

**EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE 02 APRIL 2009**

**08/0828/FL: PROPOSED CHANGE OF USE TO HOT FOOD CARRY-OUT AND  
DIVISION OF EXISTING SHOP**

**BY: MR SHARIF  
AT: 3 GROUGAR ROAD, CROOKEDHOLM, KILMARNOCK**

**Report by Head of Planning and Economic Development**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 This proposal involves the subdivision of the existing shop to provide a hot food takeaway/carry out, installation of a flue and minor alterations to the frontage. The remainder of the premises will continue as a shop. The materials proposed for the frontage alterations would be as existing. In short, it is proposed to half the property - the proposed hot food takeaway area amounts to some 5 metres in width, with the remaining shop being 5.5 metres.

1.2 The applicant has not submitted a supporting statement with the application. The applicant has been contacted by this Division in terms of the progress of the application and the associated issues; however no justification has been submitted.

1.3 The proposed flue is proposed to be of stainless steel, to be sited on the rear elevation of the property, taken through the roof and finishing no higher than the ridge of the roof.

**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).

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

3.2 As indicated in Section 5 of the report, due to the impact that is considered will result from the hot food takeaway on neighbouring properties and the surrounding residential area in general, 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 Modification). It is considered that the nearby centre of Hurlford would be a more appropriate location for a hot food takeaway noting its more predominant mix of established residential and commercial uses. Whilst there are no outstanding issues raised by the consultees, the points raised by the objectors to the application indicate that the proposal has generated a high degree of local concern. Given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused from a planning policy perspective unless material considerations indicate otherwise. The applicant has not submitted any justification for the proposal, therefore there are no other material considerations lending support to this application.

### **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 Principal Planning Committee 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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#### 08/0828/FL: PROPOSED CHANGE OF USE TO HOT FOOD CARRY-OUT AND DIVISION OF EXISTING SHOP

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#### 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, traditionally constructed property of 3 Grougar Road, which is currently a convenience/licensed grocers shop. The shop is attached to a dwelling at No 1 Grougar Road (which lies outwith the application site and is not within the applicant's control), with No 3 fronting directly onto Grougar Road. To the east is King George's playing field, children's play area and local community centre, to the north and west is housing, and to the south is a public car park. The building measures approximately 10.5 metres by 7.5 metres.

2.2. **Proposed Development:** This proposal involves the subdivision of the existing shop to provide a hot food takeaway/carry out, installation of a flue and minor alterations to the frontage. The remainder of the premises will continue as a shop. The materials proposed for the frontage alterations would be as existing. In short, it is proposed to half the property - the proposed hot food takeaway area amounts to some 5 metres in width, with the remaining shop being 5.5 metres.

2.3 The applicant has not submitted a supporting statement with the application. The applicant has been contacted by this Division in terms of the progress of the application and the associated issues; however no justification has been submitted.

2.4 The proposed flue is proposed to be of stainless steel, to be sited on the rear elevation of the property, taken through the roof and finishing no higher than the ridge of the roof.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Hurlford and Crookedholm Community Council has not responded to their consultation at the time of writing this report.

***Noted.***

3.2 East Ayrshire Council Roads and Transportation Division has no objections to make relative to the proposed development subject to advisory notes relating to the footway being kept clear of building materials.

***Noted.***

3.3 East Ayrshire Council Environmental Health and Licensing Division has no objections in principle but offer suggested conditions, if the application is to be approved, as follows:

- Noisy work during construction should be restricted to 8am-7pm Monday to Friday; 8am-1pm on a Saturday and no noisy work on a Sunday; and noise arising from the works should not cause the underlying background noise level to rise by more than 3 dB;
- All drainage should be completed to the satisfaction of SEPA and/or Scottish Water; including the installation of a suitable grease trap within the drainage layout;
- All waste arising from construction works should be disposed of to the satisfaction of the Waste Management Authority and otherwise by burning;
- The proposed ventilation system should be completed as per the plan attached to the application;
- At least one additional sink should be provided in each kitchen in addition to those shown on the plan;
- Suitable ventilation provision should be made, arising from the use of the proposed facilities;
- Provision should be made for the storage of waste water prior to its disposal; and
- If any suspected contamination is discovered, the Council's Contaminated Land Officer should be notified, along with any remedial measures to be undertaken in this event.

