

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 09 SEPTEMBER 2005

**05/0624/FL: CHANGE OF USE OF CLASS 1 SHOP TO HOT FOOD
TAKEAWAY AND ALTERATIONS INCLUDING INSTALLATION OF FLUE
AT 7 LOUDOUN STREET, MAUCHLINE**

APPLICATION BY MR I SHAFIQ

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the change of use from a Class 1 shop to hot food takeaway and alterations including the erection of a flue to the rear. The shop at present is a small fruit and vegetable store with a large front window and small door to the right side of the front elevation. The shop front would remain unaltered with some internal alterations and the erection of a flue to be positioned on the rear elevation of the building starting at an approximate height of 1.3 metres above ground level and travelling a distance of 9.7 metres venting slightly above the rear eaves level. An associated Listed Building Consent application for the installation of the proposed flue has also been submitted for consideration.

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 proposal is consistent with the development plan, the East Ayrshire Local 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 in Section 6 of the report there are material considerations relevant to this application.

3.2 The various third party responses received all show a high degree of concern in relation to the impact of the proposed takeaway on Mauchline Town Centre. With respect to the points of objection raised, it is accepted that the type of development proposed falls within the category of 'bad neighbour

development'. However, many of the points relating to nuisance potential of patrons of the proposed premises are matters of policing and not planning.

3.3 The proposed change of use, although facing a number of local objections, is not perceived to adversely affect the surrounding conservation area and the group of "B" Listed Buildings on Loudoun Street. Therefore although there is considerable heritage interest in the locality of the application site, particularly relating to Robert Burns, the use of the premises as a hot food take-away need not damage these interests.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused 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 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 I SHAFIQ

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 the proposed development is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is located in the centre of the historical settlement of Mauchline between Earl Grey Street and the Cowgate on the south side of Loudoun Street some 20 metres from the traffic lights on the A76. The property is a traditional two storey white rendered tenement style building which has been divided to accommodate a pharmacy and fruit and vegetable shop with residential units above and a raised attic level. The property in question forms part of a Category "B" group Listed Building noted as dating back to the late 18th and early 19th century. The land to the rear of the property extends to the rear of the Mauchline and District Kilmarnock Supporters Club located on Earl Grey Street. The application site lies within Mauchline Conservation Area which has outstanding status.

2.2 **Proposed Development:** Full planning permission is sought for the change of use from a Class 1 shop to hot food takeaway and alterations including the erection of a flue to the rear. The shop at present is a small fruit and vegetable store with a large front window and small door to the right side of the front elevation. The shop front would remain unaltered with some internal alterations and the erection of a flue to be positioned on the rear elevation of the building starting at an approximate height of 1.3 metres above ground level and travelling a distance of 9.7 metres venting slightly above the rear eaves level. An associated Listed Building Consent application for the installation of the proposed flue has also been submitted for consideration.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Mauchline Community Council has raised their concerns with respect to this application and take the view that a further hot food takeaway in Mauchline will have adverse effects for the environment in terms of parking on Loudoun Street and resulting levels of litter. They wish that any decision made take these issues into consideration.

No significant issues have been raised by the Roads and Transportation Division with respect to on street parking. Potential issues regarding litter nuisance can in part be addressed by appropriate conditions in any consent granted for the proposed development.

3.2 East Ayrshire Council Environmental Health Division has no objections in principle to the proposal but wish to make the following comments:

- (i) Any waste arising from the works should be disposed of to the satisfaction of the Waste Management authority, and otherwise than by burning.
- (ii) Noisy work on the site should be restricted to 8am to 6pm Monday to Friday, 8am to 1pm on a Saturday and no noisy work on a Sunday.
- (iii) Consideration should be given to the installation of acoustic insulation in those ceilings which directly connect with the upstairs property, in order to reduce break out of noise to that property. It is further suggested that noise from the patrons entering or leaving the building may give rise to complaints by nearby residents
- (iv) The flue to be erected should terminate at least 500mm above the level of the top of any opening window on the upper floor, and further should be isolated from the building structure to minimise any likelihood of vibration being transmitted into the building.
- (v) Suitable provision should be made for the storage of refuse prior to its collection, and suitable collection arrangements should be made.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Division. With respect to potential noise nuisance, it is noted that this type of facility generally operates during evening hours but the extent of hours of opening are in some respects governed by the Civic Government (Scotland) Act in terms of Late Hours catering licenses. Other similar facilities within the town centre of Mauchline generally open until 12 midnight Sunday to Wednesday and until 1 am Thursday to Saturday. It is under this regulatory mechanism that the issue of such a license would be deemed to be appropriate or not. However, it is not considered that there would be exacerbation of any existing levels of nuisance resulting from the development

proposed. Furthermore, any disorderly conduct of patrons outwith the premises is a police matter.

