

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 28 MAY 2004

**03/1026/FL : PROPOSED CHANGE OF USE OF FLAT TO FORM AN
EXTENSION TO EXISTING GROUND FLOOR RESTAURANT AT 6
KILMARNOCK ROAD, MAUCHLINE**

APPLICATION BY MR AFTAB AHMED

EXECUTIVE SUMMARY

1. DEVELOPMENT DESCRIPTION

1.1 It is proposed to change the use of an existing first floor flatted unit to form a restaurant with preparation area and toilets. This will enable a waiting and bar area to be formed on the ground floor.

1.2 The plans also show the formation of additional external signage and a door canopy.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.

3. SUMMARY OF ANALYSIS

3.1 As indicated in section 5 of the report, the application is considered to be in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application, however it is considered that these have been sufficiently addressed and would not merit a recommendation of refusal.

3.2 The application has been made to convert the first floor of a traditional two storey building from a flatted residential unit to form a restaurant. At present the ground floor of the building is occupied by a hot food takeaway and small restaurant area with kitchens, toilets and storage space. The conversion of the flat to accommodate the restaurant would evidently enable the expansion of the business and provide a downstairs waiting/seating area.

3.3 The proposed development includes minimal alterations to the external appearance of the building. Details of the indicated entrance canopy can be agreed by condition.

3.4 Albeit neighbouring residents have raised some valid concerns regarding the proposed restaurant, the points of concern are primarily based on the amenity of the area and how the restaurant will impact on this. The site is located within the village centre and is an acceptable use and in any case the use already exists at this property and it is not considered that the proposal will exacerbate any potential problems of detriment to amenity.

3.5 The Committee raised concern about the level of work which has thus far been undertaken prior to the determination of the current planning application. However, it was concluded at the time of the official's site visit that the works did not constitute development and hence no breach had taken place. Building Standards are currently dealing with an application for building warrant.

3.6 There are no other material planning considerations which would indicate that the recommendation should be anything other than one of approval.

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 will not require to be referred to the Development Services Committee because this would not constitute a significant departure from the development 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 AFTAB AHMED

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 objection. Members will recall considering this application at the meeting on 07 May 2004 when the application was continued to allow for a site visit to take place and to enable further investigation into the provision of car parking at the site.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is a two storey traditional building fronting onto Kilmarnock Road in the settlement of Mauchline. It accommodates an existing hot food takeaway and restaurant called Village Tandoori and at present comprises the ground floor of the building only.

2.2 A residential property also forms part of the building in which the restaurant is located. To the other side is a vehicular access to the rear of the property which is served by an area of hardstanding to provide parking for customers of the restaurant. Private garden space of residential properties fronting onto Burnside Road adjoin the property at the rear and the boundary here is a vertically boarded screen fence.

2.3 **Proposed Development:** It is proposed to change the use of an existing first floor flatted unit to form a restaurant with preparation area and toilets. This will enable a waiting and bar area to be formed on the ground floor.

2.4 The plans also show the formation of additional external signage and a door canopy.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads Division had no comments to make but advises that the application should be passed to Amey Highways for comment.

Noted.

3.2 East Ayrshire Council's Environmental Health officer has no objection to the proposed development.

Noted.

3.3 Amey Highways has no objection to the proposed development. Subsequent to the meeting on 07 May 2004 further consultation was undertaken with Amey Highways with particular reference to the provision of car parking at the site. They advised that had there not been any parking provision then the cumulative effect of the proposal would have been considered against the existing town centre parking and including the development across the road. However, as the site plan showed an area of land to the rear of the property which was available for parking by customers of the restaurant/takeaway they did not regard the nearby development as a pertinent issue in the consideration of the current planning application.

Noted.

3.4 Scottish Water has advised that a totally separate drainage system of foul and surface water sewers will be required.

Noted.

3.5 Mauchline Community Council has been consulted but no response had been received at the time of writing this report.

Noted.

4. REPRESENTATIONS

4.1 One third party letter of representation has been received and the following matters have been raised.

4.2 Will the applicant be granted a liquor licence and if so what will be the restricted opening hours.

The current application is for the change of use of the flatted accommodation to form a restaurant. There is already a restaurant within the property and it is not proposed to vary the opening hours. As a Class 3 use the property can, in accordance with the Town and Country Planning (Use Classes) (Scotland) Order 1997 sell liquor to diners. However, the applicants would separately need to secure a licence under the Licensing Scotland Act to do so in relation to the extended premises. This process is not a material planning consideration.

4.3 The applicant has already converted the back of the carry out shop to a car park, which can only be accessed by crossing a public footpath, surely this is not safe for pedestrians.

There is an area of hardstanding to the rear of the shop unit which is indeed accessed across the public footway adjacent to the A76 trunk road. The vehicular access exists in any case and it is the responsibility of individual vehicle drivers to take due care when accessing or egressing from this parking area. There are no objections from the Roads Division or from Amey Highways.

4.4 The parking bays directly outside our house are delivery bays for the carry out shop, if he has built his own car park will this mean that we will be allowed to park our own cars here, because at present there is nowhere available.

If the residents of adjoining properties park their vehicles on land pertaining to the Indian restaurant this is a matter for the owner of the restaurant and the nearby residents to discuss and is not a material planning consideration in the determination of this application. Both the applicant and any neighbouring residents will require to take account of parking restrictions as they pertain to this part of the public highway.

