

## **EAST AYRSHIRE COUNCIL**

**GOVERNANCE AND SCRUTINY COMMITTEE: 24 SEPTEMBER 2010**

**PLANNING, ENFORCEMENT AND LISTED BUILDING CONSENT APPEAL  
DECISIONS: 01 FEBRUARY 2009 – 31 DECEMBER 2009**

### **Report by Depute Chief Executive / Executive Director of Neighbourhood Services**

#### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present to Committee for information, an analysis of Planning (including Enforcement Notice) and Listed Building Consent appeal decisions received from the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) during the above period.

1.2 During the this period, no requests for a review of a Local Development application decision, as defined by the Town & Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, were received. Members will be aware that for Local Developments, the right of appeal to the DPEA has been replaced by a review undertaken by the Council's Local Review Body.

#### **2. COMMENTARY: DPEA APPEAL DECISIONS**

2.1 Table 1 relates to appeal decisions received from the DPEA and it shows the outcomes in respect of 24 appeal decisions received during the above period. 7 appeals were allowed, 3 were approved in part and 13 dismissed with 1 appeal being received out of time and returned to the appellants.

2.2 14 appeal decisions (not including the enforcement notice appeals) were in respect of decisions delegated to officers. 10 were dismissed and 4 allowed.

2.3 6 appeals were in respect of decisions taken at Committee. 2 were dismissed and none allowed in their entirety. 3 appeals were however allowed in part. 1 appeal was received out of time and was returned to the appellants. Of the 5 "Committee" appeals where a decision was issued, in 4 cases the eventual appeal decision was consistent with the officer recommendation to Committee. In 1 case the appeal decision was contrary to the officer recommendation to Committee.

2.4 Of the 24 decisions, none were in respect of the Authority's failure to determine the application inside the statutory two month period.

2.5 Of the 3 enforcement notice appeals that were determined, 2 out of the 3 appeals upheld the enforcement notice and 1 appeal overturned the notice as detailed in Appendix 1 at items 5, 18 and 21.

2.6 It was also noted that in two appeals (items 3 and 14 in the Appendix), the DPEA Reporter in both cases agreed with the Council's attempts to protect daylighting to neighbouring residential properties and both appeals were refused and local plan policy was reinforced. In items 8 and 13 it is noted that refusals of planning permission in both cases were overturned as the Reporter did not agree with the level of road works required for item 13 and, in respect of item 8, the Reporter considered that a suspensive condition could have been adequately applied to resolve the concerns regarding sightlines.

### **3 COMMENTARY: LOCAL REVIEW BODY DECISIONS**

3.1 There were no appeals to the Local Review Body within the timescales of this report.

### **4. CONSEQUENT ENFORCEMENT ACTIVITY**

4.1 The appeals at Items 11 & 18 in Appendix 1 concerned Threepwood Farm Galston and related to a planning application in retrospect and also an enforcement case for Threepwood Farm. There are separate on-going enforcement and planning permission appeal cases at this site concerning unauthorised use of a yard area and refusal of a use of buildings for a landscape business. These will be detailed in a future report.

### **5 CONSEQUENT PROCESS ENHANCEMENTS**

5.1 Arising from analysis of the appeal and review decisions, the following performance enhancement has been introduced.

5.2 With regard to item 8, discussions have been held with Council solicitors to discuss the imposition of suspensive planning conditions in similar future cases noting the Reporter's position and eventual costs against the Council. The Division had been reluctant previously to apply conditions on land not in the ownership of the applicant; ie to create vehicle sightlines; because the applicant would not have been able to ensure that the other land owner maintained those sightlines in future years. The Reporter in this case took a contrary view which officers now have regard to. In this case the Reporter considered that the actions of the Planning Authority had been unreasonable as a suspensive condition would be been adequate given the landowners agreement to negotiate if planning consent was granted.

## **6. FINANCIAL IMPLICATIONS**

6.1 Claims for expenses were received in respect of 1 of the appeals lodged. The claim was successful in relation to item 8 referred to above where the Council was considered to have acted unreasonably. Expenses were awarded to the Council on no occasions.

