

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 1 APRIL 2010**

**10/0042/PP: CHANGE OF USE TO FORM HOT FOOD TAKEAWAY  
BY MR AHMED**

**AT 38 HOLEHOUSE ROAD, KILMARNOCK**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 This proposal involves the change of use of the existing garage with associated internal and external alterations to form a hot food takeaway/carry out. It is proposed to use the existing internal floorspace of the garage to form a waiting area with 2 tables and chairs and a food preparation area with associated storage and restroom areas. External alterations would comprise the formation of a new shopfront. No flue has been proposed, and this would require a further application to be submitted for consideration should the applicants require to erect one. No details of staff or visitor parking have been provided by the applicants.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the application should be refused for the reasons indicated on the attached sheet.**

#### **3. CONCLUSIONS**

3.1 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 Approved Ayrshire Joint Structure Plan (1999) and the Adopted Ayrshire Local Plan (2003).

3.2 There are no detailed policies of relevance in this instance in the Approved Ayrshire Joint Structure Plan, however, the proposal does not accord with Policy RTC15 of the Adopted East Ayrshire Local Plan and the application should therefore be refused unless material considerations indicate otherwise.

3.3 As indicated in Section 5 of the report and noting the impact of the hot food takeaway on neighbouring properties and the surrounding residential area, the proposal can be considered to be contrary to RTC15 of both the Adopted

Local Plan and the Alteration to the Local Plan (Finalised Version with Modifications). The points raised by the objectors indicate that the proposal has generated a high degree of local concern which is a significant material consideration.

3.4 As indicated in Section 6, there are no other material considerations that would support the application, indeed the Roads Division oppose the development.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Full Council as this would not constitute a significant breach of policy.

**Alan Neish**  
**Head of Planning and Economic Development**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

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AT 38 HOLEHOUSE ROAD, KILMARNOCK

### Report by Head of Planning and Economic Development

#### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Northern Local Planning Committee under the scheme of delegation as it is subject to more than ten objections.

#### 2. APPLICATION DETAILS

2.1 **Site description:** The application site comprises the single storey garage building on Holehouse Road at the corner of Grassyards Road, Kilmarnock. Adjacent to the garage is a shop trading as 'Heather Stores' which is also under the control of the applicant.

2.2. **Proposed Development:** This proposal involves the change of use of the existing garage with associated internal and external alterations to form a hot food takeaway/carry out. It is proposed to use the existing internal floorspace of the garage to form a waiting area with 2 tables and chairs and a food preparation area with associated storage and restroom areas. External alterations would comprise the formation of a new shopfront. No flue has been proposed, and this would require a further application to be submitted for consideration should the applicants require to erect one. No details of staff or visitor parking have been provided by the applicants.

#### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Piersland and Bentinck Community Council has offered the following observations on their consultation – [1] that there is only one parking space outside the shop at present, raising safety issues with cars trying to park at this location close to a busy junction; [2] the amount of litter that will be generated by the proposal; and [3] presently, when cars sit outside this location with their lights on, it is very off-putting for cars coming down the hill towards this busy junction.

***The Roads and Transportation Division have assessed the road safety concerns and commented at Section 3.2 of this report.***

3.2 East Ayrshire Council Roads and Transportation Division has recommended that the application be refused as customer parking outside the shop could cause road safety issues with regard to vehicles leaving the junction of Grassyards Road/Holehouse Road. Such vehicles require a clear view over a length of road to allow safe exit. East Ayrshire Council are considering a pedestrian crossing in future which could raise issues with customer parking. It is also noted that no indication has been provided of the number of employees and the location of employee parking.

***It is not within the power of the applicant to preclude on street parking at this location.***

3.3 East Ayrshire Council Environmental Health and Licensing Division have noted that they are unable to provide a response due to the lack of details on ventilation, but also raise wider concerns about the introduction of this type of use in a largely residential area.

