

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 25 APRIL 2008

**08/0141/FL: REMOVAL OF CONDITION NO. 1 FROM PLANNING CONSENT
06/1111/FL TO ALTER THE HOURS OF OPERATION
AT 17 BROWN STREET, NEWMILNS
BY FLEETPOINT LTD**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The application relates to the removal of condition No. 1 of planning consent 06/1111/FL which states that “the use of the premises for the activity hereby approved shall only take place between 08:30 to 17:30 Monday to Friday and 08:30 to 12:30 on a Saturday and at no time on a Sunday.” The new hours of operation proposed by the applicant for the M.O.T. garage are Monday to Friday 08:00 – 17:30, Saturday 08:00 – 17:30 and Sunday 09:00 – 15:00.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated in the report the application is not considered to be fully in accordance with the terms of the Development Plan. Therefore it should be refused unless material considerations indicate otherwise.

3.2 There are material considerations relevant to the application and it is considered that these are of sufficient weight to merit refusal of the 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 will not require to be referred to the Principal Planning Committee as it would not be a significant departure from Council policy.

Alan Neish
Head of Planning, Development and Building Standards

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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08/0141/FL: REMOVAL OF CONDITION NO. 1 FROM PLANNING CONSENT
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AT 17 BROWN STREET, NEWMILNS
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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 Local Planning Committee under the scheme of delegation, due to the fact that more than ten objections have been submitted in respect of the application.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is currently occupied by an M.O.T garage, a store, staffroom and associated office building at 17 Brown Street, Newmilns. The application site, measuring approximately 524 square metres, is bounded to the north by Brown Street, to the west by the residential property at 19 Brown Street and to the east by the residential property at 15 Brown Street. The application site is bounded to the south by open space. Entrance to the site is taken from the existing access from Brown Street which leads to the existing yard area.

2.2 **Proposed Development:** The application relates to the removal of condition No. 1 of planning consent 06/1111/FL which states that "the use of the premises for the activity hereby approved shall only take place between 08:30 to 17:30 Monday to Friday and 08:30 to 12:30 on a Saturday and at no time on a Sunday." The new hours of operation proposed by the applicant for the M.O.T. garage are Monday to Friday 08:00 – 17:30, Saturday 08:00 – 17:30 and Sunday 09:00 – 15:00.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division has no objection to the proposal.

Noted.

3.2 East Ayrshire Councils Environmental Health Section has no objection to the proposal but has suggested that if planning consent was to be granted it should be for a temporary time period of one year in order to determine whether any level of disturbance is likely to be caused by the additional working hours.

Planning permission was approved for the use of the site for an M.O.T. garage under a previous consent 06/1111/FL and this consent conditioned the hours of operation of the business. It should be noted that the Council has since received complaints from residents about noise from the site and of operations being undertaken outwith the hours specified. The Planning Division investigated the complaints and the current planning application was submitted by the applicant in an attempt to regularise the situation.

3.3 Newmilns and Greenholm Community Council has not commented on the application.

Noted.

3.4 Scottish Power has no objection to the proposal.

Noted.

3.5 Scottish Water has offered no objection to the proposal.

Noted.

3.6 Scottish Environment Protection Agency has no objection to the proposal.

Noted.

4. REPRESENTATIONS

4.1 The applicant submitted a letter of support for the application. The supporting correspondence states that the removal of the restrictions on the operational hours would allow M.O.T tests by appointment only. As the applicant pays commercial rates for a commercial property he assumes that he would be able to work in line with the same regulations as other M.O.T testing stations. The applicant believes that the restrictions relate to M.O.T. testing, therefore if there was no M.O.T. testing at this property then the garage would not have to operate under these restrictions and could open and close at any given time. Because of the financial implications of being unable to provide a service of M.O.T. by appointments to the public, this may be the case in the near future.

It is noted that the applicant proposes to provide an M.O.T. service by appointment only. However, the applicant should be aware that the hours of operation imposed by condition number one of planning consent 06/1111/F, apply to the overall garage facility, not just to the provision of the M.O.T. service. Given that the garage is located in a predominantly residential area it is considered that providing additional hours of business operation would result in an adverse affect on the residential amenity of the surrounding area.

4.2 Twenty five letters of objection were received, from twenty seven parties, in connection with the proposal, the majority of the objections were in the form of a standard letter. The points of objection are summarised below:

Parking

4.3 More often than not I am unable to park my car outside or near my house. I have lost count of the number of occasions on which cars, which do not belong to neighbours, have been parked outside my house for days and literally weeks at a time.

The Council's Roads and Transportation Division has not raised any objection to the proposal. In addition, the Roads Division has not made any adverse comment regarding on street parking at the proposed site. It is considered that issues of on street parking and illegal parking are a matter for East Ayrshire Council's Roads Division and Strathclyde Police respectively.

4.4 Since Fleetpoint Ltd commenced operation they have regularly and consistently had customers vehicles parked and trade vehicles parked on both sides of Brown Street within the vicinity of their premises, causing disruption to residents' parking and displacing parking up and down the street.

