

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 30 SEPTEMBER 2011

11/0490/PP: CHANGE OF USE FROM A NEWSAGENTS TO A HOT FOOD TAKEAWAY SHOP AT 8 MAIN STREET, DALMELLINGTON

BY NICEDAYS STORES LIMITED

Report by Head of Planning and Economic Development

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=11/0490/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for the change of use of the existing Class 1 (shops) use (of the Use Classes (Scotland) Order 1997) to use as a hot food takeaway (*sui generis* use). Furthermore, the applicant proposes the installation of an extract flue which would attach to the western gable wall and extend to some 700mm above the ridge of the building. The extract flue would have a diameter of between 300-400mm and would be finished in galvanised steel.

2. RECOMMENDATION

2.1 It is recommended that the application should be indicated on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report the application is contrary to the Development Plan. No evidence has been submitted to satisfy the requirements of policy RTC3 part (i) in that the proposal falls within Schedule 6 (ii) of the Local Plan. Furthermore, the adverse visual impact of the flue on the exposed gable of the building makes the proposal contrary to policies RTC3 part (ii), ENV1 and ENV7 and the impact on adjacent residential property by reason of smells and noise makes it contrary to policy RTC15 of the Local Plan.

3.2 The material considerations of this case generally do not lend support to the proposal. The comments of the objectors primarily relate to competition between business which is not a material consideration; however the comments in relation to the potential adverse impact on the adjacent residential properties is shared by Environmental Health. Whilst it is

acknowledged that planning conditions could be attached to any grant of consent, as the proposal currently stands it is unacceptable to Environmental Health and would adversely impact on residential amenity. The location of the flue on the exposed gable combined with its size and finish will have an adverse visual impact on the setting of the Dalmellington Conservation 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 would not require to be referred to 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 Southern Local Planning Committee under the scheme of delegation as it is subject to more than 10 objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a two and a half storey rendered building which is currently vacant on the ground floor having previously contained a newsagent. The upper level of the building contains a flatted dwelling. The site is located off Main Street within the town centre of Dalmellington and is within the Dalmellington Conservation Area. The site is bounded to the south by the rear of properties fronting Waterside Street and to the north by Main Street with dwellings and shops on its other side. To the east of the site are adjoining buildings which turn the corner of Main Street and Waterside Street and to the west by a gap site and thereafter by a two storey building containing a newsagent on the ground floor. The applicant has indicated an ownership interest in the gap site and buildings to the west of the application site.

2.2 **Proposed Development:** Planning permission is sought for the change of use of the existing Class 1 (shops) use (of the Use Classes (Scotland) Order 1997) to use as a hot food takeaway (*sui generis* use). Furthermore, the applicant proposes the installation of an extract flue which would attach to the western gable wall and extend to some 700mm above the ridge of the building. The extract flue would have a diameter of between 300-400mm and would be finished in galvanised steel.

3. CONSULTATIONS AND ISSUES RAISED

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

3.2 East Ayrshire Council Roads and Transportation Service has no objections to the development but notes that the “no waiting at any time” restrictions in front of the premises will be enforced.

3.3 The East Ayrshire Access Panel has no objections to the proposed development but requests that if level access doesn't currently exist, could it be considered.

The site currently has a relatively level access with no steps however as the proposal does not relate to alterations to the shop front, any changes to the access would be at the discretion of the applicant.

3.4 East Ayrshire Council Environmental Health Service has not objected to the application but has provided comments on the following issues:

1. As there are residential properties above the proposed shop, the ventilation arrangements as noted on the plans accompanying the application will be inadequate to minimise the potential for nuisance arising caused by odours or fumes from the cooking process. Should the application be approved, it is strongly recommended that a filtered ventilation system be required rather than the coarse grease filter system which the plans indicate.
2. Induction ventilation will require to be introduced in order to provide an adequate supply of fresh air into the premises.
3. The induction and extraction ventilation systems should be interlocked with the gas supply to cooking ranges etc. to ensure that cooking cannot be carried out without adequate ventilation being in operation.
4. It is unclear from the application what the operating hours of the takeaway would be, if approved. There may be the potential for nuisance from noise arising from either the operation of the premises as a takeaway, or from patrons of the shop, or both. It is suggested that comments be sought from the applicant on this matter prior to formal consideration.
5. A vapour barrier should be installed to prevent percolation of fumes and odours through the building fabric to the properties on the upper levels.
6. The ventilation system, as installed, will require to be acoustically isolated from the building to prevent transmission of sound and vibration from the system into the residential parts of the building.
7. A grease trap, suitable in size and location, should be installed in the drainage system prior to its discharge into the main sewerage system.
8. It is noted that there is no intervening ventilated space between the w.c. compartment and the kitchen. Such a space will require to be provided and be suitably ventilated to the external air
9. Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, and no noisy work on a Sunday.
10. Noise from the works during construction should at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A) at the nearest noise-sensitive location.

