

EAST AYRSHIRE COUNCIL

GOVERNANCE AND SCRUTINY: 3 APRIL 2009

PLANNING AND LISTED BUILDING CONSENT APPEAL DECISIONS

01 May 2007 – 31 January 2009

Report by Depute Chief Executive / Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to present to Committee for information an analysis of Planning and Listed Building consent appeal decisions received from the Scottish Government Directorate for Planning and Environmental Appeals during the above period.

2. COMMENTARY

- 2.1** Table 1 shows the outcomes in respect of 33 appeal decisions received during the above period. 10 appeals were allowed and 23 dismissed.
- 2.2** 18 appeal decisions were in respect of decisions delegated to officers. 13 were dismissed and 5 allowed.
- 2.3** 12 appeal decisions were in respect of decisions taken at committee. 8 were dismissed and 4 allowed. Of the 12 committee decision “appeals”, there were 8 cases where the eventual appeal decision was consistent with the officer recommendation to committee. There were 4 cases where the appeal decision was contrary to the officer recommendation to committee.
- 2.4** Of the 33 decisions, 3 were in respect of the authority’s failure to determine the application inside the statutory two month period. Of these, 2 were refused and 1 approved.
- 2.5** Claims for expenses were received in respect of 5 of the appeals lodged. These were successful on 2 occasions where the Council was considered to have acted unreasonably.

2.6 It was also noted that in one appeal, a Senior Reporter of the DPEA applied a construction hours condition to the approval he concluded was appropriate, whereas in another appeal decision, the Reporter considered that other legislation could be used to secure the living conditions of neighbours during construction and rejected the use of a construction hours condition. The DPEA will be contacted for clarity in this regard.

2.7 It was further noted that whilst not a planning appeal, the Scottish Ministers refused the application by AMEC Project Investment Plc under the Electricity Act 1989 for a Wind Farm at Kyle Forest, near Dalmellington on 24 October 2008 and, awarded expenses in the Council's favour for a part of the Public local Inquiry arising from its objection to the application.

3. REPORTING TO COMMITTEE

3.1 The decisions of the DPEA, although summarised within Table 1, on occasion raise significant issues; for example relative to expenses claims or the application assessment process. Consequently, in such circumstances, an update report will be presented to the committee that determined the application or within whose area lay the site of a delegated decision. The report will analyse the decision notice concluding on learning points for future applications and appeals.

4. FINANCIAL AND LEGAL MATTERS

4.1 As indicated above, there were 2 successful claims for expenses arising from the 33 appeals.

4.2 As indicated above, the Council was awarded expenses arising from its objection to the Kyle Forest Wind Farm application.

5. RECOMMENDATION

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

DVM/RH
02 March 2009

BACKGROUND PAPERS

- 1. Planning Applications 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

Appeal Decisions Report May 2007 – January 2009

Table 1

	<i>App No.</i>	<i>Site Address</i>	<i>Proposed Development</i>	<i>Recommendation</i>	<i>Decision</i>	<i>Venue & Decision Date</i>	<i>Appeal Decision</i>	<i>Appeal Decision Date</i>	<i>Expenses Claimed</i>	<i>Expenses Awarded</i>
1	06/0621/FL	Mansefield Terrace, Dunlop, Kilmarnock	Erection of a new house.	Refuse	Refusal of planning permission.	NLPC 27 Oct. 2006	Refuse	28 June 2007	No	No
<p>Refused at Committee because of the inadequate nature of vehicular and pedestrian access from the proposed house to the public road, the Reporter based his decision on the development plan; Local Plan policy RES4. The requirement within RES4 to have regard to highway safety and visual amenity was considered to be breached and the argument presented that in historic areas lesser roads standards would be acceptable to preserve the character of the area, was refuted by the Reporter indicating that the inability to attain modern standards pointed to not accepting additional development. Furthermore the Reporter was concerned that approval for this house would make it difficult for the Council to resist additional houses in adjacent undeveloped land. The appeal was dismissed.</p>										
2	06/0564/OL	Land East of Anderson Drive, Darvel.	Residential development.	Approve subject to conditions	Refusal of outline planning permission.	Devel. Services Comm. 12 Dec. 2006	Approve	28 June 2007	Yes	Yes
<p>Refused at Committee contrary to officer recommendation. The reasons for refusal were detriment to road safety, loss of open space and prematurity in view of the local plan review. The Reporter considered the access would not be hazardous and noted no designation in the development plan resisting development. The condition of the site affords only limited amenity value and the development would not be visually harmful. Policies RES4 and SD2 were met.</p> <p>The appeal was allowed and conditions based on those drafted in the officer's committee report were applied. Expenses were awarded as the Council was considered to have acted unreasonably.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
3	05/0986/FL	Skerrington Mains Farm, Galston Road, Hurlford	New telecommunications base station. 20 metre mock tree tower with 3 antennae, 4 transmission dishes and 6 ground based cabinets	Refuse	Refusal of planning permission.	Delegated 22 March 2006	Approve	21 Aug. 2007.	No	No

