

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 28 MARCH 2008

**07/0973/FL: INSTALLATION OF EXTRACT CANOPY, DUCTING AND FANS
TO KITCHEN (IN RETROSPECT)
AT MAXWOOD HOTEL, 10-12 MAXWOOD ROAD, GALSTON
BY MR S.A. CHOUDHRY**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The application site comprises a 1.5 storey hotel and restaurant set in the predominantly residential area of Maxwood Road within the settlement boundary of Galston. The hotel building has been extended to the rear with a large 1.5 storey extension, dormers windows and flat roofed rear extensions as well as a flat roof extension to the front. The building is finished in various materials including slate to the pitched portions of the roof and sandstone and painted render finish to the walls. The site is surrounded by residential properties. To the north of the site, across Maxwood Road, are flatted properties and to the west and east of the hotel, directly adjacent, are further residential properties. To the south of the hotel is the parking area accessed along the west side of the Hotel with a further dwellinghouse to the south of this area.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the condition on the attached sheet.

3. CONCLUSIONS

3.1 As detailed in Section 5 of the report, there are no Structure or Local Plan policies relevant to this proposal.

3.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The consultation response returned from the Councils Environmental Health Service has offered no adverse comments on the development in terms of smells or noise emanating from the flues. The main points of objections raised by the community council and objectors centre around smells and noise. It is considered that the comments from the Environmental Health Service carry significant weight and thus adequately address these issues

as will the requirement to fit appropriate filters to screen out smells, pursued by Environmental Health as a result of a complaint. As pointed out in response to these objection points, should excessive noise or smells be found to be emanating from the flues, appropriate measures to address them could be pursued through the appropriate environmental health legislation at that time. It is considered that the installation of two flues to an existing restaurant business is acceptable and will not adversely impact upon the amenity of the area.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application will not require to be referred to the Parent Planning Committee as it would not constitute a significant departure for policy.

Alan Neish
Head of Planning & 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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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 planning application which is to be considered by the Local Planning Committee under the scheme of delegation, since it has been the subject of objection from more than ten parties.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a 1.5 storey hotel and restaurant set in the predominantly residential area of Maxwood Road within the settlement boundary of Galston. The hotel building has been extended to the rear with a large 1.5 storey extension, dormers windows and flat roofed rear extensions as well as a flat roof extension to the front. The building is finished in various materials including slate to the pitched portions of the roof and sandstone and painted render finish to the walls. The site is surrounded by residential properties. To the north of the site, across Maxwood Road, are flatted properties and to the west and east of the hotel, directly adjacent, are further residential properties. To the south of the hotel is the parking area accessed along the west side of the Hotel with a further dwellinghouse to the south of this area.

2.2 **Proposed Development:** The applicant has installed two extract flues onto the single storey flat roofed kitchen extension to the rear of the hotel. The flues are 1.5 metres in height with the top 0.5 metres above the height of the flat roof. The flues project 65cm horizontally from the building at the widest section and are formed with a pyramidal style top. The flues are finished externally in galvanised stainless steel. The internal steel canopy houses filters and baffle filters for grease extraction to prevent/minimise smell and noise escape.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Environmental Health Service have no adverse comments to make. They have advised that they are currently investigating one complaint regarding smells from the flues under the Environmental Protection Act 1990 as a result of this complaint the applicant will fit suitable activated carbon filters to screen the smells generated through cooking.

Noted.

3.2 Galston Community Council have objected to this proposal on the following grounds:

- It is a retrospective planning application. These applications are all too frequent and would appear to be a shortcut to getting the planning consent required knowing that otherwise there would be objections.

Planning legislation allows the submission of retrospective planning applications however the retrospective nature of the application does not alter the consideration of the merits of the proposal.

- As of 11 December 2007 the neighbours of the above mentioned premises have not yet had any communication from the applicant regarding this planning application.

This issue was put to the applicant and it was admitted that neighbour notification had not been undertaken. The applicant has since undertaken neighbour notification and has certified this undertaking.

- The residents surrounding this hotel are dreading the coming months as to the constant smell of cooking infiltrating into their homes.

The Councils Environmental Health Service have not objected to this development however they are investigating one complaint as detailed at 3.1 above. Should smells become an issue in the future, the issue could be addressed through the Environmental Protection Act 1990 by the Environmental Health Service at that time.

- It is understood that the hotel has recently repositioned all the cookers in their kitchen thus their requirement to reposition the said extractors.

The layout of the kitchen is not a material planning consideration and therefore cannot be taken into consideration in the determination of this application.

- It would appear that the main reason for the enhanced kitchen is so as to build up a carry out trade. We believe that this requires another planning application.