11. All waste arising from the works should be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning.
12. All drainage should be completed to the satisfaction of SEPA and/or Scottish Water.
13. There is insufficient detail provided in relation to the proposed kitchen layout, finishes etc., and I would be grateful if these could be supplied to the Team Leader (Food safety/Health and Safety) for his perusal.

The points raised by the Environmental Health Service are noted. The current system as proposed is clearly insufficient to provide adequate protection to adjoining residential properties. Should members choose to grant consent is it recommended that planning conditions be attached that address points 1, 2, 3, 5, 6, 7 and 8 to ensure that ventilation is provided and that appropriate odour control is in place. The operating hours of the establishment as noted at point 4 would be addressed through the requirement for a licence and the remainder of the points could be attached as notes to any grant of planning consent.

4. REPRESENTATIONS

4.1 The proposal has been subject to 26 letters of objection which were received following neighbour notification and public advertisement of the proposals. The main points of objection are summarised as follows:

Competition and number of takeaways

4.2 Dalmellington has enough take away food places.

4.3 This would be unfair for established businesses.

4.4 Dalmellington and Bellsbank have reached saturation point and whilst there may be 1 or 2 positions available to local people for employment, I would be very worried that if this planning application is granted, the effects on similar establishments could be devastating and fear that some may close due to the increasing economic difficulties. I believe this would be terrible for the village as it still suffers from many years of economic deprivation.

4.5 At present there is a snack bar, an Indians, 2 Chinese, 2 chip shops, 2 coffee shops and the bakers all offering hot food to take away throughout the day and night, all within a half mile distance of this proposed development. There are also mobile food vans who operate within the village. There is also a public house offering food, a hotel which does meals and another pub which has requested permission for an extension to allow a restaurant. This is a substantial list within a small area and I don't feel there is space for any more.

Planning Circular 4/2009 clearly advises that the planning system operates in the long term public interest and does not seek to protect other properties or businesses from financial or other loss

as a result of a development. On this basis the objections relating to the number of hot food takeaways and potential impacts on existing businesses is not a material consideration and carries no weight in the assessment of this application.

Parking/Roads

4.6 Parking is enough of a problem without more problems being created.

4.7 Traffic congestion is an issue as on street there is double yellow lines outside the premises, many shops and flats around that area, and have limited space for individuals to park as it is which may become an issue.

The Council's Roads and Transportation Service has raised no objection to the proposal but notes the presence of parking restrictions at the front of the site. Should parking take place at the front of the shop in breach of these restriction, enforcement would be for the police to pursue under their road traffic powers.

Residential Amenity/Noise/Litter/General Disruption

4.8 Unwanted fumes, contamination and pollution to the building from the operation of the premises for example the smell of spicy cooking, damaging flat carpets, clothing or staining from grease fumes.

4.9 Increase in litter around the premises which would encourage the introduction of rodents.

4.10 Sound pollution from the premises which on a busy street is already very loud. Also, in late night openings, and at weekends which would be more boisterous and exceptionally loud.

4.11 Large groups of people hanging around the premises which is directly next to our flat, attracting drunk characters as individuals or groups as well as perhaps unruly characters. This could lead to vandalism etc. Also as two young women staying in the flat I feel our security may also be at risk, individuals will be banging at our door, using the door way for urination, as you see many drunk individuals do. They may also try and get in to our flat.

The comments of the Environmental Health Service indicate that the current proposal does not meet with a sufficient standard to protect the residential amenity of the adjacent properties by reason of smell and noise. These issues could be addressed by the attachment of planning conditions should members choose to grant consent. In terms of external noise and disturbance it is agreed that a degree of impact is likely to occur. However, this should be considered in relation to the location of the development within the identified town centre of Dalmellington and its close proximity to the road. Within a town centre area which often accommodates a mix of uses, a greater degree of noise and disturbance should be expected and would not be

unreasonable. In this case it is not expected that an undue adverse impact would occur to the surrounding area particularly given the town centre location.