***The above requirements for a flue could only be addressed by the submission of a further application, however, the wider environmental issues which raise concern are discussed in detail in Section 4, 5 and 6 below.***

#### **4. REPRESENTATIONS**

4.1 27 letters of objection and a petition containing 41 signatures have been received relating to the proposed development. The main points of objection are as follows:

4.2 Increased litter, vermin, noise and activity concerns have been raised by the majority of the objectors noting an existing litter problem in the area which seems to be exacerbated by selected patrons visiting the current shop and can be excessive at peak times. The main concerns are that despite the efforts of Cleansing staff to keep this area litter free, the volume of litter and activity that might be generated by a hot food use would be unacceptable to the surrounding residents and would encourage vermin.

***The surrounding area is of a residential nature and this proposal could unacceptably impact upon residential amenity to the detriment of the surrounding residential properties in this established residential area.***

4.3 In terms of cooking odours, no proposals have been submitted to ascertain how cooking odours will be dissipated, therefore the Council's Environmental Health Division have been unable to comment on the proposal in terms of the effect of cooking odours. Although the proposal would be unable to operate without a flue, a further application would be required if a flue was proposed. The objectors have stated that the combination of a fish and chip, and curry facility within the one unit would, in itself, be detrimental to the residential amenity of the area.

***Objections based on odours could be controlled to an extent through the introduction of a flue which would be required should Members decide to grant consent. However, this would require the successful submission of a further application as it has not been included in this current proposal.***

4.4 The proposals would lead to an increase in loitering, which would disturb the residents in the surrounding areas. This would cause disturbance to surrounding properties as a result of noise which would adversely impact on this quiet residential area.

***Issues arising from anti-social behaviour such as loitering are a common theme throughout the letters of objection. In this respect, the Police would have a role in terms of kerbing anti social behaviour. However there would be likely to arise additional general disturbance as a result of the premises which would have an overall impact upon the established residential amenity for residents who live in surrounding properties. This use, by its very nature, is one which would encourage early evening and late night activity as customers arrive and depart with purchases.***

4.5 The proposed use would lead to an increased level of traffic generation which would have an impact on road safety given the adjacent busy road junction which has previously been the site of road accidents.

***The Council's Roads and Transportation Division has highlighted concerns in terms of road safety and has recommended refusal of this application as detailed in Section 3.2 of this report.***

4.6 There is no need for the proposed use.

***This is not a material planning consideration and therefore cannot be taken into account in the assessment of this application.***

4.7 The proposal is contrary to Policy RTC15 of the East Ayrshire Local Plan as the application does not meet any of the 4 criteria. This is because the site would be overdeveloped and inconsistent with the surrounding residential area, it

would add to problems with existing traffic levels, it would have a detrimental impact on the amenity of adjacent properties by virtue of general disturbance, noise, litter and odour and would be incompatible with surrounding properties noting the established residential character and amenity of the area.

***Policy RTC15 is discussed in Section 5 of this report.***

4.8 The shop unit already operates a hot food takeaway business.

***Following inspection of the site, the food being sold from the premises is currently ancillary to the main retail use of the building.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (AJSP) (2007) which has no relevant detailed policies, and the Adopted East Ayrshire Local Plan (EALP) (2003).

### Adopted East Ayrshire Local Plan (EALP) (2003)

5.2 Policy RTC15 states that development proposals for public houses and hot food takeaways will be considered acceptable uses within town centres and may be considered appropriate in other locations where the proposals:

(i) meet the Council's design and layout policies;

***It is considered that the development meets the Council's relevant design guidance on shopfronts noting that the alterations proposed would result in an aesthetic improvement to the existing garage building.***

(ii) meet with the requirements of the Council as Roads Authority;

***The Council's Roads and Transportation Division has recommended refusal on road safety grounds.***

(iii) do not have detrimental effect on the amenity of adjacent properties by reason of noise, litter, odour or any other disturbance;

***The development of a hot food takeaway has the potential to create negative impacts in terms of litter, noise and odour. As the property is adjacent to a number of residential houses, which currently experience problems of amenity as detailed in the letters of objection, these concerns carry a significant degree of weight and it is considered that the proposed development would not comply with***

***Policy RTC15 in terms of the effect the proposal would have on the surrounding residential amenity in an established residential area.***

- (iv) are compatible with surrounding land uses.

