

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 29 JANUARY 2010

**09/0797/PP – CHANGE OF USE OF PEDESTRIAN FOOTWAY TO ALLOW
EXTERNAL SEATING AREA FOR COFFEE SHOP WITH ASSOCIATED
ENCLOSURES AT 12 PORTLAND STREET, KILMARNOCK
BY WHITBREAD GROUP PLC**

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The proposals comprise an area of 2 metres (deep) x 7.7 metres (wide) section of pavement immediately outside the shop unit and the area would be delineated by demountable chrome barriers 0.935 metres high with burgundy fabric inserts displaying the Costa Coffee logo and lettering. Set within this area is external seating comprising 4 circular tables, two of which have 4 seats and two tables closest to the entrance have two seats each. The outdoor seating is being used as part of the use of premises as a coffee shop as detailed in section 6 of this report.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions 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.

3.2 There are no applicable policies against which to determine this application in the AJSP and the EALP. The consultation process has not raised any issues that would result in a recommendation other than approval. No representations have been received. The use of external seating is considered to be appropriate in this town centre location. The reduced area of seating addresses points made by the Access Panel and will not be detrimental to the established character of the surrounding area and should add vitality to 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 then the application will not require to be referred to Full Council as that would not be a significant departure from Council 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 the Council owns the pavement to the front of the property.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises an area of the pavement on Portland Street in front of an existing two storey traditional building which faces onto The Cross in Kilmarnock Town Centre. The site lies outwith the John Finnie Street and Bank Street Outstanding Conservation Area and is surrounded by other commercial units primarily of a retail nature.

2.2 **Proposed Development:** The proposals comprise an area of 2 metres (deep) x 7.7 metres (wide) section of pavement immediately outside the shop unit and the area would be delineated by demountable chrome barriers 0.935 metres high with burgundy fabric inserts displaying the Costa Coffee logo and lettering. Set within this area is external seating comprising 4 circular tables, two of which have 4 seats and two tables closest to the entrance have two seats each. The outdoor seating is being used as part of the use of premises as a coffee shop as detailed in section 6 of this report.

3. CONSULTATIONS RECEIVED

3.1 East Ayrshire Council Roads and Transportation Division have no objections.

Noted.

3.2 Bonnyton Community Council has not replied at the time of writing.

Noted.

3.3 East Ayrshire Access Panel North District has concerns about the seating area taking up the entire area of the slabbed pavement and pedestrians would have to make use of the cobbled area. The Panel have requested that the area of seating is reduced for patrons to sit out whilst allowing pedestrians to walk or to have wheelchair access on the level slabbed area.

It was noted from a site visit that a street lighting column is adjacent to the application site. The comments from the Access Panel have been addressed by the agent submitting a revised seating layout which reduces the depth and capacity of the seating area from 2 metres to 1.5 metres to allow reasonable access space for wheelchair users. This aspect of the application has been discussed with the Building Standard's Disability Awareness Advisor and is considered to be acceptable.

4. REPRESENTATIONS

4.1 No letters of representations have been received.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 For the purposes of this application, the Development Plan comprises the Adopted East Ayrshire Local Plan (2003), however there are no policies directly applicable to this proposal.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the consultation responses and amenity considerations in respect of the location of this site.

Consultation Responses

6.2 None of the consultation responses recommend that the application should be refused. It is noted that the Applicant's Agent has submitted amended proposals reducing the seating capacity and depth of the seating area to improve access across the slabbed area for all members of the community.

Amenity

6.3 In respect of the amenity of the surrounding area, Kilmarnock's town centre would not be adversely affected. There are other uses at The Foregate and at Bank Street with outdoor seating which can add to the vitality of the area. The outside seating can promote a café culture and can attract more users to the existing facilities in the town centre. There are no residential

properties in the vicinity of this site and it is therefore considered that this application is appropriate in amenity terms.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council relative to this application. In terms of legal implications, the Council owns the pavement. There is no requirement to notify, the Scottish Government under Circular 3/2009 "Notification of Planning Applications", should Members choose to grant consent.

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.

8.2 There are no applicable policies against which to determine this application in the AJSP and the EALP. The consultation process has not raised any issues that would result in a recommendation other than approval. No representations have been received. The use of external seating is considered to be appropriate in this town centre location. The reduced area of seating addresses points made by the Access Panel and will not be detrimental to the established character of the surrounding area and should add vitality to the area.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions 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 then the application will not require to be referred to Full Council as that would not be a significant departure from Council Policy.

Alan Neish
Head of Planning and Economic Development

18 January 2010

RDB/KW

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application forms and plans
2. Statutory Notices and Certificates
3. Representations
4. Consultation Responses
5. Approved Ayrshire Joint Structure Plan
6. Adopted East Ayrshire Local Plan
7. Finalised Draft with Modifications East Ayrshire Local Plan.

Anyone wishing to inspect the above papers should contact Robert Beaton, Planning Officer on 01563 576770.

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 09/0797/PP

Location	12 Portland Street Kilmarnock East Ayrshire KA1 1HZ
Nature of Proposal:	Change of use of pedestrian footway to allow external seating area for coffee shop with associated enclosures
Name and Address of Applicant:	Whitbread Group Plc Whitbread Court, Houghton Hall Business Park Porz Avenue, Dunstable Bedfordshire LU5 5XE
Name and Address of Agent	Gerald Eve LLP 201-249 Avebury House Avebury Boulevard Milton Keynes Buckinghamshire MK9 1AU

DPOs Reference: RDB/KW

The above application for Planning Permission should be Approved with Conditions

1. The seating area hereby approved shall operate at all times entirely within the application site as defined on the approved general layout plan.

Reason: In order to retain effective planning control and in the interests of public safety.

2. The seating hereby approved shall operate at all times with barriers in place as per the approved general layout plan.

Reason: In the interests of visual amenity and road safety.

3. The seating area comprising tables, chairs and barriers hereby approved shall be removed from site and stored within the building at 12 Portland Street or some other location to be agreed with the Planning Authority; at the end of each day's trading unless with the prior written agreement of the Planning Authority.

Reason: In the interests of visual amenity and road safety.

Note

1. The applicant is advised to make early contact with the Council's Roads and Transportation Division at Greenholm Street, Kilmarnock or on 01563 576369 in respect of any additional consents or public utility diversion that may be required under the Roads (Scotland) Act 1984.