The application was refused on the grounds of visual intrusion, the "tree" mast not integrating with existing adjacent species, contrary to policies ENV11, ENV13 & CS2 in the adopted local plan and being insensitively designed in the Rural Protection area. The Reporter accepted that the mock "pine" tree would present an irregularity of outline sympathetic to the irregular outline of adjacent broadleaved foliage. Although the existing trees, against which the mast was proposed for screening purposes, were not in the applicant's control and may be removed, the Reporter did not see them being under any realistic threat of removal and allowed the appeal subject to conditions.

4	06/1147/FL	Site of former Newhouse Smiddy, Silverwood, Kilmarnock, KA3 6JHJ	Erection of new machinery store (Class 6) and offices including erection of wind turbine.		Failure to determine within the prescribed period planning permission.	Not determined by Plan. Auth.	Refuse	21 Aug. 2007.	No	No
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The store was 840sq ms in area and 9ms to the ridge, the turbine 9ms to mid hub and 11.8ms to blade tip. The applicant considered the site to be "brownfield." The Council argued there was no site-specific locational need, no social or economic benefit for this particular site and the development was not genuine rural diversification. The site was highly visible and would impact the surrounding environment and uses. (The turbine would be acceptable in itself.) SEPA objected because of the lack of information about effluent treatment.

