

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 28 OCTOBER 2005

**05/0754/FL AND 05/0921/LB: PROPOSED CHANGE OF USE FROM
COMMERCIAL KITCHEN TO FISH AND CHIP SHOP TAKEAWAY AND
ALTERATIONS
AT 30A MAIN STREET, KILMAURS
BY MS ELIZABETH ANDERSON**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the change of use of the south-west section of the building, from a commercial kitchen to a fish and chip shop takeaway. The external alterations comprise the replacement of a window on the south elevation with a single glazed timber door, and a new flue attached to the roof of this section of the property. Internally, the existing link door to the Turf Hotel will be bricked up, and the food preparation area will be altered to install a deep fat fryer and serving area.

1.2 Listed Building Consent is required for the internal and external alterations referred to above.

2. RECOMMENDATION

2.1 It is recommended that the applications for planning permission and listed building consent be approved subject to the conditions on the attached sheets.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, these applications are considered to be consistent with the Development Plan. Therefore the applications should be approved unless material considerations indicate otherwise.

3.2 As indicated in Section 6 there are material considerations relevant to these applications however none are considered to be of such significant weight as would merit refusal of the applications.

CONTRARY DECISION NOTE

Should the Committee agree that the applications be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the applications will not require to be referred to the Development Services Committee as there would be no significant departure from Council Policy.

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 and an application for listed building consent, to be considered by the Local Planning Committee under the scheme of delegation as they are subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The applications site is within the premises of the Turf Hotel, which is within the centre of Kilmaurs. The property has a stone frontage, slate roof and red timber doors and windows, the rear and side elevations are white render. The section of the building subject of the applications, is part of the single storey extension at the southwest corner of the property. There are a mix of uses surrounding the site, including housing, shops and other licensed premises.

2.2 **Proposed Development:** Full planning permission is sought for the change of use of the south-west section of the building, from a commercial kitchen to a fish and chip shop takeaway. The external alterations comprise the replacement of a window on the south elevation with a single glazed timber door, and a new flue attached to the roof of this section of the property. Internally, the existing link door to the Turf Hotel will be bricked up, and the food preparation area will be altered to install a deep fat fryer and serving area.

2.3 Listed Building Consent is required for the internal and external alterations referred to above.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Environmental Health Division do not object to the proposal but give the following advice:

- (i) Any waste arising from the work should be disposed of to the satisfaction of the Waste Authority, and otherwise than by burning.

This can be addressed by attaching an advisory note, should consent be granted.

- (ii) Noisy construction work should be restricted to 08:00 – 18:00 Monday to Friday, 08:00 - 13:00 on Saturdays, and at no times on a Sunday.

This can be resolved by way of a condition, should consent be granted.

- (iii) Noise from the work should be at a level that will not cause detriment to the amenity of the area.

The proposed condition in relation to point (ii) above is to prevent excessive noise during construction work. The external alterations proposed are limited and the Environmental Health Division have powers to prevent noise disturbance. As such, it is not considered necessary to attach a further condition in this regard.

- (iv) Any noise from patrons entering or leaving the building may give rise to complaints from nearby residents.

This location is within Kilmaurs town centre, and this type of use is considered generally acceptable within town centres. However, a condition should be attached to limit the opening hours, in the interests of minimising noise disturbance.

- (v) The flue arrangement originally proposed was unsatisfactory.

An Environmental Health Officer subsequently visited the site and advised of the current legislative requirements. Amended plans have been submitted which are now to the satisfaction of Environmental Health.

- (vi) Satisfactory provision should be made for the disposal of refuse prior to collection.

This can be resolved by way of a condition, should consent be granted.

3.2 East Ayrshire Council's Roads and Transportation Division have no objections, however, advise that the applicant must contact East Ayrshire Council's Cleansing Services with regard to the potential increase in litter, and that all appropriate road permits for road occupation and road/footway operations must be obtained from the Roads Division.

The applicant has advised they have been in contact with the Cleansing Service; the final details of the refuse storage and disposal may be resolved by way of condition, should consent be granted. The issue regarding road permits may be addressed by attaching an advisory note.

3.3 Transco have raised no objection in relation to the proposal.

Noted.

3.4 Historic Scotland has raised no objection in relation to the proposal.

Noted.

3.5 The Architectural Heritage Society has raised no objection in relation to the proposal.

Noted.

3.6 Kilmaurs Community Council have not responded in relation to this proposal.

Noted.

4. REPRESENTATIONS

There are four objectors in relation to these applications. The points of concern are noted below:-

4.1 It is not appropriate to sell take-away food in a pub. It is bad enough having teenagers drinking on the street at night, and this may encourage anti-social behaviour.

