

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE : 07 SEPTEMBER 2001**

**00/0185/FL : PROPOSED CHANGE OF USE TO INCLUDE CAR SALES  
AND PORTACABIN/OFFICE AT TOWER GARAGE,  
KILMARNOCK ROAD, MAUCHLINE**

**APPLICATION BY MR S HUNTER**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Full planning permission is sought for a change of use of the application site to undertake the display and sale of second hand cars. The development also includes the siting of a portacabin on the western boundary of the application site, to the north of the filling station premises. The proposal is retrospective as car sales are presently being conducted from the site and the portacabin has already been located on site.

The proposal involves the siting of a maximum of 30 second-hand cars for sale. The portacabin to the rear of the site will be used as an office for the car sales business. A 2-metre high timber fence is also to be erected along the western boundary of the site.

Access to the site is to be taken from the existing northern access to the Tower Filling Station from the A76 Trunk Road. Access to the existing residential property at Craigknowe is also taken through the application site.

This is an amended application and the original application included the formation of a new, separate vehicular access to serve the residential property at Craigknowe. A report on the original application was considered by the Southern Local Planning Committee at its meeting on 16 June 2000. The Committee resolved to grant planning permission for the development subject to the applicant and adjoining landowner entering into a Section 75 Agreement with the Council to secure access visibility sightlines for the proposed new access. However, the applicant has been unable to conclude this legal agreement and consequently, has amended the planning application to exclude the formation of the new, separate vehicular access.

The boundary of the application site has also been amended to reflect the fact that the filling station itself is now under separate ownership. The amended plan also shows the provision of a 3 metres wide access strip from the access junction to the site leading to the residential property at Craigknowe.

**2. RECOMMENDATION**

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

### **3. SUMMARY OF ANALYSIS**

3.1 As is indicated at paragraph 5.2 above, the application is considered to be generally 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. As is indicated in Section 6 above, there are material considerations relevant to this application,

3.2 Given the age of the Adopted Mauchline/Drongan/Ochiltree Local Plan, the Council has agreed that the East Ayrshire Local Plan Finalised Version with Modifications (EALP) should be considered as a prime material consideration. Whilst the proposal is in accordance with the provisions of the Adopted Mauchline /Drongan/Ochiltree Local Plan, it is contrary to the policy provisions of the EALP in that the proposed use is contrary to Policy RTC18.

3.3 However, given the nature of neighbouring uses is considered to be an acceptable exception to that policy which is consistent with Policy RTC19. This allows for the sale and display of motor vehicles provided it is in keeping with its surroundings and is not detrimental to the amenity of the area. There are a number of uses in close proximity i.e. petrol filling station, shop, restaurant, garden centre. The proposed use would be compatible with these uses, and would not have an adverse impact on the general amenity of the area.

3.4 With respect to the points of objection, it is considered that with the imposition of appropriate conditions, the development can be undertaken in a manner that would minimise any adverse impact on the existing residential property at Craigknowe. With regard to the aspects of rights of access across the development site, this is a legal matter between the objector and the applicant/operator of the site and the objectors are seeking their own legal remedy on this issues. It is therefore not a material consideration in the determination of this application.

3.5 The proposal involves the erection of a portacabin for office and sales accommodation. It is considered that a temporary consent for 2 years would be appropriate due to the siting of the portacabin in a prominent location on the A76 and its proximity to the countryside.

**Alan Neish**  
**Head of Planning & 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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KILMARNOCK ROAD, MAUCHLINE**

**APPLICATION BY MR S HUNTER**

**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 contrary to policy and is subject to objection.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The application site forms part of the curtilage of the Tower Filling Station on the west side of Kilmarnock Road (A76 Trunk Road) in Mauchline. The application site is bounded to the north by the existing residential property of Craigknowe and its curtilage, to the south by the Tower Filling Station, restaurant and car park, to the west by agricultural land and to the south-east by Mauchline Garden Centre. The site is 0.565 hectares in area and was previously a general parking area associated with the filling station.

2.2 **Proposed Development:** Full planning permission is sought for a change of use of the application site to undertake the display and sale of second hand cars. The development also includes the siting of a portacabin on the western boundary of the application site, to the north of the filling station premises. The proposal is retrospective as car sales are presently being conducted from the site and the portacabin has already been located on site.

2.3 The proposal involves the siting of a maximum of 30 second-hand cars for sale. The portacabin to the rear of the site will be used as an office for the car sales business. A 2-metre high timber fence is also to be erected along the western boundary of the site.

