

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 12 SEPTEMBER 2003

**03/0408/FL: PROPOSED TEMPORARY REMOVAL OF CONDITION 3 FROM
PLANNING CONSENT 00/0142/FL TO ALLOW APPROX 30 CASES PER
WEEK TO BE FILLED FOR MARKETING PURPOSES
AT 2 BURNGRANGE LANE, MAUCHLINE**

APPLICATION BY MR DAVID COOPER

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for the removal of condition 3 from planning consent 00/0142/FL dated 03 May 2003 which states:

No bottling or other treatment of the spring water shall take place within the application site.

Reason: to prevent an industrial type of use from being introduced into the appeal site.

1.2 The current application has been made in response to representations received and enquiries undertaken by the Council's Enforcement Officer regarding unauthorised bottling of water within the garage premises. The applicant is currently bottling approximately 30 cases of spring water per week within the garage, this product being used for marketing purposes. The business, Burnswell Spring, is in the process of establishing a customer base and in order to do this successfully the applicant requires to provide samples of the product. The applicant now seeks to temporarily remove condition 3 to allow the bottling of approximately 30 cases of spring water within the garage premises.

1.3 The applicant has indicated that he has now acquired premises at the former Ramsay and Jackson yard which lies immediately south of Burngrange Lane. It is the applicant's intention to establish the bottling operations of his business from this site. The temporary removal of condition 3 from the existing planning consent would allow time for the operations to be established at the new site while still having the ability to bottle for marketing purposes.

1.4 Under the previous planning consent, all bottling of spring water was to be undertaken outwith the application site, with spring water being taken by a small tanker to an appropriate bottling location. The production of spring water was

limited by condition and vehicle movements were also limited in terms of numbers and times of movements. The permission granted was also subject to the implementation of a number of improvements to the access drive at Burngrange Lane in the interests of public safety.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated in 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. As is indicated at Section 6 of the report, there are material considerations relevant to this application, however it is considered that these matters have been satisfactorily addressed and are not of sufficient weight to merit refusal of the application.

3.2 This application has been made on a retrospective basis to have the condition removed in order that the applicant can fill up to 30 cases per week for distribution to market the product. The condition was imposed on appeal in order to address concerns from third parties and to prevent an industrial type of use being introduced into the application site. The applicant has recently acquired a site in close proximity to the pumping station with the intention of undertaking bottling operations from that site.

3.3 It is not considered that the temporary removal of the condition would have any significant adverse affects on neighbouring properties while it would enable a local business to establish a market prior to investing in the redevelopment of a commercial site. It is recognised that the site is not suitable as a permanent base from which to establish and operate a bottled water business. However, the removal of the condition has been applied for on a temporary basis and it is considered that it complies with the relevant policies and is therefore acceptable.

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 will not require to be referred to the Development Services Committee because it is not a significant departure from the development plan.

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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SOUTHERN LOCAL PLANNING COMMITTEE: 12 SEPTEMBER 2003

**03/0408/FL: PROPOSED TEMPORARY REMOVAL OF CONDITION 3 FROM
PLANNING CONSENT 00/0142/FL TO ALLOW APPROX 30 CASES PER
WEEK TO BE FILLED FOR MARKETING PURPOSES
AT 2 BURNGRANGE LANE, MAUCHLINE**

APPLICATION BY MR DAVID COOPER

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 the proposal is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site relates to a single garage associated with the private residential property at 2 Burngrange Lane in Mauchline. The garage also lies adjacent to the residential property at 1 Burngrange Lane. These residential properties are occupied by the applicant and his father. The applicant and his father operate a spring water production facility from the existing garage. Planning permission was granted, on appeal, in 2001 for the change of use of the garage to a pumping station to enable the applicants to extract spring water from an existing artesian well which was discovered at the site.

2.2 The site is accessed by a single width vehicular lane from the end of Burngrange Lane. This is a private access serving the two above mentioned properties. Beyond the site to the north east and east are open fields and there is further housing to the west. A dwellinghouse is situated to the south of the application site beyond the applicant's own house.

