

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 4 DECEMBER 2009**

**09/0586/PP: CHANGE OF USE OF FORMER TANNING STUDIO INTO A  
HOT FOOD TAKEAWAY AND INSTALLATION OF NEW CHIMNEY FLUE  
AT: 130 KING STREET, KILMARNOCK  
BY MRS TANZEELA RAHMAN**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 The proposed development comprises a change of use to form a hot food takeaway and the installation of a flue at the rear elevation. Shopfront alterations are also proposed and will comprise a roller shutter arrangement, with pedestrian access door.

#### **2. RECOMMENDATION**

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

#### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the proposal can be considered to accord with Policies RTC2, RTC11, and RTC15 of 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 hot food takeaway, noting its predominant mix of established commercial uses, and that the application site is a vacant property.

3.2 There are no outstanding issues raised by the consultees. The points raised by the objectors 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. There are no residential properties in the immediate locale and this proposal will not adversely affect neighbouring uses. Noting the proposals to deal with cooking odours and the extent to which conditions applied to any consent can mitigate other impacts, there are not considered to be any material considerations meriting refusal of the 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 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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### Report by Head of Planning and Economic Development

#### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for planning permission which is to be considered by the Northern Local Planning Committee under the scheme of delegation as it is the subject of more than 10 objections.

#### 2. APPLICATION DETAILS

2.1 **Application Site:** The application site comprises a mid terraced retail unit that is currently vacant within Kilmarnock's Town Centre boundary which was formerly occupied by Tan Express.

2.2 The application site is bound by King Street to the west, other commercial units used for a range of uses including shops and hot food takeaway to the north and south and, to the east, by the servicing area for this row of terraced properties.

2.3 **Proposed Development:** The proposed development comprises a change of use to form a hot food takeaway and the installation of a flue at the rear elevation. Shopfront alterations are also proposed and will comprise a roller shutter arrangement, with pedestrian access door.

#### 3. CONSULTATIONS RECEIVED

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

#### ***Noted.***

3.2 East Ayrshire Council Environmental Health have no objections subject to conditions on the restriction of hours and noise from construction works, drainage and the disposal of construction waste. Environmental Health also commented on the initial plans and recommended that the height of the flue be increased.

***The conditions referred to by Environmental Health are matters which can be controlled by their own nuisance legislation. In this location, it is not necessary to incorporate a restriction on the hours of construction.***

***The applicant's agent has amended the height of the flue which now meets the requirements of Environmental Health. It is not considered that the flue will be a dominant feature to the rear of these premises.***

3.3 East Ayrshire Council Roads and Transportation Division and East Ayrshire Access Panel have no objections to the application.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 Nineteen parties have submitted 20 letters of objection (15 of which are standard letters with one having no address to allow an acknowledgement). The main points of objection are as follows:-

4.2 It is a massive disadvantage to have a hot-food takeaway trading next to an existing facility. This business is barely managing to trade and this proposal could force current employees into unemployment.

***Members are advised that economic competition is not a material planning consideration.***

4.3 There will be parking on double yellow lines outwith the premises.

***Parking outside the premises on double yellow lines would be a matter for the police to control. The site has easy access to sufficient car parking in close proximity to the proposed use. The applicant's agent has further confirmed that all deliveries are proposed from the rear of the premises, accessed from Sturrock Street and he has also advised that the applicant will endeavour to make sure that customers and delivery agents adhere to parking controls.***

4.4 Litter from the proposed hot food takeaway will have a detrimental impact due to the lack of a rear storage area for bins and a cardboard recycle uplift. Waste would be placed directly onto King Street.

***Noted. The Council's Roads and Transportation Division have advised that they would not accept any waste being put on the footway.***

**However, the applicant intends to form a bin storage area which is indicated on the proposed plan at the rear of the premises in the rear service area.**

**If Members choose to grant consent it is recommended that a condition be incorporated requiring further details to be agreed for the refuse storage area.**

- 4.5 An adjoining gift shop selling general giftware, fabrics and clothing finds that the clothing is susceptible to any cooking odour and the close proximity of a hot food outlet in the shared building could render stock unsaleable.

