

REGULATORY PANEL: 28 FEBRUARY 2024

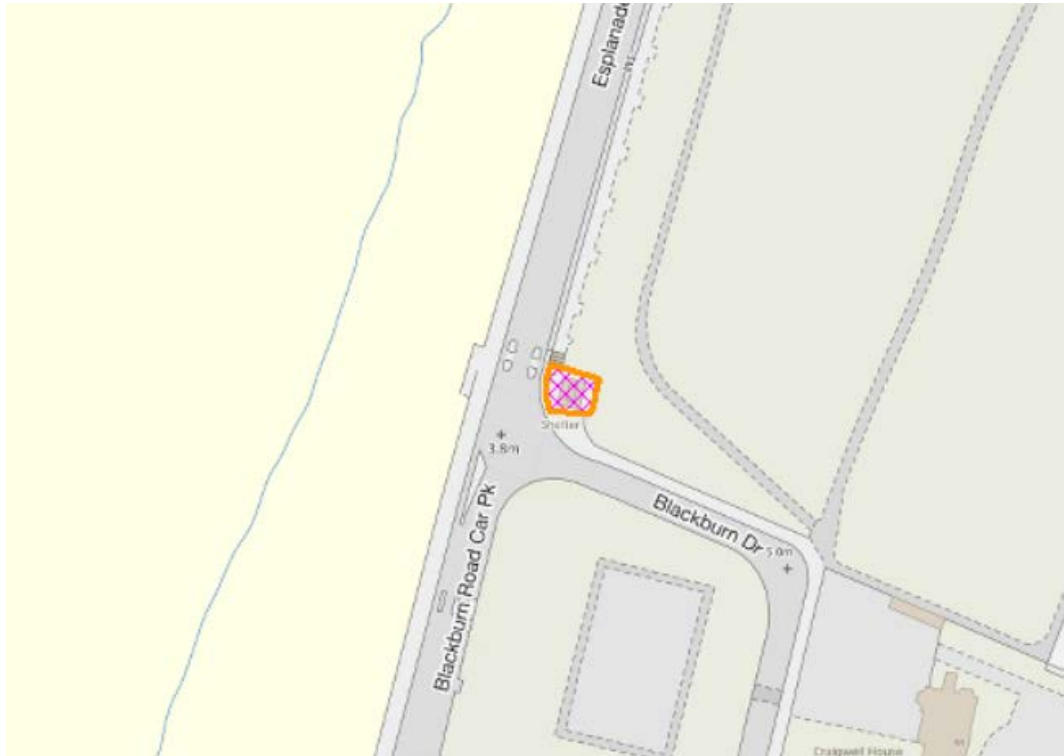
REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT

24/00015/APP

LOW GREEN ESPLANADE AYR SOUTH AYRSHIRE

Location Plan

APPLICATION SITE 



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Summary

Planning permission is sought for alterations to and the change of use of a former public convenience building to form a hot food take away, the change of use of hardstanding and erection of fencing to form an external storage area and the formation of an external seating area at the Low Green, Esplanade, Ayr. The application site is within the bounds of Ayr Central Conservation Area.

The external alterations comprise of enclosing the rear canopy of the building to enlarge the internal footprint, repairs to the existing building, installation of additional windows and doors and a ventilation flue to the rear of the building. A 2.4-metre-high timber fence and gate shall also be erected to screen the storage area to be formed to the rear of the building.

The application requires to be reported to the Council's Regulatory Panel, in accordance with the Council's approved procedures for handling planning applications and Scheme of Delegation, as the Council has a financial and ownership interest in the site, and a written objection has been received.

