and no such order shall be made assigning those functions; and "local authority" and "area" shall be construed accordingly.

(9) In this Part "best practicable means" is to be interpreted by reference to the following provisions—

(a) "practicable" means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under [section 71 of the Control of Pollution Act 1974](#) (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d), (e) or (g) and in relation to Scotland, paragraph (ga), of subsection (1) above if proceedings in respect thereof might be instituted under [Part 1](#) or under regulations under [section 2 of the Pollution Prevention and Control Act 1999](#).

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) and, in relation to England and Wales, section 81A(9) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

5. Modified by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) Pt 9 s.112(2) (January 26, 2009)
6. Modified by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) Pt 9 s.111 (January 26, 2009)
7. Modified by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) Pt 9 s.109 (January 26, 2009)
8. Modified by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) Pt 9 s.110 (January 26, 2009)
9. Modified by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) Sch.3(1) para.1 (October 1, 2009: as SSI 2009/319)
10. In relation to Wales:

79.— Statutory nuisances and inspections therefor.

(1) Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- [
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
-] ¹¹
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;
- (h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

(1B) Land is in a "contaminated state" for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

- (a) harm is being caused or there is a possibility of harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be, caused;

and in this subsection "harm", "pollution of controlled waters" and "substance" have the same meaning as in Part IIA of this Act.

(2) Subsection (1)(b) [, (fb)] ¹¹ and (g) above do not apply in relation to premises—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the

Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;

and "visiting force" means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

(3) Subsection (1)(b) above does not apply to—

(i) smoke emitted from a chimney of a private dwelling within a smoke control area,

(ii) dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,

(iii) smoke emitted from a railway locomotive steam engine, or

(iv) dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

(4) Subsection (1)(c) above does not apply in relation to premises other than private dwellings.

(5) Subsection (1)(d) above does not apply to steam emitted from a railway locomotive engine.

(5A) Subsection (1)(fa) does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

[

(5B) Subsection (1)(fb) does not apply to artificial light emitted from—

(a) an airport;

(b) harbour premises;

(c) railway premises, not being relevant separate railway premises;

(d) tramway premises;

(e) a bus station and any associated facilities;

(f) a public service vehicle operating centre;

(g) a goods vehicle operating centre;

(h) a lighthouse;

(i) a prison.

] ¹¹

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(6A) Subsection (1)(ga) above does not apply to noise made—

(a) by traffic,

(b) by any naval, military or air force of the Crown or by a visiting force (as defined in subsection (2) above), or

(c) by a political demonstration or a demonstration supporting or opposing a cause or campaign.

(7) In this Part—

[

"airport" has the meaning given by [section 95](#) of the Transport Act 2000;

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"appropriate person" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the National Assembly for Wales;

[

"associated facilities", in relation to a bus station, has the meaning given by [section 83](#) of the [Transport Act 1985](#);

"bus station" has the meaning given by [section 83](#) of the Transport Act 1985;

11

"chimney" includes structures and openings of any kind from or through which smoke may be emitted;

"dust" does not include dust emitted from a chimney as an ingredient of smoke;

"equipment" includes a musical instrument;

"fumes" means any airborne solid matter smaller than dust;

"gas" includes vapour and moisture precipitated from vapour;

[

"goods vehicle operating centre", in relation to vehicles used under an operator's licence, means a place which is specified in the licence as an operating centre for those vehicles, and for the purposes of this definition "operating centre" and "operator's licence" have the same meaning as in the Goods Vehicles (Licensing of Operators) Act 1995;

"harbour premises" means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition "harbour area" and "harbour operations" have the same meaning as in [Part 3](#) of the Aviation and Maritime Security Act 1990;

11

"industrial, trade or business premises" means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

[

"lighthouse" has the same meaning as in [Part 8](#) of the Merchant Shipping Act 1995;

11

"local authority" means, subject to subsection (8) below,—

(a) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) in England outside Greater London, a district council;

(bb) in Wales, a county council or county borough council;

(c) the Council of the Isles of Scilly; and

(d) in Scotland, a district or islands council or a council constituted under [section 2](#) of the [Local Government etc \(Scotland\) Act 1994](#);

"noise" includes vibration;

"person responsible"—

(a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

(b) in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the [Vehicle Excise and Registration Act 1994](#) and any other person who is for the time being the driver of the vehicle;