***The surrounding land use is predominantly residential in nature with the current convenience shop forming one of two small commercial properties in the immediate locale. Currently, the existing premises offer day-to-day convenience shopping for the surrounding residents. The introduction of a hot food carry out would not be consistent with the four criteria identified where such uses are proposed outwith the town centre.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of this application are the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications), the consultation responses and letters of representation detailed in Section 3 of the report, the impact upon amenity and the planning history of the site.

### Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications)

6.2 The new Policy RTC15 considers the same aspects as that of the current adopted Policy RTC15, which is discussed in section 5.2 of this report. The application is considered to be contrary to Policy RTC15 of the Alteration.

### Consultation Responses

6.3 The consultation responses have been addressed in Section 3 of the report. The Road and Transportation Division recommended refusal of the application.

### Representations Received

6.4 Turning to the objections received, the concerns raised generally relate to loss of amenity, traffic impact, road safety, litter and hot food takeaway uses in the vicinity and anti-social behaviour. The issues raised by the objectors are consistent with this Division's concerns relative to the negative impact of the proposal on residential amenity. Objections have also been received that are reflected in the Roads Division's concerns about road safety in respect of proximity to the junction of Grassyards Road/Holehouse Road.

## Planning History

6.5 There is no outstanding planning history for the site.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial or legal implications for the Council in the determination of this application.

## **8. CONCLUSIONS**

8.1 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 Approved Ayrshire Joint Structure Plan (1999) and the Adopted Ayrshire Local Plan (2003).

8.2 There are no detailed policies of relevance in this instance in the Approved Ayrshire Joint Structure Plan, however, the proposal does not accord with Policy RTC15 of the Adopted East Ayrshire Local Plan and the application should therefore be refused unless material considerations indicate otherwise.

8.3 As indicated in Section 5 of the report and noting the impact of the hot food takeaway on neighbouring properties and the surrounding residential area, the proposal can be considered to be contrary to RTC15 of both the Adopted Local Plan and the Alteration to the Local Plan (Finalised Version with Modifications). The points raised by the objectors indicate that the proposal has generated a high degree of local concern which is a significant material consideration.

8.4 As indicated in Section 6, there are no other material considerations that would support the application, indeed the Roads Division oppose the development.

## **9. RECOMMENDATION**

9.1 It is recommended that the application should be refused for the reasons indicated on the attached sheet.

**Alan Neish**  
**Head of Planning & Economic Development**

MF/KW  
17 March 2010  
FV/DVM

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Full Council as this would not constitute a significant breach of policy.

### **List of Background Papers**

1. Application form, plans and statutory notices/certificates;
2. Public Advertisements;
3. Statutory Consultations;
4. Representations received
5. Adopted East Ayrshire Local Plan;
6. Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications);

Anyone wishing to inspect the above papers should contact Marion Fergusson on 01563 576769.

***Implementation Officer: Dave Morris***

**East Ayrshire Council**

## TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1997

**Application No: 10/0042/PP**

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Location	38 Holehouse Road Kilmarnock East Ayrshire KA3 7AU
Nature of Proposal:	Change of use to form hot food takeaway
Name and Address of Applicant:	Mr Nisar Ahmed Heather Stores 38 Holehouse Road Kilmarnock KA3 7AU
Name and Address of Agent	KRS Design 42 Old Mill Road Kilmarnock KA1 3AX

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Officer's Ref: Marion Fergusson  
01563 576769

The above planning permission application should be refused for the following reasons:

1. The proposed development would result in a detrimental affect on the residential amenity of adjacent properties and that of the surrounding area in terms of noise, litter, odour and general disturbance. The proposal is therefore considered to be contrary to Policy RTC15 of the Adopted East Ayrshire Local Plan 2003 and Policy RTC15 of the Alteration to the East Ayrshire Local Plan (Finalised Draft with Modifications) (2009) and there are no material considerations which would warrant the granting of the application in this instance.
2. The proposed development would be contrary to the requirement to secure road safety at the junction of Grassyards Road with Holehouse Road because customer parking would obstruct necessary sight lines.