

**EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 16 AUGUST 2002**

**02/0003/FL: PROPOSED CHANGE OF USE FROM CHARITY SHOP TO  
HOT FOOD TAKEAWAY  
AT 71 TITCHFIELD STREET, KILMARNOCK  
FOR THOMAS MCGILL**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 It is proposed to change the use of the ground floor shop unit to a hot food takeaway. The proposed ground floor plan indicates a front shop area, servery counter, hot food preparation area, food store, refuse storage area (accommodating 3 litter bins) and toilet. The plans also indicate a mechanical extract fan with external ventilation. A new flue will be installed to remove cooking smells to terminate at the rear of the building above the gutter level of the second floor flats.

1.2 The applicant has advised that the expelled gases will be one storey above any air intake fans from neighbouring shops. The applicant advises of his intention to replace or upgrade the existing flue in the same position, to meet current legislation. The exhaust gases would be expelled at the same position as the existing flue at approximately 600 mm above eaves level to the rear of the property.

1.3 There would be an internal area to the rear of the shop designated for daily food waste. The refuse would be cleaned out on a daily basis and collected at times agreed with the Department of Cleansing.

**2. RECOMMENDATION**

**2.1 The application should be approved subject to the conditions on the attached sheet.**

**3. CONCLUSIONS**

3.1 As is indicated at paragraph 5.2 of the report there are no relevant policies in the development plan and therefore greater weight should be attached to the other material considerations.

3.2 There are other material considerations relevant to this application as indicated in Section 6 of the report and they are supportive of the proposal. The proposal is consistent with the policies of EALP. With regard to the letter of objection, the proposal is located within the town centre in close proximity to a number of other commercial uses. Residential properties located within the town centre will often experience a lower level of amenity due to the close proximity of commercial town centre uses which are often associated with noise, smell and general disturbance. The objectors concerns regarding smell, odour and refuse provision can be alleviated by a satisfactory ventilation and refuse system which can be addressed by attaching conditions to any grant of planning permission.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning & Building Control, the application will not require to be referred to the Development Services Committee because there will be no significant breach of Council policy.

**Alan Neish**  
**Head of Planning and Building Control**

**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.**

## EAST AYRSHIRE COUNCIL

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02/0003/FL: PROPOSED CHANGE OF USE FROM CHARITY SHOP TO HOT  
FOOD TAKEAWAY  
AT 71 TITCHFIELD STREET, KILMARNOCK  
FOR THOMAS MCGILL

### Report by Head of Planning and Building Control

#### 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 objections.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises 71 Titchfield Street which is an existing ground floor shop unit within an existing three storey property with residential property above. The site is bound to the north by commercial properties on the ground floor and residential property above, to the east by Titchfield Street beyond which are other commercial and residential properties and to the south and west by the Galleon Sports Centre Car Park. The site is located within Kilmarnock town centre. The property has been extended to the rear.

2.2 **Proposed Development:** It is proposed to change the use of the ground floor shop unit to a hot food takeaway. The proposed ground floor plan indicates a front shop area, servery counter, hot food preparation area, food store, refuse storage area (accommodating 3 litter bins) and toilet. The plans also indicate a mechanical extract fan with external ventilation. A new flue will be installed to remove cooking smells to terminate at the rear of the building above the gutter level of the second floor flats.

2.3 The applicant has advised that the expelled gases will be one storey above any air intake fans from neighbouring shops. The applicant advises of his intention to replace or upgrade the existing flue in the same position, to meet current legislation. The exhaust gases would be expelled at the same position as the existing flue at approximately 600 mm above eaves level to the rear of the property.

2.4 There would be an internal area to the rear of the shop designated for daily food waste. The refuse would be cleaned out on a daily basis and collected at times agreed with the Department of Cleansing.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 The Roads and Transportation Division and the Coal Authority have advised that there are no objections to the proposed development.

***Noted.***

3.2 The Grange Howard Community Council and Piersland Bentinck Community Council have not replied to their consultation letters at the time of writing this report.