(c) in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land and, subject to subsection (12) and, in relation to England and Wales, [section 81A\(9\)](#) below, any vessel;

[

"prison" includes a young offender institution;

] ¹¹

"private dwelling" means any building, or part of a building, used or intended to be used, as a dwelling;

[

"public service vehicle operating centre", in relation to public service vehicles used under a PSV operator's licence, means a place which is an operating centre of those vehicles, and for the purposes of this definition "operating centre", "PSV operator's licence" and "public service vehicle" have the same meaning as in the Public Passenger Vehicles Act 1981;

"railway premises" means any premises which fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;

"relevant separate railway premises" has the meaning given by subsection (7A);

] ¹¹

"road" has the same meaning as in Part IV of the New Roads and Street Works Act 1991;

"smoke" includes soot, ash, grit and gritty particles emitted in smoke;

"street" means a highway and any other road, footway, square or court that is for the time being open to the public; [] ¹¹

[

"tramway premises" means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of "light maintenance depot", "network", "station" or "track" in section 83 of the Railways Act 1993;

] ¹¹

and any expressions used in this section and in the Clean Air Act 1993 have the same meaning in this section as in that Act and section 3 of the Clean Air Act 1993 shall apply for the interpretation of the expression "dark smoke" and the operation of this Part in relation to it.

[

(7A) Railway premises are relevant separate railway premises if—

(a) they are situated within—

- (i) premises used as a museum or other place of cultural, scientific or historical interest, or
- (ii) premises used for the purposes of a funfair or other entertainment, recreation or amusement, and

(b) they are not associated with any other railway premises.

(7B) For the purposes of subsection (7A)—

(a) a network situated as described in subsection (7A)(a) is associated with other railway premises if it is connected to another network (not being a network situated as described in subsection (7A)(a));

(b) track that is situated as described in subsection (7A)(a) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in subsection (7A)(a));

(c) a station or light maintenance depot situated as described in subsection (7A)(a) is associated with other railway premises if it is used in connection with the provision of railway services other than services provided wholly within the premises where it is situated.

In this subsection "light maintenance depot", "network", "railway services", "station" and "track" have the same meaning as in Part 1 of the Railways Act 1993.

] ¹¹

(7C) In this Part "relevant industrial, trade or business premises" means premises that are industrial, trade or business premises as defined in subsection (7), but excluding—

(a) land used as arable, grazing, meadow or pasture land,

(b) land used as osier land, reed beds or woodland,

(c) land used for market gardens, nursery grounds or orchards,

(d) land forming part of an agricultural unit, not being land falling within any of paragraphs (a) to (c), where the land is of a description prescribed by regulations made by the appropriate person, and

(e) land included in a site of special scientific interest (as defined in section 52(1) of the Wildlife and Countryside Act 1981),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond.

(7D) For the purposes of subsection (7C)—

“agricultural” has the same meaning as in [section 109](#) of the Agriculture Act 1947;

“agricultural unit” means land which is occupied as a unit for agricultural purposes;

“drain” has the same meaning as in the Water Resources Act 1991;

“lake or pond” has the same meaning as in [section 104](#) of that Act;

“sewer” has the same meaning as in that Act.

(8) Where, by an order under [section 2](#) of the [Public Health \(Control of Disease\) Act 1984](#), a port health authority has been constituted for any port health district or in Scotland where by an order under [section 172](#) of the [Public Health \(Scotland\) Act 1897](#) a port local authority or a joint port local authority has been constituted for the whole or part of a port, the port health authority, port local authority or joint port local authority, as the case may be shall have by virtue of this subsection, as respects its district, the functions conferred or imposed by this Part in relation to statutory nuisances other than a nuisance falling within paragraph [(fb),]¹¹ (g) or (ga) of subsection (1) above and no such order shall be made assigning those functions; and “local authority” and “area” shall be construed accordingly.

(9) In this Part “best practicable means” is to be interpreted by reference to the following provisions—

(a) “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications;

(b) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures;

(c) the test is to apply only so far as compatible with any duty imposed by law;

(d) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances;

and, in circumstances where a code of practice under [section 71](#) of the [Control of Pollution Act 1974](#) (noise minimisation) is applicable, regard shall also be had to guidance given in it.