The Council's Roads and Transportation Division has not objected to the application and has not raised any adverse comments in relation to on street parking.

4.5 Residents have become concerned at the length of time some vehicles are left unattended (up to a week or more) and on occasions have left notices on vehicles to the effect that if not removed they will be reported to the police as abandoned.

Any issues regarding on street illegal parking or abandoned vehicles are a matter for Strathclyde Police.

4.6 Commercial vehicles attending at or being repaired at Fleetpoint Ltd. premises are often left parked outside houses blocking and causing disruption, in some cases to television and radio reception.

It is acknowledged that some commercial vehicles are parked on the public street. However, it is considered that the on street parking of such vehicles would not result in a long term or permanent adverse effect on the daylight provision to any dwellinghouse on the street. Whilst it is acknowledged that the on street parking of larger commercial vehicles may interfere with television and radio reception to adjacent dwellinghouses it is considered that the interference would be temporary in nature and would not result in a permanent loss of signal.

Breach of Existing Conditions

4.7 It is a condition of Fleetpoint Ltd's existing planning consent that they operate within certain hours believed to be 8am – 5pm Monday to Friday and 8am to 12.30pm on a Saturday. The proprietor has blatantly ignored these restrictions since his business opened, alleging that he uses the premises for personal use on a single classic car. The hours are systematically breached, particularly on Saturdays and Sundays when it is common for work to continue until 4pm or 5pm.

Planning consent was granted for the change of use from a workshop to M.O.T. garage on 16 February 2007 (06/1111/FL). Condition number one of the planning permission states that “the use of the premises for the activity hereby approved shall only take place between 08:30 to 17:30 Monday to Friday and 08:30 to 12:30 on a Saturday and at no time on a Sunday.”

The Council has received complaints from residents stating that Fleetpoint is operating outwith the hours of operation approved by planning consent 06/1111/FL. The Planning Division investigated the resident's complaints which resulted in the proprietor of Fleetpoint submitting the current planning application to alter the hours of operation of the business.

Noise

4.8 Noise from Fleetpoint Ltd is a particular problem at the weekends when trying to make use of our garden. Late into the afternoon metal against metal hammering, revving of engines, loudspeaker telephone ringing, raised voices and other noises are a constant disruption. This has had an impact on the level of peace and enjoyment previously experienced in our garden prior to Fleetpoint Ltd opening.

The issue of noise levels is a matter for the Council's Environmental Health Section. Whilst the Council's Environmental Health Section has not objected to the application they suggest that a temporary consent be granted to enable future monitoring of noise levels generating from the site. The Planning Division has received

complaints from residents relating to issues of noise and disturbance at Fleetpoint. Consequently it is considered that any extension to the hours of operation, particularly at the weekend and evenings would result in an adverse affect on the residential amenity of the area and would not be mitigated by a temporary planning consent.

4.9 Noise from the outside telephone bell ringing can be heard at either end of the street and during the night and noise from car doors banging.

The noise levels generated by the telephone and from the car doors, would be a matter for the Council's Environmental Health Section.

4.10 Brown Street is a busy road through the week because of traffic going to and from Vesuvius but at the weekends residents enjoy a quieter few days. Fleetpoint are noisy enough through the week, extending hours would cause unacceptable levels of noise throughout the weekend.

It is acknowledged that Brown Street includes commercial, industrial and residential properties. However it is considered that the proposed alteration to the hours of operation of Fleetpoint to extend further into the weekend, evenings and early morning could result in additional noise levels thereby adversely affecting the residential amenity of the adjacent dwellinghouses.

Residential Amenity

4.11 The nature of Brown Street is predominantly residential. Many residents have young children. Allowing the applicant to extend the opening hours will not only increase the hours during which commercial/industrial noise will intrude but also, on the evidence of the applicant's operations to date, will result in even greater numbers of his customers vehicles including commercial vehicles parking in the street.

It is acknowledged that the proposal to extend the operational hours of the M.O.T. garage to include the weekend, evenings and earlier on weekday mornings will provide opportunity to bring noise and disturbance into a predominantly residential area into hours when other sources of noise and disturbance have subsided, resulting in an adverse affect on the residential amenity of the area.

4.12 Traffic to and from the applicant's site, the parking of vehicles being repaired and attending the site and the noise of operations are injurious to the resident's amenities. Amenity is the characteristic of an area which induces people to want to live there and want to continue living there.

The proposal to increase the hours of operation of the business will potentially result in a related increase in the number of customers using the M.O.T. garage. Consequently it is considered that the proposal will result in a detrimental affect on the residential amenity of the neighbouring properties.

4.13 The overall nature of Brown Street and quality of housing is gradually improving the length of the street. The objectors and residents wish to retain the predominant residential nature and the implications for improvement of the housing stock and quality of life.