(i) Item 8 in the Appendix 1; 07/0512/OL. The DPEA made an award of expenses against the Council to the appellant to the sum of £485.

## **7. LEGAL IMPLICATIONS**

7.1 The outcome of the appeals continually assist the Council to review and update its practices and procedures so that any potential challenge to the decisions it takes can be minimised.

## **8. RISK MANAGEMENT IMPLICATIONS**

8.1 The exercise by Local Planning Committees and Officers of delegated powers brings with it the possibility that a decision may have financial implications for the Council. The risk of this occurring can be minimised by observance of sections 25 & 37 of the Town & Country Planning (Scotland) Act 1997, the availability of sound professional advice and the implementation of best practice. Paragraph 5.2 above exemplifies how best practice is being introduced.

## **9. COMMUNITY PLANNING IMPLICATIONS**

9.1 There are no community planning implications.

## **10. RECOMMENDATION**

**10.1 It is recommended that the Committee note the contents of the report.**

DVM/FMF  
10 September 2010

## **BACKGROUND PAPERS**

- 1. Planning Appeals as listed in Table 1 and associated papers.**

Any person wishing to inspect the background papers listed above should contact Dave Morris on 01563 576753.

**Implementation Officer: Alan Neish**

**DPEA Appeal Decisions Feb 2009 - 31 Dec 2009**

**Table 1**

	<b>App No.</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Venue &amp; Decision Date</b>	<b>Appeal Decision</b>	<b>Appeal Decision Date</b>	<b>Expenses Claimed</b>	<b>Expensed Awarded</b>
1	07/0786/FL	Land at Stepend Road, Cumnock	Erection of 2no. gabion retention walls within public open space.	Approved subject to Conditions	Refusal of Planning Permission	SLPC 14/12/07	Approved in Part	11/02/2009	No	No
<p>This appeal was held as a public inquiry and the Reporter approved the eastern gabion wall and the importation of soil subject to conditions concerning landscaping, design, and maintenance. The western gable wall was refused. The Reporter noted that there were no relevant Development Plan policies and placed more importance on material considerations of design, public safety and residential amenity. The Reporter considered that the eastern wall did not result in privacy/overlooking and would not have the potential for antisocial behaviour but he felt that the outlook to the western wall would be extremely poor, visually dominant and due to its form and layout would encourage anti-social behaviour. The appeal was <b>allowed in part</b>.</p>										
2	08/0350/FL	63 Irvine Road, Kilmarnock	Creation of driveway and landscaping of existing front garden.	Refuse	Refusal of Planning Permission	Delegated Powers 20/08/08	Approve	13/03/2009	No	No
<p>Refused on delegated powers as the application was contrary to the Development Plan due to its unacceptable impact on visual amenity and overall appearance of the area. The application in part was retrospective as works had commenced without obtaining planning permission but had stopped following the application being lodged. The Reporter noted that the site is located on a main route to/from Kilmarnock characterised by dwellings set above the road level in a consistent form along the road. Sufficient garden was considered to be retained for the general character of the street to continue and that the retaining wall would be constructed of material and detail in-keeping with the streetscene. The Reporter considered that provided the material was good quality, it would comply with the spirit of the design guidance and therefore local plan policy. Whilst the Reporter noted that this appeal could lead to other requests for car parking he stated that this appeal was dealt with on its own merits which means other car parking spaces would not automatically be allowed. The appeal was <b>allowed</b> and planning permission granted subject to conditions.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
3	08/0480/FL	9 Riverbank Place, Kilmarnock	Erection of two storey extension to rear of semi detached dwelling-house.	Refuse	Refusal of Planning Permission	Delegated Powers 17/09/08	Refuse	18/03/2009	No	No
