

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 06 DECEMBER 2002

**02/0654/FL: PROPOSED CHANGE OF USE OF FIRST FLOOR HOTEL TO
NIGHTCLUB
AT COPPERFIELDS INN, 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 first floor hotel to a nightclub. The proposed alterations are all internal and include the removal of internal individual room partitions and formation of the bar seating and toilet areas. An upgraded internal entrance lobby will also be formed. Listed building and planning consent are not required for these alterations.

The applicant has submitted a management plan regarding the operation of the business which indicates the following:

1. All food and drink deliveries will be kept between 9 am and 5 pm six days a week with no deliveries on a Sunday;
2. Used bottles will be stored within the storage areas at the rear of the bars and at the ground floor service entrance at night times and will be loaded into the external bins between the hours of 9 am and 5 pm daily;
3. All other waste will be loaded into external bins on a daily basis though not after 11 pm at night.

The applicant has also advised that the proposed nightclub is based in the town centre of Kilmarnock where noise from patrons leaving the building would be considered acceptable. It is understood that there are a number of taxi ranks situated close by and the presence of the Police Station on St Marnock Street will facilitate the speedy dispersal of any large crowds. The applicant has approved management procedures for dealing with disturbance and will fully co-operate with all statutory bodies where health and safety issues are concerned.

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 in Section 5 of this 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 1999, the application should be approved unless material considerations indicate otherwise.

3.2 As is indicated in 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 objections 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 night club is considered to be acceptable in the town centre and 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 that 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:** This application site relates to 3 St Marnock Place, Kilmarnock, which is a traditional stone built former mill warehouse 'B' listed building located within Kilmarnock town centre. The current proposal relates to the first floor of the building currently used as a hotel. The site is bounded to the north by Starz Bar, to the east by Kilmarnock Water, to the south by commercial property at St Marnock Street and to the west by commercial and residential properties.

2.2 **Proposed Development:** Full planning permission is sought to change the use of the first floor hotel to a nightclub. The proposed alterations are all internal and include the removal of internal individual room partitions and formation of the bar seating and toilet areas. An upgraded internal entrance lobby will also be formed. Listed building and planning consent are not required for these alterations.

The applicant has submitted a management plan regarding the operation of the business which indicates the following:

1. All food and drink deliveries will be kept between 9 am and 5 pm six days a week with no deliveries on a Sunday;
2. Used bottles will be stored within the storage areas at the rear of the bars and at the ground floor service entrance at night times and will be loaded into the external bins between the hours of 9 am and 5 pm daily;

3. All other waste will be loaded into external bins on a daily basis though not after 11 pm at night.

The applicant has also advised that the proposed nightclub is based in the town centre of Kilmarnock where noise from patrons leaving the building would be considered acceptable. It is understood that there are a number of taxi ranks situated close by and the presence of the Police Station on St Marnock Street will facilitate the speedy dispersal of any large crowds. The applicant has approved management procedures for dealing with disturbance and will fully co-operate with all statutory bodies where health and safety issues are concerned.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division, Scottish Water and the Architectural Heritage Society for Scotland have no adverse comments to make regarding the proposed development.

Noted.

3.2 Bonnyton Community Council and Grange Howard Community Council have not replied to their consultation letter at the time of writing this report.

Noted.

3.3 East Ayrshire Council Environmental Health have no objections although they have commented that the proposed development may give rise to complaints of noise nuisance from nearby properties and they will require to carry out monitoring of the premises should complaints arise. The applicant should therefore ensure that any noise generated within the premises does not impact on the surrounding environment.

Noted. The applicant's agent has been in direct discussion with Environmental Health and has explained the principles of their noise abatement scheme. He has advised that it is intended to fully insulate and line all external walls including the loft areas and sloping faces of the roof. All existing windows will be infilled with solid, insulated partitions internally 300 mm from the existing window and sealed to all edges. Visually the external appearance will be unaffected and all ventilation extracts will have sound dampers and will be located to the rear elevation (facing into Kilmarnock Water) of the building. All noise emitting services will either be located within the building or ducted through dampers to this elevation.

Environmental Health have advised that the applicant is undertaking all practicable work from a construction point of view. Beyond these works, it would be a matter for Environmental Health to control by monitoring noise levels under the Environment Protection Act 1990 once the facility was operational.

3.4 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. The introduction of a nightclub into this area would raise the number of persons on the street and the obvious chance for conflict. There is no CCTV coverage and any violence could be concealed.

Noted.

3.5 Historic Scotland have no comments to make.

Noted.

4. REPRESENTATIONS

Letters of objection have been received from 6 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 of Kilmarnock. The town centre immediately around the application site is already well served by public houses and nightclubs and in addition this would cause an imbalance of licensed trade against non-licensed retail property use in the location thereby creating a clubland environment. Such activities would destroy the centre of the town creating a culture of drink, drugs and associated problems to the dismay and cost of local businesses and residents. Furthermore, if approved, this proposal would result in 2 nightclubs and 3 pubs in close proximity to residential properties.

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 one of mixed use and the primary use remains retail. The use of the property for a nightclub is acceptable as it is a town centre uses 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 not being disposed of properly as existing disposal facilities are currently unacceptable. An area of

wasteland owned by East Ayrshire Council is used as a dumping ground and noise levels are an issue during the day, particularly in the summer, when doors and windows are open. Empty bottles are put outside late at night which disturbs residents and there are early beer deliveries at 7 am in the morning. Local residents have already complained to Copperfields and the proprietors of the Starz Bar. Noise from club and pub goers is also unacceptable early in the morning and club goers furthermore create a mass of excessive drinking and fast food eating as shown in John Finnie Street.

