

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE 30 APRIL 2009

**08/0950/FL: CHANGE OF USE FROM CLASS 1 TO CLASS 3 WITH HOT
FOOD TAKEAWAY**

**BY: MILLER LTD
AT: UNIT 2, 7 ARMOUR STREET, KILMARNOCK**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 This proposal involves the change of use of part of 7 Armour Street (Unit 2), to provide a restaurant, with hot food takeaway/carry out. 7 Armour Street previously had the benefit of planning consent under application 06/0207/FL to be subdivided to form three retail units, with associated external alterations. The remainder of that unit will continue to trade as Class 1 Retail (some 870 sq metres).

1.2 No details of any proposed flue or ventilation system for the proposed use have been submitted with this application. If the use is granted planning permission, these elements would need to be the subject of a further application. The application also does not propose any external alterations to the building which if subsequently required in terms of shop frontage etc, may also require further planning permission

2. RECOMMENDATION

2.1 It is recommended that the application should be approved subject to the conditions indicated on the attached sheet.

3. CONCLUSION

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 East 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 to accord with Policy RTC15 of the Adopted East Ayrshire Local Plan and the

application should therefore be granted unless material considerations indicate otherwise.

3.2 As indicated in Section 5 of the report, the proposal can be considered to accord with Policies RTC2, RTC11, and RTC15 of both the Adopted Local Plan and Policies RTC1, RTC3, and RTC15 of the Alteration to the Local Plan (Finalised Version with Modifications). It is considered that Kilmarnock town centre is the appropriate location for a restaurant and hot food takeaway, noting its more predominant mix of established commercial uses, and that the application site is a vacant property.

3.3 There are no outstanding issues raised by the consultees. The points raised by the objectors to the application have also been noted, however, the issues raised do not warrant refusal of the application. The site is an established commercial property surrounded by adjacent commercial properties, within Kilmarnock town centre. Given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise. The level of objections that the application has generated is noted. However it is further considered given there are limited residential properties in the immediate locale, that neither these objections nor the other material considerations would warrant refusal of this application.

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 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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**08/0950/FL: CHANGE OF USE FROM CLASS 1 TO CLASS 3 WITH HOT
FOOD TAKEAWAY**

**BY: MILLER LTD
AT: UNIT 2, 7 ARMOUR STREET, 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 part of 7 Armour Street, which is a modern retail unit within the small retail estate located at Armour Street. The estate on Armour Street is divided by St Andrews Street, and then continues southwards, with a range of further retail and some Class 3 uses (e.g. McDonald's restaurant). Residential flatted properties at Gallion Walk are across Armour Street some 40 metres from the application site. Some units in the neighbouring retail area have been vacant for a period of time (MFI, Durham Pine). Both areas of the overall retail park have parking facilities, and the site lies within the defined Kilmarnock town centre boundary. The application site is currently vacant with the remainder of the unit trading as "Dreams" bed retailer.

2.2 **Proposed Development:** This proposal involves the change of use of part of 7 Armour Street (Unit 2), to provide a restaurant, with hot food takeaway/carry out. 7 Armour Street previously had the benefit of planning consent under application 06/0207/FL to be subdivided to form three retail units, with associated external alterations. The remainder of that unit will continue to trade as Class 1 Retail (some 870 sq metres).

2.3 No details of any proposed flue or ventilation system for the proposed use have been submitted with this application. If the use is granted planning permission, these elements would need to be the subject of a further application. The application also does not propose any external alterations to the building

which if subsequently required in terms of shop frontage etc, may also require further planning permission.

3. CONSULTATIONS AND ISSUES RAISED

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

Noted.

3.2 East Ayrshire Council Environmental Health Division have no objections in principle to the proposal, but comment that there is a lack of information submitted on drainage, ventilation, kitchen facilities, refuse disposal or any bar facilities.

Noted. Any internal alterations proposed would be outwith the remit of planning control as they do not require planning permission. Any such alterations would be the subject of a Building Warrant, and details of sanitation, drainage, kitchen facilities, etc would be referred to Environmental Health for their consideration at the time of any such application. Any new flue, however, and any other external alterations would require to be the subject of a further planning application.

3.3 East Ayrshire Council Roads and Transportation Division have no objection to the proposal because, whilst a change of use from retail to a Class 3 (Food and Drink) use would necessitate a higher amount of parking provision in this instance as the use is within the town centre controlled parking zone, there is no additional requirement.

Noted.

4. REPRESENTATIONS

4.1 Three letters of objection, representing four individual objectors and a petition containing 15 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 in close proximity to a number of dwellings. 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. There are a number of residents who feel intimidated to go out at night.

The Council's Roads and Transportation Division and the Council's Environmental Health and Waste Management Division have no objections to make on the proposal. The residential units nearby are divorced from the application site by Armour Street itself. The site is also located within the Kilmarnock town centre boundary as defined by the Adopted East Ayrshire Local Plan, and Class 3 (Food and Drink) uses, and hot food uses, are considered to be acceptable uses within the town centre boundary. The proposal is therefore in accordance with the provisions of the adopted East Ayrshire Local Plan as detailed in Section 5 of this report.