<p>Refused on delegated powers as the application was considered to be contrary to the Adopted EALP as it would substantially reduce daylight to the adjacent property and adversely affect residential amenity by overshadowing. The Reporter considered that the determining issue was the effect on natural light on the adjacent property having regard to Policy ENV7 of the EALP. The Reporter noted that the extension would be full width of the house and considered that such a large extension over two storeys would impact upon habitable accommodation to the rear. He considered that the proposals would be contrary to the Council's Design Guidance which provides that extensions should be designed and sited to ensure the maximum provision of daylight and the appeal was <b>dismissed</b>.</p>										
4	08/0711/FL	Craigmalloch U759, loch doon from A713 at Mossdale to Doon Castle, Dalmellington Ayr	Proposed front and side extensions	Refuse	Refusal of Planning Permission	Delegated Powers 23/12/08	Approve	18/03/2010	No	No
<p>The Reporter noted that this appeal was an isolated cottage overlooking Loch Doon which had a conservatory, garage and greenhouse. The Reporter referred to Policy ENV7 of the Adopted EALP. He considered the side extension to be unobjectionable and the proposed porch to be acceptable and in accordance with Policy ENV7. Noting the screening of trees to the north of the site and external materials for the roof, despite the extensions creating an element of symmetry, he felt that overall, the proposed extensions would not be overly obtrusive or conspicuous and in compliance with Policy ENV7. In terms of material considerations he noted the other scattered houses along the west of Loch Doon and that they were mostly modest of little architectural distinction or uniformity of design referring in particular to one cottage which had an hipped roof and projecting bay to the front. The appeal was <b>allowed</b>.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
5	DP068	Land adjacent to Dunston Cottage, Kerse Square, Patna	Alleged unauthorised engineering works, alteration to existing access to road	N/A	N/A	N/A	Refuse	26/03/2009	No	No
<p>This was an Enforcement Notice appeal. The appeal was dismissed and the Enforcement Notice amended to allow for additional time to remove stored caravans, portacabins, temporary buildings and construction plant. The appellants had appealed on the basis that permission ought to be granted, that the notice wasn't served as required, the steps for compliance were excessive and an unreasonable time-period. The Reporter considered that the location of the site within a sensitive Landscape Area was contrary to the Development Plan as the activities did not protect or enhance the landscape, trees had been removed, ground levelled and vehicles and equipment imported and deposited all over the site. He considered that the Council had gone to considerable effort to deliver notices which occupiers had refused to accept, meaning notices had to be posted on site. Whilst he amended the notice to allow additional time for compliance he otherwise <b>dismissed</b> the appeal. The site has since been acquired, topsoiled and grassed by a neighbour.</p>										
6	08/0395/FL	Cloverpark Road, Dunaskin, Waterside, Patna	Erection of private dwelling with associated car parking	Refuse	Refusal of Planning Permission	Delegated Powers 25/08/08	Refuse	15/04/2009	No	No
<p>Refused on delegated powers as the application was contrary to the Adopted EALP in relation to road matters as where there is an existing private road, a maximum of 5 residential dwellings can be developed. The whole road needed to be upgraded for road safety and residential amenity reasons. The application also represented a dwellinghouse in the countryside without a site specific locational need. The Reporter considered that the proposed development was inappropriate as an extension to the existing settlement and was not an infill site. Noting that there was no locational need, the Reporter concluded that the appeal was contrary to the Local Plan and the appeal was <b>dismissed</b>.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
7	08/0743/AD	Kilmarnock Filling Station, 25 Queen's Drive, Kilmarnock	2 no single sided internally illuminated standing display units	Refuse	Refusal of Planning Permission	Delegated Powers 16/012/08	Refuse	22/04/2009	No	No
<p>Refused on delegated powers for 2 advertisement units not associated with the petrol filling station, as the application would be contrary to the Adopted EALP due to the impact on visual amenity and general character of the surrounding area. The Reporter considered that the determining issue would be visual amenity and that both signs would be unsightly additions to the existing PFS signage and introducing clutter spoiling the pleasant and comparatively open approach to the town centre. The appeal was <b>dismissed</b>.</p>										