(10) A local authority shall not without the consent of the Secretary of State institute summary proceedings under this Part in respect of a nuisance falling within paragraph (b), (d), (e) [(fb)]¹¹ or (g) and in relation to Scotland, paragraph (ga), of subsection (1) above if proceedings in respect thereof might be instituted under [Part I](#) or under regulations under [section 2](#) of the [Pollution Prevention and Control Act 1999](#).

(11) The area of a local authority which includes part of the seashore shall also include for the purposes of this Part the territorial sea lying seawards from that part of the shore; and subject to subsection (12) and , in relation to England and Wales, section 81A(9) below, this Part shall have effect, in relation to any area included in the area of a local authority by virtue of this subsection—

(a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and

(b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State.

(12) A vessel powered by steam reciprocating machinery is not a vessel to which this Part of this Act applies.

11. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 [Pt 9 s.102](#) (January 31, 2007 as SI 2007/2797)
12. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 [Pt 9 s.101](#) (April 6, 2006 as SI 2006/795)
13. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 [Pt 9 s.102](#) (April 6, 2006 as SI 2006/795)

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Part III STATUTORY NUISANCES AND CLEAN AIR

Statutory nuisances

This version in force from: **January 26, 2009 to present**

(version 8 of 8)

80.— Summary proceedings for statutory nuisances.

(1) [Subject to subsection (2A) where]¹ a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”) imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) [Subject to section 80A(1) below, the abatement notice]² shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

[

(2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (a) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—

(a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or

(b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.

(2C) The conditions are—

(a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;

(b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority.

(2D) The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur.

(2E) The appropriate person is the person on whom the authority would otherwise be required under subsection (2A)(a) above to serve an abatement notice in respect of the nuisance.

]¹

(3) [A person served with an abatement notice]³ may appeal against the notice to a magistrates' court [or in Scotland, the sheriff]⁴ within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within [paragraph (a), (d), (e), (f), (fa) or (g) of section 79(1)]⁵ above except where the nuisance arises on industrial, trade or business premises;

[

(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

(i) the artificial light is emitted from industrial, trade or business premises, or

(ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;

]⁵

[

(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above

except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;

]⁶

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

[

(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(8B) For the purposes of subsection (8A) "relevant sport" means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(8C) In subsection (8A) "domestic premises" means—

(a) premises used wholly or mainly as a private dwelling, or

(b) land or other premises belonging to, or enjoyed with, premises so used.

]⁵

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within [paragraph (g) or (ga) of section 79(1)]⁷ above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.^{[⁹]⁸ [¹²]¹¹}

1.

Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 Pt 7 c.2 s.86 (April 6, 2006 as SI 2006/795)

2. Words substituted by Noise and Statutory Nuisance Act 1993 c. 40 s.3(2) (January 5, 1994)
3. Words substituted by Noise and Statutory Nuisance Act 1993 c. 40 s.3(3) (January 5, 1994)
4. Words inserted by Environment Act 1995 c. 25 Sch.17 para.3 (April 1, 1996)
5. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 Pt 9 s.103 (April 6, 2006 as SI 2006/795)
6. Added by Noise and Statutory Nuisance Act 1993 c. 40 s.3(4) (January 5, 1994)
7. Words inserted by Noise and Statutory Nuisance Act 1993 c. 40 s.3(5) (January 5, 1994)
8. Modified by Clean Neighbourhoods and Environment Act 2005 c. 16 Pt 9 s.103 (March 16, 2006 as SI 2006/768 and SI 2006/2797)
9. In relation to Wales:

80.— Summary proceedings for statutory nuisances.

(1) [Subject to subsection (2A) where]¹⁰ a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
- (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 80A(1) below, the abatement notice shall be served—

- (a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, on the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

[

(2A) Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—

- (a) serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2) above; or
- (b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

(2B) If a local authority has taken steps under subsection (2A)(b) above and either of the conditions in subsection (2C) below is satisfied, the authority shall serve an abatement notice in respect of the nuisance.

(2C) The conditions are—

- (a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence;
- (b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority.

(2D) The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur.

(2E) The appropriate person is the person on whom the authority would otherwise be required under subsection (2A)(a) above to

serve an abatement notice in respect of the nuisance.