The take-away would not be accessible from the pub, and in terms of appropriate uses, this use is considered generally acceptable for town centres.

4.2 Our (nearby) business is already struggling to pay rent, bills, Council tax etc and the business is not very busy therefore profits are already low.

The issue of competition is not a material planning consideration.

4.3 The change of use may lead to problems with litter, which most people do not dispose of responsibly.

The applicant has advised they have been in contact with the Council's Cleansing Department to discuss litter and waste. The applicant has advised they will accept the Cleansing Division's recommendation regarding litter storage and collection. A condition can be attached regarding the storage and disposal of customers' rubbish should consent be granted.

4.4 There may be noise pollution due to the actual building environment (fans, deliveries etc), and also with the cars and people the business will attract.

The Environmental Health Division has raised no objection in relation to working noise. The opening hours can be limited by way of condition, should consent be granted. Further, the degree of disturbance must be assessed against existing uses in the area given the village centre location of the premises including a take-away shop and licensed premises.

4.5 The smell would be a problem, and the village already has to put up with the smell from the Chinese take-away.

There is always the possibility of some smells from commercial food premises, however this will be mitigated by way of condition requiring details of equipment to extract smells, should consent be granted.

4.6 There are already several businesses providing food and take-away food, and quite a number of residents in the village feel that another take-away is not required.

The proposal is considered acceptable in principle. Competition is not a material planning consideration.

4.7 While Kilmaurs is a very quiet village during the day, it is very noisy at night with teenagers sitting at The Cross, leading to noise and litter, and turning the village into a no-go area. A fish and chip shop would only enhance this problem.

As stated in relation to 4.1 above, the proposal is an acceptable town centre use under Local Plan policy. It is recognised that the introduction of a hot food take away may attract people in the evening, however the degree of disturbance must be assessed

against the existing uses in the area and the central location of the premises.

4.8 The village has been regenerated in recent years with new shops and houses. It is an up and coming area with good facilities which can only get better with the new motorway and new income coming into the area. Adding a fish and chip shop into this area would not enhance the village.

This proposal is consistent with Local Plan policy (see Section 5 below) and is therefore acceptable in principle. Should consent be granted, conditions can be attached regarding opening hours, construction working hours, smell and refuse disposal, to alleviate concerns regarding amenity.

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 these applications the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (EALP).

Ayrshire Joint Structure Plan

5.2 There are no policies specifically relating to this matter in the Approved Ayrshire Joint Structure plan.

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 Kilmaurs town centre and hot food takeaways are considered to be acceptable town centre uses under Schedule 5.

5.4 Policy ENV4 seeks to ensure that all development within or affecting the setting of a Conservation Area or affecting the appearance or setting of a Listed Building, is sympathetic to the area or building concerned in terms of its layout, size, scale, design, siting, materials and colour of finish. The policy also states that development proposals should seek to preserve, enhance or incorporate features, which contribute positively to the character or appearance

of the area and have due regard to the architectural and historic qualities of the area or building concerned.

The site is located within a Category 'C(s)'-listed building and the Kilmaurs Conservation Area. The external alterations are limited, and it is proposed to use the same materials as existing. The proposed flue will affect the setting of the Conservation Area to a degree, however, it is considered that the impact will be limited, and the flue will be largely screened from Main Street. Internally, the alterations relate only to the south-west extension of the hotel building. It is not considered that there is anything within this section of architectural merit which requires to be protected.

These applications are therefore considered to be compliant with Development Plan policy.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of these applications are the consultation responses received which are addressed in Section 3 of the report, the letters of objection which are addressed in Section 4 of the report, the planning history of the site and the impact upon the amenity of the area.

Consultation Responses

6.2 The consultation responses are detailed in the report and do not raise any issues to warrant refusal of these applications.

Letters of Objection

6.3 The points of objection have been addressed in Section 4 of the report. It is not considered that they raise any issues sufficient to warrant refusal of these applications.

Planning History

6.4 The previous applications pertaining to this site are listed below:

- Planning Application Nos: 83/33ABCDEFGHIJKLMN related to various alterations to the property including signage, alarms, a beer garden, re-painting of the building, and also the erection of dwellinghouses to the rear of the property;

- Planning Application No: 01/0667/FL, for the change of use from a hotel to licensed restaurant with private dwellinghouse and separate main door access was approved with conditions on 16 November 2001;
- Listed Building Application: 01/0692/LB for internal and external alterations was approved with conditions on 21 December 2001;
- Planning Application No: 02/0295/FL for new vehicle garaging to the rear of the property was approved with conditions on 19 July 2002;
- Listed Building Application: 02/0318/LB for single storey garages to the rear of the property was approved with conditions on 19 July 2002

6.5 It is not considered that any of these applications relate to the proposal currently being considered, and as such they present no issues which would affect the recommendation for the applications currently being considered.