8	07/0512/OL	Ferguson Knitwear Factory, High Peacockbank, Old Kilmarnock Road, Stewarton	Application for the erection of dwellinghouses	Refuse	Refusal of Planning Permission	Delegated Powers 28/01/08	Approve	30/04/2009	Yes	Yes
<p>The appeal was <b>allowed</b> subject to conditions as the Reporter considered that whilst due to the prominence of the site, houses would fail to comply with Policy RES17 of the adopted EALP, he referred to SPP15 "Planning for Rural Housing" which was in force at the time of this appeal which stated that in many rural areas, there are small sites such as sawmills or brickworks where the use has ceased and these buildings could be converted. In this case the factory was demolished but he considered houses would bring a net environmental benefit. He noted that roadworks would be required to form visibility splays either side of the access and whilst the Council had refused consent as the land required to the south was not in the appellant's ownership, the land owners had agreed that negotiations would take place if planning permission was forthcoming. The Reporter referred to case law which states that in such circumstances, where there appears to be no reasonable prospect of fulfilment, a negative condition could be proposed i.e. prohibiting the commencement of construction works before the necessary access and sightlines have been secured. Consent was granted and expenses awarded to the appellant as the Reporter considered that the Council had acted unreasonably in refusing consent.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
9	08/0381/OL	Hilltop, Burn Road, Darvel	Erection of single dwelling-house (in outline)	Refuse	Refusal of Planning Permission	Delegated Powers 18/12/08	Approve	08/05/2009	No	No
<p>The Reporter <b>allowed</b> the appeal and granted consent subject to conditions including an occupancy restriction for an agricultural worker. The application had been refused as the council felt that there had been an inappropriate justification for a house in the rural protection area and it would constitute inappropriate development in the countryside. The Reporter noted that the appellant was part of the family running this farm and that he lived in Darvel about 1km from the site. He noted that the appellant now worked full time assisting his uncle who was approaching retirement age and residing at another farm unit nearby which is worked as a joint unit at the appeal site. The SAC report advised 2 labour units and the Reporter noted since the appeal was lodged that information had been provided to show that the appellants grandmother and parents reside in houses within the unit. He noted these houses have no agricultural ties and could be sold on the open market and felt that it was unreasonable to expect the present needs of the farming enterprise to await any availability that might occur sometime in the future.</p> <p>The Reporter also felt that it was not appropriate for the appellants parents who were past retirement age, to be responsible for security and animal welfare and he took the view that agricultural need was proven and he dismissed the council's concern regarding ribbon development.</p>										
10	08/0695/FL	Cloncaird Farm, Dalrymple by	Proposed new dwelling	Refuse	Refusal of Planning Permission	Delegated Powers 23/01/08	Refuse	27/05/2009	No	No
<p>This application was refused under delegated powers as the application was contrary to the Approved AJSP and Adopted EALP and no justification had been submitted for a site specific locational need. The Reporter considered that the proposal would not match any of the categories where housing in the Rural Protection Area would have policy support and that overall, the proposal was contrary to the Development Plan. The appeal was <b>dismissed</b>.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
11	07/0190/FL	Threepwood Farm, Sorn Road, Galston	Recycling Facility & Yard, Polytunnels & Animal Feed Store, Change Of Use Of Existing Buildings To Office, Shop Cafe, Heritage Centre, New Access Road, Traffic Calming & Landscaping	Refuse	Refusal of Planning Permission	NLPC 05/12/08	Split decision – substantially refused	10/06/2009	No	No

