

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 06 DECEMBER 2002

**02/0646/FL: PROPOSED CHANGE OF USE FROM COFFEE SHOP TO
BAR
AT COPPERFIELDS COFFEE SHOP, 3 ST MARNOCK PLACE,
KILMARNOCK
FOR MR KEVIN FINNIE**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought to change the use of the existing Copperfields Coffee Shop to a bar. All alterations are internal and do not require planning or listed building consent.

The applicant has submitted details of a management plan in respect of the disposal of litter and deliveries to the premises which indicate the following:-

1. All food and drink deliveries will be kept between 9.00am and 5.00pm six days a week with no deliveries on a Sunday;
2. Used bottles will be stored within the cellar of the bar at night and will be loaded into the external bins between the hours of 9.00am and 5.00pm daily;
3. All other waste will be loaded into external bins on a daily basis although not after 11.00pm at night;
4. Refuse collection has been arranged through a private contractor and takes place three times per week. This is usually at 11.00am and will be restricted between normal hours of 9.00am and 5.00pm.

The applicant has also advised that it is important for him to arrange frequent, daily deliveries of stock to reduce areas of storage within the building. This also means frequent refuse collection enabling the building and its surroundings to be kept clean and free from any environmental and safety problems.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated 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 Sections 25 and 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 generally supportive of the proposed use. The proposal complies with Policies RTC1 and RTC2 of the EALP. The change of use will not adversely affect any neighbouring properties to a degree meriting refusal of the application and will complement surrounding uses. None of the statutory consultees have raised any objections and whilst the third party representations have been carefully noted, they are not considered to be of such weight as to warrant a recommendation of refusal for the application. The use of the premises as a public house is considered to be acceptable in the town centre as it is an area of mixed use – commercial and residential. The lower part of the existing building is already a public house and has been for many years and it is not considered that this additional facility will have a negative effect on the surrounding area. Whilst there are residential properties nearby it is considered that 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 on occasion associated with noise, smell and general disturbance.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control then the application would not require to be referred to the Development Services Committee as this would not be a significant breach of 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.

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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 objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site relates to a traditional 'B' listed former mill warehouse building located within Kilmarnock town centre. The entire property is presently occupied by Copperfields Coffee Shop on the ground floor, Copperfields Bar in the basement and a hotel in the upper floors. The site is bounded to the north by offices and the Starz Bar, and to the south by Copperfields Hotel and Bar in the basement. In the east lies Kilmarnock Water and to the west St Marnock Place beyond which is a church hall associated with St Marnock Parish Church and an area of vacant land.

2.2 **Proposed Development:** Full planning permission is sought to change the use of the existing Copperfields Coffee Shop to a bar. All alterations are internal and do not require planning or listed building consent.

The applicant has submitted details of a management plan in respect of the disposal of litter and deliveries to the premises which indicate the following:-

1. All food and drink deliveries will be kept between 9.00am and 5.00pm six days a week with no deliveries on a Sunday;
2. Used bottles will be stored within the cellar of the bar at night and will be loaded into the external bins between the hours of 9.00am and 5.00pm daily;
3. All other waste will be loaded into external bins on a daily basis although not after 11.00pm at night;

4. Refuse collection has been arranged through a private contractor and takes place three times per week. This is usually at 11.00am and will be restricted between normal hours of 9.00am and 5.00pm.

The applicant has also advised that it is important for him to arrange frequent, daily deliveries of stock to reduce areas of storage within the building. This also means frequent refuse collection enabling the building and its surroundings to be kept clean and free from any environmental and safety problems.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division, East Ayrshire Council Environmental Health, Scottish Water, The Coal Authority and Transco have no adverse comments to make regarding the proposed development.

Noted.

3.2 Bonnyton Community Council have not responded to their consultation letter at the time of writing this report.

Noted.

3.3 Strathclyde Police have commented that there are a number of licensed premises within the area already but at present there have not been any problems. There is no CCTV coverage and any violence could be concealed.

Noted.

4. REPRESENTATIONS

Letters of objection have been received from 3 parties together with a petition of objection on behalf of 32 persons. The points raised comprise the following:-

4.1 There is an over-provision of public houses within the immediate area. Kilmarnock town centre is already well served by public houses and in addition this would cause an imbalance of licensed trade against non-licensed retail property use in the commercial zone. Furthermore if approved, this proposal would destroy the centre of the town creating a culture of drink, drugs and associated problems to the dismay of local businesses and residents thereby adversely affecting the amenity of the area.

The issue of over-provision of a particular use is not in itself a material planning consideration. What can be at issue is whether a

number of similar uses may generate disturbance to such a degree as to merit refusal of further such uses. The area where the site is located is of mixed use and the primary use remains retail. The use of the property for a bar is acceptable as it is a town centre use in terms of Policies RTC 1 and RTC 2 of the EALP.

4.2 The numerous public houses congested in the general area of the application site have led to a deterioration in the local environment. This is particularly with reference to rubbish left over the weekend and noise levels during the day (with deliveries), particularly in the summer, when doors and windows are open. Existing disposal facilities are currently unacceptable. An area of wasteland owned by East Ayrshire Council is used as a dumping ground. In the evening, noise complaints have already been raised against the Starz Bar and the current proposal can only exacerbate the problem. Noise from pub goers in the early hours of the morning is unacceptable.

Noise levels from premises during the day would not generally be considered to be excessive within a mixed-use area. It is not considered that a further public house in the town centre will have a detrimental impact on the amenity of the area. It is not envisaged that patrons of the public house will increase the amount of litter in the town centre to a degree sufficient to merit refusal of the application. Any grant of planning consent could by condition restrict the applicant to the proposed management scheme detailed in Section 2.2 of this report.