The Reporter considered the nature and visibility of the yard made it highly intrusive and incongruous and contrary to policy IND 6 of the adopted local plan. The history of the site was not accepted by the Reporter as being sufficient to make the whole site brownfield to a degree that would be an important material consideration. The appeal was dismissed.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
5	06/0817/FL	18 Auchinleck Road, Cumnock, Ayrshire	Erection of twelve dwelling houses.	Approve subject to conditions	Refusal of planning permission.	SLPC 26 Jan. 2007	Refuse	5 Sept. 2007	No	No
<p>Proposed on steeply rising ground the development would provide 12 houses in three "tiers". The committee refused the application because of detriment to visual amenity and adverse impact on adjacent houses. The Reporter agreed that overlooking concerns could be addressed by conditions and overshadowing was not a concern. However, he considered the committee report under-estimated the dominating appearance of 2.5 storey buildings with three levels of accommodation and concluded that there would not be compatibility with surrounding densities and housing types as required by policy RES4 (iii) of their adopted local plan. A less ambitious, more sensitive scheme could be acceptable. The appeal was dismissed.</p>										
6	06/1070/FL	Grassyards, A719, Waterside, By Kilmarnock	Trout fishery.	Approve subject to conditions	Refusal of planning permission.	NLPC 30 Mar. 2007	Refuse	10 Sept. 2007	No	No
<p>Three fishing ponds were proposed in a 4.4 hectare site with vehicular access off the A719 and 69 car parking spaces. The application was refused by committee because of its negative ecological impact and detriment to the amenity of the surrounding area. The Reporter noted, and over a page, detailed the objections received and concluded that the submission had not established specific locational need (given a nearby disused site) and had not been fully justified in terms of net social and economic benefit. He commented that the site was not well suited to the formation of fishing ponds; the site was "probably just too small" for accommodating three fishing ponds; and expressed surprise at the comments of the highways officials. The Reporter questioned the suitability of reliance on the Grassyards Burn during times of low flow. Notwithstanding the levels of support, the appeal was dismissed.</p>										
7	06/1087/FL	Highfield, 33 Bowes Rigg, Stewarton, Kilmarnock	The erection of an extension to the side of the house.	Refuse	Refusal of planning permission.	Delegated 24 Jan. 2007	Approve	13 Sept. 2007	No	No
<p>Given the presence of houses of varying age, size, design and disposition on individual plots of varying size and shape, the Reporter concludes that the relevance of "building line" is diminished. In this part of Bowes Rigg the Reporter saw no harm to the character and appearance of the neighbouring properties or the wider area deriving from the proposed 5 metre projection beyond the building line. The living conditions of a neighbouring proprietor would not be compromised and the appeal was allowed.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
8	06/1113/FL	Towerhill Farm, Crosshouse Road, Kilmaurs, KA3 2SE	Roof over existing midden.	Refuse	Refusal of planning permission.	NLPC 16 March 2007	Refuse	7 Dec. 2007.	No	No
<p>The Reporter placed weight on policy IND7 of the adopted local plan, considering that the restricted distance from the boundary, the height of the proposal, its distance from the rear wall of the adjacent house and its length along the boundary together mean the roofed midden would have an overbearing and adverse impact on the amenities of that property. He dismissed the appeal.</p>										
9	07/0596/ADV	165 Riccarton Road, Kilmarnock, KA9 5LQ	One double sided free standing display unit.	Refuse	Refusal	Delegated 29 Aug. 2007	Refuse	7 Dec. 2007	No	No
<p>Considering whether the proposal would be contrary to amenity, the Reporter concluded that the existing levels of advertising displayed more than adequately meet the appellant's business needs and the proposal would unnecessarily create a clutter which would be inappropriate and damaging to the environmental quality of the area. The appeal was dismissed.</p>										
10	07/0438/FL	Treeview, Hollybush, Ayrshire.	Extension and alterations to residential dwelling.		Failure to determine within the prescribed period planning permission	Not determined by Plan. Auth.	Refuse	18 Dec. 2007	No	No
<p>The Reporter concluded that the design of the extension, (increased ridge height and cutting away of the roof to provide a sun terrace in the front elevation), would detract from the character and appearance of the bungalow to the detriment of the visual amenity of the area. He dismissed the appeal and refused to grant planning consent.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
11	06/0850/FL	Meikle Mosside Farm, Fenwick, Kilmarnock	Removal of condition 3 of planning permission 04/0546/FL for the redevelopment and extension of existing facility.	Refuse	Refusal	NLPC 16 March 2007	Refused appeal against condition 3	9 Jan. 2008.	No	No

Condition three related to the submission of details providing for the "formation of a tonal, non reflective finish to the cladding of the upper levels and roof of the arena." The application was refused to prevent the use of inappropriate materials that would have a detrimental impact on the adjacent designed landscape, listed buildings and Ancient Scheduled Monument. Historic Scotland objected to the removal / amendment of the condition. The Reporter agreed with the Council that the roofing material should have a non-reflective finish to preclude damage to the designed landscape at Rowallan and to minimise adverse effect on the surrounding landscape. The removal or amendment of the condition would be inconsistent with policies in the adopted local plan and there are no material considerations to justify an exception. The wording of the condition was considered to meet the appropriate "tests" and should not be amended for that reason. The Reporter dismissed the appeal.