The appeal was substantially **dismissed** and planning permission was refused for the above development as the Reporter concluded that these proposals would be contrary to the development plan policies.

The recycling facility and operations were found to be visually intrusive into the countryside noting it would take many years for landscaping to soften this impact. The Reporter noted that there are other waste sites in the vicinity with capacity meaning heavy lorries and skip vehicles would have to bring waste to this rural site, there was no locational need demonstrated for this particular location and whilst the creation of jobs is clearly a benefit that was not to be at the expense of the local environment. The Reporter found that the appellant had not followed the sequential test and that goods had been brought into the site to service the shop as a primary rather than ancillary use as there was no evidence of feed production at the mill.

However, planning permission was granted for the use of the existing polytunnels and erection of a new polytunnel for the purposes of soil screening and for new sewerage to the septic tank and reed bed with tree screening and SUDS system, noting the lawful use rights on the former mill building. Separate enforcement action is being pursued regarding the use of this area.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
12	07/0536/FL	The Meadows, A71, Galston, Ayrshire	Mineral extraction, processing of minerals, formation of lochan, erection of sculptures and associated landscape works	Approve subject to Conditions	Approved Subject to Conditions	NLPC 12/09/08	Refuse	02/07/2009	No	No

The appeal was against Condition 33 which stated that no wholesale or retail sales of excavated material could take place at any time and all materials removed from the site were to be transferred across the A71 for storage and subsequent use in the development of a tourism and development site north of the A71. The applicant appealed as he thought the condition was neither precise nor relevant. The Reporter noted the site lies in the Rural Protection Area and that permission had been granted on the understanding that material would be used in the appellants proposed tourism related development although the appellants now sought to sell the material for commercial viability and optimum delivery of their development. The Reporter noted that the appellant offered no certainty that the tourism project would be delivered or the benefits realised if the condition was removed. He noted that the loss of materials if sold, would mean that these would need to be imported at a later date.

The Reporter saw no fully specified site specific locational need and no certainty of social and economic benefit and considered the removal of the condition to be contrary to the Adopted EALP and the appeal was **dismissed**.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
13	07/0802/FL	Townend of Grange, Dunlop, Kilmarnock	Subdivision of dwellinghouse and change of use of steadings and outbuildings to form 2 no. dwellinghouses and stables	Approve subject to Conditions	Approved subject to Conditions	Delegated Powers 10/03/09	Approve	07/07/2009	No	No

This appeal was against conditions imposed on a planning consent in relation to road improvement works including sightlines to be implemented and completed prior to any of the building conversion works. The Reporter stated that based on the submitted evidence and his site inspection that he was not convinced that the proposed development would have significant road safety impacts as whilst the junction did not meet Roads standards for visibility and gradient, he found no substantive evidence that the proposed development would generate an increase in traffic as there would have been by the previous use of the property as a working farm. He did not agree that additional works were necessary for sightlines and he was not persuaded that the need to collect an additional bin, warrants improvements to the grading of the junction. One more bin would not necessarily lengthen the time a refuse vehicle is stationary at this location. Condition 1 was therefore not relevant and unreasonable. Whilst the Reporter concluded that it is proper for conditions to secure satisfactory access when genuinely required, it is wrong to require improvements simply because an access is unsatisfactory. The appeal was **allowed**.