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 nightclub in the town centre will have a detrimental impact on the amenity of the area particularly at night. It is not envisaged that patrons of the nightclub will increase the amount of litter or noise in the town centre to a degree sufficient to merit refusal of the application. The applicant has submitted a management plan regarding delivery times and the disposal of waste and used bottles.

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. Nevertheless the location of 3 pubs and 2 clubs within 50 yards of each other is unacceptable.

Over-provision of public houses in itself is not a material planning consideration. The Licensing Board will consider any application before it in isolation from 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 The nightclub would be incompatible with nearby residential properties in St Marnock Street and Nelson Street and be of significant adverse impact on those properties.

The application site is located within the town centre in an established mixed-use area. Residential properties located in 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 applicant has submitted a management plan addressing the delivery times for food and drink and the disposal of empty bottles and waste which will take place between 9.00am and 5.00pm.

4.5 Objection is offered from residents in St Marnock Place due to traffic congestion, lack of parking space for residents and disruption of access due to queues of patrons to the nightclub. During the day the lane to the front of the property is already congested and this can only get worse with deliveries to the new nightclub.

East Ayrshire Council Roads and Transportation Division have raised no objections to the application. The lack of car parking spaces for residents is outwith the realm of this application. Patrons using the nightclub are unlikely to affect access to neighbouring residential properties to any significant degree. The servicing of the premises if approved would be undertaken in accordance with the applicant's submitted details which have been formulated to reduce inconvenience to neighbouring properties.

4.6 The extra volume of people attracted in the evening would add further to the vandalism and nuisance through loitering and urinating already being experienced by business and residents of the area. Since the property changed ownership, there has been a dramatic increase in noise levels at night and increased traffic levels (vehicle and pedestrian) and damage to adjacent properties.

Vandalism and general anti-social behaviour is a Police matter and not a material planning consideration. Clearly there is a Police presence very near at hand. 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 The proposed nightclub will have a significant adverse effect on the value of the nearby residential property and quality of their home life whose living accommodation looks directly onto the existing hotel. In general property values of all properties will result in 'lost' investments to many people thus impairing their quality of life.

The impact of the proposal on the value of a neighbouring residential property is not a material planning consideration. The impact of the proposal on the amenity of adjacent residential properties is addressed in Section 4.8 below.

4.8 There are currently various suitable sites around Kilmarnock town centre that could be converted into a nightclub without disturbing a residential area and these should be considered first.

The Committee is asked to consider only the merits of the proposal before them. The site is located within Kilmarnock town centre in a mixed-use area comprising primarily commercial properties. Residents living in the town centre 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.

4.9 There are seagulls and stray cats around the adjacent residential property due to the waste from the Treehouse and Copperfields not being disposed of properly in addition to the Starz Bar which has also been the subject of unresolved complaints regarding rubbish and storage of beer canisters. There are unpleasant smells from waste both food and human. This would increase due to the nightclub. It appears that the new owners have a complete disregard for the tidiness of the area.

The applicant has submitted a management plan which indicates that waste will be loaded into external bins on a daily basis. If proper waste management procedures are implemented it is not anticipated that the above problems will occur. Any problems of this nature with the Starz Bar are a matter for Environmental Health and not relevant to the determination of this application.

4.10 There are noisy beer deliveries at 7.00am on weekday mornings. Empty bottles being put outside at the end of the night at the weekend creates additional noise. This would increase due to the nightclub and affect local residents at night and professional businesses during the day.

The applicant has submitted a management plan indicating that all food and drink deliveries will be kept between 9.00am and 5.00pm and used bottles loaded into external bins between these stated times. Therefore problems regarding noise from deliveries and the disposal of empty bottles from the nightclub should not arise.

4.11 Residents going home at night would be more at risk with a nightclub across the road.

It is not anticipated that the nightclub will affect the security of residents accessing their property to a detrimental level, particularly given the presence nearby of the Police Station.

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 nightclubs, 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 that 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 nightclubs and public houses towards the town centre.

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

Planning History

6.3 02/0646/FL: Planning consent is sought for a change of use from coffee shop to bar at 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 in Section 5 of this 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 1999, the application should be approved unless material considerations indicate otherwise.

8.2 As is indicated in 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 objections 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 night club is considered to be acceptable in the town centre and 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, 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: 02/0646/FL.

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

Implementation Officer: Dave Morris

020654FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0654/FL

Site of Proposal:	Copperfields Inn 3 St Marnock Place KILMARNOCK
Nature of Proposal:	Proposed Change of Use of First Floor Hotel To Night Club and Associated Alterations
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. 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 To enable the Planning Authority to retain control over future signage on the site.

3. Notwithstanding the approved plans, the proposed management scheme and noise abatement measures detailed in the McLean Gibson Partnership letter dated 11 October 2002 shall be fully operational prior to the proposed night club being brought into use and maintained in place thereafter unless otherwise approved in writing by the Planning Authority. Notwithstanding the foregoing, full details of the sound insulation measures shall be submitted to and approved by the Planning Authority prior to the commencement of development.

REASON In the interests of the amenity and character of the surrounding area.

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.

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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**