12.	06/1042/FL	Site to the east of East Heads Steading, Newmilns, Ayrshire.	Change of use of land to form equine retirement home, erection of stables, dwelling house and garage.	Refuse	Refusal of planning permission.	NLPC 16 Mar. 2007	Refuse	9 Jan. 2008	No	No
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The Reporter shared Council concerns that the provision of 5 stables on 1 hectare of land is inadequate, on health and safety grounds, for the projected 10 - 15 retirement horses. Accompanying business proposals did not relate to the details in the application and the Reporter was not persuaded that the development in the application was a viable rural business. Furthermore he was not convinced that a case had been made for a worker's house to be provided. Policy RES13 of the adopted local plan was breached and the development was inconsistent with SD3 as there was no evidence of a site specific locational need; the social economic benefits were also limited. The Reporter said that "support from SPP15 for rural diversification does not, in itself, provide sufficient justification for an exception to development plan policy which takes the terms of SPP15 into account". The appeal was dismissed.

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses awarded
13	05/0889/LB	16 Main Street, Sorn, by Mauchline KA5 6HU	Conversion of a single storey outbuilding and alterations to form 2-storey guest house and the erection of a sun lounge.	Refuse	Refusal of listed building consent.	Delegated 18 May 2007	Refuse.	3 April 2008	No	No
<p>The site lies in the Sorn Conservation Area and is a "B" Listed Building. The works, which proposed the raising of the existing wallhead by 1.8 ms and the provision of a new enlarged roof structure, were considered to materially change its appearance and significantly alter its relationship to the adjacent school house. The Reporter considered it would become out of proportion with the original building and that the sun lounge would be detrimental to the setting of the listed building. Seeing no support for such works in the development plan, the Reporter dismissed the appeal.</p>										
14	05/0853/FL	16 Main Street, Sorn, by Mauchline KA5 6HU	Conversion of a single storey outbuilding and alterations to form 2-storey guest house and the erection of a sun lounge.	Refuse	Refusal of planning permission	Delegated 18 May 2007	Refuse	3 April 2008	No	No
<p>The site lies in the Sorn Conservation Area and is a "B" Listed Building. The works, which proposed the raising of the existing wallhead by 1.8 ms and the provision of a new enlarged roof structure, were considered to materially change its appearance and significantly alter its relationship to the adjacent school house. The Reporter considered it would become out of proportion with the original building and that the sun lounge would be detrimental to the setting of the listed building. Seeing no support for such works in the development plan, the Reporter dismissed the appeal.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses awarded
15	07/0330/FL	7 Bowes Rigg, Stewarton, KA3 5EH	Erection of a timber building to form gymnasium (in retrospect) and formation of access.	Refuse	Refusal of planning permission	Delegated 08 June 2007	Refuse	17 April 2008	No	No
<p>The Reporter did not consider that the development complied with the terms of policy ENV7 of the adopted local plan in that it was not behind the building line, and of a scale and prominence that was detrimental to the residential character and amenity of the area. Even with landscaping the building would be an inappropriate feature in the streetscape. The appeal was dismissed.</p>										
16	07/0311/OL	Crosshouse Road, Knockentiber, KA2 0BY	Outline planning permission for residential development.	Refuse	Refusal of planning permission	Delegated 26 Sept 2007	Refuse	22 April 2008	No	No
<p>Outline planning permission for housing was refused on 2.2 hectares of land to the rear and side of the applicant's premises and separate from the settlement boundary of Knockentiber. Only part of the site is brownfield and the proposal (around 4 houses) would be to the detriment of the character of the area. The Reporter considered the development was not consistent with the Structure Plan (COMM5) nor with RES13 of the adopted local plan. Policy SD6 of the local plan, whilst supportive of brownfield development in rural areas, is not sufficient to overcome landscape impact concerns. The appeal was dismissed.</p>										
17	07/0572/FL	6 Main Street, Dalrymple Ayr, KA6 6DF	Change of use from dwellinghouse to shop.	Approve subject to conditions	Refusal of planning permission.	SLPC 05 Oct. 2007	Approve	28 April 2008	No	No
<p>The Reporter noted that although there were no objections from the Roads and Transportation Division, the application had been refused because of concerns about traffic and parking. The Reporter did not consider that parking was so over subscribed as to sustain refusal. A pharmacy was not seen as incompatible with neighbouring residential uses and would be consistent with policy RTY6 of the adopted local plan. There would be no detriment to the character of the conservation area and the appeal was therefore allowed.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
18	07/0406/FL	76 Morton Place, Stewarton, Kilmarnock	Erection of a two storey end-terrace dwelling.	Refuse	Refusal of planning permission.	Delegated 10 July 2007	Refuse	28 April 2008.	No	No
<p>The Reporter noted the restricted nature of the plot and the potential for loss of privacy relevant to adjacent property. She concluded that the proposals would run contrary to policy RES5 of the adopted local plan and that there would be insufficient secluded private open space. The appeal was dismissed.</p>										
19	07/0734/FL	Applewood, near Dalrymple, Ayr KA6 6EE	Additional stables and outdoor arena. Appeal against Condition 2.	Approve subject to conditions (including 2)	Approve subject to conditions (including 2)	Delegated 29 Oct 2007	Approve & vary the terms of the planning permission be deleting Condition 2.	4 Aug. 2008.	No	No
<p>Condition 2 required the stables and outdoor arena to be used only incidental to the enjoyment of the dwellinghouse and not for commercial purposes. The Reporter, noting the separation of the arena from the nearest house, concluded that the condition was not necessary to protect residential amenity. The appeal was allowed.</p>										
20	07/0680/FL	17 High Street, Stewarton Kilmarnock	Conversion of store at rear to provide 2 No flats entered from side lane.	Refuse	Refusal of planning permission.	Delegated 08 Oct 2007	Approve subject to conditions	21 Aug. 2008	No	No
<p>The Reporter considered that the issue of access rights was not material and that the ability to access the proposed flats would be no more demanding than the pre-existing ability to access the appeal site for use as a store. He considered that any prospective residents would recognise parking restrictions in the vicinity and said the Council could control highway safety problems in other ways or that landowners could restrict use of their private land. Choosing not to agree with the Roads and Transportation Division's assessment of the situation, he allowed the appeal.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
21	07/0707/FL	Unit 7, Glencairn Terrace, Kilmaurs	Erection of 3 No residential dwellinghouses (including demolition of existing commercial premises).	Refuse	Refusal of planning permission.	Delegated 14 Nov. 2007	Approve subject to conditions .	26 Aug. 2008	No	No