14	08/0632/FL	143 Henderson Drive, Smallburn, Muirkirk, Cumnock	Erection of extension to front of building	Refuse	Refusal of Planning Permission	Delegated Powers 12/11/08	Refuse	07/07/2009	NO	NO
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This application was refused under delegated powers as it was contrary to Policy ENV7 of the Adopted EALP due to daylighting concerns to neighbouring property and an adverse impact upon the appearance of the building and surrounding area, in particular the neighbouring property. The Reporter acknowledged the front extension that had been previously constructed, but he considered that this proposal was unacceptable where the extension was positioned to the south and close to the boundary of the adjoining property and its principal living space. The proposal would therefore be inconsistent with Policy ENV7 of the Adopted EALP where the design guidance states that the Council will ensure the maximum provision of daylighting to neighbouring property. The appeal was **dismissed**.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
15	08/0677/OL	Plot adjacent Maxwood Croft, Galston	Erection of one and a half storey house	Refuse	Refusal of Planning Permission	Delegated Powers 23/09/08	Refuse	09/07/2009	No	No
<p>This appeal was considered at a Hearing where the main issues were the effect on the character as appearance of the countryside, road safety and convenience. The hearing centred on compliance with the Development Plan and the Reporter found that the Adopted EALP should prevail. The Reporter found that the proposals would cause adverse impact on the character of the countryside contrary to the Development Plan. The Reporter noted national policy but was not persuaded that this outweighed the Development Plan. The Reporter further found that access was narrow but that the trips generated by one house would not be of concern and that it would be for the developer to overcome the design, access and ownership matters. Despite this the Reporter concluded that the application remained contrary to the Development Plan and the appeal was <b>dismissed</b>.</p>										
16	08/0787/FL	Amlaird Farm, Waterside, Kilmarnock	Erection of single dwellinghouse	Refuse	Refuse	Delegated Powers 30/04/09	Approve	12/08/2009	No	No
<p>The Reporter found the application not totally inconsistent with the Development Plan in terms of labour requirements for the farm which were complicated by the appellants operating a contract spraying business as well as the agricultural enterprise. In terms of access the Reporter agreed that visibility to the north of the junction is poor as a dip in the road could conceal, briefly, an on-coming vehicle however he found that access could be tolerated for a single farmhouse and that material considerations also supported the case for approval with conditions. The appeal was <b>allowed</b>.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
17	08/0507/AD	The Bobbin Filling Station, A71 Galston roundabout to U33 Woodhead, Galston	Erection of 2 no. internally illuminated, double sided, free standing display units	Refuse	Refusal of Planning Permission	Delegated Powers 12/12/08	Refuse	20/08/2009	No	No

The application was refused under delegated powers on the basis that the application was contrary to the Adopted EALP in terms of visual impact on the general character of the surrounding area representing an over prominent, inappropriate and unnecessary form of signage. The Reporter felt that whilst the amount of signage on the existing Petrol Filling Station was quite small, it was important to control signage levels in order to minimise visual amenity impact and advertising clutter. The Reporter found that by their size and position the signs would represent commercial elements out of place in the context of the surrounding attractive rural character of the area. The appeal was **dismissed**.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
18	DP/030/02/0167	Threepwood Farm, Sorn Road, Galston	Alleged unauthorised bund & storage of building-reclaimed materials outwith application area currently subject of appeal.	N/A	N/A	N/A	Approve	28/08/2009	No	No

