

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 17 JUNE 2005

**05/0390/FL: ERECTION OF FLUE AT GARAN FISH BAR
63 MAIN STREET, MUIRKIRK**

APPLICATION BY MR. F. LAU

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought retrospectively for the erection of a flue at the fish and chip shop. The flue is positioned to the rear elevation of the building starting at an approximate height of 2.5 metres above ground level and remains at this height, running parallel with the ground towards the western gable end where it then forms an 'L-shape' and extends vertically to a height approximately 1.5 metres above the eaves level. The metal flue is circular in shape with a silver metallic finish.

2. RECOMMENDATION

2.1 It is recommended that the application be approved.

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 have been made by the occupants of number 59 Main Street which is the adjacent building to the western elevation and recessed at a distance of at least 1.5 metres from the end of the wall where the flue is attached. As the flue is at an adequate discharge height above the eaves level and not attached to number 59 Main Street, it is not considered that there would be any significant adverse impact on this property.

3.3 It is considered that all reasonable attempts have been made to reduce any adverse impacts from the flue to the neighbouring properties. It should be

further noted that this is an existing hot food takeaway premises that has operated for some time at this location. The Environmental Health Division has stated that the flue is at an acceptable height and position and if any issues are raised regarding the operation of the unit this will be investigated accordingly. If an investigation was to be carried out and it was found that the flue was adversely affecting the neighbouring property then appropriate action would require to be taken to resolve this under legislation enforced by the Environmental Health Division. In this regard it is considered that the representations received are not of sufficient weight as to merit refusal of the application.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, 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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APPLICATION BY MR. F. LAU

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 in the centre of the settlement of Muirkirk to the east of the junction with Glasgow Road facing onto Main Street. The property is a traditional semi-detached two storey sandstone tenement building which has been divided to accommodate a fish and chip shop (Garan Fish Bar) with residential units above. The land to the rear of the property extends significantly to provide a large north facing garden area.

2.2 **Proposed Development:** Full planning permission is sought retrospectively for the erection of a flue at the fish and chip shop. The flue is positioned to the rear elevation of the building starting at an approximate height of 2.5 metres above ground level and remains at this height, running parallel with the ground towards the western gable end where it then forms an 'L-shape' and extends vertically to a height approximately 1.5 metres above the eaves level. The metal flue is circular in shape with a silver metallic finish.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Muirkirk Community Council have no objection to this application and have noted that there is no encroachment or visible irritation to the public gaze.

Noted.

3.2 East Ayrshire Environmental Health Division has no objections in principle to the erection of the flue as shown, subject to 'no nuisance' being caused to the residential property, both adjoining and above the hot food premises, from the operation of the flue system. The adopted layout of the flue is acceptable in that the final discharge point is still well above eaves level and any nearby windows. The Division is not aware of any complaints having been made about the operation of the unit.

Noted. The Environmental Health Division has been advised of the comments of the objectors in relation to the operation of the flue.

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 The erection of the flue has covered the kitchen window in steam and I have concerns regarding fumes entering my kitchen.

The flue has been located in this position to give the highest possible release of fumes without becoming visible from the front elevation. The Environmental Health Division has noted in its consultation response that if any problems arise with fumes/smells affecting neighbouring properties it will become actively involved.

4.3 The release of steam/smoke and associated smells from the flue when the bathroom window is open is generating smells within the dwellinghouse.

The purpose of the flues is to direct unwanted steam/smells from a building to the atmosphere. The Environmental Health Division has formally noted that the final discharge point is sufficient, located well above eaves level and any adjacent windows.

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 two consultation responses received would indicate that the application should be approved.

Representations

6.3 The primary objection raised was in relation to the release of waste fumes/steam from the flue causing ventilation issues and related smells within the neighbouring property. Although this is a valid objection, the Environmental Health Division has indicated that they believe the height of the flue should not cause any significant adverse affects and any problems should be referred to Environmental Health for consideration. At the date of the consultation no objections have been lodged directly with the Environmental Health Division.

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 have been made by the occupants of number 59 Main Street which is the adjacent building to the western elevation and recessed at a distance of at least 1.5 metres from the end of the wall where the flue is attached. As the flue is at an adequate discharge height above the eaves level and not attached to number 59 Main Street, it is not considered that there would be any significant adverse impact on this property.

8.3 It is considered that all reasonable attempts have been made to reduce any adverse impacts from the flue to the neighbouring properties. It should be further noted that this is an existing hot food takeaway premises that has operated for some time at this location. The Environmental Health Division has stated that the flue is at an acceptable height and position and if any issues are raised regarding the operation of the unit this will be investigated accordingly. If an investigation was to be carried out and it was found that the flue was adversely affecting the neighbouring property then appropriate action would require to be taken to resolve this under legislation enforced by the Environmental Health Division. In this regard it is considered that the representations received are not of sufficient weight as to merit refusal of the application.

9. RECOMMENDATION

9.1 It is recommended that the application be approved.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, 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

1 June 2005
RG/HM/RG
FV/DVM

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: 05/0390/FL

Location	GARAN FISH BAR, 63 MAIN STREET, MUIRKIRK
Nature of Proposal:	RETROSPECTIVE ERECTION OF FLUE
Name and Address of Applicant:	MR F LAU GARAN FISH BAR 63 MAIN STREET MUIRKIRK KA18 3QR
Name and Address of Agent	N/A

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

The above FULL application should be approved.

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