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(3) A person served with an abatement notice may appeal against the notice to a magistrates' court or in Scotland, the sheriff within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £20,000.

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (fa) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

(aza) in the case of a nuisance falling within paragraph (fb) of section 79(1) above except where—

(i) the artificial light is emitted from industrial, trade or business premises, or

(ii) the artificial light (not being light to which sub-paragraph (i) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility;

(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

(8A) For the purposes of subsection (8)(aza) a relevant sports facility is an area, with or without structures, that is used when participating in a relevant sport, but does not include such an area comprised in domestic premises.

(8B) For the purposes of subsection (8A) "relevant sport" means a sport that is designated for those purposes by order made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

(8C) In subsection (8A) "domestic premises" means—

(a) premises used wholly or mainly as a private dwelling, or

(b) land or other premises belonging to, or enjoyed with, premises so used.

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) or (ga) of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under [section 66](#) of that Act, and when a level fixed under [section 67](#) of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

10. Added by Clean Neighbourhoods and Environment Act 2005 c. 16 [Pt 7 c.2 s.86](#) (October 27, 2006 as SI 2006/2797)

11. Figure substituted by Antisocial Behaviour etc. (Scotland) Act 2004 asp 8 (Scottish Act) [Sch.2\(1\) para.4\(4\)](#) (October 28, 2004)

12. In relation to Scotland:

80.— Summary proceedings for statutory nuisances.

(1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice ("an abatement notice") imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 80A(1) below, the abatement notice shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) A person served with an abatement notice may appeal against the notice to a magistrates' court or in Scotland, the sheriff within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

[

(4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a "fixed penalty notice") in accordance with [section 80ZA](#) offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

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(5) Except in a case falling within subsection (6) below, a person who commits an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(6) A person who commits an offence under subsection (4) above on industrial, trade or business premises shall be liable on summary conviction to a fine not exceeding £40,000.

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within [paragraph \(a\), \(d\), \(e\), \(f\) or \(g\) of section 79\(1\)](#) above except where the nuisance arises on industrial, trade or business premises;

(aa) in the case of a nuisance falling within paragraph (ga) of section 79(1) above except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes;

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney; and

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above.

(9) In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) or (ga) of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove—

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (construction sites, etc); or

(b) where the alleged offence was committed at a time when the premises were subject to a notice under section 66 of that Act (noise reduction notice), that the level of noise emitted from the premises at that time was not such as to constitute a contravention of the notice under that section; or

(c) where the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of that Act, and when a level fixed under section 67 of that Act (new buildings liable to abatement order) applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level.

(10) Paragraphs (b) and (c) of subsection (9) above apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed.

13. Added by Public Health etc. (Scotland) Act 2008 asp 5 (Scottish Act) [Pt 9 s. 113\(2\)](#) (January 26, 2009)

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Subject: Environmental health

Keywords: Abatement notices; Local authorities; Statutory nuisance; Summary procedure

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Alteration to East Ayrshire Local Plan

Key to Settlement Maps

		Policy No.
	Settlement Boundary	IND 5; RES 3, 4; RTC 3
	Town Centre Boundary	RTC 2, 4, 5, & 13
	Proposal	
	Housing Opportunity	RES 1
	Miscellaneous Opportunity	
	Business & Industry Opportunity	IND 4
	Open Space	CS 5 & 6
	Conservation Area	ENV 7
	Local Nature Reserve	ENV 13(iii)
	Number of houses in Development Site to be developed post 2017	
	Broad direction of future settlement growth 2017 to 2025 to meet Structure Plan requirements	

Policies SD 1 - 4 and 6 - 8; IND 9 - 12; TOUR 1 - 6; RES 2, 5 - 8 and 18 - 29; RTC 1, 7 and 14 - 21; CS 1, 2, 4, 7 - 12 and 14 - 18; WM 1 - 14; T 1 - 9; ENV 1 - 6, 9 - 12, 13(iii) - (vi), 14 and 18 - 26; Proposals PROP 2, 4 - 8, 10 - 12, 14 and 17 - 28; Recommendations REC 1 - 5 and 7 - 10 relate to the whole of the Local Plan Area.

Stewarton

In addition to the proposal numbers indicated in the Key Panel, proposals PROP16, PROP69, PROP71 & PROP72 refer specifically to the whole of the settlement.

