

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 12 MAY 2010

**09/0597/PP: CHANGE OF USE OF PUBLIC OPEN SPACE TO FORM
GARDEN GROUND AND THE ERECTION OF A BOUNDARY FENCE
AT: 4 KAY PARK GROVE, KILMARNOCK
BY MR AND MRS MCDONALD**

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 This application is for a change of use of public open space to private garden ground and also proposes to relocate the existing garden timber fence of "hit and miss" panel design which is approximately 1 metre in height.

2. RECOMMENDATION

2.1 It is recommended that application should be refused for the reasons on the attached sheet.

3. CONCLUSIONS

3.1 Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. For the purpose of this application, the Development Plan comprises the Adopted East Ayrshire Local Plan (2007) and the Adopted East Ayrshire Local Plan (2003).

3.2 Whilst the application concerns a small area of land adjacent to the existing garden, the proposal has wider implications for the loss of public landscaping to private garden ground and is therefore contrary to Policies TLR8, TLR 9 and ENV1 of the Adopted East Ayrshire Local Plan.

3.3 Whilst there are material considerations relevant to this application, the policy implications of the East Ayrshire Local Plan Finalised Version with

Modifications also note that the proposal is contrary to the relevant Policies. Whilst there are other relevant material considerations, none outweigh the policy concerns with this application.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Full Council as this would not constitute a significant breach of policy.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for planning permission, which is to be considered by the Northern Local Planning Committee under the Scheme of Delegation as the Council owns the land.

2. APPLICATION DETAILS

2.1 **Site Description:** The applicant's property is situated within a small development of four modern houses at the entrance to Kay Park on Strawberrybank Road. No 4 Kay Park Grove sits in a prominent position at the park entrance and is bounded by a retaining wall to Strawberrybank Road. Of the 4 houses in this development, 3 face/back onto the retaining wall. Overall, the site is within the Kay Park Conservation Area.

2.2 Between the retaining wall and the gardens of Kay Park Grove is an area of formal and informal planting, which provides a landscape buffer to the houses. It is proposed to incorporate some of this area of landscaping into the garden ground of No 4 Kay Park Grove.

2.3 **Proposed Development:** This application is for a change of use of public open space to private garden ground and also proposes to relocate the existing garden timber fence of "hit and miss" panel design which is approximately 1 metre in height.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Piersland/Bentinck Community Council have not responded to their consultation at the time of writing this report.

Noted.

3.2 East Ayrshire Council Outdoor Services and East Ayrshire Council Roads and Transportation Service have no objections to this ground being transferred as part of the applicant's garden.

Noted.

4. REPRESENTATIONS

4.1 No letters of representation have been received.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 There are no specific policies within the Approved Ayrshire Joint Structure Plan and for the purposes of this application, the proposal should be assessed against the Adopted East Ayrshire Local Plan.

5.2 Within the adopted East Ayrshire Local Plan, the site is Safeguarded Open Space. Policy TLR8 presumes against development on such spaces, unless it is of a certain type such as new playing fields, sports facilities, play areas, and sports pavilions.

This application does not comprise any of the above uses and therefore the application is contrary to Policy TLR8.

5.3 Policy TLR9 states that the Council will only permit the development of recreational or amenity open space for purposes other than those described in Policy TLR8 above, in three exceptional circumstances which are as follows:-

- (i) the retention or enhancement of the facilities can best be achieved by the redevelopment of part of the site and where the development would not adversely affect the overall sporting, recreational and amenity value of the site itself; or
- (ii) alternative provision of equal community benefit and accessibility can be made available within close proximity to the site; or
- (iii) there is a clear, long term excess of pitches, playing fields and amenity open space in the wider area.

None of the above criteria are applicable to this application. The loss of public space to private garden ground is considered inappropriate in general terms relative to the policies of the Local Plan, either

incrementally or on a larger scale. The removal of this area of protected open space would be likely to have a negative effect on overall visual amenity, as the site comprises mature planting which is considered to be an intrinsic part of the area's established character and appearance. The site is prominent in relation to the Kay Park and the entrance to the redeveloped Burns Monument, as it sits at the gateway to the park.

5.4 Policy ENV1 states that the Council will seek to protect, preserve and enhance all heritage resources requiring conservation including Listed Buildings and Conservation Areas, together with their respective settings, Scheduled Ancient Monuments and Archaeological and Industrial Archaeological sites and landscapes.

The proposal is located within the Kay Park Conservation Area. It is considered that the removal of this small area of protected open space in the circumstances of this site would be likely have a negative effect on the setting of the Conservation Area, for the reasons outlined in paragraph 5.3 above.

6 ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the East Ayrshire Local Plan Finalised Version with Modifications, consultation responses, planning history and other general material considerations.

East Ayrshire Local Plan Finalised Version with Modifications.

6.2 Policy CS6 is similar to Policy TLR8 of the adopted Local Plan, and states a presumption against development on those safeguarded areas of open space unless for playing fields, sports facilities, play areas, but also includes the promotion of public realm features.

The application is therefore contrary to Policy TLR8 noting that none of the above uses are relevant to this application.

6.3 The proposal therefore, requires to be assessed against Policy CS7, which is intrinsically the same as Policy TLR9 of the adopted local plan.