2.3 **Proposed Development:** Permission is sought for the removal of condition 3 from planning consent 00/0142/FL dated 03 May 2003 which states:

No bottling or other treatment of the spring water shall take place within the application site.

Reason: to prevent an industrial type of use from being introduced into the appeal site.

2.4 The current application has been made in response to representations received and enquiries undertaken by the Council's Enforcement Officer regarding unauthorised bottling of water within the garage premises. The applicant is currently bottling approximately 30 cases of spring water per week within the garage, this product being used for marketing purposes. The business, Burnswell Spring, is in the process of establishing a customer base and in order to do this successfully the applicant requires to provide samples of the product. The applicant now seeks to temporarily remove condition 3 to allow the bottling of approximately 30 cases of spring water within the garage premises.

2.5 The applicant has indicated that he has now acquired premises at the former Ramsay and Jackson yard which lies immediately south of Burngrange Lane. It is the applicant's intention to establish the bottling operations of his business from this site. The temporary removal of condition 3 from the existing planning consent would allow time for the operations to be established at the new site while still having the ability to bottle for marketing purposes.

2.6 Under the previous planning consent, all bottling of spring water was to be undertaken outwith the application site, with spring water being taken by a small tanker to an appropriate bottling location. The production of spring water was limited by condition and vehicle movements were also limited in terms of numbers and times of movements. The permission granted was also subject to the implementation of a number of improvements to the access drive at Burngrange Lane in the interests of public safety.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Division has no objection subject to conditions restricting the number of vehicle movements per week as well as being restricted to off peak times during the week only.

The applicant uses his own private car to distribute the bottled water and it is therefore not practical nor appropriate to restrict the movements made. The number of movements associated with the dispatch of bottled product will be restricted by virtue of the limited production of 30 cases per week as a condition of any consent granted.

3.2 East Ayrshire Environmental Health Service has no objection to the proposal.

Noted.

3.3 Mauchline Community Council has not responded to the consultation letter.

Noted.

4. REPRESENTATIONS

4.1 This application has attracted two third party letters of representation and the points of objection are summarised as follows:

4.2 Forklift trucks are used for delivering empty bottles and these vehicles are crossing over the children's safety road to school. None of the conditions regarding road safety have been carried out.

Road safety is a concern which has been raised previously. The site is indeed accessed by a narrow lane stemming off Burngrange Lane, which itself is a narrow access. It is also evident that the local children do cross the lane in order to get to school. However, there are three detached dwellinghouses which take vehicular access off the lane. In a letter from the applicant to the Division it is confirmed that at present the distribution of the bottled water is done by private car only hence there is no issue of larger delivery vehicles which might pose a threat to pedestrians in the area. The condition on the planning consent which relates to the provision of road safety measures is only required to be implemented if the water is leaving the site in a tanker, which it is not, therefore the condition is not applicable at this stage. It is accepted that there will be delivery of bottles to the site; however it is not considered that the level of production for marketing purposes will give rise to significant vehicle movements. A condition can be attached to any consent granted to ensure that delivery of bottles to the application site be restricted to avoid times when children may be using Burngrange Lane to walk to and from school.

4.3 One objector lives close enough to hear the bottling going on giving rise to noise nuisance.

It is not considered that the noise is of a level which would constitute extraneous noise pollution. It is considered that a condition should be attached to any temporary consent granted to restrict the bottling to appropriate operational hours to prevent any significant disturbance to the residential amenity of adjacent properties.

4.4 The proposal will result in devaluation of other residential properties in the area.

Property value is not a material planning consideration in the determination of this application.

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 (1999) and the Adopted East Ayrshire Local Plan (2003).

East Ayrshire Local Plan

5.2 Policy IND11 states that the Council will be supportive of the operation of small businesses in residential properties subject to the primary use remaining residential and the business not adversely affecting the existing residential use.

The application has been made for the removal of the condition disallowing the bottling of the water from the garage premises. The business has already been approved at this site. It is considered that on the scale proposed, at a rate of no more than 30 cases per week, the business will not have an adverse impact on the surrounding environment and hence does not contravene this policy.

