

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 06 AUGUST 2004

**04/0306/FL: PROPOSED CHANGE OF USE FROM VIDEO RENTAL SHOP TO
HOT FOOD TAKE AWAY
AT 37 MAIN STREET NEWMILNS
BY PAULINE SHEK**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The proposed development is for a change of use from video rental shop to hot food take-away. The development will comprise mainly internal alterations. The addition of a vent to a window on the rear elevation and the change of a rear window to a door will be the only external changes. The customer access arrangements will not be altered.

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 at Section 5 of the report, applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The proposed development does not accord with the Development Plan and therefore the application should be refused unless material considerations indicate otherwise.

3.2 It is considered that the proposed development meets the requirements of Policy RTC2. The application site is located within the town centre of Newmilns. Hot food take-away establishments are identified in Schedule 5 as acceptable uses in town centres and therefore the application accords with Local Plan Policy.

3.3 However, the prime material considerations in assessing the application are the shared entrance and its detrimental impact on the residential amenity of the property above. The shared entrance also would constitute a security concern for the resident of the property above and given the opening hours of

such establishments the door to the street would require to be open until late in the evening. It is also considered that customers loitering within the shared part of the building late at night would contribute to a valid perception of concern on the part of the resident above.

3.4 Therefore although the proposal may not have a significant detrimental impact on the area as a whole it would have a detrimental impact on the residential property above. The impact of a shared entrance and the perceptions of detriment to the security of the nearby householder are a valid material consideration, so too is the probability of noise disturbance. It is therefore considered that the detrimental impact on the property above necessitates that the application should be refused.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development Services Committee.

Alan Neish
Head of Planning, Development and Building Standards

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, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation as it is subject to objections and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is a ground floor property located at 37 Main Street Newmilns within Newmilns Outstanding Conservation Area. The application site is surrounded by both residential and retail properties situated on both Main Street and High Street. Pedestrian/customer access to the unit is off a common vestibule/close which serves an upper floor flat.

2.2 **Proposed Development:** The proposed development is for a change of use from video rental shop to hot food take-away. The development will comprise mainly internal alterations. The addition of a vent to a window on the rear elevation and the change of a rear window to a door will be the only external changes. The customer access arrangements will not be altered.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Scottish Water, Transco, Architectural Heritage Society and the EAC Roads and Transportation Division have no comments to make on this application.

Noted.

3.2 The Council's Department of Neighbourhood Services comment that any waste arising from the construction works should be disposed of to the satisfaction of the Waste Management Authority. Any noisy work should be

restricted to 7am to 6pm Monday to Friday, 8am to 1pm Saturday and no noisy work on a Sunday.

Noted.

3.3 SEPA, The Coal Authority and Darvel Community Council have not responded to their consultation at the time of writing this report.

Noted.

4. REPRESENTATIONS

Ten letters of objection have been received in respect of the proposed development. The grounds of objection are as follows:-

4.1 There is a shared entrance vestibule giving access to the shop premises and my flat on the first floor. The door allowing access to the shared entranceway should be locked at all times. This would not be the case should customers require to gain access to the ground floor shop late at night, thereby resulting in a security risk to my property.

It is considered that the shared entrance would have a detrimental impact on the amenity of the residential property above. The shared entrance would constitute a security concern for the resident of the property above. Given the opening hours of such establishments and the anticipated character of use the concerns of the resident above are valid and are a material consideration in this matter.

4.2 It would appear from my title deeds that the proprietors of the shop premises of number 37 Main Street have no right to use the back-court. Accordingly there is no allocated area for refuse to be stored in bins and I would consider this to be a health risk. The plans also show a new back door leading onto my property at the rear and the ground in question is enclosed by an eight-foot wall with the only way out being through my property.

Noted. However East Ayrshire Council's Department of Neighbourhood Services has been consulted as part of the application and has offered no objection in respect of health risk or related matters. The applicant has submitted no details with regard to the back court and the status of site to rear and any encroachment by the applicant onto property which is not in their ownership is a legal matter.

4.3 There are at least three or four empty shop units within close proximity, which previously traded as take-away premises without success.

Noted.

4.4 The Main Street in Newmilns is a preserved area, and I believe that another hot food take-away is very inappropriate and would further damage the preserved appearance of the area. Hot food establishments seriously damage the image of such a traditional village Main Street and there are already a number of shops on the Main Street, which provide this service.

Noted. The provision of such facilities is acceptable in principle in terms of town centre situations. The issue of commercial viability is not a material consideration in this case.

4.5 The area currently experiences the problem of too much traffic and illegal parking. It is difficult enough to park without attracting more cars to such a small area. As this property is situated on a bend it would greatly increase the risk of accidents on what is already a busy road.

