

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 29 JANUARY 2010**

**09/0783/PP: CHANGE OF USE TO FORM CATERING FACILITY  
AT 25 RIGG STREET, STEWARTON  
BY MR PETER BROWN**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 The application relates to a change of use to allow the siting of a catering trailer within the car park of the tyre and exhaust centre. The trailer will be located immediately adjacent to the pavement of Rigg Street with the trading counter facing away from Rigg Street towards the tyre and exhaust centre. The trailer will measure approximately 5.5 metres by 2 metres with an awning element provided shelter to the trading counter. Bins are to be located on either side of the trailer for litter.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the application be refused for the reasons on the attached sheet.**

#### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the application is considered to be largely contrary with the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

3.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The Alteration to the East Ayrshire Local Plan carries considerable weight in this instance. The proposal is considered to be contrary to Policy RTC 14 of the Alteration for similar reasons to those under the existing Local Plan. The point raised by the Roads Division is noted with regard to on street parking and this is a view expressed by the Community Council and objectors. Given the location of the van it is considered that on street parking is encouraged with the relevant road safety concerns as a result. The proposal is considered to have a negative impact on the amenity of the area for this reason as well as the visual amenity of this busy area. The applicants supporting

statement is the only material consideration expressly in favour of the development and whilst the points made are noted, it is considered that the vitality and viability of the town centre would be effected given its close location to this area and the ample supply of catering facilities nearby within the town centre area.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application will not be required to be referred to the Full Council as this would not be a significant departure from 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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AT 25 RIGG STREET, STEWARTON  
BY MR PETER BROWN**

### 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 Local Planning Committee under the scheme of delegation, since it is subject to more than 10 separate objections.

#### **2. APPLICATION DETAILS**

2.1 **Site Description:** The site is centrally located within the town of Stewarton within the car park of a previously approved tyre and exhaust change unit and car wash. The site is within an industrial area with various buildings to the north and south. Rigg Street forms the eastern boundary of the site with a flatted development opposite. A catering trailer is currently located on site through the use of permitted development rights.

2.2 **Proposed Development:** The application relates to a change of use to allow the siting of a catering trailer within the car park of the tyre and exhaust centre. The trailer will be located immediately adjacent to the pavement of Rigg Street with the trading counter facing away from Rigg Street towards the tyre and exhaust centre. The trailer will measure approximately 5.5 metres by 2 metres with an awning element providing shelter to the trading counter. Bins are to be located on either side of the trailer for litter.

#### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council's Roads and Transportation Division has no objections to the development but would require all customers to use the parking area provided within the site as a no waiting order is in place on Rigg Street between the junctions with New Street and Brown Street.

***Noted. Given the position of the catering trailer on site, adjacent to Rigg Street, it is considered that it is unlikely that all patrons will park within the site and indeed the position could actually be seen to encourage parking on street.***

3.2 Stewarton Community Council have objected to the development on the following grounds:

3.2.1 Vehicles stopping to use the catering van will exacerbate the present traffic difficulties due to parking in Brown Street which is a relatively narrow street. Rigg Street is a busy commuter route and vehicles stopping near this junction would make the area more hazardous for vehicles and pedestrians.

***Road safety and pedestrian footpath access is being and will continue to be impaired by the presence of the trailer. This area is designated as a no waiting area given the key nature of the route and the presence of the facility fronting onto the road encourages patrons to stop, which impacts upon the road and footpath.***

3.2.2 The potential for litter around such facilities which also happens elsewhere despite refuse bins.

***The applicant has provided two litter bins at the catering trailer to address this matter.***

3.2.3 The proposal will impact on the many small businesses within the town centre offering snacks.

***Competition between businesses is not a material planning consideration. The impact that the proposal has on the town centre in general however is a material consideration and the location and nature of the business near to the town centre would harm the vitality and viability of the town centre.***

3.2.4 If the proposal is to be granted we would prefer it to be located at the opposite end of the car parking area so that vehicles stopping would enter the car park.