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 Adopted East Ayrshire Local Plan (2010).

5.2 Policy RTC3 advises that the Council will 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 current shop use falls within Schedule 6(i) and the takeaway use falls within Schedule 6(ii) of the Local Plan. The applicant has provided no information to demonstrate that the site has been actively marketed for a minimum of 6 months for an alternative Schedule 6(i) use. On this basis it is contrary to part (i) of this policy. In terms of part (ii) it is considered that the extract flue on the gable wall of the building is not sympathetic to the Conservation Area in terms of its design, position and material finish. Given that it is located on a side gable that is open to views, albeit restricted close range views, of vehicles and pedestrians on Main Street, it is considered that it will be highly visible and will be exacerbated by its metal finish, to the detriment of the Conservation Area.

5.3 Policy RTC15 states that development proposals for public houses and hot food take-aways will be considered acceptable uses within town centres, and may be considered appropriate in other locations, where the proposals:

- (i) meet with the Council's design and layout policies;
- (ii) meet with the requirements of the Council as Roads Authority;
- (iii) do not have a detrimental effect on the amenity of adjacent properties by reason of noise, litter, odour or any other disturbance; and
- (iv) are compatible with surrounding land uses.

This position reflects that of policy RTC3 above where the principle of locating such a development in the town centre is acceptable. However, no justification has been submitted by the applicant in terms of policy RTC3 part (i) and as noted by Environmental Health in their consultation response, the proposals as they currently stand would have an adverse impact on neighbouring residential property by reason of smell and odour.

5.4 Policy ENV1 states that the Council will seek to protect, preserve and enhance all built heritage resources requiring conservation including Listed Buildings and Conservation Areas, together with their respective settings, Historic Gardens and Designed Landscapes, Scheduled Ancient Monuments and Archaeological and Industrial Archaeological Sites and Landscapes.

The site is located near the heart of Dalmellington Conservation Area and is highly visible in the street scene. The applicant has provided no information on any changes to the shop front therefore the only external component of the application relates to the proposed extract flue on the gable wall of the building. The flue begins from approximately 2.5m above ground level and extends up the gable of the building, turning to take account of the slope of the roof and thereafter extending some 700mm above the ridge line. Given the open aspect of the building from the west and the lack of screening available it is likely to be highly visible when viewed from Main Street. It is noted that this gable currently includes an air conditioning type unit as does the facing gable which creates a degree of visual impact. However, these units are not as severe in appearance as the flue would be, due to their locations on the gables and also their generally compact nature which combine to keep the adverse visual impact relatively low.

5.5 Policy ENV7 states that development within a conservation area shall preserve or enhance its character and that the Council will not be supportive of any development that is unsympathetic to the area or building concerned in terms of its layout, size, scale, design, siting, materials and colour of finish.

As noted at section 5.4 above it is considered that there will be an adverse visual impact resulting from the position, size and finish of the flue on the exposed gable wall. This will have an adverse impact on the setting of the Dalmellington Conservation Area and as such is contrary to Policy ENV7.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the consultation responses, planning history, the impact on the amenity of the area including the setting of the Conservation Area and the representations.

Consultation Responses

6.2 The consultation response from Environmental Health is of particular relevance to this proposal. As the proposal currently stands the smell and noise impacts of the development on neighbouring residential property is unacceptable. These issues could be addressed through planning conditions should members choose to grant consent which would allow sufficient protection for these properties.

Representations

6.3 The points raised by the objectors primarily relate to a proliferation of food shops within the Dalmellington Area and the impact that a further one could have on local businesses. Further points have been raised regarding residential amenity by way of smell and noise as well as the impact generally in the local area given the issues associated with hot food takeaways such as noise and drunkenness. As already advised at Section 3 above, the competition between, and number of, food shops is not a material planning consideration and carries no weight in the consideration of this application. The use is within the town centre of Dalmellington and as such the principle of locating a hot food takeaway is acceptable and the impacts of the use on the surrounding area are considered to be acceptable.

6.4 In terms of impact from smells and noise on neighbouring residential property it is accepted that as the proposal stands an unacceptable impact would occur to neighbouring/adjoining property. However, adequate protection could be provided through planning conditions as per Environmental Health Service recommendations should members choose to grant planning consent.