2.4 Access to the site is to be taken from the existing northern access to the Tower Filling Station from the A76 Trunk Road. Access to the existing residential property at Craigknowe is also taken through the application site.

2.5 This is an amended application and the original application included the formation of a new, separate vehicular access to serve the residential

property at Craigknowe. A report on the original application was considered by the Southern Local Planning Committee at its meeting on 16 June 2000. The Committee resolved to grant planning permission for the development subject to the applicant and adjoining landowner entering into a Section 75 Agreement with the Council to secure access visibility sightlines for the proposed new access. However, the applicant has been unable to conclude this legal agreement and consequently, has amended the planning application to exclude the formation of the new, separate vehicular access.

2.6 The boundary of the application site has also been amended to reflect the fact that the filling station itself is now under separate ownership. The amended plan also shows the provision of a 3 metres wide access strip from the access junction to the site leading to the residential property at Craigknowe.

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

3.1 Consultations are as for the original proposal with the exception of the Scottish Executive Road Network Management and Maintenance Division which has been re-consulted on the amended proposals.

3.2 East Ayrshire Council Roads and Transportation Division have advised that the Scottish Executive Development Department will advise on this application.

***Noted.***

3.3 The Scottish Executive Development Department – Road Network Management and Maintenance Division does not propose to advise against the granting of permission.

***Noted.***

3.4 West of Scotland Water, The Coal Authority, British Gas Transco have no adverse comments to make on the proposed development.

***Noted.***

3.5 East Ayrshire Council's Environmental Health and Waste Management Division has no objection in principle to the development. The proposed car sales office/portacabin will fall within their jurisdiction for the enforcement of Health and Safety at work legislation.

***Noted.***

3.6 Mauchline Community Council and Scottish Power have not responded to the consultation letter.

***Noted.***

#### 4. REPRESENTATIONS

4.1 The original application was the subject of formal objections from the owner/occupiers of the residential property at Craigknowe. Following re-notification procedures on the amended proposals, a total of five letters of objection from the same joint objectors have been received with respect to the amended proposals. The points of objection are summarised as follows:

4.2 This use of land creates a direct loss of amenity and enjoyment of our residence.

***It is considered that the use of the development site for the purposes of the display and sale of cars would not have a significant adverse impact on the amenity and enjoyment of the existing residential property. It is considered that appropriate conditions could be attached to any consent granted for the development to minimise any impact in this regard. In particular it is considered that there should be no display of cars immediately adjacent to the boundary fence between the application site and the objectors' property.***

4.3 The use of the land is not in direct relationship to the general use of the existing petrol filling station as this is operated under third party control and ownership and therefore not essential to the commercial viability of either use.

***The amended plans for the development now exclude the land associated with the petrol filling station reflecting that this is now in separate ownership. The amended application shall therefore require to be determined on its own merits. The commercial viability of the development is not a material consideration in the determination of this application.***

4.4 The proposed use has been operated by the applicant approaching some two years without any form of statutory consent having been issued, but with the full knowledge and acquiescence of the Council.

***This is not a valid ground of objection to the amended application. However Members will note that in June 2000, following negotiation in line with the Council's prevailing enforcement policy, a planning application was presented to and determined by the Southern Local Planning Committee. As indicated above the applicant was unable to secure a legal agreement enabling issue of the June 2000 decision and this amendment to the application resulted.***

4.5 Since car sales have been operated on the subject site, the owner/applicant has deliberately and consistently blocked our legal right of vehicular and pedestrian access. This legal right is formally registered in our

title and notified to the applicant and his legal agents. If consent is granted, then we can only imagine that blocking tactics will get worse.

***The amended plans for the development include a 3 metres wide access strip to allow access to the residential property at Craighnowe. A condition can be attached to any consent granted for the proposed development to ensure that the display of cars does not encroach within this access strip in the interests of protecting the amenity of the residential property at Craighnowe. However, the formal legal right of access, and any infringement of it, is clearly a separate legal matter between the applicant and the objectors for which there are appropriate legal processes to resolve such matters.***

4.6 We have been professionally advised that our property has fallen considerably in value directly due to the use of car sales, but also due to the consistent infringement of blocking our legal right of access.

