

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 24 FEBRUARY 2006

**05/1193/FL: REPLACING OLD EXTRACTION SYSTEM WITH THE
INSTALLATION OF NEW FLUE/VENT
AT 20 MAIN STREET, DALMELLINGTON**

APPLICATION BY MR. W. LOY

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought retrospectively for the erection of a flue/vent to the rear of the cafe. The flue/vent is positioned to the rear of the café on the side elevation of a small flat roof extension above an access door. The flue/vent is almost flush fitting with the wall at an approximate height of 2 metres above ground level with the approximate dimensions of 55cm x 25cm. The flue is made from a metal material, is rectangular in shape and finished in a grey colour.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

3.1 As indicated in Section 5 of the report, there are no specific policies relating to this type of development in the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, greater weight should be given to the material considerations in respect of the proposed development. As is indicated in Section 6 of the report there are material considerations relevant to this application.

3.2 The two third party representations lodged show clear concerns with respects to the location of the flue/vent. When undertaking a site visit it is clear that smells are being released with the venting system forcing waste air out into the atmosphere. As this extract is positioned slightly above head height the smells seem to linger in the rear garden area directly below the two residential properties of number 16A and 16B Main Street.

3.3 The consultation responses received and third party representations would indicate that this retrospective positioning of a flue/vent system is inappropriate. After visiting the site it is clear that issues such as cooking smells being released, as described in the letters of representation, are apparent and this can be considered as being of detriment to the adjacent residential amenity. As there are other more suitable positions for the sighting of a flue system it is considered that this retrospective 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 would not require to be referred to the Development Services Committee as it would not be classed as a significant departure from the East Ayrshire Local Plan.

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 application which is to be considered by the Local Planning Committee under the scheme of delegation, as the proposed development is the subject of objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is located on the southern side of the Main Street within the Dalmellington Conservation Area. The property forms a small café fronting onto Main Street with a small car park located directly along the western boundary. Two residential flats are located above and to the side of the proposal. The access to both flats is taken via a 'close' from Main Street leading to two elevated entrances at the rear of the café. Attached to the rear elevation of the café is a small flat roof single storey extension which protrudes into the rear garden area of the above flat. The garden is enclosed by an approximate 2 metre high brick wall following the line of the western gable and the adjacent car park.

2.2 The café is a traditional 2 storey building finished in red sandstone and with the car park positioned directly adjacent to it, the full gable elevation is in view which has a small advertising sign.

2.3 **Proposed Development:** Full planning permission is sought retrospectively for the erection of a flue/vent to the rear of the cafe. The flue/vent is positioned to the rear of the café on the side elevation of a small flat roof extension above an access door. The flue/vent is almost flush fitting with the wall at an approximate height of 2 metres above ground level with the approximate dimensions of 55cm x 25cm. The flue is made from a metal material, is rectangular in shape and finished in a grey colour.

3. CONSULTATIONS AND ISSUES RAISED

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

Noted.

3.2 East Ayrshire Council Environmental Health Division has provided detailed comments on the application which are outlined below:

Although the applicant has stated that this installation is a replacement of a similar old system, this is not altogether factual. The previous system was far less powerful and relied a great deal on passive rather than active ventilation. The new installation is causing cooking smells to enter the neighbouring upstairs properties creating a statutory nuisance. Action by this Department to abate of the smell nuisance is currently in abeyance pending the outcome of this Planning Application; however there appear to be only two options available:

a) Installation of activated carbon filters, fitted after the existing grease filters which will remove the bulk of the cooking odours. The success of this method of removing cooking smells can not be guaranteed, and regular replacement of the filters would in any case be essential.

b) Relocation of the outlet of the flue system to the right hand elevation of the building overlooking the car park.

Noted.

4. REPRESENTATIONS

4.1 Two letters of representation have been received with regard to the proposed development. The main points of objection are summarised below:

4.2 This system was installed while my wife and I were away on holiday without consulting either myself or my neighbours and since the extract has been in use the smells from the café enter my house whenever the door is opened. I can't leave any windows at the rear of the house open as the smells come straight in. The extract is on from 8am – 4pm Monday to Wednesday and 8am – 9pm Wednesday to Saturday which as you can imagine is making my family life very unpleasant.