The applications have been assessed against the various material planning considerations which include the provisions of the development plan, consultations, representations received (1 in total) and the impact of the proposed development on the locality. The assessment concludes that the proposed development complies with the development plan. The consultation responses do not raise any issues of over-riding concerns that cannot be addressed by condition. Equally, the points raised in the letter of objection have been fully considered, but do not raise any issues that would merit a recommendation of refusal of the application. Overall, there are no policy objections, and following the above assessment, it is considered that the proposal will not have an adverse impact on residential amenity at the locality and will have a neutral impact on the character and appearance of Ayr Central conservation area.

Given this assessment and having balanced the applicant's rights against the general interest, it is recommended that the applications be approved subject to conditions.

REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT

REGULATORY PANEL: 28 FEBRUARY 2024

SUBJECT:	PLANNING APPLICATION REPORT
APPLICATION REF:	24/00015/APP
SITE ADDRESS:	LOW GREEN ESPLANADE AYR SOUTH AYRSHIRE
DESCRIPTION:	ALTERATIONS, CHANGE OF USE OF FORMER PUBLIC CONVENIENCE BUILDING TO HOT FOOD TAKE AWAY, CHANGE OF USE OF HARDSTANDING AND ERECTION OF FENCING TO FORM EXTERNAL SEATING AREA AND STORAGE AREA
RECOMMENDATION:	APPROVAL WITH CONDITIONS

APPLICATION REPORT

This report fulfils the requirements of Regulation 16, Schedule 2, paragraphs 3 (c) and 4 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The application is considered in accordance with the Council's Scheme of Delegation as well as the Procedures for the Handling of Planning Applications.

Key Information:

- The application was received on 11 January 2024.
- The application was validated on 11 January 2024.
- A Site Visit was carried out by the Planning Authority on 5 February 2024.
- No Neighbour Notification was required.
- A Site Notice was posted in the locality under Section 65 of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) by the Planning Authority on 23 January 2024.
- A Public Notice, under The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) was placed in the Local Press on 23 January 2024.

1. Proposal:

The application site relates to a vacant former public convenience building at the Low Green, Esplanade, Ayr. The application site is within the bounds of Ayr Central conservation area.

The proposed development comprises of alterations to and the change of use of a former public convenience building to form a hot food take away, the change of use of hardstanding and erection of fencing to form an external storage area and the formation of an external seating area. The external alterations comprise of enclosing the rear canopy of the building to enlarge the internal footprint, repairs to the existing building, installation of additional windows and doors and a ventilation flue to the rear of the building. A 2.4-metre-high timber fence and gate shall also be erected to screen the storage area to be formed to the rear of the building. The application submission outlines that the proposed seating area and barriers shall be removed from the site each day and securely stored while the premises is not open.

The agent for the application has confirmed that there is no specific operator for the premises at the time of the application and therefore no details regarding the operation of the premises has been provided.

The application requires to be reported to the Council's Regulatory Panel, in accordance with the Council's approved procedures for handling planning applications and Scheme of Delegation, as the Council has a financial and ownership interest in the site, and a written objection has been received.

2. Consultations:

Ayrshire Roads Alliance - Offer no objections.

Environmental Health - Offer no objections, subject to conditions.

Waste Management – Offer no objections.

3. Submitted Assessments/Reports:

In assessing and reporting on a Planning application the Council is required to provide details of any report or assessment submitted as set out in Regulation 16, Schedule 2, para. 4 (c) (i) to (iv) of the Development Management Regulations.

None.

4. S75 Obligations:

In assessing and reporting on a Planning application the Council is required to provide a summary of the terms of any Planning obligation entered into under Section 75 of The Town and Country Planning (Scotland) Act in relation to the grant of Planning permission for the proposed development.

None.

5. Scottish Ministers Directions:

In determining a Planning application, the Council is required to provide details of any Direction made by Scottish Ministers under Regulation 30 (Directions requiring consultation), Regulation 31 (Directions requiring information), Regulation 32 (Directions restricting the grant of Planning permission) and Regulation 33 (Directions requiring consideration of condition) of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, or under Regulation 50 (that development is EIA development) of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

None.