Noted. East Ayrshire Council's Roads and Transportation Division were consulted as part of this application and offered no objection to the proposed development.

4.6 Another hot food take-away opening until late will result in excess noise, there is already a problem of noise pollution and I believe this would make it far worse.

Noted. However there are similar establishments within the area and one more additional hot food take-away would not significantly increase the general noise levels sufficient to warrant refusal. It should however be noted that given the customers' access arrangements there is likely to be an issue of loitering within the shared part of the building late at night and consequent disturbance and detriment to the residential amenity of the immediately adjoining property.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. For the purposes of this application the Development Plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan.

Approved Ayrshire Joint Structure Plan

5.2 The application does not raise any strategic issues that would require assessment against the provisions of the Approved Ayrshire Joint Structure Plan.
Adopted East Ayrshire Local Plan

5.3 Policy RTC2 states that the types of development detailed in Schedule 5 of the Local Plan will be considered acceptable, in principle, within town centres and on those development opportunity sites identified as being suitable for such purposes on the Local Plan maps.

The application site is located within the town centre of Newmilns. Hot food take-aways are identified in Schedule 5 as acceptable uses in town centres. In principle it is acceptable, however, given the unusual nature of the situation with the shared access and the potential detrimental impact on the property above the application site is not considered suitable for the use proposed.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The material considerations relevant in the determination of this application comprise the consultation responses, letters of representation and the impact of the proposal on the amenity of the area.

Consultation Responses

6.2 The consultation responses are detailed in section 3 of this report and offer no objection to the proposed development.

Letters of Representation

6.3 The letters of representation are detailed in Section 4 of this report and the points raised do offer some valid grounds of objection.

6.4 In particular respect of the access arrangements the shared entrance would have a detrimental impact on the residential amenity of the property above. The shared entrance would constitute a security and amenity concern for the resident of the property above and given the opening hours of such establishments the door would require to be open until late at night. It is considered that customers loitering within , or making use of, the shared part of the building late at night would create an inappropriate degree of disturbance and generate a reasonable perception of concern in respect of the neighbour's use of the shared access.

Impact of the Proposal on the Amenity of the Area

6.5 The circumstances of the proposed development are such that it is considered that the proposals will have a detrimental impact on the area with particular regard to the amenity of the upper floor flat.

6.6 The impact of a shared entrance on the residential amenity of the property above and the concerns of the householder are a valid material consideration. It is therefore considered that the detrimental impact on the property above is such as to merit refusal of the application.

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 at Section 5 of the report, applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The proposed development does not accord with the Development Plan and therefore the application should be refused unless material considerations indicate otherwise.

8.2 It is considered that the proposed development meets the requirements of Policy RTC2. The application site is located within the town centre of Newmilns. Hot food take-away establishments are identified in Schedule 5 as acceptable uses in town centres and therefore the application accords with Local Plan Policy.

8.3 However, the prime material considerations in assessing the application are the shared entrance and its detrimental impact on the residential amenity of the property above. The shared entrance also would constitute a security concern for the resident of the property above and given the opening hours of such establishments the door to the street would require to be open until late in the evening. It is also considered that customers loitering within the shared part of the building late at night would contribute to a valid perception of concern on the part of the resident above.

8.4 Therefore although the proposal may not have a significant detrimental impact on the area as a whole it would have a detrimental impact on the residential property above. The impact of a shared entrance and the perceptions of detriment to the security of the nearby householder are a valid material consideration, so too is the probability of noise disturbance. It is therefore

considered that the detrimental impact on the property above necessitates that the application should be refused.

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, Development and Building Standards the application will not require to be referred to the Development Services Committee as this would not constitute a significant departure from policy.

Alan Neish
Head of Planning, Development and Building Standards

28 July 2004
(EMcL/MMM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultations.
4. Letter of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted East Ayrshire Local Plan.
7. Application No: 99/0829/FL.

Anyone wishing to inspect the above papers please contact Eddie McLennaghan on 01563 576772.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Site of Proposal: 37 Main Street
NEWMILNS

Nature of Proposal: Proposed change of Use from Video Rental
Shop to Hot Food Take Away

Name & Address of Applicant: Pauline Shek
Ocean Tower
60 John Finnie Street
KILMARNOCK
KA1 1BS

Name & Address of Agent:

DPOs Reference: EMcL/MMM

The above FULL application should be refused on the following grounds:-

1. The proposed development would be detrimental to the residential amenity of the first floor flat above by reason of its proposed use of a shared entrance and the creation of noise and general disturbance in that location.
2. The proposed development would be detrimental to the residential amenity of the first floor flat above by reason of the proposed use of the shared entrance and the consequent perception, in respect of the residents above, of detriment to their and their property's security.

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THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**