***Locating the van further into the site is likely to address the on street parking problem to a degree as most drivers would then enter the site itself.***

3.3 East Ayrshire Council's Environmental Health Division have no objections to the development

***Noted.***

#### 4. REPRESENTATIONS

4.1 Twenty eight letters of objection and a petition with 95 signatories have been received in connection with this application. The grounds of objection are summarised as follows:

4.2 Road safety including the busy nature of Rigg Street, parking on the public footpath and the obstruction that this caused to pedestrians.

***Road safety and pedestrian footpath access is being and will continue to be impaired by the presence of the trailer. This area is designated as a no waiting area given the key nature of the route and the presence of the facility fronting onto the road encourages patrons to stop which impacts upon the road and footpath.***

4.3 Litter is generated by this type of use which also gives rise to vermin such as rats and seagulls.

***The applicant has provided litter bins at the facility to address such matters.***

4.4 The use will be noisy, smelly and bring disturbance to residents, particularly of the flats across the road and is made worse by the early opening hours.

***The location of the development is likely to bring a further degree of disturbance to nearby residents particularly by way of vehicles parking on the road to access the facility. The opening hours of the facility is a matter for the Licensing Section to consider however it should be noted that the hours of operation of the adjacent tyre, exhaust and car wash are controlled through planning condition to maintain the amenity of the nearby flats.***

4.5 The proposal will impact upon the existing shops of Stewarton by creating more competition, particularly during the current difficult financial climate.

***Competition between businesses is not a material planning consideration.***

4.6 No notification of this application was provided.

***Neighbour notification was undertaken by the Planning Authority in line with the requirements of the Development Management Procedure Regulations 2008. The application has also been advertised in the Kilmarnock Standard on 20 November 2009.***

4.7 There was to be a 6ft high fence at the front of the site and the car wash was to be located at the rear of the building, neither of which have been done.

***This matter is currently being investigated by the Planning Authority and discussions have taken place with the applicant with regard to their obligations under planning consent 09/0173/FL.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

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

### East Ayrshire Local Plan

5.2 Policy RTC 14 allows for the siting of static snack bars within settlement boundaries subject to five key criteria, including impact on vitality and viability of existing retail and catering provision within the settlement, the visual and amenity impact to the environment and adjacent properties. The criteria also include servicing and car parking provision, site specific locational need and the compatibility with surrounding uses.

***The proposal will have an impact upon the vitality of the town centre as similar uses to that proposed exist nearby within the established town centre area where businesses should be primarily located. The trailer location impacts upon the visual amenity of the surrounding area particularly given its location off of the busy Rigg Street. The Roads Division have advised that no cars should park on the public road and ample parking is provided within the site however the location fronting onto Rigg Street encourages on street parking. A minimal level of site specific locational need is demonstrated given the tie in with the existing business and nearby railway station.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations are the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications), consultation responses, letters of representation, the applicants supporting statement, the site planning history and the impact on the amenity of the area.

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

6.2 Policy RTC 14 advises that the siting of static snack bars within settlement boundaries will only be considered acceptable where a range criteria are met similar to those under RTC14 of the Adopted Plan.

***The proposal will have an adverse impact upon the town centre given the proximity of the site to the town centre boundary. As similar uses are available nearby within the town centre the vitality and viability of the existing catering provision is likely to be affected. The prominent location on Rigg Street causes a visual impact to the detriment of the surrounding area. This location also encourages vehicles to stop on the street which runs counter to the Roads Division requirements for off street parking provision. A minimal level of site specific locational need is demonstrated given the existing use and the nearby railway station.***

### Consultation Responses

6.3 The consultee comments are not wholly supportive of the application.

### Letters of Representation

6.4 The letters of representation raise several key issues, particularly the road safety concerns of vehicles parking on the public road and footpath.