6. Representations:

2 representations have been received, which object to the proposed development. All representations can be viewed online at www.south-ayrshire.gov.uk/planning

The issues raised by Representee can be summarised as follows.

- Obstruction of public footway.
- Ownership and title deeds.

The matter of proposals on the public footway are considered in the assessment section of this report.

In accordance with the Council's procedures for the handling of Planning applications the opportunity exists for Representees to make further submissions upon the issue of this Panel Report by addressing the Panel directly. A response to these representations is included within the assessment section of this report.

7. Assessment:

The material considerations in the assessment of this planning application are the provisions of the development plan, other policy considerations (including government guidance), objector concerns and the impact of the proposal on the amenity of the locality.

On 13 February 2023, Scottish Ministers published and adopted National Planning Framework 4 (NPF4). NPF4 sets out the Scottish Ministers position in relation to land use planning matters and now forms part of the statutory development plan, along with the South Ayrshire Local Development Plan 2 (LDP2) (adopted August 2022).

Sections 25(1) and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) indicates that in making any determination under the Planning Acts, regard is to be had to the development plan. The determination shall be made in accordance with the plan unless material considerations indicate otherwise. The application is determined on this basis.

Legislation states that in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); Section 24(3)). NPF4 was adopted after the adoption of LDP 2, therefore NPF4 will prevail in the event of any incompatibility.

(i) National Planning Framework 4 (NPF4)

The following policies of NPF4 are relevant in the assessment of the application and can be viewed in full online at [National Planning Framework 4 - gov.scot \(www.gov.scot\)](https://www.gov.scot/national-planning-framework-4):

- Policy 7: Historic assets and places

National Policy 7 seeks to protect and enhance the historic environment. Development proposals in conservation areas will only be supported where the character appearance of the conservation area and its setting is preserved or enhanced (para. (d)).

- Policy 9: Brownfield, vacant and derelict land and empty buildings

This policy seeks to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development. Development proposals for the reuse of existing buildings will be supported, taking into account their suitability for conversion to other uses (para. (d)).

- Policy 14: Design, quality and place

This Policy seeks to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach to ensure that development proposals do not result in a detrimental impact on the quality of an area, regardless of scale.

- Policy 21: Play, recreation and sport

The intention of this policy is to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.

- Policy 30: Tourism

The overall purpose of this policy is to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with the zero and nature commitments and inspire people to visit Scotland.

With regard to the above policies, the application proposals involve the reuse of vacant former public convenience and surrounding areas of hardstanding, and as such shall not impact upon the use of the adjacent area of open space. It is noted that the building is located along Ayr seafront, which is considered to be an area visited by tourists to South Ayrshire. As such, there are other food and drink kiosks/restaurant/cafes within this locale which service both local residents and tourists through the year. It is considered that the proposed use, while bringing a vacant building back into use, would also add to this offering.

The external alterations proposed comprise of the enclosing of the rear canopy of the building to enlarge the internal footprint, re-rendering of the building, repairs to the existing roof, gutters and cast-iron columns, installation of windows to the west and south elevations, the installation of two doors to the east elevation and the erection of a ventilation flue to the rear of the building. A 2.4-metre-high timber fence and gate shall also be erected to screen the storage area to the rear of the building. Given the nature of the alterations and repair works proposed, and that the flue shall be sited on a less visible roof plane from the wider conservation area, it is not considered that they shall result in a detrimental impact on the character and of Ayr Central conservation area, as discussed further below.

It is therefore considered that the proposed development is compliant with NPF4, as outlined further below. The provisions of NPF4 must, however, be read and applied as a whole, and as such, no policies should be read in isolation. The application has been considered in this context.

