

**EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 15 MARCH 2002**

**02/0010/FL: PROPOSED CHANGE OF USE OF CLASS 1 RETAIL SHOP TO  
LICENSED RESTAURANT CLASS 3  
AND INSTALLATION OF VENTILATION FLUE  
AT 8-12 COLLEGE WYND, KILMARNOCK  
FOR K & L PARTNERSHIP**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 The applicants propose to change the use of the premises from a retail shop to a licensed restaurant. The floor plans show the layout internally changing to a restaurant-bistro on the ground floor with kitchen, waiting area, cloakroom and toilets. There are no external alterations proposed with the exception of an ventilation flue to dispel cooking odours from the kitchen. This is to be located at the rear of the building.

**2. RECOMMENDATION**

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

**3. CONCLUSIONS**

3.1 As is indicated at 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.

3.2 As is indicated at Section 6 of the report, there are material considerations relevant to this application and these are supportive of the proposed use. The proposal complies with the Policy RTC2 of the EALP. The change of use will not adversely affect any neighbouring properties and will complement surrounding uses. None of the statutory consultees have raised any objections and whilst the letter of objection is noted, it is not considered to be of such significance to warrant a recommendation of refusal for the application. The proposed siting

and design of the ventilation flue will not adversely affect the amenity of the John Finnie Street and Bank Street Outstanding Conservation Area.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control and if that decision was arrived at on the basis of the principle of the development, then the application would require to be referred to the Development Services Committee.

**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.**

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**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 because it is subject to an objection.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site relates to 8-12 College Wynd, Kilmarnock, which is a traditional building located within Kilmarnock town centre. The building is unlisted but located within the John Finnie Street and Bank Street Outstanding Conservation Area. The building is presently occupied by Lauder's Ironmongers and is a two storey rendered building with a slate roof. The site is of irregular shape and is surrounded to the east by College Wynd and on all other boundaries by commercial properties.

2.2 **Proposed Development:** The applicants propose to change the use of the premises from a retail shop to a licensed restaurant. The floor plans show the layout internally changing to a restaurant-bistro on the ground floor with kitchen, waiting area, cloakroom and toilets. There are no external alterations proposed with the exception of an ventilation flue to dispel cooking odours from the kitchen. This is to be located at the rear of the building.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division, Environmental Health and the West of Scotland Water Authority have no adverse comments to make regarding the proposal.

*Noted.*

3.2 Scottish Environment Protection Agency have no objection on the understanding that foul drainage is connected to the public sewer. Consultation with West of Scotland Water is recommended.

***A note to this effect can be attached to any planning consent granted.***

3.3 The Bonnyton Community Council have not replied to their consultation letter at the time of writing this report.

***Noted.***

#### **4. REPRESENTATIONS**

One letter of objection has been received and the points raised comprise the following:-

4.1 The restaurant will result in noise late at night with people congregating.

***The property is located within the established town centre where there are a mix of uses and such diversity is supported by the East Ayrshire Local Plan Finalised Version with Modifications. It is not considered that the proposed development will create an unacceptable level of noise.***

4.2 The restaurant will result in cooking smells.

***The proposal includes the installation of a ventilation system which includes an extract flue. Environmental Health have not raised any objection to the proposed development.***

4.3 There is a lack of parking spaces in the street and cars park indiscriminately which will make it difficult for emergency vehicle access.

***The Roads Division have offered no objections to the proposal being located within the town centre as there are car parking facilities available whether in car parks or designated on-street spaces.***

4.4 There is sufficient provision for licensed premises and some units close soon after opening.

***The sufficiency or otherwise of provision of licensed premises is not a planning consideration. It is a matter for the Licensing Board.***

4.5 The pend between the properties is closed, alarmed and padlocked with metal gates after 5.00 pm weekdays and all day on Sundays. The Bistro would have no emergency access at these times. If the gates were left open the objectors' premises would be left insecure. The objectors' Solicitor has advised that the Title Deeds provide that the gates to the pend are to be kept open during formal business hours which they submit is the practice over many years between 9.00 am – 5.00 pm, Monday to Saturday. It is submitted that outwith these hours the gates to the pend will be locked and the objectors will have keys in order to gain entry. The objectors submit that it is paramount for these gates to be locked in the evenings for security reasons which was a prime consideration in the purchase of the property.