As detailed above in section 5 of this report, the proposed development does not comply with the criteria in Policy TLR9 and the application is therefore contrary to this policy and if consent is granted for this proposal it would impact upon efforts to protect areas

of established open space which make a visual contribution to Kilmarnock's established landscape.

6.4 Strategic Policy ENV1 is also relevant and this equates to Policy ENV1 of the Adopted Local Plan as detailed in paragraph 5.4 above.

As detailed above, noting the location of the site within the Kay Park Conservation Area, the removal of this area of protected open space would be likely to have a negative impact on the setting of the surrounding area which has an established parkland character and on the screening of the residential properties afforded by the existing embankment which is of benefit to the local community.

6.5 Policy RES22 seeks to protect, preserve and enhance the residential character and amenity of existing residential areas. In this regard, this policy states that there will be a general presumption against:

- (ii) the development of locally important areas of recreational or amenity open space which contribute significantly to the character and appearance of the residential area concerned.

The change of use of an area of protected open space to private garden ground in the circumstances of this site would be likely to have a detrimental impact on the character and appearance of the area. The site is prominent in relation to the Kay Park and Burns Monument entrance, as it sits at the gateway.

Consultation Responses

6.6 The consultation responses have been addressed in Section 3 of the report and are not considered to raise any issues that would warrant the refusal of the application.

Planning History

6.7 The applicant's residential property has had a number of related minor applications, however, none of these applications impact on this proposal and there is no other relevant planning history.

Other Material Considerations

6.8 The applicant has submitted a letter of justification for the proposal, intimating the following:

- The Estates section has agreed to sell the land to the applicant;

- The land is not used by the public due to its inaccessibility atop the high banking;
- The land is not effectively maintained at present; and
- The area of land in the overall context of the rest of the banking is not significant.

The Council's Estates section has intimated to the applicant that they are minded to sell, however this would be with the caveat that any planning consents required would need to be obtained by the applicant. The fact that the Estates Section have intimated to the applicant that they are willing to sell, does not commit Members to granting planning consent and would not be a material consideration in the determination of this application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are financial and legal implications for the Council in the determination of the planning application as the Council owns the land, however, the application would not need to be referred to the Scottish Ministers as the proposal is not a significant departure from the Development Plan and is being recommended for refusal.

8. CONCLUSIONS

8.1 Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. For the purpose of this application, the Development Plan comprises the Adopted East Ayrshire Local Plan (2007) and the Adopted East Ayrshire Local Plan (2003).

8.2 Whilst the application concerns a small area of land adjacent to the existing garden, the proposal has wider implications for the loss of public landscaping to private garden ground and is therefore contrary to Policies TLR8, TLR 9 and ENV1 of the Adopted East Ayrshire Local Plan.

8.3 Whilst there are material considerations relevant to this application, the policy implications of the East Ayrshire Local Plan Finalised Version with Modifications also note that the proposal is contrary to the relevant Policies. Whilst there are other relevant material considerations, none outweigh the policy concerns with this application.

9. RECOMMENDATION

9.1 It is recommended that application should be refused for the reasons on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development, the application would not require to be referred to the Full Council as this would not constitute a significant breach of policy.

Alan Neish
Head of Planning & Economic Development

5 May 2010
MF/KW/RH

FV/DVM

List of Background Papers

1. Application form, plans and statutory notices/certificates;
2. Public Advertisement;
3. Consultation Responses;
5. Adopted East Ayrshire Local Plan;
6. Planning Application:
8. East Ayrshire Local Plan (Finalised Version) with Modifications

Anyone wishing to inspect the above papers should contact Marion Fergusson, Senior Planning Officer on 01563 576769.

Implementation Officer: Dave Morris

TP24

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 09/0597/PP

Location	4 Kay Park Grove Kilmarnock East Ayrshire KA3 7RA
Nature of Proposal:	Change of use of public open space to form garden ground and for the erection of a boundary fence on the north western boundary of the land
Name and Address of Applicant:	Mr Alastair and Mrs Sally McDonald 4 Kay Park Grove Kilmarnock KA3 7RA
Name and Address of Agent	

Officer's Ref: Marion Fergusson
01563 576759

The above Planning Permission application should be Refused for the following reasons;

1. The proposal would be contrary to Policy TLR 8 of the East Ayrshire Local Plan and Policy CS6 of the East Ayrshire Local Plan Finalised Version with Modifications as the site is designated as Safeguarded Open Space with a presumption against development [unless for new playing fields/greens; sports facilities; play areas; or the development of ancillary sports facilities]. The removal of this landscaped open space would also have a negative effect on the visual amenity of the area.

2. The proposal would be contrary to Policy TLR 9 of the East Ayrshire Local Plan and Policy CS7 of the East Ayrshire Local Plan Finalised Version with Modifications as the development of private or public recreational or amenity

open space will only be permitted in exceptional circumstances, and in this instance the loss of public space would have a negative effect on overall visual amenity, as the site comprises mature planting considered to be an intrinsic part of the area's character and appearance.

3. The proposal would be contrary to Policy ENV 1 of the East Ayrshire Local Plan and Strategic Policy ENV1 of the East Ayrshire Local Plan Finalised Version with Modifications as the removal of this small area of protected open space would have a negative effect on the visual amenity and setting of the Kay Park Conservation Area.