**Environmental Health have advised that the flue is acceptable. Any nuisance issues can be addressed by Environmental Health under their own legislation.**

- 4.6 The rear of the premises is often visited by undesirable people. Any hot food business may leave the fire door open which means this area becomes vulnerable to anti-social behaviour.

**Anti-social behaviour would be a police matter and it would also be a private legal matter between the tenants to ensure the security of the premises. Environmental Health's comments are also noted in terms of the control of odour in paragraphs 3.2 and 4.9 of this report.**

- 4.6 There are already problems from existing hot food takeaways which will be exacerbated by the proposed use. There is also no space for waste bins at the rear. The waste bin storage area outside the premises at the rear is not within the applicant's ownership.

**Environmental Health have not objected to the application and there is an area on the plan identified for waste storage. Whilst this is outwith the red line application site it is within an area of communal land which is used by the commercial units for deliveries and servicing. Details of refuse storage can be required to be provided by condition.**

**The applicant's agent has provided an extract from the title plan supplied by the landlord of this property. This title plan shows that the area where the waste storage area is proposed, is within an area of common ground where the applicant has a servitude right of access. The recommended planning condition seeks the agreement of the details, specification and exact location of the proposed waste storage area, to be put in place prior to the unit opening for trading and maintained thereafter. This area is set back from the public road on Kilmarnock's one way system and it is not therefore a prominent location.**

4.8 The adjacent shop unit has been flooded twice in the past 4 years as outside drains have not been able to cope with heavy rain. This will be aggravated by fats and waste being washed down sinks.

***The disposal of cooking waste and the installation of any grease trap would be a matter for the building warrant process and Scottish Water.***

***The applicant's agent has advised that a grease trap will be fitted to the existing drainage system. Leftover cooking fats etc are disposed of on a daily basis to an appropriate refuse facility.***

4.9 It is considered that a hot food takeaway is inappropriate to operate with its different trading pattern from shared premises.

***This is a town centre location and without any residential premises in close proximity, this is an area where a mix of commercial premises would be appropriate. This area is surrounded by a variety of commercial uses and whilst there are some hot food uses in the surrounding area, an additional facility would not be detrimental to the surrounding area.***

***Environmental Health have also advised that given the predominantly commercial nature of the surrounding area, they consider that the proposed use would have little additional impact in terms of odour.***

4.10 This shop unit is located within an important retail street which reflects the southern end of the established and recognised retail main street at King Street. There are future proposals for the town which will have an influence in giving some hope for a revival of King Street namely, the rumours that a clothing retailer will take over the former Tesco site at Fowlds Street and the announcement that East Ayrshire Council is taking office space at Strand Street with occupancy in early 2010.

***The application site is located within the core town centre area where retail development is the predominant use. However, a range of uses defined in Schedule 5 of the Local Plan, would also be appropriate. Whilst retail is the main use within the Kilmarnock Town Centre, National Policy (Scottish Planning Policy 8 "Town Centres and Retailing") states that successful town centres provide a diverse range of community and commercial activities.***

4.11 A recent article in Scottish Property Network confirmed a statement from the Council's Leader that this Council maintains that Kilmarnock's Town Centre Regeneration is one of its key priorities. Kilmarnock has a healthy independent retail sector and we wish to retain that. Locating staff in the town centre will boost spending locally and hopefully encourage others to bring their business to East Ayrshire.

**Members are referred to the response to paragraph 4.10 above.**

4.12 East Ayrshire Council is also assisting and encouraging local businesses to participate in the CARS Scheme in key retail areas/streets in the town. This initiative has to be welcomed to concentrate the Council's growing awareness of protecting and encouraging retail in the core central area in the future.