The appeal was **allowed** and the service of this Enforcement Notice was quashed. The bunding was substantially complete when the site visit was undertaken and the Reporter did not consider that the bund had a landscape and visual impact that would be unacceptable, nor was it out of scale against the levels to the south and east of the farm or in the context of the farm complex. He noted that vegetation coverage was good at the time of the site visit although he considered a planning condition would be necessary for the submission and implementation of a landscaping scheme, for all seasons of the year as his assessment of its impact was dependent upon visual impact. Planning permission for the bund was therefore granted subject to a condition concerning a landscaping scheme.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
19	09/0195/AD	69 Glaisnock Street, Cumnock	Internally illuminated single sided free standing display unit	Refuse	Refusal of Planning Permission	Delegated Powers 11/05/09	Refuse	14/09/2009	No	No
<p>This application for an internally illuminated display unit at the existing Spar shop was refused. The Reporter noted that the site lay within the conservation area, adjacent to a listed building. The Reporter considered that the sign would be unduly conspicuous and refused to grant consent for reasons of visual amenity. He noted the council's concern about the sign being a public safety hazard to pedestrians particularly those who are visually impaired or who have mobility issues and whilst he generally agreed with this, he noted in this instance that the sign would not be obstructing a through route or materially increasing the area of pavement that could not be sued so he did not consider that the sign would be detrimental to public safety. The appeal was <b>dismissed</b> on visual amenity grounds.</p>										
20	09/0068/FL	Garden area adjacent to and belonging to 36 Carmel Avenue, Kilmarnock	Two one bedroom flats	Refuse	Refusal of Planning Permission	Delegated Powers 14/05/09	Refuse	28/10/2009	No	No
<p>This application to build a detached building to form 2 cottage flats in the side garden of 36 Carmel Avenue was refused because the application was contrary to the Adopted EALP and not in-keeping with the existing residential character and appearance of the area, and would damage residential amenity and privacy of neighbouring properties. The Reporter concluded that the scale and siting of the proposed building would be so out of character with its surroundings, contrary to the Adopted EALP that the appeal was <b>dismissed</b>.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
21	ENA/190/28	Rowallan Activity Centre, Meikle Mossie, Fenwick	Alleged unauthorised application of inappropriate roof finish	N/A	N/A	N/A	Refuse	18/11/2009	No	No
<p>This was an appeal against an Enforcement Notice held by public inquiry and the Reporter found the roof to give the building an unfinished industrial appearance with a significantly detrimental visual impact out-of-keeping with its rural surroundings. He felt that the Council was entitled to require a tonal non-reflective finish to safeguard the landscape setting of the area and as such, the proposal did not comply with the Adopted EALP. The tree planting for screening to the west would not conceal the roof of the type of building within a reasonable timescale and the Reporter referred to Historic Scotland's advice that it was visible from the upper levels of the castle making it an alien feature. The Reporter did not feel that the tourism related enterprise on site justified a significant breach of planning control which detracted from nationally important heritage assets. He extended the compliance period allowing 28 days to submit a roofing sample and 9 months to complete the work. Otherwise the appeal was <b>dismissed</b>. Compliance period expires at end of September 2010.</p>										
22	08/0777/FL	Former BT Exchange Unit, Polwarth Street, Galston	Change of use from former BT exchange unit to form an internet café and formation of service layby	Approve subject to Conditions	Refusal of Planning Permission	NLPC 30/04/09	Appeal received out of time (ie more than 6 months from date of decision)	20/11/2009	No	No
<p>This application was refused by the Northern Local Planning Committee as it was contrary to the Adopted EALP. The applicant appealed but the appeal was received outwith the statutory time period for lodging appeals with the Scottish Government i.e. 6 months from the date of the decision. The Scottish Government returned the paperwork to the appellant's agents and <b>refused to accept receipt of the appeal</b>. [A further similar application was received 04 March 2010, refused under delegated powers and following review by the Council's Local Review Body, was dismissed. This will appear in the next report to Committee].</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expensed Awarded
23	07/0862/OL	Land opposite 1 Braehead Road, Fenwick	Erection of 2 dwelling houses	Refuse	Refusal of Planning Permission	NLPC 02/04/09	Refuse	04/12/2009	No	No
<p>The Reporter <b>dismissed</b> the appeal having considered the key issues to be whether the application complies with the Adopted EALP, the current TPO on the site and whether material considerations nevertheless justify approval. The Reporter considered that the site could accommodate one dwellinghouse but the Reporter felt that he could not impose such a condition and that he had to assess the application on the basis it was submitted. He concluded that the application was contrary to the Development Plan policies and that it could not be satisfactorily reconciled with the TPO - even with the felling approved for the appeal at Item 24 below. In his conclusions the Reporter referred to a new application for one single dwellinghouse being the way forward; which application has since been submitted and approved.</p>										
24	07/0863/TP	Land opposite 1 Braehead Road, Fenwick	Felling of 13 trees	Refuse	Refusal of Planning Permission	NLPC 02/04/09	Approve in part	04/12/2009	No	No
<p>This appeal was submitted and considered in tandem with item 23 above. Consent was granted to fell 10 trees out of the proposed 13 and the Reporter identified these in conditions by species and numbered each. Felling was subject to replacement trees on a one-for-one basis and subject to details of aftercare and replacement, should any newly planted trees fail in the first 5 years after planting. In terms of the Adopted EALP Policy ENV15, the Reporter felt that this area of woodland makes meaningful contribution to the amenity of the area but would also benefit from management. Whilst the appellant sought to fell 13 trees, the tree survey recommended that 10 trees be felled and the Reporter considered that there was appropriate justification. The appeal was <b>allowed in part</b>.</p>										