4.3 Whilst it is noted that the question of licensing is outwith the jurisdiction of the Development Services Department, the view of the Licensing Board will have been noted as over-provision within the Kilmarnock town centre. Objection is offered on the understanding that there is a perception that planning permission should only be granted where it is capable of being implemented, to grant permission in this instance would lead to a lack of consistency.

Over-provision of public houses is not in itself a material planning consideration. The Licensing Board will consider any application before it in isolation of the planning system. Planning permission can be granted for a particular use or development, but it may, on occasion, not be able to be implemented on site as a result of the operation of other legislation and regulations.

4.4 It is considered that correct policing and monitoring of the situation would be difficult as neighbours to the site already experience difficulties with broken bottles and scattered debris to the front of the offices. The current proposals will only further deteriorate the situation.

Noted.

4.5 The narrow road from St Marnock Street into St Marnock Place/ Nelson Street is already congested during the day and this will be made worse with heavy vehicles undertaking deliveries on a regular basis. Taxi operators will also find it difficult to enter the area early in the morning and the car park entrance/exit will be compromised by heavy goods vehicles. Businesses will suffer from associated traffic problems.

East Ayrshire Council Roads and Transportation Division have raised no objections to the application. Taxi drivers are unlikely to face difficulties accessing the area and servicing of the premises would be undertaken in accordance with the applicant's management plan which has been formatted to reduce any inconvenience to neighbouring properties.

4.6 If the current proposal is approved, vandalism will increase including damage to adjacent properties as residents leave their vehicles parked in the area overnight. Some residents have already complained to the management of urine and vomit associated with club/pub goers.

Damage to property and general anti-social behaviour are criminal matters for the Police and not a material planning consideration. It is appropriate though to consider the application in terms of general disturbance created by the proposal, but this must be in the context of the existing nature and use of the town centre.

4.7 Bars and discos induce a 'clubland' atmosphere and result in problems for local businesses and residents. This can only lead to reduced property values and lost investments to many people.

The effect of a proposal on a property investment is not a material planning consideration.

4.8 There is a risk to residents from the types of people attending the proposal and leaving in the early hours of the morning in terms of vandalism, noise disruption, rubbish disposal and general nuisance.

As previously discussed in this section of the report, the proposal is not considered to be a risk to residents. The site is located in the town centre in a mixed use area where residents cannot expect the level of amenity that would exist in a homogeneous, residential area.

4.9 Overall the centre of Kilmarnock is becoming a 'no-go' area at night and particularly at the weekend from drink and drugs associated behaviour. The intimidating behaviour of 'party goers' and 'pub crawlers' will not improve as a result of more clubs in this congested area. The creation of a 'clubland'

environment is not beneficial to the quality of the town but a deterioration in the sector and a reduction in amenity and property values.

Noted and Members are referred to the responses detailed in paragraphs 4.1 and 4.7 of this report.

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 public houses, which are compatible with other uses in the immediate vicinity.

The proposed use accords with the above policy and would be compatible with adjacent town centre uses. The immediate area is of mixed use and the town centre is generally an area where uses such as those proposed should be positively encouraged to locate.

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 detailed in Section 3, the letters of objection detailed in Section 4 and the planning history of the site.

East Ayrshire Local Plan Finalised Version with Modifications

6.2 The Adopted 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. Policies RTC 1 and 2 are relevant due to the location of

the site within the identified town centre boundary and both direct developments such as a public house towards the town centre.

The proposal is considered to be compliant with Policies RTC 1 and 2 of the EALP.

Planning History

6.3 02/0654/FL: Proposed Change of Use of First Floor Hotel to Nightclub at Copperfields Inn, 3 St Marnock Place, Kilmarnock.

This application is also on the agenda to be determined by the Central Local Planning Committee.

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 Sections 25 and 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 generally supportive of the proposed use. The proposal complies with Policies RTC1 and RTC2 of the EALP. The change of use will not adversely affect any neighbouring properties to a degree meriting refusal of the application and will complement surrounding uses. None of the statutory consultees have raised any objections and whilst the third party representations have been carefully noted, they are not considered to be of such weight as to warrant a recommendation of refusal for the application. The use of the premises as a public house is considered to be acceptable in the town centre as it is an area of mixed use – commercial and residential. The lower part of the existing building is already a public house and has been for many years and it is not considered that this additional facility will have a negative effect on the surrounding area. Whilst there are residential properties nearby it is considered that 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 on occasion associated with noise, smell and general disturbance.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated 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 then the application would not require to be referred to the Development Services Committee as this would not be a significant breach of policy.

Alan Neish
Head of Planning and Building Control

27 November 2002
(FMF/MMM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Certificates/notices.
3. Statutory Consultations.
4. Letters 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.
9. Planning Application No: 02/0654/FL.

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

Implementation Officer: Dave Morris

020646FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0646/FL

Site of Proposal:	Copperfields Coffee Shop 3 St Marnock Place KILMARNOCK
Nature of Proposal:	Proposed Change of Use from Coffee Shop to Bar
Name & Address of Applicant:	Mr Kevin Finnie The Treehouse Sandgate AYR
Name & Address of Agent:	McLean Gibson Partnership Cathcart House 20 Cathcart Street AYR KA7 1BJ

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 and plans received on 20 August 2002 and the letter dated 10 October 2002 from McLean Gibson Partnership.

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

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 To enable the Planning Authority to retain control over future signage on the site.

3. Formal application for planning permission in respect of detailed plans of any proposed new buildings or 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 a change of use only.

Note to Applicant:-

1. Copies of the consultation responses received from Transco and the Coal Authority are attached and the applicant is strongly advised to note same.

**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.**