Defining the critical issues as being impact on character of the area, proximity of the railway line and material considerations, the Reporter concluded that the small proposed terrace, although more compact than many of the adjacent houses, would be an improvement over the current industrial premises. Their design and layout would be acceptable. The Reporter felt the relationship with the adjacent railway would be tolerable without application of special conditions or requirements and he rejected the suggestion, at the end of a cul de sac, there should be provided a 2m footpath across the front of the site. The appeal was allowed subject to conditions.

22	07/0896/FL	Former garage site, Struthers Avenue, Crookedholm, Kilmarnock	The erection of 2 No detached private villas.	Approve	Refusal of planning permission.	NLPC 01 Feb 2008	Approve subject to conditions .	5 Sept. 2008	Yes	Yes
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The Reporter noted that the decision of the housing committee to declare the site surplus and advertise it for residential use does not prejudice the planning application but does indicate there is no essential functional requirement for the land. He considered the site to be a brownfield, gap site and identified policy RES4 as encouraging sympathetic development of such sites. The proposed dwellings would be sensitive and compatible with surrounding densities. There would be no unreasonable impacts on neighbouring properties. The appeal was allowed. Expenses were awarded on the basis of the Council not having provided evidence of the site's amenity value and not substantiating its refusal with reference to local plan policies.

NOTE - The Reporter said "I have not included conditions related to restricted working hours as other legislation can be used to secure the living conditions of neighbours during construction."

