

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 29 JANUARY 2010

**09/0753/PP: REMOVAL OF CONDITION 1 FROM PLANNING CONSENT
05/1162/FL
AT 25 BRIDGE STREET, GALSTON
BY MRS MELEK EYGI**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The application relates to the removal of condition 1 of planning consent 05/1162/FL. Condition one restricts the operating hours to 8am to 11pm Monday to Friday, 10am to 11pm on Saturdays and 12pm to 11pm on Sundays.

2. RECOMMENDATION

2.1 It is recommended that the application be approved.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, there are no policies that relate specifically to this type of development. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be assessed against the material considerations.

3.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The planning history indicates that the use is acceptable and whilst a planning condition was attached to the previous consent, Circular 4/1998 indicates that planning conditions should not be used to duplicate other legislation, in this case licensing legislation. The consultees, including the Licensing section, have raised no objection and the proposal itself will have no adverse impact on the amenity of the area. The objection is noted however the issues that the objector raises are capable of being addressed by other legislation and are thus not prejudiced by this proposal.

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.

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 a planning application which is to be considered by the Local Planning Committee under the scheme of delegation, as the Head of Planning and Economic Development considers that it is appropriate for members of the Planning Authority to take the decision because this condition was originally approved by Committee, in part in response to objections received when the 2005 application was being determined.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is a café and takeaway situated in an unlisted commercial premise located within Galston town centre and the Galston Outstanding Conservation Area. The property fronts onto Bridge Street and is adjoined by commercial properties on the ground floor to the east and west and flatted dwellings above.

2.2 **Proposed Development:** The application relates to the removal of condition 1 of planning consent 05/1162/FL. Condition one restricts the operating hours to 8am to 11pm Monday to Friday, 10am to 11pm on Saturdays and 12pm to 11pm on Sundays.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Galston Community Council and Strathclyde Police have not responded at the time of writing.

Noted.

3.2 East Ayrshire Council's Environmental Health Division have received no objections from the Out of Hours Noise Unit and as such they have no objection to the grant of this proposal.

Noted.

3.3 East Ayrshire Council's Licensing section has no comments in relation to the application. However they clarify that the shop would require a late hours catering licence to operate after 11pm.

Noted.

4. REPRESENTATIONS

4.1 One letter of objection has been received in connection with this application, details of which are listed below.

4.2 I live directly above the property and get all the noise directly below my living room window including cars closing doors and engines running, the owner banging his window, the extraction fans on the front windows, banging of the shop door, youths gathering at the shop and the extraction fan at the rear, directly below a bedroom window.

4.3 Anti social behaviour from youths hanging around the property.

4.4 The constant smells associated from this type of property, to the rear of my property and within my property.

4.5 As the town is starting to quieten down at this time of night I do not feel this condition needs to be removed. If it is it will then make the shop a focal point and increase the noise pollution we already get from this property, again eroding our quality of life within our own property.

4.6 All the takeaways in Galston have flats above them but they are owned by the people who own the business and have a vested interest in their shops. As the owner of 25 Bridge Street does not own the flat above him I do not feel that we have to be discriminated against so the owner of the shop can make money and we have to put up with the problems and have our quality of life eroded even further.

As the proposal is for the deletion of a condition it is considered that the points made by the objector are misplaced as the opening time of the premises does not alter with the deletion of the condition, rather it would be through an application to the Licensing Section. The merits of such an application would be considered at that time and

would involve various consultees such as the Police. Should such a license be applied for the applicant would be required to display a notice to this effect which would allow the objector to raise concerns over late opening and the impact that this will have.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 For the purposes of this application the development plan comprises of the Adopted East Ayrshire Local Plan (EALP).

5.2 There are no policies that specifically relate to the development proposed.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the impact on the amenity of the area, the planning history, Circular 4/1998 and the letter of objection.

Consultation Responses

6.2 Whilst not every consultee has returned comments on this proposal, it is noted that Environmental Health and Licensing have offered no objections.

Circular 4/1998: The Use of Conditions in Planning Permissions

6.3 This Circular advises on the appropriate use of planning conditions. A condition which duplicates the effect of other controls will normally be unnecessary. Given that the applicant requires a late hours catering license to open after 11pm, under the Civic Government Scotland Act 1982 it is considered that this is the most appropriate way of controlling the opening hours of the development rather than the condition attached to consent 05/1162/FL.

Impact on the Amenity of the Area

6.4 It is considered that the proposal will not affect the amenity of the surrounding area given that it is solely for the deletion of a condition which duplicates other legislation. The merits of any extension to the hours of operation would be considered by the Licensing Section should an application be received to extend the hours.

Planning History

6.5 Application 05/1162/FL for a part change of use of coffee shop to form hot food takeaway and alterations to shop front in retrospect was approved with conditions on 17 March 2006.

6.6 Application 08/0311/FL for the installation of an activated carbon unit to rear of café/hot food takeaway was approved with conditions on 4 December 2008.

Letter of objection

6.7 The points raised by the objector predominantly relate to the noise impact from the facility. The removal of the condition does not in itself extend the opening hours as the opening hours are controlled through Licensing legislation. The removal of the planning condition does not increase the noise already experienced by the objector. Any extension to the opening hours will require a license where such issues would be considered.

FINANCIAL AND LEGAL IMPLICATIONS

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

CONCLUSIONS

8.1 As indicated in Section 5 of the report, there are no policies that relate specifically to this type of development. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be assessed against the material considerations.

8.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The planning history indicates that the use is acceptable and whilst a planning condition was attached to the previous consent, Circular 4/1998 indicates that planning conditions should not be used to duplicate other legislation, in this case licensing legislation. The consultees, including the Licensing section, have raised no objection and the proposal itself will have no adverse impact on the amenity of the area. The objection is noted however the issues that the objector raises are capable of being addressed by other legislation and are thus not prejudiced by this proposal.

9. RECOMMENDATION

9.1 It is recommended that the application be approved.

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.

Alan Neish
Head of Planning and Economic Development

19 January 2010
(DW/KMcL/SA)
FV-DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Planning application 05/1162/FL
5. Planning application 08/0311/FL
6. Planning circular 4/1998

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

Implementation Officer: Dave Morris

TP24

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 09/0753/PP

Location	25 Bridge Street Galston East Ayrshire KA4 8AE
Nature of Proposal:	Removal of Condition 1 from Planning Consent 05/1162/FL
Name and Address of Applicant:	Mrs Melek Eygi C/o Agent
Name and Address of Agent	Alistair Mair 34 Welton Road Mauchline KA5 6BH

DPOS Reference: DW/KMc/SA

The above Planning Permission application should be approved.