***The contended loss in value of property is not a valid ground of objection to the proposed development.***

4.7 Should it be decided to recommend consent of this application, then we fully expect that adequate provisions be made, and conditions of consent imposed, to totally protect our current legal right of vehicular access to our home. It is essential that vehicular access is maintained parallel to the main road and to a reasonable width to enable ready access by all emergency vehicles, as stipulated in our land title and clear of all existing road and drainage systems . A 3 metres strip of land is totally inadequate for vehicular access for our own use and more so that of emergency services.

***The determination of this application under planning legislation cannot establish, alter or extinguish any legal right of access the objectors have over the application site. Such rights can only be determined through legal processes, not planning processes. The amended application provides for a 3 metres wide access strip running parallel to the A76 Trunk Road. It is considered that this is of sufficient width to allow the passage of emergency vehicles. In the interests of safeguarding the amenity and enjoyment of the existing residential property at Craighnowe, it is considered that a condition should be attached to any consent granted for the development to prevent the encroachment of vehicles displayed for sale within the site onto this vehicular access strip.***

4.8 The objectors have a formally constituted heritable right of access for vehicles along the front of the forecourt area where there was formerly a clearly defined access roadway parallel to Kilmarnock Road. The access way has been in continuous use in terms of the title since 1969. Entrance to this access roadway is gained from the entry/exit from the filling station to the right hand side looking from the road. They are now being denied access over the access roadway as vehicles for sale are being parked across the access way.

The objectors have obtained a Decree of Interdict in the Sheriff Court against the applicant 's repeated and often abusive actions to block their access.

***Comments as per paragraph 4.7 above.***

4.9 The question of refuse collection by the Council is also affected. We are not entitled to place our refuse bins on third party land and we can only place the bins at our boundary gate to which the refuse vehicle has no access, due to the excessive and extensive parking of cars.

***The amended application provides for a 3 metres wide access strip running parallel to the A76 Trunk Road. It is considered that this is of sufficient width to allow the passage of a refuse vehicle. In the interests of safeguarding the amenity and enjoyment of the existing residential property at Craighnowe, it is considered that a condition should be attached to any consent granted for the development to prevent the encroachment of vehicles displayed for sale within the site onto this vehicular access strip.***

## **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 Approved Ayrshire Joint Structure Plan and the Adopted Mauchline/Drongan/Ochiltree Local Plan, (1993). The Adopted 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 Policy COM3 which states that further retail developments outwith the established shopping areas of the main settlements will generally be discouraged.

***The retail sale of cars is not an activity that would be normally undertaken within the established core shopping areas of settlements. In this respect it is considered that the proposal does not conflict with the spirit of Policy COM3.***

## **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) (2001) and the representations received.

6.2 The Adopted Local Plan is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the East Ayrshire Local

Plan, (Finalised Version with Modifications) (EALP) should be considered as a prime material consideration. The site is affected by Policies RTC18 and RTC19.

6.3 Policy RTC18 considers that applications for the sale and display of motor vehicles will only be considered acceptable in locations within town centre boundaries, on miscellaneous development opportunity sites specifically identified for such purposes on the Local Plan maps or on land located within existing industrial areas not specifically safeguarded for industrial purposes on the Local Plan maps.

***The proposal is contrary to this policy, as the site is not located within the town centre of Mauchline or within an existing industrial area. The site has not been identified for this specific use, however the proposal can be considered as an exception to policy as a range of uses operate from the site and immediate area, with which the sale of cars would be compatible.***

6.4 Policy RTC19 states that all applications for the sale and display of motor vehicles will be assessed against the following criteria:-

- (i) the development being of a size and scale in keeping with its surroundings;
- (ii) the development being fully compatible with surrounding land uses and not being detrimental to the amenity of the area and
- (iii) the proposal meeting all the requirements of the Council as Roads Authority.

***Where a proposal is consistent in principle with, or constitutes an acceptable exception to Policy RTC18, Policy RTC19 may then test the suitability of the site itself. There is a petrol filling station, shop, restaurant operating adjacent to the application site and a garden centre operating from premises on the opposite side of the road. It is considered that the proposed use would be compatible with these surrounding uses and it is further considered that the proposed use would not be detrimental to the area.***

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no legal or financial implications for the Council in the determination of this application.

## **8. CONCLUSIONS**

8.1 As is indicated at paragraph 5.2 above, the application is considered to be generally 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. As is indicated in Section 6 above, there are material considerations relevant to this application,

8.2 Given the age of the Adopted Mauchline/Drongan/Ochiltree Local Plan, the Council has agreed that the East Ayrshire Local Plan Finalised Version with Modifications (EALP) should be considered as a prime material consideration. Whilst the proposal is in accordance with the provisions of the Adopted Mauchline /Drongan/Ochiltree Local Plan, it is contrary to the policy provisions of the EALP in that the proposed use is contrary to Policy RTC18.