***The CARS Scheme does not specifically relate to retail buildings but rather, seeks to protect the heritage of traditional buildings in the Outstanding Conservation Area, irrespective of their use.***

***This application site is not located within the John Finnie Street and Bank Street Outstanding Conservation Area and any approval for this proposal would not undermine the aims and achievements of the CARS Project.***

## **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) and the Adopted East Ayrshire Local Plan (EALP) (2003).

Approved Ayrshire Joint Structure Plan (AJSP) (2007)

5.2 There are no Policies within the AJSP relevant to the determination of this application.

Adopted East Ayrshire Local Plan (EALP) (2003)

5.3 The policies that are relevant to this application are RTC2, RTC11 and RTC15.

***The proposed use falls into the Categories detailed within Schedule 5 of the Adopted Plan and complies with Policy RTC2. The proposed change of use from Schedule 5 use to a hot food takeaway complies with RTC11.***

5.4 Policy RTC15 states that development proposals for public houses and hot food takeaways will be considered acceptable uses within town centres where a range of criteria are met.

***The application complies with RTC15 as it meets with the requirements of the Roads Division and in operation will be compatible with surrounding uses.***

## 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.

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

6.2 In this case, significant weight can be given to Policies RTC1, RTC3, RTC15.

***The proposal is consistent with these policies, given its town centre location.***

### 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 raised by consultees can be addressed by appropriately worded conditions and/or advisory notes to any grant of consent.***

### Representations Received

6.7 The concerns in the letters of objection generally relate to loss of traffic, litter, cooking odours and hot food takeaway uses in the vicinity. Whilst noted, the concerns of objectors are not echoed by the consultation responses received from the consultees and would not merit the refusal of the application.

## 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. As indicated in Section 5 of the report, the proposal can be considered to accord with the Adopted Local Plan and the Alteration to the Local Plan (Finalised Version with Modifications). It is considered that Kilmarnock Town Centre is the appropriate location for a hot food takeaway, noting its predominant mix of

established commercial uses, and that the application site is a vacant property.

8.2 There are no outstanding issues raised by the consultees. The points raised by the objectors have also been noted, however, the issues raised do not warrant refusal of the 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 Full Council as this would not constitute a significant breach of policy.

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

FMF/KW

27 November 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. Approved Ayrshire Joint Structure Plan (2007)
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 Fiona Finlay, Principal Planning Officer on 01563 576798.

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0950/PP

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Site of Proposal: 130 King Street  
Kilmarnock  
East Ayrshire  
KA1 1PG

Nature of Proposal: Proposed change of use of former tanning studio into a hot food takeaway facility and Installation of New Chimney Flue

Name & Address of Applicant: Mrs Tanzeela Rahman  
130 King Street  
Kilmarnock  
East Ayrshire  
KA1 1PG

Name & Address of Agent: Michael A V Boston Architectural Services  
34 Main Street  
Prestwick  
Ayrshire  
KA9 1NX

DPOs Reference: FMF/KW

The above application for Planning Permission should be approved subject to the following conditions:

1. Prior to any work commencing on site, further details of the finish, size, materials and exact location of an area for the storage of refuse (including proposals to deal with customer waste), shall be submitted to and approved in writing by the Planning Authority. The refuse store and customer waste bins shall be installed on site prior to the use being commenced and shall be maintained thereafter at all times.

Reason: To ensure that there are appropriate facilities for refuse storage and collection.

2. Prior to any work commencing on site further details of the finish and colour of the proposed roller shutter at the shopfront shall be submitted to and approved in writing by the Planning Authority. The roller shutter shall thereafter be installed and maintained as approved.