***Noted. This is not a material planning consideration and is a legal issue between the applicant and the objector. However, for information the applicants have recently written to the Division confirming their willingness to discuss and address the issues of lighting and security in respect of the pend. The issue of emergency exit is a matter for consideration under the application for a building warrant.***

## **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. Policy 4.3.5 states that non-retail uses in the main shopping area of Kilmarnock Town Centre shall be determined in accordance with Policies 5.2.10 to 5.2.12. Policy 5.2.12 is the only relevant Policy and states that the Council shall encourage non-retail commercial development within the town centre outwith the core area for a number of uses including restaurants which is compatible with other uses in the immediate vicinity.

***The proposed use is compatible with the above policy and would be in keeping with adjacent uses.***

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

6.1 The principal other material considerations relevant to the determination of the application are the East Ayrshire Local Plan Finalised Version with Modifications (EALP), the consultation responses and letter of objection.

### East Ayrshire Local Plan, Finalised Version with Modifications

6.2 The Adopted Kilmarnock Local Plan is considerably out-of-date and it is therefore appropriate that greater weight should be attached to more recent expressions of Policy. The Council has agreed that the EALP should be considered as a prime material consideration. Policy RTC2 is relevant and states that the types of development detailed in Schedule 5 of the EALP will be considered acceptable in principle. Schedule 5 includes restaurants as uses which are acceptable in principle in town centres.

***The proposal is considered to be compliant with Policy RTC2 of EALP.***

### Consultations

6.3 The consultation responses received have been highlighted in Section 3 of this report. None of the responses raise any material considerations that would warrant a recommendation of refusal for this application.

### Letter of Objection

6.4 The letter of objection has been discussed in Section 4 of this report and it is considered that the points raised are not of such significance as to warrant a recommendation of refusal for this application.

## **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 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.

8.2 As is indicated at Section 6 of the report, there are material considerations relevant to this application and these are supportive of the proposed use. The proposal complies with the Policy RTC2 of the EALP. The change of use will not adversely affect any neighbouring properties and will complement surrounding uses. None of the statutory consultees have raised any objections and whilst the letter of objection is noted, it is not considered to be of such significance to warrant a recommendation of refusal for the application. The proposed siting and design of the ventilation flue will not adversely affect the amenity of the John Finnie Street and Bank Street Outstanding Conservation Area.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application 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 and Building Control and if that decision was arrived at on the basis of the principle of the development, then the application would require to be referred to the Development Services Committee.

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

6 March 2002  
(FMF/MMM)  
FV-DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Certificates/Notices.
3. Statutory Consultations.
4. Letter of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted Kilmarnock Local Plan.

7. Finalised East Ayrshire Local Plan with Modifications.
8. Approved Strathclyde Structure Plan.

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

***Implementation Officer: Dave Morris***

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## EAST AYRSHIRE COUNCIL

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

02/0010/FL

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Site of Proposal:	8-12 College Wynd KILMARNOCK
Nature of Proposal:	Proposed Change of Use of Class 1 Retail Shop to Licensed Restaurant Class 3 and Installation of Ventilation Flue
Name & Address of Applicant:	K & L Partnership 6 Spey Avenue KILMARNOCK      KA1 3PG
Name & Address of Agent:	William Barnaby Towerhill Lodge 29A Crosshouse Road KILMAURS Kilmarnock      KA3 2SA

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DPOs Reference:    FMF/MMM

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

1. Formal application for planning permission in respect of detailed plans of any proposed new buildings, extensions, frontage facades 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 a change of use only.

2. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements)(Scotland) Regulations 1984, no permission is granted for the display of any advertisements and no fascia signs, adverts or projecting signs shall be erected on the premises without the prior written consent of the Planning Authority.

REASON In the interests of visual amenity of the Outstanding Conservation Area.

3. Prior to the commencement of the use hereby approved, the premises shall be fitted with an adequate grease trap which shall be maintained thereafter to the satisfaction of the Planning Authority.

REASON In the interests of public safety.

Note:

1. The applicants are advised to contact West of Scotland Water, 35 Glenburn Road, Prestwick, Tel No 0808 100 5333, to discuss compliance with current Water Byelaws.

**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**