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**NORTH AYRSHIRE COUNCIL**

23rd August 2023

**Planning Committee**

Locality	Arran
Reference	23/00436/PP
Application Registered	14th June 2023
Decision Due	14th August 2023
Ward	Arran

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<b>Recommendation</b>	Refuse and Approve service of Enforcement Notice
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<b>Location</b>	Old Pavilion Lamlash Brodick Ayrshire KA27 8LS
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<b>Applicant</b>	Fergie's F.A.O. Mrs Emma Ferguson
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<b>Proposal</b>	Siting of burger van within one car parking space for temporary period of three years
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**1. Description**

Planning permission is sought for the siting of a mobile snack van for a temporary period of three years on an existing car park within the Conservation Area of Lamlash. The car park is leased and maintained by North Ayrshire Council.

**BACKGROUND**

Public complaints over the van were initially reported to Planning Services in early 2023, no planning permission for the use had been gained and the matter was investigated as an unauthorised use under planning enforcement reference 23/00019/BREACH. The owners claimed at that point that the van was licensed, was only intermittently sited and had not been at that particular site for more than 28 days and so was not in breach of Planning law. They were advised at that time that the investigation would be closed and that the site would be monitored for potential future planning breaches. Advice was given that they were free to apply for planning permission for the use if they wished in the meantime.

**PROPOSAL**

The van is fully mobile and is a standard sized Fiat van converted to have a high sided compartment to the rear with a serving hatch to the side. It is not fixed to the site and has not

been permanently positioned at the car park. It has been observed by Council Officers sited on the first, westmost space of the gravel public car park to the north of the Old Pavilion and tennis courts in Lamlash at the entrance from the A841 road for more than 28 days cumulatively since the initial complaints above were received.

The business sells hot filled rolls, other prepared foods and hot and cold drinks and snacks. It is not permanently connected to any services, a gas bottle is placed to the side for the cooking equipment when sited and a water bottle and small generator are also brought to the site.

## APPLICANTS' PLANNING STATEMENT

The application was supported by a Planning Statement, a copy of an Arran Banner article and thirteen comments in support given by customers and submitted by the applicants.

The Statement confirms that a Licence was obtained from North Ayrshire Council for street trading but claims that they were unaware that they also needed planning permission for the change of use of the land if sited in the same place for more than 28 days in a calendar year.

The Statement claims that the van fills a gap in the market by providing hot food at affordable prices which is not otherwise available in the surrounding area, where there is only a small sandwich shop offering cold pasta and rolls or a Co-op supermarket offering 'meal deals'. It claims that eating at pubs or restaurants in the area would not be affordable for most locals. It also claims to cater for elderly lunch clubs and for local High School pupils whose parents pre-pay and pre-order lunches although no evidence was provided.

The business claims to be aimed more at affordable food for locals rather than tourists who are well catered for elsewhere and confirms the intention to seek permanent premises once established, hence the application being for a temporary period only.

In recognising the Conservation Area location, the Statement confirms that the van is not permanently sited and usually trades only between 10am and 4pm on Tuesdays to Saturdays using only one parking space. The van is otherwise kept at the applicants' home address and is deep cleaned between shifts. During trading, a bin is supplied for customers' use and is removed at the end of trading. The Statement continues that no wastewater or other materials are disposed of at the site, that no fumes or unpleasant smells are created and concludes that no issues have been encountered in trading from the site thus far.

The site is at the western side of the Lamlash Conservation Area on the approach to the village centre from Whiting Bay and the van has been sited on the first space of the car park c.38-40 metres north of the tennis courts. The site is adjoined by the remaining car park to the east, the Whitehouse Woods site to the west and by Lamlash Green to the north. The car park is accessed directly from the A841 road immediately to the west of the site. There are commercial premises some 190m to the north and c.120m to the southwest and Lamlash Medical Centre and dwellinghouses are to the south.

In terms of the Adopted 2019 North Ayrshire Council Local Development Plan ("the LDP"), the site is located on an area identified as Open Space within the General Urban Area of Lamlash. The site is also within the boundary of Lamlash Conservation Area.