The Environmental Health and Licensing Division also offered the comments that the overall size of the proposal gives cause for concern, as space within both the kitchen and public areas is extremely limited.

***The above requirements can be addressed by attaching relevant conditions and advisory notes should Members decide to grant planning consent.***

#### **4. REPRESENTATIONS**

4.1 Four letters of objection, representing five individual objectors and a petition containing 23 signatures has been received relating to the proposed development following the statutory neighbour notification process and public advertisement of the proposals. The main points of objection are as follows:

4.2 The site is adjacent to a number of dwellings and immediately attached to one. It is questionable that the development could be created without causing major nuisance impact to the neighbouring residents, namely - noise, litter, smells, etc generally associated with this type of operation.

***The Council's Roads and Transportation Division and the Council's Environmental Health and Waste Management Division has no objections to make on the proposals. The concerns highlighted in the letters of objection do have merit and collectively impact upon residential amenity and the resultant quality of such amenity for residents should the proposal be granted planning permission.***

***Notwithstanding the fact that consultees have not objected, this Division generally shares the concerns of the objectors and noting that the surrounding area is essentially of a residential nature where late night commercial activity is not pre-dominant, there is a concern that this proposal could unacceptably impact upon residential amenity particularly in terms of activity, its associated noise and cooking smells arising from the site. The application site is located on Grougar Road set back from Main Road where most of the commercial properties within Crookedholm are located. The site is surrounded by residential properties and is the gateway to the residential estate.***

***The dwellinghouse to the rear of the site is not associated with this application site and lies within separate ownership to the application site. The proposal to locate the external flue for the hot food takeaway use through the rear plane of this roof would be***

***immediately in front of this separate residential property and its visual and functional impact would be significant.***

4.3 The proposals could lead to an increase in loitering and antisocial behaviour, which could result in disturbance to the residents in the surrounding areas. The current premises operate as a licensed grocers shop. The area has been subject to antisocial behaviour in the vicinity with youths purchasing alcohol and the provision of hot food would exacerbate matters. This would lead to disturbance to surrounding properties.

***The Council's Environmental Health and Waste Management Division has no adverse comments to make on the proposals, however, objections based on anti-social behaviour that may stem from the conversion of part of the premises to a hot food takeaway are a common theme throughout the letters of objection received. It is considered that such behaviour would have an overall impact upon the established residential amenity for residents who live in surrounding properties. The site, as alluded to above, is set back from Main Road and is bound by residential properties. It is not located within the primary commercial area of Crookedholm and Hurford and is in a residential area where residents would reasonably expect to have less activity later into the evening. This use by its very nature is one which would encourage loitering and late night activity as customers arrive and depart with purchases in addition to the associated litter etc. It would also encourage noise from customer vehicles in terms of engine noise and car doors opening and closing. Although the Council's Roads and Transportation Division have not objected in terms of road safety noting the adjacent public car park, there remains a serious concern regarding the associated activity arising from visitors arriving by vehicle to this property.***

4.4 The proposed use would lead to an increased level of traffic generation, which would have an impact on road safety impact for the nearby children's playground.

***The Council's Roads and Transportation Division has no adverse comments to make on the proposal in terms of road safety however as detailed in section 4.3 above, there remain concerns regarding the impact that increased levels of vehicles would have, arriving later into the evening, on the residential quality of the surrounding area and the resultant impact on residents.***

4.5 Another ground objection raised was that 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.***

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

5.1 Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications are 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 (AJSP) (2007) and the Adopted East Ayrshire Local Plan (EALP) (2007).

### Approved Ayrshire Joint Structure Plan (AJSP) (2007)

5.2 It is not considered that there are any Policies within the AJSP relevant to the determination of this application. The application therefore falls to be assessed against the provisions of the adopted East Ayrshire Local Plan 2003.

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

5.3 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 no major external alterations are proposed.***

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

***The Council's Roads and Transportation Division has no objections to make to the proposed development.***

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

***It is considered that 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 physically joined to the dwelling at No. 1 Grougar Road, it is considered there will be a particular***

***environmental impact on this property with relation to the siting of the proposed flue. The concerns in relation to amenity are further detailed in section 4 of this report and it is not considered that the proposed development complies with Policy RTC15.***

- (iv) are compatible with surrounding land uses.