8.3 However, given the nature of neighbouring uses is considered to be an acceptable exception to that policy which is consistent with Policy RTC19. This allows for the sale and display of motor vehicles provided it is in keeping with its surroundings and is not detrimental to the amenity of the area. There are a number of uses in close proximity i.e. petrol filling station, shop, restaurant, garden centre. The proposed use would be compatible with these uses, and would not have an adverse impact on the general amenity of the area.

8.4 With respect to the points of objection, it is considered that with the imposition of appropriate conditions, the development can be undertaken in a manner that would minimise any adverse impact on the existing residential property at Craigknowe. With regard to the aspects of rights of access across the development site, this is a legal matter between the objector and the applicant/operator of the site and the objectors are seeking their own legal remedy on this issues. It is therefore not a material consideration in the determination of this application.

8.5 The proposal involves the erection of a portacabin for office and sales accommodation. It is considered that a temporary consent for 2 years would be appropriate due to the siting of the portacabin in a prominent location on the A76 and its proximity to the countryside.

## **9. RECOMMENDATION**

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

Alan Neish  
Head of Planning and Building Control

HM/HM/FGD  
29 August 2001

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory notices/certificates.
3. Consultation responses.
4. Letters of representation.
5. East Ayrshire Local Plan, Finalised Version with Modifications.
6. Adopted Mauchline/Drongan/Ochiltree Local Plan.
7. Approved Strathclyde Structure Plan.
8. Approved Ayrshire Joint Structure Plan.

Any person wishing to inspect the background papers listed above should contact Mr. Hugh Melvin on 01563 555481

**Implementation Officer : Dave Morris**

EAST AYRSHIRE COUNCIL  
TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 00/0185/FL

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|                                |   |
|--------------------------------|---|
| Location                       | Tower Garage<br>Kilmarnock Road, MAUCHLINE KA5 5TT                |
| Nature of Proposal:            | Proposed change of use to include car sales and portacabin/office |
| Name and Address of Applicant: | Mr Stephen Hunter<br>Tower Garage<br>Kilmarnock Road, MAUCHLINE   |
| Name and Address of Agent      |   |

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DPO's Ref: [ Hugh Melvin ]  
PPO's Ref; [ ]

The above **FULL** application should be granted subject to the following conditions.

(1) Permission is granted for a limited period of 2 years from the date hereof, and the use shall be discontinued and the land restored to its former condition in accordance with a scheme to be agreed by the Planning Authority at the expiration of this period, unless a further permission is granted.

REASON – The proposed building is of a temporary nature.

(2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, and the Town and Country Planning (Use Classes) (Scotland) Order 1997, this permission relates to the use of the premises for car sales and the further express permission of the Planning Authority shall be required in respect of any other use which would be authorised by the said order.

REASON – To enable the Planning Authority to retain control over the use of the site in the interests of residential amenity.

(3) Eight customer and staff car parking spaces shall be provided within the site. Details of their location shall be submitted to and approved by the Planning Authority with the eight car parking spaces being physically demarcated on site for this use, all to be approved and implemented within one month of the date of this consent.

REASON – In the interests of general amenity and road safety.

(4) No more than 30 cars shall be displayed for sale on the forecourt at any one time and no cars associated with the development shall be parked or displayed within 5 metres

of the northern boundary of the application site immediately adjacent to the access of the residential property at Craighnowe.

REASON – In the interests of residential amenity.

(5) The area for the display of vehicles for sale shall not encroach within 3 metres of the existing eastern boundary fence of the application site as shown on the approved plans. Within one month of the date of this consent, the applicant shall install a drop kerb, (or an alternative means of physical demarcation subject to the prior approval of the Planning Authority), along the eastern limit of the car sales area, and not encroaching within the requisite 3 metres access strip.

REASON – In the interests of general and residential amenity and to clearly confirm the extent of the car sales area.

(6) At no time shall the display of cars extend beyond the physical demarcation line of the car sales area.

REASON - In the interests of general and residential amenity.

(7) Except in cases of emergency and except for car valeting, there shall be no repair or maintenance of vehicles within the development site.

REASON – In the interests of residential amenity.

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THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 555320.**

**AGENDA**