Relevant policies of the LDP include:

- Strategic Policy 1: Spatial Strategy (the Towns and Villages Objective);
- Strategic Policy 2: Placemaking;
- Policy 8: Business Development on Arran and Cumbrae;
- Policy 9: Preserving and Enhancing our Conservation Areas; and
- Policy 19: Developments Involving Open Space.

## **Relevant Development Plan Policies**

### SP1 - Towns and Villages Objective Towns and Villages Objective

Our towns and villages are where most of our homes, jobs, community facilities, shops and services are located. We want to continue to support our communities, businesses and protect our natural environment by directing new development to our towns and villages as shown in the Spatial Strategy. Within urban areas (within the settlement boundary), the LDP identifies town centre locations, employment locations and areas of open space. Most of the remaining area within settlements is shown as General Urban Area. Within the General Urban Area, proposals for residential development will accord with the development plan in principle, and applications will be assessed against the policies of the LDP. New non-residential proposals will be assessed against policies of this LDP that relate to the proposal.

In principle, we will support development proposals within our towns and villages that:

- a) Support the social and economic functions of our town centres by adopting a town centre first principle that directs major new development and investment to town centre locations as a priority including supporting town centre living.
- b) Provide the right new homes in the right places by working alongside the Local Housing Strategy to deliver choice and variety in the housing stock, protecting land for housing development to ensure we address housing need and demand within North Ayrshire and by supporting innovative approaches to improving the volume and speed of housing delivery.
- c) Generate new employment opportunities by identifying a flexible range of business, commercial and industrial areas to meet market demands including those that would support key sector development at Hunterston and i3, Irvine.
- d) Recognise the value of our built and natural environment by embedding placemaking into our decision-making.
- e) Prioritise the re-use of brownfield land over greenfield land by supporting a range of strategic developments that will deliver:
  - regeneration of vacant and derelict land through its sustainable and productive re-use, particularly at Ardrossan North Shore, harbour and marina areas, Montgomerie Park (Irvine) and Lochshore (Kilbirnie).
  - regeneration and conservation benefits, including securing the productive re-use of Stoneyholm Mill (Kilbirnie) and supporting the Millport Conservation Area Regeneration Scheme.

- f) Support the delivery of regional partnerships such as the Ayrshire Growth Deal in unlocking the economic potential of the Ayrshire region.

## Strategic Policy 2

### Placemaking

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places. The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

### Six qualities of a successful place

#### Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

#### Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

#### Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

#### Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

#### Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat

networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

#### Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

#### Detailed Policy 8 - Develop on Islands

##### Policy 8:

#### Business Development on Arran and Cumbrae

We will support developments that will have a positive impact on the vitality, vibrancy and viability of the island and avoid unacceptable adverse impacts on the environment, amenity or the tourism offer of the area.

We will promote as a preference, the existing settlement pattern in providing the best-placed locations because these are likely to have access to utilities and services and to ensure the greatest range of employees can access new businesses.

Proposals will be supported where they have demonstrated a sequential approach to site selection in the following order of preference:

- o Within or adjacent to established industrial and business locations
- o Within settlements
- o Edge of settlements
- o Within existing countryside buildings
- o Rural locations that are, or can be made, easily accessible by a choice of transport modes

We will be flexible and realistic in applying the sequential approach, in particular where key sector and employment uses are proposed to ensure the island can capitalise on major inward investment opportunities.

#### Detailed Policy 9 - Conservation Areas

##### Policy 9:

#### Preserving and Enhancing our Conservation Areas

Development within or adjacent to a Conservation Area, that preserves or enhances its character and appearance, and is consistent with any relevant Conservation Area Appraisal or Management Plan, will be supported providing it can be demonstrated that it retains appropriate scale, proportion, siting, massing, design, and use of materials whilst not inhibiting high quality innovative design.