(ii) South Ayrshire Local Development Plan 2

The following policies of the South Ayrshire Local Development Plan 2 are relevant in the assessment of the application and can be viewed in full online at [Local development plan 2 - South Ayrshire Council \(south-ayrshire.gov.uk\)](https://www.south-ayrshire.gov.uk/local-development-plan-2):

- LDP 2 Strategic Policy 1: Sustainable Development
- LDP 2 Strategic Policy 2: Development Management
- LDP 2 Policy: Open Space
- LDP 2 Policy: Tourism
- LDP 2 Policy: Historic Environment
- LDP 2 Policy: General Retail

The application proposals involve the reuse of a vacant former public conveniences and surrounding areas of hardstanding to form a hot food takeaway, the erection of fencing to form a storage area and an outdoor seating area. The above policies indicate that development may be acceptable (on areas of open space) where its scale, use and design are appropriate to the existing character of the open space and there is no individual or cumulative effect on the amenity or recreational value of the site. Given the nature and scale of the proposals, it is not considered that they shall have an adverse impact upon the amenity or recreational value of the wider area of open space.

It is noted that the building is located along Ayr seafront, which is considered to be an area visited by tourists to South Ayrshire. As such, there are other food and drink kiosks/restaurant/cafes within this locale which service both local residents and tourists through the year. It is also acknowledged that hot food takeaway uses are ordinarily directed towards town centre areas. However, considering that the proposed use of the building, while bringing a vacant building back into use, would add to the existing food and drink offering in the nearby area, therefore also improving tourist facilities at this locale, it is not considered that this location is inappropriate for the hot food takeaway use proposed in this instance.

The external alterations proposed comprise of enclosing the rear canopy of the building to enlarge the internal footprint, re-rendering of the building, repairs to the existing roof, gutters and cast-iron columns, installation of windows to the west and south elevations, the installation of two doors to the east elevation and the erection of a ventilation flue to the rear of the building. A 2.4-metre-high timber fence and gate shall also be erected to screen the storage area to the rear of the building. Given the nature of the alterations and repair works proposed, and that the flue shall be sited on a less visible roof plane from the wider conservation area, it is not considered that they shall result in a detrimental impact on the character and of Ayr Central conservation area, as discussed further below.

Therefore, it is not considered that there would be any adverse effect on the amenity or recreational value of the surrounding locality, or the character and appearance of the conservation area. It is therefore considered that the proposed development is compliant with LDP2, as outlined further below.

The provisions of the Adopted South Ayrshire Local Development Plan 2 must, however, be read and applied as a whole, and as such, no single policy should be read in isolation. The application has been considered in this context.

(iii) Other Policy Considerations (including Government Guidance)

Historic Environment Policy for Scotland

Historic Environment Policy for Scotland outlines the commitment of Historic Environment Scotland to supporting the protection and management of Scotland's rich and diverse historic environment in a sustainable way so that current and future generations can understand, appreciate and benefit from it. In terms of development within conservation areas, planning authorities are required to pay special attention to the desirability of preserving or enhancing the character and appearance of the area.

The Managing Change document on Setting defines setting as the way in which the surroundings of a historic asset contributes to how it is experienced, understood and appreciated, and indicates that the setting of a historic structure often extends beyond the immediate property boundary of that structure into the broader landscape. Less tangible elements can also be important in understanding the setting. These may include function, sensory perceptions or the historical, artistic, literary and scenic associations of places or landscapes. Planning authorities are expected to take into account the setting of historic assets in the determination of applications for planning permission.

South Ayrshire Council's Historic Environment Guidance

South Ayrshire Council's Historic Environment Guidance is also a material consideration in assessment of the application.

Guidance Policy 1 refers to design quality, and states that development proposals will be considered in terms of compliance with the 'General Criteria for New Development', which applies to both new development and extensions to existing development / buildings.

Guidance Policy 3 refers specifically to development proposals within conservation areas, and states that all new development within, or affecting the setting of, a conservation area shall be required to preserve or enhance its character or appearance. To ensure a consistent high standard of development within conservation areas, proposals will be considered in terms of compliance with the design principles for all proposed development within a conservation area.