### Impact on the Amenity of the Area

6.5 The proposal will have a generally negative impact upon the amenity of the area, caused particularly by the location of the trailer as vehicles stop on Rigg Street to access the trailer causing road safety concerns. The location is also visually prominent on this key route as well as from the flats on the other side of Rigg Street.

### Planning History

6.6 Application 09/0173/FL for Change of use of commercial shed to proposed car wash/valet service and tyre/exhaust change unit was approved with conditions on 18 June 2009.

6.7 A catering trailer has been located at the site from the beginning of December in exercise of the applicants permitted development rights under Class 15 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

### Applicants supporting statement

6.8 The applicant has advised that the proposal is fully policy compliant. They have advised that the proposal is targeting a different market from those town centre catering units, particularly the passing trade and commuters who can use the car parking because car parking within the town centre is poor. As a result of

this they do not believe that the proposal will significantly effect any of these businesses. Further to this the trailer is a key component in the viability of the car care facility and should this proposal be prevented the viability of the business may be affected including the provision of up to 20 local jobs. The success of the business is important for the town generally and the site offers more parking to reduce congestion near the rail station. As an example the applicant highlights the plethora of hairdressing shops in competition with each other in the town and that this sets a precedent.

## **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 indicated in Section 5 of the report, the application is largely contrary to the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

8.2 As indicated in Section 6, there are material considerations relevant to the determination of this application. The Alteration to the East Ayrshire Local Plan carries considerable weight in this instance. The proposal is contrary to Policy RTC 14 of the Alteration for similar reasons to those under the existing Local Plan. The point raised by the Roads Division is noted with regard to on street parking and this is a view expressed by the Community Council and objectors. Given the location of the van it is considered that on street parking is encouraged with the relevant road safety concerns as a result. The proposal is considered to have a negative impact on the amenity of the area for this reason as well as the visual amenity of this busy area. The applicants supporting statement is the only material consideration expressly in favour of the development and whilst the points made are noted, the vitality and viability of the town centre would be effected given its close location to this area and the ample supply of catering facilities nearby within the town centre area.

## **9. RECOMMENDATION**

9.1 It is recommended that the application be refused for the reasons on the attached sheet.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application will not be required to be referred to the Full Council as this would not be a significant departure from Policy.

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

19 January 2010  
FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of Representation.
5. Supporting statement
6. Adopted East Ayrshire Local Plan (2003).
7. Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications)
8. Planning application 09/0173/FL

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: 09/0783/PP

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|------------------------------|---|
| Site of Proposal:            | 25 Rigg Street<br>Stewarton<br>Kilmarnock<br>East Ayrshire<br>KA3 5AJ     |
| Nature of Proposal:          | Change of Use to Form Catering Facility                                   |
| Name & Address of Applicant: | P B Properties<br>Balgraymill Farm<br>Cutstraw Road<br>Fenwick<br>KA3 6BB |

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DPO's Reference: DW/KW

The above application for planning permission should be refused for the following reasons:

1. The proposed development would be contrary to Policy RTC 14 of the Adopted East Ayrshire Local Plan as it will impact adversely upon the vitality and viability of the existing retail and catering provision within Stewarton.
2. The proposed development would be contrary to Policy RTC 14 of the Adopted East Ayrshire Local Plan as it creates an unacceptable impact on the visual quality and amenity of the area.
3. The proposed development would be contrary to Policy RTC 14 of the Adopted East Ayrshire Local Plan as the siting of the proposed development adjacent to Rigg Street encourages on street parking to the detriment of road safety.

4. The proposed development would be contrary to Policy RTC 14 of the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications) as it will impact adversely upon the vitality and viability of the existing retail and catering provision within Stewarton.

5. The proposed development would be contrary to Policy RTC 14 of the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications) as it will create an unacceptable impact on the visual quality and amenity of the area.

6. The proposed development would be contrary to Policy RTC 14 of the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications) as the siting of the proposed development adjacent to Rigg Street will encourage on street parking to the detriment of road safety.