The surrounding area predominantly consists of a mix of uses, some of which have late night commercial activity. There are some residential properties at St Andrew's Court and at Gallion Walk across Armour Street. Late night activity is one factor to be expected when residential properties border the town centre, and it is considered that a balance needs to be sought in protecting residential amenity and encouraging the range of uses which make the town centre successful in terms of its continuing vitality and viability. In this instance, it is considered that the use is acceptable in principle and that one additional restaurant in the locale would not impact significantly on the existing residential amenity of adjacent properties to the extent that would warrant refusal of this planning application.

4.3 The proposals could lead to an increase in the existing car racing and antisocial behaviour in the area, resulting in more disturbance to the residents in the surrounding areas. These issues have been reported to Strathclyde Police, East Ayrshire Community Safety Unit and the Councils Anti-Social Behaviour unit.

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 are a common theme throughout the letters of objection received. It is not considered that one additional restaurant would have a significant impact upon the existing residential amenity of residents who live in surrounding properties. The unit in which the proposed use would be housed is sufficiently far enough away from dwellings for any noise or smell issues not to impact on residential amenity. Anti-social behaviour of car racing in the vicinity is a matter for Strathclyde Police and East Ayrshire Community Safety Unit and is not a material planning consideration. The surrounding area whilst having some residential properties in the vicinity, is part of the defined Kilmarnock town

centre and is therefore an area where a balance of different uses would be appropriate.

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 RTC2 states that the types of development specified in Schedule 5 of the Local Plan will be considered acceptable in town centres.

It is noted that the proposed use falls into the Categories of Schedule 5 for both the restaurant and hot food elements. The application therefore complies with Policy RTC2.

5.4 Policy RTC11 states that where a property falling into the Classes specified in Schedule 5 of the Local Plan becomes vacant, the Council will encourage and support the re-use of the property for appropriate Schedule 5 uses.

The current unit since being subdivided is currently vacant and is within the boundary of the town centre of Kilmarnock, as defined in the Local Plan. Therefore the proposed change of use from one Schedule 5 use to Class 3 (Food and Drink) represents an appropriate new use for this unit in policy terms noting that the proposed use represents a Schedule 5 use.

5.5 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 noting that no major external alterations are proposed. Any external alterations would require a separate planning application should members choose to grant consent.

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

The Council's Roads and Transportation Division have not objected to this application. It is considered that there is sufficient parking available in the immediate locale in terms of both short stay free parking or pay and display public parking. In this respect the site has a car park in front of the units and is located within Kilmarnock's town centre.

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

There are no residential properties in the immediate locale. The nearest residential properties are across Armour Street at Gallion Walk. It is considered that any potentially detrimental effects of the proposal could be mitigated through the provision of appropriate litter bins and opening hours. This building which forms part of the application site is a purpose built commercial property within a predominantly commercial area.

- (iv) are compatible with surrounding land uses.

The property comprises part of a larger retail warehouse, which has been subdivided into two units, the largest of these is occupied by Dreams bed store. It is considered that the surrounding uses in the area are predominately commercial in nature, with limited residential units in the immediate locale, and therefore a food and drink use and hot food takeaway is acceptable in this location.

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, 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 Modifications)

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 Policies RTC1, RTC3, RTC15.

6.3 The Council will, through Policy RTC1, adopt a sequential approach in assessing development proposals for retail, commercial leisure developments and other uses appropriate to town centres as described in Schedule 6(i) of the Plan. Developers will be required to locate all such development firstly, in town centres as identified on the Local Plan maps; secondly, in edge of centre locations where no such town centre sites are available; and thirdly, in identified commercial centres as identified on the local plan maps, in preference to out of centre locations. Applicants proposing such developments in out of centre locations will be required to demonstrate to the satisfaction of the Council:

- (i) that no suitable alternative site can be found or assembled within town centres, in an edge of centre location or in an identified commercial centre: and
- (ii) that the chosen location is, or can be made, easily accessible by a choice of modes of transport.

Similar to the exiting policy RTC2, Schedule 6 uses in the Alteration to the Local Plan are the same as those specified in Schedule 5 of the Adopted Local Plan. As the proposed site is within Kilmarnock town centre, the restaurant and hot food elements that are also included within Schedule 6(i) are considered to be appropriate alternative uses.

6.4 RTC3 states that within town centres and elsewhere throughout the area settlements, the Council will positively encourage owners and developers to retain and improve all existing retail facilities and other facilities falling within Schedule 6(i) of the local plan. Where changes of use of properties in Schedule 6(i) use are proposed or where a property in Schedule 6(i) use becomes vacant, the Council will, in the first instance, encourage and support the re-use or redevelopment of the property for an appropriate alternative Schedule 6(i) use.

The Council will also be supportive, in principle, to changes of use from Schedule 6(i) use to alternative Schedule 6(ii) uses or to the redevelopment of gap or infill sites within town centres for Schedule 6(ii) uses but only where it can be conclusively demonstrated by the applicant / developer that:

- (i) the properties or sites concerned have been actively and widely marketed for Schedule 6(i) uses for a period of six months and that no appropriate Schedule 6(i) use for the premises can be found; and
- (ii) the proposed development is sympathetic, in terms of its scale, design and material finish to the character and amenity of the area concerned.