There is a presumption against the demolition of unlisted buildings that contribute positively towards the character and appearance of a Conservation Area. Proposals will only be supported in the following exceptional circumstances:

- i) The proposal is accompanied by a suitable redevelopment of the site which contributes positively toward the character and appearance of the Conservation Area. Such proposals should also include interim landscaping or sensitive screening of the site. We will also expect proposals to be accompanied by an implementation timetable and where the

redevelopment period is considered to be excessive the demolition will generally be resisted.

AND

- ii) A competent assessment of the building's contribution to the Conservation Area has concluded that there is little or no value in the building's retention; and
    - o The repair or reuse of the building is not economically viable; or
    - o The demolition of the building is essential to delivering significant benefits to the wider community economically, socially or environmentally.
- Works to trees within Conservation Areas will be supported where they are:
- o Part of an agreed scheme of tree management; or
  - o Required on the grounds of safety or nuisance; or
  - o Directed towards trees which are not of a material value to the conservation area (i.e. the trees are small, self-seeded saplings; or not otherwise visible to the public/neighbours - they are remotely located; or fast growing tree species such as conifers, leylandii etc.); or
  - o In association with a wider development proposal which would enhance the amenity of the conservation area overall - including one where suitable replacement trees can be accommodated.

Further information on our Built Heritage Designations can be found in schedule 9.

Detailed Policy 19 - Open Space Devs

Policy 19:

Developments Involving Open Space

Developments involving the loss of open space (excluding outdoor sports facilities) will only be supported where they accord with the Council's current Open Space Strategy and in the following exceptional circumstances:

- o the open space is:
- o of limited amenity and/or recreational value (not as a result of neglect or poor maintenance) and does not form part of a recognised upgrading/ improvement scheme or strategy; or
- o a minor part of a larger area of functional open space and the development would not harm or undermine the function of the main site; or
- o a minor part of the wider provision of open space and its loss would not result in a significant deficiency of open space provision within the immediate area; or
- o the development would result in
- o a local benefit in terms of either alternative equivalent provision being made or improvement to an existing public park or other local open space; or
- o significant benefits to the wider community which outweigh the loss of open space.

## **2. Consultations and Representations**

The statutory neighbour notification was carried out and the application was advertised in the local press (Arran Banner). Nine objections, ten supporting and one neutral comment have been received, the various points of which are summarised as follows:

OBJECTION 1: Overprovision / Effects on existing businesses. The presence of this van is detrimental to the survival of existing well established businesses in permanent premises.

RESPONSE: The purpose of the Planning system is not to protect the private interests of one business owner over another but to support the provision of an adequate range of services and facilities without significant adverse effects on existing land users. The matters of need and/or over-provision are considered in the following Analysis.

OBJECTION 2: Health. Other businesses and the High School offer healthier and more affordable alternatives than stated in the application.

RESPONSE: Food uses are regulated by Environmental Health legislation and the range of goods sold is not directly a material planning consideration.

OBJECTION 3: Appearance. The van is unsightly and is not what people expect to see on Arran when they visit for the scenery. It looks old and dirty and usually has boxes piled up on the front seat.

RESPONSE: This is personal opinion. The condition and interior of moving vehicles is not controlled by planning legislation. This application relates to the proposed use of the site.

OBJECTION 4: Noise. The noise and fumes from the generator are not fitting to the wider amenity.

RESPONSE: Noise complaints would be a matter for Environmental Health. EH was consulted on the application and the response is in the following section of this report.

OBJECTION 5: Hygiene. How can a small van without running water be adequately cleaned during the day's operation?

RESPONSE: The application states that supply would be from a water barrel when trading. This is not a material planning consideration and would be covered by Environmental Health and Licensing legislation.

OBJECTION 6: Loss of public parking space / Traffic impacts.

RESPONSE: Active Travel and Transport was consulted on Road safety and traffic issues. The response is in the following section of this report.

OBJECTION 7: Adverse impact on Conservation Area character.

RESPONSE: Effects on the character and setting of the Conservation Area are considered in the following Analysis.

