

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 4 MAY 2001

00/0738/FL: PROPOSED ALTERATIONS AND CHANGE OF USE TO HOT FOOD TAKE AWAY AT 73-75 HIGH GLENCAIRN STREET KILMARNOCK FOR SEVKI HAS

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 It is proposed to change the use of the two presently vacant shop units into a hot food take away. This will involve internal renovation with No.75 High Glencairn Street comprising the cooking area and serving counter. 73 High Glencairn Street would be linked via an internal entrance door and would accommodate a store and toilet. There are no changes proposed which would affect the external fabric of the front elevation of the building. Furthermore, for ventilation purposes, the necessary extraction would be done using existing brick flues serving the existing shops. The applicant's agent has advised that the flues currently discharge above ridge level and will have a metal liner added.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

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 terms of the letter of objection, the proposal is located within the town centre boundary 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.

3.3 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.

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 as it is subject to an objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is 73-75 High Glencairn Street which currently comprises two ground floor shop units within a red sandstone traditional tenement building. The neighbouring shop unit on the ground floor is a hot food take away and the upper floor comprises residential units which have been the subject of a recent conversion. The site is bound to the front by High Glencairn Street and to the rear by ground associated with the residential units of the building.

2.2 **Proposed Development:** It is proposed to change the use of the two presently vacant shop units into a hot food take away. This will involve internal renovation with No.75 High Glencairn Street comprising the cooking area and serving counter. 73 High Glencairn Street would be linked via an internal entrance door and would accommodate a store and toilet. There are no changes proposed which would affect the external fabric of the front elevation of the building. Furthermore, for ventilation purposes, the necessary extraction would be done using existing brick flues serving the existing shops. The applicant's agent has advised that the flues currently discharge above ridge level and will have a metal liner added.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Roads Division has advised that there are no objections to the proposed development.

Noted.

3.2 West of Scotland Water have advised that drainage from the development must include an adequate grease trap. They have also advised that contact should be made with their Office regarding compliance with current water byelaws.

Noted. Should Members choose to grant planning permission an appropriate condition can be attached, meeting West of Scotland Waters requirement.

3.3 The Piersland Bentinck Community Council have not responded to their consultation at the time of writing this report.

Noted.

3.4 Environmental Health and Waste Management initially advised the following:

- Suitable provision should be made for the satisfactory hygienic storage of refuse from the business pending collection. As the upper floor of this building is being converted into flatted accommodation and there is also some such property at the rear of the building, it is important that adequate measures are in place for the control of any wastes arising.
- The provision of a satisfactory ventilation system from the premises is essential in view of the conversion of the property above into residential flats. It is recollected that when the planning application in respect of these works was reported on there was a query over the ventilation arrangements from the existing Chinese restaurant carry-out at 71 High Glencairn Street and the possibility of odour problems due to the proposed installation of velux windows in the roof space of the residential accommodation above it. The situation was resolved by proposing to re-align and extend the flue clear of the windows.

Following clarification received from the applicant concerning the storage of refuse and the proposed ventilation system (i.e. the change to the use of the existing brick flue), Environmental Health have made the further observations:-

1. If the existing chimney is to be used, a suitable flue liner must be installed, with suitable rainwater protection provided.
2. A suitable, removable and cleanable grease filter must be provided and used at all times.
3. A suitable, removable and cleanable odour-absorbing filter must be provided and used at all times.

4. The use of flues of the proposed type in positions such as proposed in this case in such close proximity to residential property rarely fail to give rise to complaints. It is therefore essential that conditions 1-3 are fully met and the applicant must discuss in detail with this department his proposals for installation and maintenance of the extract flue prior to works commencing.

Following receipt of these comments the applicant's agent was contacted and requested to provide further clarification. The applicant is agreeable to providing the above items and Environmental Health subsequently confirmed that this was acceptable.

4. REPRESENTATIONS RECEIVED

One letter of representation was received.

- (a) The siting/sublease of an Indian take away next to an existing Chinese take away would be detrimental to the above tenanted properties and the general amenity of the area.
- (b) The location of the extractor flue at the common entry would be detrimental to the recently refurbished flats and the extraction flue would be sited/secured to property outwith the ownership of the operator of the take away. Even if a charcoal filter were installed there would be excessive smells. Overall the flue would be unsightly and located on a prominent fully upgraded property with not enough room for the vent to the underside of the sloping stair.
- (c) In terms of the removal of refuse, it is contended that there is an insufficient area to store refuse containers. It is further contended that at present there is a bin continuously in the passageway blocking access/egress for families with disabilities and pushchairs.
- (d) Noise from patrons entering and leaving the take-away at late hours would be detrimental to the amenity of the private flats above.
- (e) The proposal would result in excessive use of the common entry by staff, food suppliers and any take-away delivery service.
- (f) There is no car parking facility within the immediate area.
- (g) It is likely that illuminated lighting would be fitted to the existing façade.