The use of the premises as a hot food takeaway may require a planning application dependant on the nature and extent of any such activity. However this application is solely to determine the acceptability of the extract flues to the rear of the hotel and any unauthorised introduction of a hot food takeaway without the benefit of the necessary planning consent can be the subject of enforcement action if required.

- The residents are concerned as to the viability of selling their property as the constant smell of curry is bound to depreciate the sale ability of their premises.

The value of neighbouring properties is not a material planning consideration and cannot be taken into consideration in the determination of this application.

4. REPRESENTATIONS

One petition with 17 signatures has been received in connection with this application as well as two individual letters of objection and one from Galston Community Council, detailed above.

The objectors raise the following concerns:-

4.1 It is a well known fact that the smell of curry will penetrate all over Maxwood Road

The Councils Environmental Health Service has stated that it has no objections to the proposed development although they have advised that one complaint has been received as detailed at 3.1 above. Should the presence of smells cause a nuisance in the future, this issue could be pursued through the Environmental Protection Act 1990 at that time.

4.2 The vents are below eaves level causing more odour.

The vents of the flues are not below eaves level of the flat roofed extension and should therefore not add to any existing odours.

4.3 I have a conservatory with 9 windows that open onto my garden with 5 of these windows facing the fans as well as a kitchen, bathroom and bedroom window also in line with the fans.

There is a reasonable separation between the flues and the neighbouring property and more significantly the Councils Environmental Health Service has stated that it has no objections to the development.

The complaint regarding smells is currently being pursued by the Environmental Health Service through the Environmental Protection Act 1990 and will include the applicant fitting appropriate filters to screen any smells.

4.4 These fans will blow towards my house as well as my washing line which faces these fans.

There is a reasonable separation between the flues and the neighbouring property and more significantly the Councils Environmental Health Service has stated that it has no objections to the development, however as a result of a recent complaint regarding smells, they have asked the applicant to fit appropriate filters to screen smells emanating from the flue.

4.5 Due to the prevailing westerly wind, I have already had my washing tainted by cigarette smoke from the beer garden at the rear of the Maxwood Hotel and now that the restaurant has been fitted with these extractor fans I will have my washing tainted by cooking odours as well.

The Councils Environmental Health Service has stated that it has no objections to the development and offers no specific concerns regarding smells from the flues, however as a result of a recent complaint the applicant is to fit appropriate filters to block any smells emanating from the flues. Should smells become an issue in the future the matter could be pursued through the appropriate environmental health legislation, such as the Environmental Protection Act 1990.

4.6 We do not want to live our lives with windows and doors tightly shut especially in summer nor do we want these smells in our houses affecting bedding and kitchens and we feel these extractor fans are invading our day to day living.

The Councils Environmental Health Service have stated that it has no objections to the development and offer no specific concerns regarding smells from the flues, however as a result of a recent complaint the Environmental Health Service have asked the applicant to fit filters to ensure that any smells are effectively screened.

4.7 The extractors are likely to create considerable noise.

The Councils Environmental Health Service has stated that it has no objections to the development. Any excessive noise caused by the extractor could be pursued through the appropriate environmental health legislation, such as the Environmental Protection Act 1990.

4.8 I have concerns regarding the undoubted congregation of youths gathering outside the take away. I can clearly recall the large numbers of individuals that hung around the 'Rumours takeaway' prior to its destruction by fire, and also the 'Babek takeaway' before they were closed down.

The main use of the application site is as a restaurant and hotel, not a takeaway as alleged by the objector. Should the applicant wish to pursue a takeaway use or should one become established, a planning application may be required for this use, depending on the extent of such a use in relation to the main use as a restaurant.

4.9 I object to the proposed takeaway as I believe it will negatively impact on the peace and quiet my family currently enjoys.

This application is for the retrospective installation of two flues and is not to change the use of the Maxwood Hotel to a takeaway use. Should the applicant wish to pursue such a use a further planning application may be required and the merits of the takeaway use would be considered at that time.

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 Approved Ayrshire Joint Structure Plan (AJSP) and the Adopted East Ayrshire Local Plan (EALP).

Ayrshire Joint Structure Plan

5.2 There are no policies in the Ayrshire Joint Structure Plan that are relevant to this application.

East Ayrshire Local Plan

5.3 There are no policies in the East Ayrshire Local Plan that are relevant to this application.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, letters of representation, planning history and the impact of the proposal on the visual and residential amenity of the area.

Consultation Responses

6.2 The consultation response returned from the Councils Environmental Health Service has raised no adverse comments regarding the flues including smells or noise generated as a result of the flues. They advised that one complaint has been received as a result of these works which is currently being investigated/pursued through the Environmental Protection Act 1990. As a result of this the applicant is to fit appropriate filters to screen out any potential smells. The issues raised by Galston Community Council, whilst noted, are not considered to carry sufficient weight to allow a recommendation for refusal. The issue raised regarding smells emanating from the flues has been investigated separately by the Councils Environmental Health Service which has acted under the Environmental Protection Act 1990, requiring the applicant to fit appropriate filters to the flue.