## SUPPORT

SUPPORT 1: Variety. A great number of tourists, local residents and working tradesmen appreciate affordable and readily available foods that don't demand the premium prices of local supermarkets. People appreciate a variety of different food options and would alternate between the local options

SUPPORT 2: Community benefit. Support should be given to a new business run by a local family and would encourage other to pursue other ventures.

SUPPORT 3: Temporary nature. The temporary trial period shows a thoughtful approach to assessing the impact of the van on its surroundings.

SUPPORT 4: Well run business. The young couple who run the business are very quick, efficient and friendly and take pride in the produce offered. They provide a good service to their community.

SUPPORT 5: Visual amenity. Convenient siting near the beach. The aesthetic of the village is mentioned by objectors but if this business was not using the car park space there would be no control over who could park there eg. industrial tankers, council vehicles etc so this not relevant

RESPONSE: All noted.

## NEUTRAL

Comment: The ownership of the car park is in the process of changing from the Council to COAST and North Ayrshire Council should not grant a licence until that process is complete.

RESPONSE: The business already has a Street Traders Licence and this application is for Planning Permission. Site ownership is not a material planning consideration. Even if planning permission were in place, the landowners consent would be a separate legal matter that the applicants would have to address.

## CONSULTATIONS

NAC ACTIVE TRAVEL AND TRANSPORT: Recommend Refusal. It is proposed that the van will be parked in the parking space all day. Parking is at a premium in Lamlash at this location. The parking area is not adopted by the Council but this would remove parking provision for the general public.

Response: Noted.

ENVIRONMENTAL HEALTH: No objection

CLEANSING: No objection

ARRAN COMMUNITY COUNCIL: No comments received

**Publicity:-** Advertised in the Arran Banner local newspaper

**Reason for advertisement:-** Regulation 20 (1) Advert  
Published on:- 23.06.2023

**Reason for advertisement:-** Schedule 3



Published on:- 23.06.2023

**Site Notices:-** No Site Notice

### **3. Analysis**

Planning permission is required for the use of land for any purpose on more than 28 days in total in any calendar year or the placing of any moveable structures on the land for the purposes of that use.

Hot food takeaway is a *sui generis* use in terms of the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended. *Sui Generis* use indicates that the use does not fall within any specific use class in the Order.

The Town and Country Planning (Scotland) Act 1997, as amended, requires that, in dealing with planning applications, the planning authority have regard to the development plan and to any other material considerations. The Development Plan comprises the LDP and National Planning Framework 4. An assessment of the proposal against the LDP policies follows:

The site is in the village of Lamlash and the Towns and Villages Objective of Strategic Policy 1 aims to generate new employment opportunities by identifying a flexible range of business commercial and industrial areas to meet market demands. In order to fully comply with SP1, proposals should also demonstrate compliance with Strategic Policy 2: Placemaking.

SP2 requires that development proposals meet the qualities of successful places which are outlined in the policy without significant adverse environmental or amenity impacts.

The main relevant qualities in relation to the policy are: Distinctive; and Safe and Pleasant.

Distinctive requires proposals to draw on positive characteristics of the surrounding area, including building forms, landscapes, spaces and scales etc. and in this regard, it is not considered that the siting of a temporary mobile snack van at such a prominent position, effectively at the roadside, would draw on or accentuate positive elements of the surrounding built environment as outlined in the policy.

Safe and Pleasant requires that proposals should create attractive places by providing a sense of security and creating a pleasant, positive sense of place by promoting visual quality and should respect the amenity of existing and future users. Whilst the proposal is proposed to be sited for several days each week and not a fixed permanent structure at the site and it is acknowledged that there would be no planning control over what vehicles may otherwise use the parking places, the proposal does not promote visual quality. The associated generator use and water and gas bottles etc would be readily visible from the roadside through the conservation area and would be detrimental to visual amenity. The proposal would not respect the amenity of users of Lamlash Green for leisure purposes in terms of noise, smells, traffic and parking as required under this criterion and cannot therefore comply with Strategic Policy 2.