It is acknowledged that Brown Street includes commercial, industrial and residential uses. However, it is noted that the predominant nature of the area surrounding the application site is residential use and as such it is considered that the proposal to increase the hours of operation of the M.O.T. garage would result in an adverse affect on the character and residential amenity of the area.

Security

4.14 A growing number of people hanging around outside Fleetpoint and near to commercial vehicles parked on the street by Fleetpoint. It makes it impossible to know if these people have legitimate business or are of bad intent.

Issues of possible anti social behaviour are a matter for Strathclyde Police.

Burning of Material

4.15 Material is burned at Fleetpoint during the day which I thought was banned and is dangerous. Fires burning at all times from the back of the garage, thus preventing neighbours from opening windows.

The issue of fires being set and burning of materials are matters that may have relevance to Strathclyde Fire Brigade and the Council's Environmental Health Section. However, it is possible for any planning consent to be conditioned such as to prevent burning of materials on site.

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 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 (2003).

Adopted East Ayrshire Local Plan

5.2 Policy IND 6 requires all proposals for new industrial or business development on land not specifically identified for such purposes on the Local Plan maps and changes of use of existing premises to industrial or business use to be justified against a set of eight separate criteria. In this instance five of the eight criteria are applicable:-

- (i) locational need ;

The application site is currently used as an M.O.T. garage and the applicant has confirmed that there has been a previously established industrial and/or storage use on the site for a period of more than ten years. It is considered that since the site has a history of commercial use and an historic general industrial use then a locational need is justified in this instance.

- (ii) availability of alternative land/premises in established industrial areas or on land identified as part of the marketable industrial land supply

It is considered that as the proposal is to extend the operational hours of a business on a site with a history of general industrial and storage use, the applicant does not require to demonstrate alternative business premises in this instance.

- (iii) economic benefit

It is considered that the proposal would result in economic benefit to the area.

- (iv) impact on surrounding environment and adjacent uses

Whilst it is acknowledged that the application site has a long established commercial and industrial use it is considered that the proposed extension to the current hours of operation, particularly at the weekend and evenings, would result in an adverse impact on the residential amenity of the surrounding environment. Given that the application site is predominantly surrounded by residential properties the proposal to extend the hours of operation of the M.O.T. garage would provide opportunity for additional noise and general disturbance, outwith standard operational hours, within a predominantly residential environment.

- (v) transportation and infrastructure implications

The Council's Roads Division has offered no objections to the proposal.

5.3 It is considered that the proposal would result in an adverse affect on the residential area and does not conform with Policy IND 6 of the Local Plan.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, the planning history of the site and the impact on the amenity of the area.

Consultation Responses

6.2 The consultation responses do not indicate that the application should be refused.

Representations

6.3 The representations received have been summarised in Section 4 of the Report and are considered to be of such weight as to merit refusal of the application.

Impact on the Amenity of the Area

6.4 It is acknowledged that the application has a long established use as a commercial/industrial site and that the site is currently used as an M.O.T. garage. However, given that the proposal is to extend the operational hours of the business on a site located within a predominantly residential area it is considered that the proposal would result in a detrimental effect on the amenity of the area.

Planning History

6.5 Planning permission (KL/W/FL/76/310L) was granted on 14 January 1993 for the erection of three dwellinghouses.

6.6 Planning permission 06/1111/FL was granted on 16 February 2007 for change of use from a workshop to M.O.T garage.

6.7 Planning permission 07/0339/FL was granted on 29 June 2007 for the erection of a store/staffroom in retrospect.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council arising from this application.

8. CONCLUSIONS

8.1 As indicated in the report the application is not considered to be fully in accordance with the terms of the Development Plan. Therefore it should be refused unless material considerations indicate otherwise.

8.2 There are material considerations relevant to the application and it is considered that these are of sufficient weight to merit refusal of the application.

9. RECOMMENDATION

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

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 will not require to be referred to the Principal Planning Committee as it would not be a significant departure from Council policy.

Alan Neish
Head of Planning and Economic Development

16 April 2008 (JL/SA)
FV-DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letters of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Planning permission KL/W/FL/76/310L
7. Planning permission 06/1111/FL
8. Planning permission 07/0339/FL

Anyone wishing to inspect the above papers please contact Jane Little, Planning Officer, on 01563 576768.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

08/0141/FL

Site of Proposal: 17 Brown Street
NEWMILNS

Nature of Proposal: Removal of condition No. 1 of planning consent
06/1111/FL to alter hours of operation.

Name & Address of Applicant: Fleetpoint Ltd
17 Brown Street
Newmilns
KA16 9AD

DPOs Reference:

The above FULL application should be refused for the following reasons:

1. The proposed development does not comply with the requirements of Policy IND 6 (iv) of the East Ayrshire Local Plan as additional hours of operation of the business would be detrimental to the amenity of the surrounding environment and to the adjacent residential properties, by virtue of increased noise and activity.
2. The proposed development, in a predominantly residential area, by reason of general disturbance outwith standard operational hours would adversely affect the residential amenity of the area.

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