4.5 Has Mr Aftab been granted permission already to carry out his developments as extensive building work is at the moment taking place.

At the time of the site visit it was apparent that some internal alterations had indeed taken place. However, these were within the ground floor only and as such did not constitute development or a change of use and therefore the applicant was entitled to undertake these internal alterations without the benefit of prior consent.

4.6 Why is Mr Aftab placing a skip at the front of his carry out shop on the pavement instead of round the back.

This is not a material planning consideration and therefore has no weight in the determination of the planning application.

4.7 What will happen if Mr Aftab is granted a liquor licence and people from the restaurant etc begin to squabble, fight etc outside here, this is certainly not behaviour we will tolerate outside our doors.

Any public disturbance would be a matter for the police to deal with and is not a material planning consideration. It is however appropriate in planning terms to consider whether a proposal may cause general disturbance in an area. However, particularly as the restaurant and hot food takeaway has been in existence at this property for a number of years, this is a matter to which only limited weight should be applied in the determination of the planning application.

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 and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no policies contained within the structure plan which are especially relevant to this planning application.

East Ayrshire Local Plan

5.3 Policy RTC1 states that the Council will adopt a sequential approach in assessing development proposals for retail and other uses appropriate to town centres as described in Schedule 5 of the plan.

The application site is within Mauchline town centre and therefore complies with Policy RTC1.

5.4 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 proposed development involves the conversion of a flat to form an extension to an existing restaurant within Mauchline town centre.

A restaurant is considered to be an acceptable town centre use under Schedule 5. Therefore the proposed use is considered to comply with planning policy.

5.5 Policy ENV4 seeks to ensure that all development within or affecting the setting of a Conservation Area is sympathetic to the area or building concerned. 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 application site is located within the Mauchline Conservation Area. The applicant has amended the plans to omit a neon sign which was proposed and not considered to be sympathetic to the character of the area and it is now considered to be compliant with Policy ENV4.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

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

Consultations Responses

6.2 None of the consultation responses received raised any objection to the proposed development.

Representations

6.3 The third party letter of representation which was received raised concern regarding the opening hours, possible noise disturbance and the access to the site. It is considered that these matters have been sufficiently addressed and would not merit a recommendation of refusal.

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 considered to be in accordance with the development plan. Therefore, given the terms of Section

25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application, however it is considered that these have been sufficiently addressed and would not merit a recommendation of refusal.

8.2 The application has been made to convert the first floor of a traditional two storey building from a flatted residential unit to form a restaurant. At present the ground floor of the building is occupied by a hot food takeaway and small restaurant area with kitchens, toilets and storage space. The conversion of the flat to accommodate the restaurant would evidently enable the expansion of the business and provide a downstairs waiting/seating area.

8.3 The proposed development includes minimal alterations to the external appearance of the building. Details of the indicated entrance canopy can be agreed by condition.

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8.5 The Committee raised concern about the level of work which has thus far been undertaken prior to the determination of the current planning application. However, it was concluded at the time of the official's site visit that the works did not constitute development and hence no breach had taken place. Building Standards are currently dealing with an application for building warrant.

8.6 There are no other material planning considerations which would indicate that the recommendation should be anything other than one of approval.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.

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

will not require to be referred to the Development Services Committee because this would not constitute a significant departure from the development plan.

Alan Neish
Head of Planning, Development and Building Standards

17 May 2004
NM/NM/SMB
FV/DVM

LIST OF BACKGROUND PAPERS

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

Anyone wishing to inspect the above background papers should contact Nicola Monroe on 01563 555485.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 03/1026/FL

Location	6 Kilmarnock Road MAUCHLINE KA5 5DD
Nature of Proposal:	Proposed change of use of flat to form an extension to existing ground floor restaurant
Name and Address of Applicant:	Mr Aftab Ahmed 6 Kilmarnock Road MAUCHLINE KA5 5DD
Name and Address of Agent	

DPO's Ref: Nicola Monroe
PPO's Ref: Hugh Melvin

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

1. The proposed development shall be carried out in accordance with the application form received on 06 November 2003 and the amended plans received by the Planning Authority on 06 April 2004.

REASON – To ensure that development is carried out in accordance with the approved details.

2. No later than two months of the date of this decision notice the developer shall submit details of the projecting canopy to be installed for the further written approval of the Planning Authority.

REASON – To enable the Planning Authority to consider the proposed canopy which should be appropriate to the character of the Conservation Area.

3. The restaurant hereby approved shall retain the existing opening hours unless the applicant receives the prior written approval of the Planning Authority to vary the opening hours.

REASON – In the interest of the amenity of the area.

4. Prior to the use hereby approved coming into operation the developer shall erect a sign at the entrance to the car park, as marked in green, which shall state: "Customer Car Parking for the Village Tandoori" and details of this sign shall be submitted for the further written approval of the Planning Authority no later than one month from the date of this consent.

REASON – To clearly direct customers of the business hereby approved to the car park provided in the interests of road safety.

5. Prior to the use hereby approved coming into operation the developer shall install and thereafter maintain a sign at the entrance door to the restaurant and also the hot food takeaway which shall state: “We would request all customers of the Village Tandoori to park their cars in the car park to the rear of the property”.

REASON – To clearly direct customers of the business hereby approved to the car park provided in the interests of road safety.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 555320.**