The points raised are consistent with the Planning Officer's site visit and the Environmental Health Divisions comments. The extract system is forcing unpleasant cooking smells generated from the café

out into the atmosphere at a position which is in close proximity to two residential properties. As the exit point of the flue system is slightly above head height the smells are lingering in the rear garden area and rising to the detriment of the above properties amenity.

4.3 The position of this vent is next to my stairs that lead to my front door. If there ever was a fire I have no safe exit from my property. If a fire was to start in the café's kitchen and enter the ducting, the flames will come out the vent which is next to the entry and exit to my property.

As noted in section 4.2 the position of the flue/vent is not considered to be appropriate in this instance primarily with regards to the height and smells discharging. However, Environmental Health have provided comments detailing the type of filter used in this system which prevents the build up of grease, reducing the risk of a fire starting.

4.4 The two letters of representation state that if the flue was to be moved to the other side of the building (western gable), venting onto an open air car park then they would have no objections.

The western gable elevation forms the boundary with an adjacent small car park. The two letters of objection describe the side elevation as more appropriate to house such a ventilation duct, as there are no residential properties in close proximity that would be adversely affected.

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 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 (1999) and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no policies contained in the structure plan which are especially relevant to the development.

Noted.

East Ayrshire Local Plan

5.3 There are no policies contained in the local plan which are especially relevant to the development.

Noted.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses and the third party representations.

Consultations Responses

6.2 The consultation response received from East Ayrshire Council's Environmental Health Division would suggest that the refusal of this application would be appropriate. If the application were to be approved it would effectively allow the applicant to continue to pollute the air, contravening the Environmental Protection Act 1990.

Representations

6.3 The two objections received show clear concerns with the working of the flue in its current position, primarily with respects to the associated smells being released and the safety issues if a fire was to start in the café. In line with the Environmental Health Division's comments both letters make reference to the repositioning of the flue on the opposite elevation which faces onto a car park which would allow the venting to take place away from the residential properties.

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, there are no specific policies relating to this type of development in the development plan. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, greater weight should be given to the material considerations in respect of the proposed development. As is indicated in Section 6 of the report there are material considerations relevant to this application.

8.2 The two third party representations lodged show clear concerns with respects to the location of the flue/vent. When undertaking a site visit it is clear

that smells are being released with the venting system forcing waste air out into the atmosphere. As this extract is positioned slightly above head height the smells seem to linger in the rear garden area directly below the two residential properties of number 16A and 16B Main Street.

8.3 The consultation responses received and third party representations would indicate that this retrospective positioning of a flue/vent system is inappropriate. After visiting the site it is clear that issues such as cooking smells being released, as described in the letters of representation, are apparent and this can be considered as being of detriment to the adjacent residential amenity. As there are other more suitable positions for the sighting of a flue system it is considered that this retrospective application should be refused.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons listed 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 would not require to be referred to the Development Services Committee as it would not be classed as a significant departure from the East Ayrshire Local Plan.

Alan Neish
Head of Planning, Development and Building Standards

9 February 2006
RG

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letters of representation.
4. Adopted East Ayrshire Local Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).

Anyone wishing to inspect the above background papers should contact Mr Robin Ghosh on 01563 555483.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 05/1193/FL

Location	BACUS CAFÉ, 20 MAIN STREET, DALMELLINGTON
Nature of Proposal:	RETROSPECTIVE ERECTION OF FLUE/VENT
Name and Address of Applicant:	MR W LOY 20 MAIN STREET DALMELLINGTON KA6 7QL
Name and Address of Agent	N/A

DPO's Ref: Robin Ghosh
PPO's Ref: Hugh Melvin

The above FULL application should be refused for the reasons listed below:

- 1) The proposed development would result in cooking smells being released at an unsuitable position affecting, to the detriment, the neighbouring residential amenity.

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