***Noted.***

3.3 Scottish Water advises that drainage from the development must include an adequate grease trap.

***Noted. A condition can be attached to any grant of planning consent requiring a grease trap.***

3.4 Environmental Health has no objections but have made the following observations:-

The layout of the building means refuse storage is extremely limited although it is noted that the premises operated as a hot food takeaway in the past. The applicant should make adequate provision for refuse storage/disposal so as to avoid any nuisance arising to neighbouring occupiers. The old ventilation system serving the former food premises at No 71 is no longer functional and will require to be completely re-installed; the new system should be connected from the kitchen area (either coupled directly from the equipment or via a ventilation canopy) into a ventilation extraction system which should be carried up the face of the building to discharge above eaves level; there should be no flue discharge from the carry out premises at any lower level. It is recommended a condition is attached to any consent if granted to confirm and ensure that there is no low level extraction discharge point from the premises. A filtration element should be incorporated into the flue system to minimise odour emissions.

The design and location of the fan should be such as not to cause any noise nuisance to occupants in the premises above the carry out, as the ventilation extraction system will be driven by an electric motor powered fan.

***It is considered that the details of the required ventilation system can be controlled by attaching a condition to any planning consent granted. Environmental Health have also confirmed that the refuse storage proposals are satisfactory on the basis that refuse is not stored outside the shop unit.***

#### **4. REPRESENTATIONS**

4.1 Two letters of representation have been received to the proposed development on the following basis:-

4.2 There should be no late opening.

***It is noted that there are residential properties on the upper floors of the property although the site is located within the established town centre of Kilmarnock where there are a mix of uses and several late night uses such as public houses, restaurants and hot food takeaways. Residential properties within town centres generally experience a lower level of amenity due to the mixture of other uses in close proximity. Consequently in the circumstances of this application it is not considered appropriate to apply any opening hours limitations.***

4.3 Cooking smells should not contaminate the flats above.

***Environmental Health have been consulted in this regard and have required details of a ventilation system to be submitted. Any ventilation system installed should have fumes discharged at the eaves level to limit any nuisance from the proposed use. Environmental Health also require a filtration system to be incorporated into the flue system to minimise odour emissions.***

4.4 Any waste materials would likely be kept in the passageway adjacent at No 69 Titchfield Street which is the entrance to the flats above, because the shop has no external rear door. This would not be hygienic.

***The applicant has submitted a floor plan which details an internal area of the shop reserved for refuse storage. Environment Health have advised that this is satisfactory although it is recommended that a condition be attached to any grant of planning consent to ensure that no rubbish is stored in this common passageway.***

4.5 The hot food take-away will have a negative effect on an adjacent sun bed salon as patrons who come in to relax on a sun bed would smell stale greasy food. The objections are as follows:-

- (i) Due to the complexity of the type of suntanning equipment used, the equipment requires to expel to the outside atmosphere from the equipment cooling process in the region of 5000m<sup>3</sup>/hr/tanning unit. At present they have 4 units with the intention of installing a fifth in the spring of the year. This means at present a volume of 20000m<sup>3</sup>/hr of new fresh air is required to replace the expired air from the existing tanning units.
- (ii) The air intake, to replenish our expired air output, is situated at the rear of the building, close to the position where the extractor from the proposed hot food takeaway would be situated.
- (iii) The smell of the expired air from the proposed hot food takeaway extraction system would certainly contaminate the normally good quality air intake. This would mean an obnoxious smell, constantly contaminating the air quality, within the salon.
- (iv) The sun beds are also highly sensitive. Over a period of time the grease content contained within the incoming air will have a damaging effect on the sensitive circuits contained within the sun beds, resulting in great expense to repair or replace.
- (v) The salon is open from 9am every morning until 10pm weekdays, and 9pm weekends. This means that opening times of both businesses would clash, ie the ventilation intake of the sun bed salon would be on at the same time as the hot food takeaway's extractor.

***A copy of the objectors letter was forwarded to Environmental Health for comment. Their understanding is that the ventilation for the Sun Club is located at first floor level just above the roof of the single storey rear extension to the building. To combat any potential contamination problems, Environmental Health have recommended that the ventilation system for the hot food take-away shop should discharge above eaves level. I.e. above second floor level.***

## **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 Kilmarnock Local Plan, (1985).

The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 Notwithstanding the age of the Adopted Local Plan the proposal would fall to be considered against this document and its associated policies. There are however no relevant policies and therefore greater weight should be placed on the 'other material considerations' as identified in Section 6 of this report.

## **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The other principal material considerations relevant to the determination of the application are the East Ayrshire Local Plan (Finalised Version with Modifications), (EALP) the consultation responses and representation received, both of which are addressed in Sections 3 and 4 of this report.