5.3 Policy ENV3 seeks to ensure that all development within Conservation Areas is sympathetic to the area.

The proposal does not involve any physical changes to the environment and will not have any impact upon the character of the Conservation Area; it therefore complies with this policy.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The other principal material considerations relevant to the determination of the application are the consultation responses, representations received and the planning history of the site.

Consultations Responses

6.2 No objections or adverse comments have been raised by any of the consultees.

Representations

6.3 The concerns raised by third parties in relation to road safety are indeed material. However, the proposal will have no implications for the use of the lane as there cannot be a restriction on the number of movements made by a private car on a daily basis. It is considered that concerns regarding vehicle movements and noise disturbance can be addressed through the imposition of appropriate conditions in any consent granted for the development.

Planning History

6.4 A planning application (Ref. No. 00/0142/FL) for the change of use of the garage from residential use to business use as a spring water pumping station was refused by the Southern Local Planning Committee on 01 December 2000.

6.5 A subsequent planning appeal (Ref. P/PPA/190/49) was upheld on 03 May 2001 and planning permission was conditionally granted for the development. The current application seeks to temporarily remove the obligation under condition 3 which prevents the bottling of spring water from within the garage premises.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications would arise in terms of formal enforcement action should the Committee be minded to refuse this application.

8. CONCLUSIONS

8.1 As indicated in 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. As is indicated at Section 6 of the report, there are material considerations relevant to this application, however it is considered that these matters have been satisfactorily addressed and are not of sufficient weight to merit refusal of the application.

8.2 This application has been made on a retrospective basis to have the condition removed in order that the applicant can fill up to 30 cases per week for distribution to market the product. The condition was imposed on appeal in order to address concerns from third parties and to prevent an industrial type of use being introduced into the application site. The applicant has recently acquired a site in close proximity to the pumping station with the intention of undertaking bottling operations from that site.

8.3 It is not considered that the temporary removal of the condition would have any significant adverse affects on neighbouring properties while it would enable a local business to establish a market prior to investing in the redevelopment of a commercial site. It is recognised that the site is not suitable as a permanent base from which to establish and operate a bottled water business. However, the removal of the condition has been applied for on a temporary basis and it is considered that it complies with the relevant policies and is therefore acceptable.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed 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 will not require to be referred to the Development Services Committee because it is not a significant departure from the development plan.

Alan Neish
Head of Planning and Building Control

27 August 2003
NM/NM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.

3. Letters of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Previous application 00/0142/FL
8. Appeal Decision P/PPA/190/49 dated 03 May 2003.

Anyone wishing to inspect the above background papers should contact Nicola Monroe on 01563 555485.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 03/0408/FL

Location	2 Burngrange Lane MAUCHLINE KA5 6EL
Nature of Proposal:	Proposed temporary removal of Condition 03 from planning consent 00/0142/FL to allow approx 30 cases per week to be filled for marketing purposes
Name and Address of Applicant:	Mr David Cooper 2 Burngrange Lane MAUCHLINE KA5 6EL
Name and Address of Agent	Mr Andrew Cooper 1 Burngrange Lane MAUCHLINE KA5 6EL

DPO's Ref: Nicola Monroe
PPO's Ref: Hugh Melvin

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

1. The removal of Condition 03 of Planning Permission Ref: 00/0142/FL dated 03 May 2003 is granted for a temporary period of 1 year only and after this time there shall be no bottling of water at the site unless otherwise approved by the Planning Authority.

REASON – To enable the Planning Authority to review the situation after this time.

2. No more than 30 cases of bottled spring water shall be filled for distribution from the site per week.

REASON – The site is suitable for a minor ancillary business operation only.

3. The bottling of spring water from the garage premises shall be restricted to between 0900 and 1800 hours Mondays to Fridays with no bottling, including delivery to the site of bottles, cases or other material associated with the production of spring water to the site, on Saturdays or Sundays.

REASON – In the interests of residential amenity.

4. Notwithstanding the provisions of Condition 3 above, there shall be no delivery to the site of bottles, cases or other materials associated with the production of the spring water for marketing purposes between 0830 and 0930 hours, 1200 and 1400 hours, and 1500 and 1600 hours.

REASON – In the interests of pedestrian safety during times when Burngrange Lane is being used by school children.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 555320.**