3.3 East Ayrshire Roads and Transportation Division has no objection to the proposed development.

Noted.

3.4 The Architectural Heritage Society of Scotland has not replied to its consultation at the time of writing this report.

Noted.

4. REPRESENTATIONS

4.1 Six letters of representation have been received with regard to the proposed development including a petition with 41 names provided. The main points are summarised below:

4.2 I feel that the town is already more than adequately served with takeaway establishments, there being five (two Chinese, one Indian, one Pizza/Kebab and one Chip Store) within close proximity of the cross.

Objections based on over-provision are not valid planning grounds of objection and are not material to the consideration of the application. In terms of NPPG8 on Retailing it is not for the planning system to seek to control market demands.

4.3 There is also the extreme litter issue in Mauchline. As we have very few bins placed anywhere Loudoun Street will just cause more problems with papers, boxes being discarded in the street which are an eyesore for the retailers and locals let alone to the Burns enthusiasts visiting our village

Conditions could be attached to any consent granted for the proposed development to provide for appropriate litter receptacles.

4.4 We already have two Hot Food Takeaways in a very short stretch of Loudoun Street, plus the newly refurbished restaurant of the old Loudoun Arms. The ventilation systems even when fully in accordance with all the requirements still mean that at cooking times, the smell of hot food of varying nationalities pervades the whole area. At times, it even can be smelt in our home and the smell can be quite nauseating and seems to be unavoidable no matter how good the extraction system is. To add yet one more hot food in a small area already crowded with two others, plus the smells from the old Loudoun Arms, can but increase the sickening food smells that waft around day and night and pervade the whole area.

The Environmental Health Division has not raised any concerns with respect to cooking odours. The proposal is located within an area of mixed uses, there are a few residential properties in the immediate vicinity of the application site.

4.5 The number of shops in Loudoun Street, the main street in our village, is dwindling as changes of use are granted. One was recently converted into a house. The shops available for commercial use for other businesses get fewer and fewer. If granted this will result in yet another commercial unit being removed. Take away shops are completely at odds with the environment, which is in a Conservation Area. As it is, tourists exiting from the graveyard are immediately faced with a Turkish Kebab Shop, and a Bookies. Hardly commensurate with a traditional environment. If the change of use is granted Loudoun Street will have three hot food takeaways in at most a hundred metre stretch. Must we sacrifice what residual charm Loudoun Street has for yet another takeaway?

Whilst recognising the view of the objector, the over provision of this type of establishment is not a valid planning ground for objection and not material to the consideration of the application. However should the Committee be minded to grant consent for this application it is considered that by the imposition of conditions to control the external appearance of the premises, the shop need not detract from the visual amenity and appearance of the Conservation Area.

4.6 The level of disruption in the evenings caused mostly by youths shouting, singing and fighting is rising and in the morning one can frequently find the remnants of discarded takeaway meals scattered on the surrounding pavements. I feel that this development (in contrast to the existing fruit and vegetable shop) will tend to encourage this trend and any expectation that a late hours catering license will be sought pending the success of this application might reasonably be assumed to exacerbate these problems.

The level of disruption as described above is an understandable concern. However, it is not considered that any increase in this can be attributed solely to a takeaway and therefore can not be a material consideration in the determination of this application. Furthermore, any disorderly conduct of patrons outwith the premises is a police matter. It is accepted that under the Civic Government Scotland Act, application can be made for a Late Hours Catering Licence and that other hot food takeaway facilities in the area are generally open until 12 midnight Sunday to Wednesday and until 1 am Thursday to Saturday. It is under this regulatory mechanism that the issue of such a license would be deemed to be appropriate or not. However, it

is not considered that there would be exacerbation of any existing levels of nuisance resulting from the development proposed. Furthermore, any disorderly conduct of patrons outwith the premises is a police matter.

4.7 I run a café/takeaway in Mauchline and I am objecting to another hot food takeaway being opened on Loudoun Street. I have been here for a long time and need the trade to survive and I feel if another shop would open it would end my business.

Objections based on over-provision are not valid planning grounds and are not material to the consideration of the application. In terms of NPPG8 on Retailing it is not for the planning system to seek to control market demands.

4.8 The siting of a fast food outlet at this address would have a detrimental effect on the flow of traffic, west from the cross. Parking is unlawful at this location and the occasional visit from the Traffic Warden does little to alleviate the problem for HGV's and buses, particularly negotiating this tight turn. I strongly believe that unlawful parking would increase and exacerbate the problem to a dangerous degree.

The section of road outside the shop is covered by a parking prohibition and control over on-street parking at this location is a matter for the police. There is a substantial public car park some 100 metres from the proposed take-away premises and an on-street parking bay within 50 metres which could cater for patrons of the premises using cars. The Roads and Transportation Division has not raised any concerns regarding road safety.