6.2 The Council has agreed that the EALP should be considered as a prime material consideration. In terms of the EALP, the property lies within the town centre boundary and the proposal should be assessed against Policies RTC 2, 3 and 15. Policy RTC 2 states that the types of development detailed in Schedule 5 of the Local Plan (which includes hot food takeaway) will be considered acceptable. Policy RTC 3 indicates that subject to the provision of all other retail policies all development proposals falling within Schedule 5 should be directed to all town centres if less than 1500m<sup>2</sup>. RTC 15 accepts hot food takeaways in town centres where various safeguarding criteria are met.

***The proposed use is identified in Schedule 5, can operate without detriment to adjoining uses and therefore complies with the above policies.***

## **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 is indicated at paragraph 5.2 of the report there are no relevant policies in the development plan and therefore greater weight should be attached to the other material considerations.

8.2 There are other material considerations relevant to this application as indicated in Section 6 of the report and they are supportive of the proposal. The proposal is consistent with the policies of EALP. With regard to the letter of objection, the proposal is located within the town centre in close proximity to a number of other commercial uses. Residential properties located within the town centre will often experience a lower level of amenity due to the close proximity of

commercial town centre uses which are often associated with noise, smell and general disturbance. The objectors concerns regarding smell, odour and refuse provision can be alleviated by a satisfactory ventilation and refuse system which can be addressed by attaching conditions to any grant of planning permission.

## **9. RECOMMENDATION**

**9.1 The application should be approved subject to the conditions 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 & Building Control, the application will not require to be referred to the Development Services Committee because there will be no significant breach of Council policy.

**Alan Neish**  
**Head of Planning and Building Control**

7 August 2002  
(FMF/MMM/IMB)

FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory Notices/Certificates.
3. Letter of Representation.
4. Statutory Consultations.
5. Adopted Kilmarnock Local Plan.
6. East Ayrshire Local Plan Finalised Version with Modifications.
7. Strathclyde Structure Plan.
8. Approved Ayrshire Joint Structure Plan.

Anyone wishing to inspect the above papers please contact Fiona Finlay on 01563 576768.

***Implementation Officer: Dave Morris***

020003FL

## EAST AYRSHIRE COUNCIL

## TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0003/FL

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Site of Proposal: 71 Titchfield Street  
KILMARNOCK

Nature of Proposal: Proposed Change of Use from Charity Shop  
To Hot Food Takeaway

Name & Address of Applicant: Mr Thomas McGill  
Beechgrove House  
Fulshaw Wood  
St Quivox  
AYR KA6 5AA

Name & Address of Agent:

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DPOs Reference: FMF/MMM

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 16 October 2000, location plans received on 16 October 2000 and the amended plans received by the Planning Authority on 2 February 2001.

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

2. The drainage system from the hot food takeaway hereby approved shall operate with an adequate grease trap to the satisfaction of the Head of Planning and Building Control in consultation with Scottish Water.

REASON In the interests of maintaining a satisfactory drainage system.

3. Prior to the commencement of any works on site, the developer shall submit, for approval by Head of Planning and Building Control full specifications of the following details with regard to the ventilation system together with details of its

maintenance. The ventilation system shall not at any time discharge fumes below eaves' level and as approved shall be installed prior to the hot food take-away being brought into use.

- a) Suitable flue liner to be installed with suitable rainwater protection provided;
- b) Details of a suitable, removable and cleanable grease filter to be provided and used at all times;
- c) A suitable, removable and cleanable odour absorbing filter to be provided and used at all times;
- d) Details of the electric motor powered fan which is to be designed and located such as not to cause any noise nuisance to occupants above the unit.

REASON In order to ensure that the property has installed an adequate ventilation system and in the interests of the amenity of neighbouring properties.

4. At no time shall any refuse be stored within the common passageway at 71 and 73 Titchfield Street.

REASON In the interests of amenity of neighbouring properties.

5. Formal application for planning permission in respect of detailed plans of any proposed new extensions or alterations (including building materials), and any new accesses shall be submitted to and approved by the Planning Authority before any such development commences.

REASON The approval relates to changes of use only.

Notes:-

1. Scottish Water have advised that early contact should be made with their office at 35 Glenburn Road, Prestwick (Tel. 0808100 5333) regarding compliance with current water byelaws.
2. The applicant is advised that this permission does not carry with it any consent for the display of advertisements under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

**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.**

**AGENDA**