6.5 Further concerns regarding road safety are not shared by the Council's Roads and Transportation Service.

Planning History

6.6 Application 00/0760/FL for proposed installation of autoteller machine through existing shop front was approved on 5 January 2001.

6.7 Application 00/0017/FL for proposed installation of autoteller machine through existing shop front was refused on 19 May 2000.

6.8 Application 99/0883/AD for a proposed projecting sign was approved with conditions on 11 February 2000.

Impact on amenity/Dalmellington Conservation Area

6.9 The change of use element of the proposal will not adversely affect the area and the reuse of this vacant unit could actually improve the amenity and vitality of the town centre in general terms. However, the flue element is visually prominent on the gable of the building and will create an adverse

visual impact when viewed from Main Street. This will adversely affect the setting of the Dalmellington Conservation Area.

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 As indicated in Section 5 of the report the application is contrary to the Development Plan. No evidence has been submitted to satisfy the requirements of policy RTC3 part (i) in that the proposal falls within Schedule 6 (ii) of the Local Plan. Furthermore, the adverse visual impact of the flue on the exposed gable of the building makes the proposal contrary to policies RTC3 part (ii), ENV1 and ENV7 and the impact on adjacent residential property by reason of smells and noise makes it contrary to policy RTC15 of the Local Plan.

8.2 The material considerations of this case generally do not lend support to the proposal. The comments of the objectors primarily relate to competition between business which is not a material consideration; however the comments in relation to the potential adverse impact on the adjacent residential properties is shared by Environmental Health. Whilst it is acknowledged that planning conditions could be attached to any grant of consent, as the proposal currently stands it is unacceptable to Environmental Health and would adversely impact on residential amenity. The location of the flue on the exposed gable combined with its size and finish will have an adverse visual impact on the setting of the Dalmellington Conservation Area.

9. RECOMMENDATION

9.1 It is recommended that the application should 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 would not require to be referred to the Council as this would not constitute a significant breach of policy.

Alan Neish
Head of Planning & Economic Development

DW/
22 September 2011
FV/HM

List of Background Papers

1. Application form, plans and statutory notices/certificates;
2. Representations
3. Consultation responses
4. Adopted East Ayrshire Local Plan 2010
5. Application 00/0760/FL
6. Application 00/0017/FL
7. Application 99/0883/AD
8. Circular 4/2009 Development Management Procedures

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Anyone wishing to inspect the above papers should contact David Wilson,
Planning Officer on 01563 576779.

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 11/0490/PP

Location	8 Main Street, Dalmellington, KA6 7QL
Nature of Proposal:	Change of use from a newsagents to a hot food take away shop
Name and Address of Applicant:	Nicedays Stores Limited 62 Merrick Drive Bellsbank, Dalmellington, KA6 7TJ
Name and Address of Agent	John Wilson 3 Watson Terrace Drongan, KA6 7AA