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
23	07/1013/FL	Wellwood Street, Muirkirk	Erection of 36 flats.	Approve subject to conditions	Refusal of planning permission.	SLPC 22 April 2008	Approve subject to conditions	3 Oct. 2008	No	No
<p>The Reporter recognised the site was identified for housing in the adopted local plan and concluded the development was in accordance with the development plan. With regard to material considerations, the principle of residential development was supported in an existing consent. Even though for more units, the appeal proposal was not viewed by the Reporter as over development. He did not consider the provision of flats to in itself justify refusal. The site is not designated for its wildlife presence and the area is not heavily trafficked. The scheme is not detrimental to residential or visual amenity and the appeal was allowed.</p> <p>NOTE - The Reporter (designated a Principal Inquiry Reporter) in contrast to the above case proposed the use of 5 conditions which included one limiting construction hours; "to minimise noise disturbance to neighbouring residents". The Division will seek clarification about the apparent contradiction in terms of "working hours" conditions given two appeal decisions issued within a month of each other.</p>										
24	07/1023/FL	Hillview Road, Darvel	Change of use of open space and erection of four houses.	Refuse	Refusal of planning permission.	Delegated 01 Feb 2008	Refuse	22 Oct. 2008	Yes	No
<p>Whilst the site is not allocated for open space, the Reporter was satisfied that the site is a useful asset to the community. Its loss would be detrimental to the setting, character, appearance and amenity of the area and as such the development would be contrary to local plan policies TLR8 and TLR9. The proposal was deemed unacceptable and the appeal was dismissed. Expenses were not awarded as the Council had not acted unreasonably.</p>										
25	07/0860/FL	Burn Road/Anderson Drive, Darvel	Erection of two houses.	Refuse	Refusal of planning permission.	Delegated 07 Dec. 2007	Refuse	22 Oct. 2008	Yes	No
<p>The Reporter considered the site to be one of a number of areas of open space in the estate. Shrub and tree planting improve its amenity value and housing development would have a detrimental impact on the area and be inconsistent with policies TLR8 and TLR9 in the adopted local plan. The appeal was dismissed. Expenses were not awarded as the Council had not acted unreasonably.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
26	07/0765/FL	Bilboa, 6 Mosshead Holdings, Barskimming Road, by Mauchline	Change of use of agricultural to residential and erection of a one and a half storey dwelling house.	Refuse	Refusal of planning permission.	Delegated 14 Feb. 2008	Refuse	30 Oct. 2008	No	No
<p>The site lies in the Rural Protection area. The proposal was not supported by any claim of functional need; nor by policies in the structure plan. The adopted local plan (policy RES13) sets out circumstances where a house may be acceptable, but none apply here and the development is contrary to the development plan. The Reporter commented that if the wish to build houses for family members in the countryside prevailed, albeit within a former smallholding, the character of countryside around towns would soon be severely compromised. Access to the site was also identified as not suitable. Other sites granted by the Council were advanced by the appellant as justification, but the Reporter concluded that even IF these were all wrong decisions, "they would not affect the present proposal which is not adjacent to them". The appeal was dismissed.</p>										
27	08/0205/FL	Former Blair and Gray garage, Beansburn, Kilmarnock	Change of use and reconfiguration from garage to form retail shops (class 1), including alterations to elevations and formation of servicing facilities.		Failure to determine the application within statutory period.	Not determined by Planning Authority	Approve	3 Nov. 2008	Yes	No
<p>The Reporter concluded that the application was consistent with the terms of policy RTC5 of the adopted local plan. (A sequential test was not required) The proposal would not be significantly harmful to the amenity of neighbouring residential properties and in terms of design the proposals would address something of an eyesore. Accepting the development as policy compliant, the Reporter addressed parking and traffic matters and commented that it was important that road safety was the subject of a supplementary committee report which continued to recommend approval. The Reporter concludes that a light controlled pedestrian crossing is neither appropriate nor necessary to warrant refusal of consent in its absence or the application of a condition requiring it to be in place. The application was approved. Expenses were not awarded as the Council, by pursuing concern about road safety, had not acted unreasonably.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