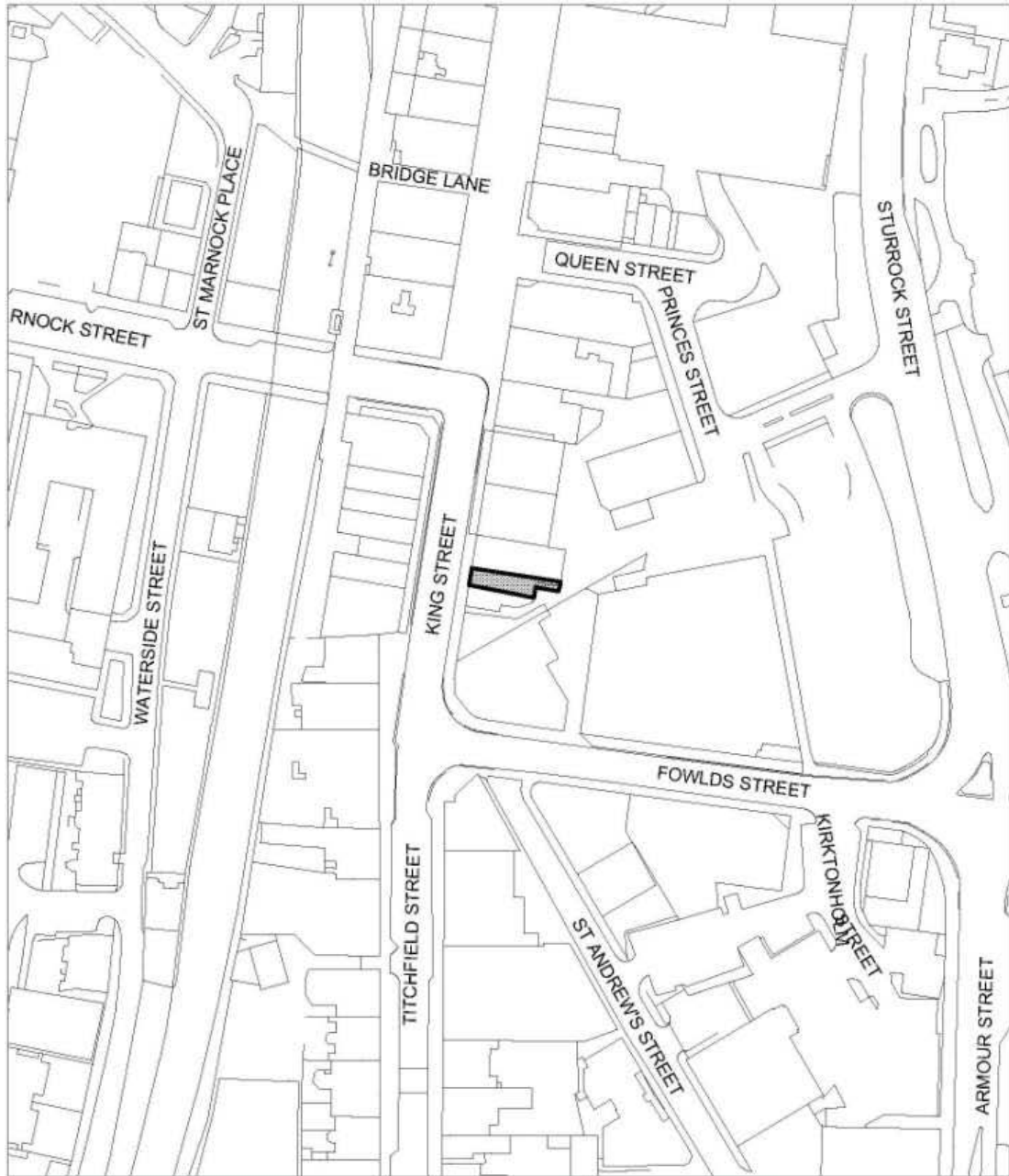
Reason: In the interests of visual amenity.

3. Notwithstanding condition No 2, all roller shutter housing and boxes shall be fully recessed internally within the application premises. Details of their design shall be submitted to and approved in writing by the Planning Authority prior to being installed on site. The roller shutter shall thereafter be installed and maintained as approved.

Reason: In the interests of visual amenity.

4. For the avoidance of doubt this consent does not include permission for the display of advertisements which may require express consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

Reason: Advertisement Consent may be required under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.



<p>Title/Location    <b>130 King Street</b> <b>Kilmarnock</b> <b>Application No. 09/0586/PP</b></p>	<p>East Ayrshire Council Planning &amp; Economic Development Division 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790    Fax: (01563) 576774 E-Mail : <a href="mailto:Planning@east-ayrshire.gov.uk">Planning@east-ayrshire.gov.uk</a> Com Date: 04/12/2009    Checked By</p>
<p>Key</p> <p> <b>Application Site</b></p>	<p style="text-align: center;"></p>

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