Letters of Representation

6.3 The letters of representation and petition highlight the potential smells and noise generated from the flues as the main issue surrounding the proposal. The Councils Environmental Health Service has offered no adverse comments to the proposal in terms of noise or smells therefore it is considered that the objections do not carry sufficient weight to allow a recommendation for refusal. Should the presence of smells or excessive noise become a future issue it could be pursued through the appropriate environmental health legislation, such as the Environmental Protection Act 1990. It should be noted however that as a result of a complaint regarding smell, the issue has been pursued by Environmental Health with the applicant to fit appropriate filters to screen out potential smells.

Planning History

6.4 KL/E/76/99A for alterations and extension to existing hotel was approved subject to conditions on 26 March 1979.

6.5 KL/E/76/99B for a double sided box type sign was approved subject to conditions on 14 July 1982.

6.6 KL/E/76/99C for the erection of 1 dwellinghouse was approved subject to conditions on 5 September 1985.

6.7 KL/E/76/99D for a proposed fenced area for use as a beer garden serviced from adjoining premises was refused on 28 October 1985.

6.8 KL/E/76/99E for the proposed erection of house and residence for Mr and Mrs Bury was approved subject to conditions on 2 February 1988.

6.9 KL/E/76/99F for the proposed erection of illuminated signs was approved subject to conditions on 22 March 1994.

6.10 KL/E/76/99G for a certificate of lawfulness for an existing hotel was approved 7 March 1994.

6.11 KL/E/76/99H for a proposed extension to existing hotel to form restaurant was approved subject to conditions on 24 January 1995

6.12 KL/E/76/99J for a proposed extension to kitchen area was approved subject to conditions on 16 August 1995.

Impact on the Amenity of the Area

6.13 It is considered that the installation of two flues to the rear of the Maxwood Hotel will not have a significant adverse impact on the amenity of the surrounding area. The Councils Environmental Health Service has raised no adverse comments regarding noise or smell from the flues but have asked the applicant to fit appropriate filters to screen out smells under the Environmental Protection Act 1990, as a result of a complaint. The Maxwood Hotel and restaurant is an established business within this residential area of Galston and has been operating for a number of years. The installation of the two flues is required in connection with the restaurant business and is considered to be an acceptable addition to the premises resulting in no significant adverse impact.

7. FINANCIAL AND LEGAL IMPLICATIONS

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

8. CONCLUSIONS

8.1 As detailed in Section 5 of the report, there are no Structure or Local Plan policies relevant to this proposal.

8.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The consultation response returned from the Councils Environmental Health Service has offered no adverse comments on the development in terms of smells or noise emanating from the flues. The main points of objections raised by the community council and objectors centre around smells and noise. It is considered that the comments from the Environmental Health Service carry significant weight and thus adequately address these issues as will the requirement to fit appropriate filters to screen out smells, pursued by Environmental Health as a result of a complaint. As pointed out in response to these objection points, should excessive noise or smells be found to be emanating from the flues, appropriate measures to address them could be pursued through the appropriate environmental health legislation at that time. It is considered that the installation of two flues to an existing restaurant business is acceptable and will not adversely impact upon the amenity of the area.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the condition on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application will not require to be referred to the Parent Planning Committee as it would not constitute a significant departure for policy.

Alan Neish
Head of Planning and Economic Development

18 March 2008

DW/RH

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of Representation.
5. Planning History.
6. Adopted East Ayrshire Local Plan (2003).
7. Approved Ayrshire Joint Structure Plan.

Anyone wishing to inspect the above papers please contact David Wilson
Planning Officer, on 01563 576779.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 07/0973/FL

Site of Proposal: Maxwood Hotel
10-12 Maxwood Road
GALSTON
KA4 8HH

Nature of Proposal: Installation of extract canopy, ducting and fans
to kitchen in retrospect.

Name & Address of Applicant: Mr S A Choudhry
2 Barrmill Road
GALSTON
KA4 8JN

DPO's Reference: DW/RH

1. Notwithstanding the plans hereby approved, the extract canopy shall be fitted within 28 days of the date of this consent, with appropriate filters to minimise the escape of smells and noise generated by the restaurant use and which shall thereafter be maintained or replaced as necessary for as long as the flues are operational. The details of the filters shall be agreed in writing by the Planning Authority prior to their installation.

REASON To protect the amenity of the surrounding residential area by preventing undue smells and noise.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**