***The surrounding land use is primarily residential in nature with the current convenience shop forming one of two small commercial properties in the immediate locale. There is a small convenience shop which also sells hot food such as filled rolls etc during the day at the junction of Grougar Road and Main Road however this use does not have late opening hours.***

***It is considered that a hot food takeaway such as proposed will have a far more negative impact on the residential properties than that of the current convenience store. It is considered that a hot food takeaway would be more appropriate in the centre of nearby Hurlford where there is a mix of residential and commercial uses and where residents living in nearby properties might reasonably expect more activity continuing later into the evening.***

## **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 DRAFT WITH MODIFICATION)**

6.2 For clarity, whilst development proposals will continue to be assessed first and primarily against the Adopted Local Plan, the Council has now given Authority for an appropriate and proportionate degree of weight to be given to the Alteration to the East Ayrshire Local Plan in the determination of planning applications. In this case, significant weight can be given to Policy RTC15.

6.3 The new Policy RTC15 considers the same aspects as that of the current adopted Policy RTC15, which is discussed in section 5.3 of this report. There are significant amenity concerns which are considered to impact to a major extent upon surrounding residential properties. These impacts will be in terms of increased activity later into the evening by the very nature of a proposed hot food takeaway, the associated visual impacts of a larger flue and the noise and smells that would have a bearing on adjoining and nearby properties.

## Consultation Responses

6.4 The consultation responses have been addressed in Section 3 of the report and are not considered to raise any issues that would warrant the refusal of this application. Any issues that have been received are considered to be able to be addressed by appropriately worded conditions and/or advisory notes should Members decide to grant consent.

## Representations Received

6.5 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. Whilst noted, the concerns of objectors are not echoed by the consultation responses received from the consultees. Notwithstanding this the issues raised by the objectors are in line with this Division's concerns relative to the impact on residential amenity and negative impact upon the established residential environment enjoyed by occupants of neighbouring properties.

## Planning History

6.6 Planning Application No: 08/0110/FL; the proposed change of use to hot food carryout and division of existing shop and installation of flue, was withdrawn by the applicant on 6 June 2008.

***The above application was withdrawn following concerns being expressed by this Division relative to the points raised in the letters of objections received.***

6.7 The applicant was subsequently contacted in writing following the validation of this current application before Members and was advised that this application appeared to be identical to the previous application which was withdrawn. The applicant was asked whether he wished to proceed with this development or provide a statement to support his proposals. As no reply or justification for the proposal was received, the application stands to be determined on its own merits.

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

8.2 As indicated in Section 5 of the report, due to the impact that is considered will result from the hot food takeaway on neighbouring properties and the surrounding residential area in general, 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 Modification). It is considered that the nearby centre of Hurlford would be a more appropriate location for a hot food takeaway noting its more predominant mix of established residential and commercial uses. Whilst there are no outstanding issues raised by the consultees, the points raised by the objectors to the application indicate that the proposal has generated a high degree of local concern. Given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused from a planning policy perspective unless material considerations indicate otherwise. The applicant has not submitted any justification for the proposal, therefore there are no other material considerations lending support to this application.

## **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/RH  
23 March 2009  
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 Principal Planning Committee 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. Policy RTC 15 of the Adopted East Ayrshire Local Plan;
6. Policy RTC 15 of the Alteration to the East Ayrshire Local Plan (Finalised Draft);
7. Planning Application: 08/0110/FL.

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

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0828/FL

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Site of Proposal: 3 Grougar Road  
Crookedholm  
Kilmarnock, KA3 6LD

Nature of Proposal: Proposed change of use to hot food carry-out  
and division of existing shop

Name & Address of Applicant: M Sharif  
3 Grougar Road  
Crookedholm  
Kilmarnock  
KA3 6LD

Name & Address of Agent: n/a

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DPOs Reference: MF/RH

The above FULL application should be refused on the following grounds:

Reasons for Refusal

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 there are no material considerations which would warrant the granting of this application in this instance.
2. 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 Alteration to the East Ayrshire Local Plan (Finalised Draft with modifications) (2009) and there are no material considerations which would warrant the granting of this application in this instance.