The proposed development comprises the redevelopment of a vacant unit within Kilmarnock town centre for both Schedule 6(i) and 6(ii) uses. In general terms, the proposal is considered to be appropriate, and the proposal is therefore in accordance with this policy.

6.5 The new Policy RTC15 considers the same aspects as that of the current adopted Policy RTC15, which is discussed in section 5.5 of this report.

Amenity concerns have been raised through the representation process which have been considered, however, it is noted that there are limited residential properties in the immediate vicinity with the site being located within the Local Plan defined town centre boundary. Increased activity may occur later into the evening by the very nature of a proposed restaurant and hot food takeaway, however, these activities are commonly found within town centres such as Kilmarnock and it is considered that the provision of a further restaurant in this locale will not have significant detrimental effects on residential amenity. Town centres commonly operate with a balance of uses and standards of residential amenity are not generally as would be expected within a homogeneous residential area.

Consultation Responses

6.6 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 as a result of this process are considered to be capable of being addressed by appropriately worded conditions and/or advisory notes should Members decide to grant consent.

Representations Received

6.7 The concerns in the letters of objection generally relate to loss of amenity, litter and restaurant 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.

The objections have been addressed under Section 3 of this report. It is considered that conditions could be imposed on any consent granted by Members in terms of the hours of operation and the provision of litter facilities, which would mitigate any detrimental effects for these elements. It is critical in the determination of this application to note that the site was within Kilmarnock town centre where a mix of uses would generally be considered to be appropriate and is supported by the Adopted East Ayrshire Local Plan.

Planning History

6.8 Planning Application No: 06/0207/FL subdivision of the main retail unit into three smaller retail units with associated external alterations was approved on 12 April 2006.

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 East 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 to accord with Policy RTC15 of the Adopted East Ayrshire Local Plan and the application should therefore be granted unless material considerations indicate otherwise.

8.2 As indicated in Section 5 of the report, the proposal can be considered to accord with Policies RTC2, RTC11, and RTC15 of both the Adopted Local Plan and Policies RTC1, RTC3, and RTC15 of the Alteration to the Local Plan (Finalised Version with Modifications). It is considered that Kilmarnock town centre is the appropriate location for a restaurant and hot food takeaway, noting its more predominant mix of established commercial uses, and that the application site is a vacant property.

8.3 There are no outstanding issues raised by the consultees. The points raised by the objectors to the application have also been noted, however, the issues raised do not warrant refusal of the application. The site is an established commercial property surrounded by adjacent commercial properties, within Kilmarnock town centre. Given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise. The level of objections that the application has generated is noted. However it is further considered given there are limited residential properties in the immediate locale, that neither these objections nor the other material considerations would warrant refusal of this application.

9. RECOMMENDATION

9.1 It is recommended that the application should be approved subject to the conditions indicated 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 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 & Economic Development

MF/IMB

20 April 2009

FV-DVM

List of Background Papers

1. Application form, plans and statutory notices/certificates;
2. Public Advertisements;
3. Statutory Consultations;
4. Representations received;
5. Planning Application: 06/0207/FL;
6. East Ayrshire Local Plan (Adopted) 2003
7. 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 & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0950/FL

Site of Proposal: Unit 2, 7 Armour Street
Kilmarnock, KA1 3HT

Nature of Proposal: Change of Use from Class 1 to Class 3 with
Hot Food takeaway

Name & Address of Applicant: Miller Ltd
c/o Winex
8 Rodborough Road
London
NW11 8RY

Name & Address of Agent: MacKinnon and Co
53 Bothwell Street
Glasgow
G2 6TS

DPOs Reference: MF/IMB

The above FULL application should be approved subject to the following conditions:

Conditions

1) The consent hereby granted is solely for a change of use and no permission is authorised relative to any external alterations to the premises, including the location, design and operation of any flue extractor system that may be required.

Reason: The proposal is in respect of a change of use alone and the further separate consent of the Planning Authority would be required for the addition of any flue extract system.

2) The hours of opening for the use hereby approved shall be no later than 2400 hrs, Monday to Saturday and 2330 on Sundays.

Reason: In the interests of the general amenity of the surrounding area.

3) Prior to work commencing on site details of litter bins and refuse storage facilities shall be submitted to and approved in writing by the Planning Authority. All approved details shall be operational on site prior to the use being commenced and shall be maintained thereafter.

Reason: In the interests of the property itself and the general amenity of the surrounding area.

Note to Applicant:

- 1) The applicant is hereby advised that the installation of a flue and any external alterations will require to the subject of a separate application for planning consent. Early contact is recommended with East Ayrshire Council's Planning and Economic Development Division (Development Management) at 6 Croft Street, Kilmarnock or on 01563 576790.
- 2) The applicant is advised to contact the Council's Environmental Health Division at an early date to ensure compliance with the legislation which that Division administers.

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