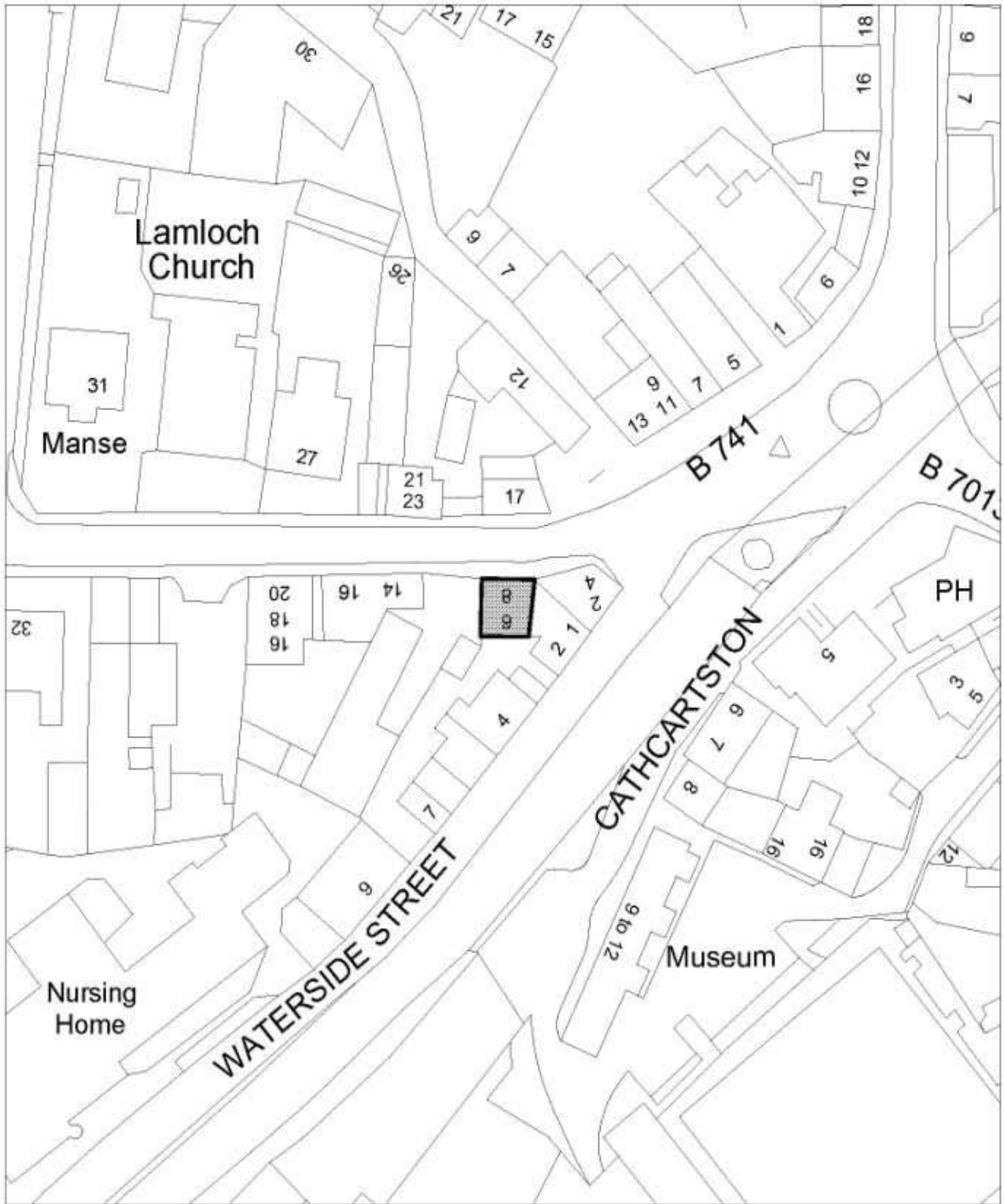
Officer's Ref: David Wilson
01563 576779



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

1. The proposed development would be contrary to Policy RTC3 part (i) of the East Ayrshire Local Plan 2010 as no information has been submitted to demonstrate that the site has actively been marketed for an alternative appropriate Schedule 6(i) use.
2. The proposed development would be contrary to Policy RTC3 part (ii) of the East Ayrshire Local Plan 2010 as the proposed extract flue would have an adverse impact on the character and amenity of the surrounding area by reason of its scale, design and material finish.
3. The proposed development would be contrary to Policy RTC15 of the East Ayrshire Local Plan 2010 as it would have a detrimental on adjacent properties by reason of noise and odour.
4. The proposed development would be contrary to Policy ENV1 of the East Ayrshire Local Plan 2010 as the extract flue would have an adverse impact on the setting of the Dalmellington Conservation Area.
5. The proposed development would be contrary to Policy ENV7 of the East Ayrshire Local Plan 2010 as the extract flue by means of its siting, scale and material finish is not appropriate to the character of the Dalmellington Conservation Area and would have an adverse impact on its setting.

Reason for the Decision

The proposal does not comply with the policies of the development plan and the material considerations do not indicate that the application should be supported contrary to the development plan.



<p>Title/Location</p> <p>8 Main Street</p> <p>Dalmellington</p> <p>Application No. 11/0490/PP</p>	<p>East Ayrshire Council</p> <p>Department of Neighbourhood Services Planning & Economic Development Service The Johnnie Walker Bond 15 Strand Street Kilmarnock KA1 1HU Tel: (01563) 576790 Fax: (01563) 554592 E-Mail : Planning@east-ayrshire.gov.uk Com Date: 30/09/2011</p>
<p>Key</p> <p> Application Site</p>	

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