28	07/0793/FL	Maxwood Hotel, 10-12 Maxwood Road, Galston	Installation of extract canopy, ducting and fans to kitchen in retrospect.	Approve subject to conditions	Grant planning permission subject to conditions.	Delegated 29 Oct 2007	Refused appeal against condition 1	4 Nov. 2008	No	No
<p>The appeal was against condition (1) attached to the permission issued. The Reporter noted the relationship to adjoining properties and the neighbours' submissions that the present installation is odorous and unacceptable. The case for simply cancelling the condition altogether was not accepted. The Reporter commented that there was indeed a role for planning authorities to consider application of planning conditions relative to fumes and residential amenity. There was in effect a "potentially large gap" between effects that might be judged to be unacceptable in planning terms and effects extreme enough to warrant action under other legislation against a statutory nuisance. Residential amenity may be affected without there being a statutory nuisance.</p> <p>Also of interest was a comment to the effect that a lack of objection from Environmental Health by itself did not preclude the need to take planning judgements informed by technical consultees and not necessarily determined by them. The Reporter considered that actual refusal of the application for extract canopy, ducting and fans would have been sensible and supportable. He dismissed the appeal to remove condition 1.</p>										
29	08/0257/FL	9 Warrick Drive, Cumnock	Proposed two storey extension to rear of dwellinghouse.	Refuse	Refusal of planning permission.	Delegated 15 May 2008	Refuse	27 November 2008	No	No
<p>The Reporter concluded that the height and bulk of the proposed extension, which would extend above the existing eaves level, would be totally out of scale and character with the existing property. There would be a significant detrimental effect. The proposal does not comply with policy ENV7 in the adopted local plan. The personal circumstances or attributes of an applicant are not relevant material considerations justifying approval; the appeal was dismissed.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
30	08/0040/FL	39 Otterburn Avenue, Kilmarnock	Attic conversion	Refuse	Refusal of planning permission	Delegated 04 Mar 2008	Refuse	27 November 2008	No	No
<p>The proposal involved increasing the height of the ridge line of the existing house. The decision on appeal turned chiefly about the impact on the character and appearance of the area. Should the application be approved, the existing variation in ridge heights resulting from existing topography would be set aside with the house as extended having a discontinuity of ridge level uncharacteristic of the area. The appeal was dismissed.</p>										
31	08/0158/LB	3 Fairliecrovoch Farm, Kilmarnock	Single storey rear extension	Approve with conditions	Refuse	NLPC 29 Aug 2008	Refuse	28 Jan 2009	No	No
<p>The Reporter did not conclude that the residential amenity of an immediately neighbouring property would be unduly compromised, noting the existing mature vegetation already impacting on loss of daylight. However, the extension proposed to this listed building was viewed by the Reporter as a significant disruption to the historic form of the main elevation and detrimental to the character of the property. The appeal was dismissed.</p>										
32	08/0159/FL	3 Fairliecrovoch Farm, Kilmarnock	Single storey rear extension	Approve with conditions	Refuse	NLPC 29 Aug 2008	Refuse	28 Jan 2009	No	No
<p>The Reporter did not conclude that the residential amenity of an immediately neighbouring property would be unduly compromised, noting the existing mature vegetation already impacting on loss of daylight. However, the extension proposed to this listed building was viewed by the Reporter as a significant disruption to the historic form of the main elevation and detrimental to the character of the property. The appeal was dismissed.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
33	08/0433/FL	Osliebrae Farm, Stewarton	New farmhouse	Refuse	Refuse	Delegated 27Aug 2008	Refuse	28 Jan 2009	No	No
<p>Situated in a Rural Protection area, the Reporter had regard to the terms of the development plan and concluded that there was no reason why the farm could not continue, even with a labour requirement of two persons, to operate with the existing farm house and an additional worker travelling in. "It is clear that the farm can be operated successfully without it" (the proposed house). It is therefore contrary to RES13 of the adopted local plan. "With no agricultural need, a new farmhouse might encourage the loss of the existing farmhouse to the business and result in an unjustified house in the Rural Protection area." The appeal was dismissed.</p>										