Impact on Amenity

6.6 Hot food takeaways may present some issues relating to noise, litter and smell, however in this instance the proposal is within the town centre and there are existing similar uses in the vicinity. Additionally, conditions may be attached to minimise any potential disturbance. It is therefore considered that the potential impact on amenity does not warrant refusal of these applications.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of these applications.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, these applications are considered to be consistent with the Development Plan. Therefore the applications should be approved unless material considerations indicate otherwise.

8.2 As indicated in Section 6 there are material considerations relevant to these applications however none are considered to be of such significant weight as would merit refusal of the applications.

9. RECOMMENDATION

9.1 It is recommended that the applications for planning permission and listed building consent be approved subject to the conditions on the attached sheets.

CONTRARY DECISION NOTE

Should the Committee agree that the applications be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the applications will not require to be referred to the Development Services Committee as there would be no significant departure from Council Policy.

Alan Neish
Head of Planning, Development and Building Standards

19 October 2005
(CP/MMM/IMB)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultations.
4. Letters of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted East Ayrshire Local Plan.
7. Application Nos: KL/W/83/33A, B, C, D, E, F, G, H, J, H, L, M & N, 01/0667/FL, 01/0692/LB, 02/0295/FL and 02/03118/LB.

Anyone wishing to inspect the above papers please contact Claire Peters, Planning Officer on 01563 576779.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0754/FL

Site of Proposal: 30A Main Street
KILMAURS
KA3 2SF

Nature of Proposal: Proposed Change of Use from Commercial
Kitchen to Fish and Chip Shop Takeaway and
Alterations

Name & Address of Applicant: Ms Elizabeth Anderson
34 Main Street
KILMAURS
KA3 2SP

Name & Address of Agent: Ian McGregor
Balgraymill Farm
FENWICK
KA3 6BB

DPOs Reference: CP/MMM/IMB

The above FULL application should be granted subject to the following conditions:-

1. The use hereby approved shall only operate between the hours of 11:00 and 23:00.

REASON To prevent noise disturbance extending into the hours during which other sources of noise have subsided, in the interest of residential amenity.

2. Notwithstanding the plans hereby approved, the external materials of the proposed new door on the south elevation, shall match the materials and colours of the existing openings.

REASON In the interests of visual amenity.

3. A scheme showing the provision to be made for the storage and disposal of refuse (for commercial uses and for customers) shall be submitted to and approved in writing by the Planning Authority before any development commences on site. The scheme shall thereafter be implemented as approved.

REASON In the interests of public safety and the amenity of the area.

4. No noisy construction work relating to the proposed alterations shall be undertaken before 08:00 and after 18:00 on Mondays to Fridays or before 08:00 and after 13:00 on Saturdays or at any time on Sundays.

REASON To minimise noise disturbance, in the interest of residential amenity.

5. Prior to the commencement of the development, details of the proposed equipment to be installed in relation to the extraction system shall be submitted to and approved by the Planning Authority. Any equipment approved shall be installed prior to the commencement of the use and thereafter maintained to the satisfaction of the Planning Authority. The details shall include the finish to the flue; such finish to minimise its visual impact.

REASON In the interests of public health and residential amenity.

NOTES:

1. The applicant is advised that all appropriate permits for road occupation and / or footway operations must be obtained from East Ayrshire Council's Roads and Transportation Division, prior to work commencing on site.
2. Any waste arising from the work shall be disposed of to the satisfaction of the Waste Management Authority, and otherwise than by burning.

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0921/LB

Site of Proposal: 30A Main Street
KILMAURS
KA3 2SF

Nature of Proposal: Proposed change of use from commercial kitchen to fish and chip shop take away and alterations

Name & Address of Applicant: Ms Elizabeth Anderson
34 Main Street
KILMAURS
KA3 2SP

Name & Address of Agent: Ian McGregor
Balgraymill Farm
FENWICK
KA3 6BB

DPOs Reference: CP/MMM/IMB

The above LISTED BUILDING application should be granted subject to the following condition:-

1. Notwithstanding the plans hereby approved, the external materials of the proposed new door on the south elevation, shall match the materials and colours of the existing openings.

REASON In the interests of visual amenity.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**