The application proposals involve the reuse of a vacant former public convenience and surrounding areas of hardstanding to form a hot food takeaway, the erection of fencing to form a storage area and an outdoor seating area. The proposed change of use is considered to have a neutral impact on the character and appearance of the conservation area. The external alterations proposed comprise of enclosing the rear canopy of the building to enlarge the internal footprint, re-rendering of the building, repairs to the existing roof, gutters and cast-iron columns, installation of windows to the west and south elevations, the installation of two doors to the east elevation and the erection of a ventilation flue to the rear of the building. A 2.4-metre-high timber fence and gate shall also be erected to screen the storage area to the rear of the building. It is noted that details of materials to be used have not been provided and as such it is deemed prudent to attach a condition to any permission granted requesting these details are provided prior to commencement of the development.

Given the nature of the alterations and repair works proposed, and that the flue shall be sited on a less visible roof plane from the wider conservation area, it is not considered that they shall result in a detrimental impact on the character and of Ayr Central conservation area, subject to the condition outlined.

It is therefore considered that the proposal accords with the aforementioned policies and Council Guidance on the basis that the development will have a neutral impact on the conservation area.

(iv) Objector Concerns

- *Obstruction of public footway.*

Concerns have been raised that the proposed development shall obstruct access to the existing public footway for wheelchair users, prams etc. In response, the Ayrshire Roads Alliance have advised that they have no objections to the proposed development and as such the information provided is regarded to be sufficient and the proposal is not considered to raise any issues relating to safety or additionally, parking, road infrastructure and traffic. Additionally, it is noted that the intention is to remove the proposed outdoor seating and flexi barriers each day to be securely stored while the premises is not open.

- *Ownership and title deeds.*

Matters regarding ownership of land and extent of title deeds do not constitute material planning considerations but rather legal matters and should therefore be more appropriately be addressed between relevant parties. As such, this matter does not form part of the assessment of the current planning application.

(v) Impact on the Locality

As noted above, the application site is located within both an area of Open Space and Ayr central conservation area, as designated by the Adopted South Ayrshire Local Development Plan 2. The application proposals involve the reuse of an existing vacant former public conveniences and surrounding areas of hardstanding to form a hot food take away, the erection of fencing to form a storage area and an outdoors seating area. As outlined above, the proposed development is considered to meet the policy provisions of the open space policy and there would be no cumulative effect on the amenity or recreational value of the area.

It is noted that the building is located along Ayr seafront, which is an area visited by both tourists to South Ayrshire, and local residents. As such, there are other food and drink kiosks/restaurant/cafes within this locale, to both the north and south of the application site, which service both local residents and tourists throughout the year. It is also acknowledged that hot food takeaway uses are ordinarily directed towards town centre areas. However, considering the proposed use of the building, while bringing a vacant building back into use, would add to the existing food and drink offering in the nearby area, therefore also improving tourist facilities at this locale, it is not considered that this location is inappropriate for the hot food takeaway use proposed, in this instance.

The agent for the application has confirmed that there is no specific operator for the premises at the time of the application and therefore no details regarding the operation of the premises has been provided. It is therefore noted that opening hours of the premises have not been specified. However, this is a matter for the Council's Licensing Service.

As set out above, the scale, use and design of the development proposals are considered to be acceptable in this instance. Therefore, it is not considered that the proposals will adversely impact on the amenity of the surrounding locale or have a detrimental impact on its setting.

The proposed ventilation flue is located to the rear of the premises and there are no residential properties located in proximity to this property. It is considered that the proposed flue is acceptable in size, scale, siting and design. Given its proposed siting, the flue is considered to be acceptable and shall not result in a significant detrimental impact on either the amenity of the surrounding locality or the character and appearance of the conservation area.

The Council's Environmental Health section has been consulted and has offered no objection to the development proposals, subject to the attachment of relevant conditions and advisory notes to any consent granted. It is therefore considered that, subject to these conditions, the property can be appropriately ventilated, and the proposed use would not adversely impact on the amenity of nearby properties.