Policy 8: Business Development on Arran and Cumbrae supports developments which have a positive impact on the vitality, vibrancy and viability of the island without unacceptable adverse impacts on the environment, amenity or the tourism offer of the area. In this regard, it is acknowledged above that the use of parking spaces would otherwise be uncontrolled by planning legislation, and also that the business has a Street Trading Licence which would allow occasional trading from the site. However, more than 28 days trading requires planning permission and for the reasons covered above, the vehicle type and scale and the associated visual aspects do not accord with the LDP in visual terms.

It cannot therefore be accepted in Planning terms that the regular siting of the mobile business within the conservation area of the village would positively impact on the visual amenity of the island or that it would not potentially adversely affect the viability of existing businesses within permanent premises within the village.

It is further considered that the existing Street Trading Licence and the provisions of planning legislation which would have allowed trading from various sites, each for up to 28 days in a year, would give ample scope to establish that the business itself is viable, at which point permanent premises could be sought. It is not therefore considered that a need has been demonstrated for permanent siting of the business at this location. For these reasons, the proposal does not accord with Policy 8.

Policy 9: Preserving and Enhancing our Conservation Areas states that development should be consistent with the area and the siting of a business at this location, which is a prominent entry point to the Conservation Area at the approach to the village from the south and Whiting Bay, would not preserve the character of the Conservation Area where Lamlash Green functions as a peaceful undeveloped green area framing the wider village centre, and would not enhance the setting of the Conservation Area or the qualities for which it was designated. The proposal does not therefore accord with Policy 9.

Turning to Policy 19 of the LDP, this states that developments involving the loss of Open Space will only be considered where the open space is of little amenity value or the development would result in either alternative equivalent local open space being provided or significant benefits to the wider community which outweigh the loss of open space.

In this case, the open space (Lamlash Green) would not itself be lost, but an element of public access to it would (the car parking provision). Given that the Roads Authority have identified that public parking is already under pressure in Lamlash and therefore recommended refusal of the application, the proposal does not accord with the Policy which aims to preserve Open Space and its functionality.

Given the above Analysis, the proposal does not therefore accord with the Local Development Plan.

The most relevant policy of National Planning Framework 4 is Policy 7 which identifies that development affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting will be preserved or enhanced. In light of the foregoing Analysis, the conservation area character would be eroded and not enhanced by the proposal.

The proposal does not therefore accord with the Development Plan and it is therefore recommended that planning permission should be refused.

In recognising the existing Street Trading Licence and the allowance in the Town and Country Planning (General Permitted Development) (Scotland) Order which allows the use of land for up to 28 days in a calendar year without the benefit of planning permission, it is further recommended that approval be given for the service of a Planning Enforcement Notice specifying that the business should not operate from the site.

#### **4. Full Recommendation**

Refused

#### **Reason for Refusal**

##### **Reason**

1. The proposed development would be contrary to Strategic Policy 2 (Placemaking) of the Adopted North Ayrshire Local Development Plan, in that it has not been shown: (i) that the development would draw on positive characteristics of the surrounding area as required by the quality 'Distinctive'; or (ii) that the development would enhance visual quality as required by 'Safe and Pleasant'.

##### **Reason**

2. The proposed development would be contrary to Policy 8: Business Development on Arran and Cumbrae of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would have a positive impact on the vitality, vibrancy and viability of the island without unacceptable adverse impacts on the environment, amenity or the tourism offer of the area

##### **Reason**

3. The proposed development would be contrary to Policy 9: Preserving and Enhancing Our Conservation Areas of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would preserve or enhance the character and setting of Lamlash Conservation Area.

##### **Reason**

4. The proposed development would be contrary to Policy 19: Developments Involving Open Space of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would result in significant benefits to the wider community which would outweigh the loss of open space or the access to it.

Allan Finlayson  
Chief Planning Officer

For further information please contact Mr Neil McAteer Planning Officer on 01294 324316.



## Appendix 1 – Location Plan

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