In response, the following comments can be raised. In respect of points (e), (f) and (g) it is considered that these would not be a basis for

recommending refusal of planning permission. The use of the common entry is a legal matter and the Road Division in their consultation response have not raised any objections relative to the parking of cars. Furthermore in respect of point (g) any proposals for an advertisement would be considered as a separate application (if necessary) under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

In light of the above comments, the applicant's agent advised this Division of his intention to use the existing brick flue as detailed in paragraph 2 and of his arrangements for refuse storage. Environmental Health have advised as detailed in paragraph 3.4 that provided a proper extraction system was installed the proposal would not adversely affect the amenity of the upstairs flats by virtue of cooking smells and that adequate storage of refuse should be secured. It was not however considered that any additional late hour activity associated with the proposal would be so significant as to warrant a recommendation of refusal on this ground alone. The proposal lies within the town centre boundary and is in close proximity to other late night uses such as public houses and a hot food take-away. These uses are all existing and were in place prior to the formation of the flats in the upper floor of the application sites and residents will have been aware of their existence. Residential properties located within the town centre tend to experience a lower level of amenity due to their association with a mixture of other uses.

In respect of points (a), (b), (c) and (d) this Division consulted Environmental Health. The comments made are as follows and these are in addition to those contained within paragraph 3.4 above

"Late night noise from patrons of the proposed take-away (point d) would generally be controllable through the Council's Licensing Section which would regulate opening times via the Civic Government (Scotland) Act 1982; however, given the location of the premises and the proximity of other such premises in the vicinity, it would not anticipate that late night opening times would be unduly restrictive.

Point (c) of the letter of objection refers to lack of available refuse storage space. This point has already been mentioned. Available space in the common yard area is undoubtedly tight and there is moreover the factor that the area is also the yard and access to the flats in the block. It is critical that the applicant can demonstrate that he had the capability to provide and maintain an adequate and hygienic refuse storage system as any shortcomings in this respect will soon manifest themselves in a nuisance complaint. Environmental Health advised that refuse arrangements if unsatisfactory would be dealt with on a public

health basis as the need arises. Provided refuse is kept in a tidy condition and does not attract vermin then there will be no problems.

With regard to point (b) the use of existing brick flues serving the existing shops will provide a ventilation system which does not require to be secured on property outwith the ownership of the applicant. This ventilation system is acceptable to Environmental Health subject to their comments in paragraph 3.4.

5. DEVELOPMENT PLAN STATUS

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 Adopted 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 properties lie within the town centre boundary and as such should be considered against Schedule 5 of the Local Plan which specifies Acceptable Town Centre Uses. The proposal can also be assessed against Policies RTC 2, 3 and 15. Policy RTC 2 states the types of development considered appropriate; those listed in Schedule 5.

In this instance, the proposal is a use identified in Schedule 5.

6.3 Policy RTC 3 indicates that subject to the provision of all other retail policies all development proposals falling within Schedule 5 shall be directed to

the town centres of Kilmarnock and Cumnock if the gross floorspace exceeds 1500m² and to all town centres if less than 1500m². The proposal complies with this policy.

6.4 Policy RTC15 is also relevant and states that development proposals for public houses and hot food takeaways will be considered acceptable uses within town centres and may be considered appropriate in other locations where the proposals:

- (i) meet with the Council's design and layout policies;
- (ii) meet with the requirements of the Council as Roads Authority;
- (iii) do not have a detrimental effect on the amenity of adjacent properties by reason of noise, litter, odour or any other disturbance; and
- (iv) are compatible with surrounding land uses.

As previously discussed in this report, the proposal is considered to comply with criteria (i)-(iv). The external alterations are minimal and the proposal is to the satisfaction of the Roads Division. Furthermore, taking into account the specialist advice provided by the Environmental Health Division, it is considered that the development will be compatible with surrounding land uses and will not have a detrimental effect on the amenity of neighbouring properties.

6.5 The responses received from consultees, and the objection, have been addressed in Sections 3 and 4 of this report.

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 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 terms of the letter of objection, the proposal is located within the town centre boundary 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.

Alan Neish
Head of Planning and Building Control

24 April 2001 (FF/SA)
FV/DM

LIST OF BACKGROUND PAPERS

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

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

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

00/738/FL

Site of Proposal	73-75 High Glencairn Street KILMARNOCK
Nature of Proposal	Proposed alterations and change of use to hot food takeaway
Name & Address of Applicant	Sevki Has C/o James Guthrie & Co 3 Portland Road KILMARNOCK KA1 2AN
Name & Address of Agent	Robert G Lang RIBA ARIAS Chartered Architect 25 Bellevue Crescent AYR KA7 2DP

DPO's Reference FMF/SA

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 West of Scotland 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 full specifications of the following details with regard to the ventilation system together with details of its maintenance, and shall obtain the written approval of the Head of Planning and Building Control in this connection. The ventilation system as approved shall be installed prior to the hot food takeaway being brought into use and shall be installed to the satisfaction of the Head of Planning and Building Control in consultation with Environmental Health and Waste Management:

- (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.

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. Prior to the commencement of development on site, details of a system for the storage and disposal of refuse shall be submitted to and approved by the Planning Authority and thereafter these details shall be implemented on site for as long as the use is in existence.

REASON To ensure an adequate refuse system in the interests of residential amenity and public health.

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) West of Scotland 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