Furthermore, it is acknowledged that the Ayrshire Roads Alliance has offered no objections to the proposals.

The application has been assessed against the various material planning considerations which include the provisions of NPF4, LDP2, consultations and the impact of the proposed development on the locality. The assessment concludes that the proposed development complies with the development plan. The consultation responses do not raise any issues of over-riding concern that cannot be addressed by condition. Overall, it is considered that the proposal will not have an adverse impact on the amenity of the locality.

Given the above assessment of the proposal and having balanced the applicant's rights against the general interest, it is recommended that the application be approved subject to conditions.

8. Conclusion:

The application has been assessed against the various material planning considerations which include the provisions of NPF 4, LDP2, consultations, representations received, the planning history of the site and the impact of the proposed development on the locality. There are no policy objections and following the above assessment, it is considered that the proposal will not have an adverse impact on the amenity of the locality.

Given the above assessment of the proposal and having balanced the applicant's rights against the general interest, it is recommended that the application be approved, subject to conditions.

9. Recommendation:

It is recommended that the application is approved with condition(s).

- (1) That the development hereby permitted must be begun within **three years** of the date of this permission.
- (2) That the development hereby granted shall be implemented in accordance with the approved plan(s) as listed below and as forming part of this permission unless a variation required by a condition of the permission or a non-material variation has been agreed in writing by the Planning Authority.
- (3) That prior to the commencement of development, samples or a brochure of all materials to be used on external surfaces, in respect of type, colour and texture, shall be submitted for the prior written approval of the Planning Authority and implemented in accordance with the approved details.
- (4) Ventilation within the kitchen requires to be adequate and suitable for the food handling/cooking carried out therein. In order to prevent the occurrence of an odour nuisance, the ventilation system in this area must be provided with suitable means of filtration e.g., grease and charcoal filters and extended ducting terminating at least one metre above eaves level of any building within 15m of the building housing the commercial kitchen, or alternatively the operation of the premises is limited to enclosed unit cooking. Details of the ventilation system shall be submitted for the approval in writing of the Planning Authority through consultation with the Council's Environmental Health Service and thereafter installed as approved, prior to the occupation of the development.

9.1 Reasons:

- (1) To be in compliance with Section 58 of The Town and Country Planning (Scotland) Act 1997 as amended by Section 32 of The Planning (Scotland) Act 2019.
- (2) To ensure that the development is carried out in accordance with the approved plans unless otherwise agreed.
- (3) To safeguard the character and appearance of the conservation area.
- (4) In order to prevent the likelihood of a smell nuisance.

9.2 Advisory Notes:

- (1) The premises require to fully comply with the Health and Safety at Work etc Act 1974 and the Food Safety Act 1990 and any Regulations and requirements therein and thereto.

9.3 List of Determined Plans:

Drawing - Reference No (or Description): DR-A-0010 Location Plan

Drawing - Reference No (or Description): DR-A-0020 All Details as Existing

Drawing - Reference No (or Description): DR-A-0021 Rev. B All Details as Proposed

9.4 Reason for Decision (where approved):

The application has been assessed against the various material planning considerations which include the provisions of NPF4, LDP2, consultations, representations received, the planning history of the site and the impact of the proposed development on the locality. There are no policy objections and following the above assessment, it is considered that the proposal will not have an adverse impact on the amenity of the locality.

The explanation for reaching this view is set out in the Report of Handling and which forms a part of the Planning Register.

Background Papers:

1. Planning application form, plans and supporting information.
2. National Planning Framework 4.
3. Adopted Local Development Plan 2.
4. Historic Environment Policy for Scotland
5. South Ayrshire Council Planning Guidance – Historic Environment
6. Consultation Responses.
7. Representations.

Equalities Impact Assessment:

An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.

Person to Contact:

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