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 in the structure plan which are especially relevant to the development.

Noted.

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 Mauchline town centre and hot food takeaways are identified within Schedule 5 as an acceptable town centre use.

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 application site involves a group 'B' Listed Building within the Mauchline Outstanding Conservation Area. The proposed development should be required to adhere to Council guidance relating to Listed Buildings and Buildings within Conservation Areas. In this respect it is considered that the configuration of the proposed flue is not acceptable in its current form and a condition should be attached to any consent granted to require further details of the proposed flue to be agreed with the Planning Authority in consultation with the Environmental Health Division.

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 responses received would indicate that the application should be approved subject to appropriate conditions.

Representations

6.3 The principal objections raised are in relation to the number of takeaway/eating premises within a relatively small area of Mauchline town centre and the resulting issues that this may bring with it – increased levels of litter, unlawful

parking, resulting smells and rowdiness/loitering concerns. It is considered that the objections are either not based on valid planning grounds, or can be addressed by the imposition of appropriate conditions, or are not substantiated through the consultation process.

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 proposal is consistent with the development plan, the East Ayrshire Local 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 in Section 6 of the report there are material considerations relevant to this application.

8.2 The various third party responses received all show a high degree of concern in relation to the impact of the proposed takeaway on Mauchline Town Centre. With respect to the points of objection raised, it is accepted that the type of development proposed falls within the category of 'bad neighbour development'. However, many of the points relating to nuisance potential of patrons of the proposed premises are matters of policing and not planning.

8.3 The proposed change of use, although facing a number of local objections, is not perceived to adversely affect the surrounding conservation area and the group of "B" Listed Buildings on Loudoun Street. Therefore although there is considerable heritage interest in the locality of the application site, particularly relating to Robert Burns, the use of the premises as a hot food take-away need not damage these interests.

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, Development and Building Standards,

the application would not require to be referred to the Development Services Committee as it would not be a significant departure from the East Ayrshire Local Plan.

Alan Neish
Head of Planning, Development and Building Standards

29 August 2005
RG/RG
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Adopted East Ayrshire Local Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).
6. Third Party Representations
7. NPPG8: Town Centres and Retailing

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: 05/0624/FL

Location	7 LOUDOUN STREET, MAUCHLINE
Nature of Proposal:	PROPOSED CHANGE OF USE OF CLASS 1 SHOP TO HOT FOOD TAKEAWAY AND ALTERATIONS INCLUDING INSTALLATION OF FLUE
Name and Address of Applicant:	MR IMRAN SHAFIQ 23 CATRINE ROAD, MAUCHLINE KA5 6AA
Name and Address of Agent	LAWRENCE AND MCPHERSON ASSOCIATES 5 NEW ROAD, AYR KA8 8EX

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

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

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, and the Town and Country Planning (Use Classes) (Scotland) Order 1997, this permission relates to the use of the premises as a Hot Food Take-Away and the further express permission of the Planning Authority shall be required in respect of any other use which falls within the same use class to the use hereby approved.

REASON: To enable the Planning Authority to retain control over the use of the site in the interests of residential amenity.

2. The consent hereby granted relates to a change of use only and formal application for planning permission in respect of detailed plans of any new extensions, alterations or shop fronts shall be submitted to and approved by the Planning Authority before any such development commences.

REASON – The approval relates to a change of use only.

3. The proposed flue to the rear of the building is not hereby approved. Details of the flue shall be submitted to and approved by the Planning Authority in consultation with the Environmental Health Authority before development commences on site

REASON: In the interests of visual amenity and the character of the Listed Building.

4. Notwithstanding the submitted plans the applicant shall provide suitable litter receptacles both within and outwith the proposed hot food premises. The external receptacles shall be in place prior to the commencement of daily business and emptied after each day's trading to the satisfaction of the Planning Authority.

REASON: To discourage the disposal of associated food packaging being deposited on Loudoun Street.

- 5 Any waste arising from the works shall be disposed of to the satisfaction of the Waste Management authority, and otherwise than by burning.

REASON: In the interests of public health

6. Construction works on the site shall be restricted between 8am to 6pm Monday to Friday, 8am to 1pm on a Saturday and no works carried out on a Sunday.

REASON: In the interests of residential amenity.

Notes to Applicant

1. The Environmental Health Division has indicated that consideration should be given to the installation of acoustic insulation in those ceilings which directly connect with the upstairs property, in order to reduce break out of noise to that property. The flue to be erected should terminate at least 500mm above the level of the top of any opening window on the upper floor, and further should be isolated from the building structure to minimise any likelihood of vibration being transmitted into the building.

2. The applicant is advised that any proposed new signage to be displayed on the frontage of the property will require to be the subject of an application for Listed Building Consent and may also require consent under the Town and Country Planning (Control of Advertisements)(Scotland) Regulations 1984.

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