

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 17 AUGUST 2007**

**07/0302/FL: ERECTION OF 2 NO DWELLINGHOUSES  
AT PLOT OF LAND, CESSNOCK ROAD, GALSTON  
BY MURDOCH PROPERTY DEVELOPMENTS**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Full planning consent is sought to erect two dwellinghouses on the plot. Both houses are proposed to front onto Cessnock Road with a single storey bungalow style property on the eastern half of the site and the two storey dwelling on the western side. The boundaries of the site would be defined by a 1.8 metre high timber fence to the north, west and east with a 1 metre high wall along the boundary with Cessnock Road.

#### **2. RECOMMENDATION**

2.1 **It is recommended that the application be approved subject to the conditions on the attached sheet and that the issuing of the planning decision notice be withheld until a legal agreement is concluded with the applicant in respect of the voluntary financial contribution as stated in paragraph 7.1 of the report; or until such voluntary contribution has been received by the Division.**

#### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the application is considered to be a significant departure from the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

3.2 As indicated in Section 6 there are material considerations relevant to this application. The consultees raised no issues that would warrant refusal of the applications. The issues raised by the objectors, whilst noted, are not considered to carry sufficient weight to allow a recommendation for refusal of the applications. The planning history of the site carries considerable weight, particularly the most recent approval, in outline, for three dwellinghouses. This application considered that the loss of the open space required for the three

dwelling would be acceptable as sufficient open space is retained to serve the estate to the north of the application site and the proposal was also in keeping with the residential nature of the area. It is considered that the scale and positioning of the two dwellinghouses is such that a minimal impact on the surrounding area and neighbouring properties will occur.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, it will not require to be referred to the Principal Planning Committee as there would be no significant breach of Council 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.**

## EAST AYRSHIRE COUNCIL

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### 07/0302/FL: ERECTION OF 2 NO DWELLINGHOUSES AT PLOT OF LAND, CESSNOCK ROAD, GALSTON BY MURDOCH PROPERTY DEVELOPMENTS

#### Report by Head of Planning and Economic Development

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation as it is a significant departure from the East Ayrshire Local Plan.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application sites comprise of an area of open space, currently partially maintained by the Council, to the south east of Galston near the B7037 Galston to Sorn road. The site fronts onto Cessnock Road, between Sorn Place and Clockston Road. The site comprises an area of open space at the south western corner of an area of public open space, zoned as an area of open space in the Local Plan. To the north of the site is an area of grassed open space and dwellings and rear gardens of the properties on Sorn Place and Burnawn Place and to the south is Cessnock Road and dwellings that front onto Cessnock Road. To the west of the site is an area of ground owned by the applicant which is subject to a separate planning application for a 1.5 storey dwellinghouse and there is a small grassed area beyond on the corner of Cessnock Road and Sorn Place. To the east of the site is Dalhanna, a detached dwellinghouse at the junction with Clockston Road.

2.2 **Proposed Development:** Full planning consent is sought to erect two dwellinghouses on the plot. Both houses are proposed to front onto Cessnock Road with a single storey bungalow style property on the eastern half of the site and the two storey dwelling on the western side. The boundaries of the site would be defined by a 1.8 metre high timber fence to the north, west and east with a 1 metre high wall along the boundary with Cessnock Road.

### 3. CONSULTATIONS AND ISSUES RAISED

- 3.1 East Ayrshire Council's Roads and Transportation Division have no objections to the development subject to the following criteria:
- i) No surface water discharge
  - ii) Driveways hard paved for two metres from rear of footway edge
  - iii) Gates to open inward, away from the public road
  - iv) Access crossings to be formed and constructed to Roads Division specifications
  - v) Any apparatus such as street lighting columns to be relocated 1 metre either side of the proposed access crossings
  - vi) Public footway boundary to be clearly defined by edging kerbs
  - vii) Fences and gated beyond the front building line to be no more than 800mm high
  - viii) The applicant to contact the Roads Division to discuss an existing watercourse
  - ix) The applicant to contact the Roads Division for a joint inspection of footways

***Appropriate conditions and notes can be attached to any consent granted that will address the issues raised by the Roads Division.***

- 3.2 Galston Community Council has no objections to the development.

***Noted.***

- 3.3 Scottish Water has no objections to the development provided the proposal has no adverse impact upon existing Scottish Water customers.

***Noted.***

- 3.4 Scotland Gas Networks have no objections to the development.

***Noted.***

- 3.5 Councils Outdoor Amenities Section has no objections to the development but specify that if any community held land is damaged by the development then it should be reinstated to the satisfaction of the Outdoor Amenities section.

***A note can be attached to any planning consent to advise the developer to liaise with the Council's Outdoor Amenities Section.***

#### 4. REPRESENTATIONS

The proposal was advertised in the Kilmarnock Standard with three letters of objection from four objectors being received in connection with the application and a summary of their grounds of objection are detailed below.

4.1 Loss of privacy in rear garden which at present is not overlooked.

***It is considered that the orientation and distance of the proposed dwellinghouse nearest to the objector's garden is such that overlooking will be minimal. This is further reinforced by the ground owned by the applicant to the west of the site being between the proposed two storey dwellinghouse and the objectors rear garden.***

4.2 My understanding is that this existing sewerage system is at maximum capacity and is part of the reason for a previous refusal.

***Scottish Water has raised no objection to the development although they do note that there may be issues within the waste water network. Should there be problems with a foul drainage connection the developer may be required to bear the costs of any upgrade to the sewerage network. The issue was not the reason for any previous refusals of planning permission on this site.***

4.3 Due to the proximity of these planned dwellinghouses it will have a negative effect on the value of my property.

***The effect on the value of neighbouring property is not a material planning consideration and therefore cannot be taken into consideration in the determination of this application.***

4.4 We expect, as the previous application had outline planning dated 09 August 1999, No 99/0274/OL, that all conditions as per that application will be taken into consideration with this new permission.

***The conditions attached to consent 99/0274/OL (see 6.6 below) were in relation to the outline application and specified that a reserved matters application should be submitted within 3 years of the date of that consent. The reserved matters application was not received and therefore the consent and conditions attached to that consent have lapsed and are not tied to this application. The current full application addresses many of the points covered by conditions in the 99/0274/OL application and any further points could be***

**addressed by attaching appropriate conditions to any grant of planning consent.**

4.5 As most houses on Cessnock Road are mainly single storey, the buildings on this development should be of a similar height.

***It is considered that Cessnock Road does not have any one house type that is predominant, with a mix of single, 1.5 storey and 2 storey houses. This proposed development includes a single, and a 2 storey dwelling which are considered to be in keeping with the types of houses nearby on Cessnock Road and Sorn Place.***

4.6 The traffic on Cessnock Road has increased since 1999, one entrance and exit to this development would be advantageous.

***The Councils Roads and Transportation Division has raised no objections to separate accesses at this location and it is considered that a single access to both houses would be difficult to achieve due to the layout of the site and would be unnecessary from a road safety perspective.***

4.7 As Cessnock Road is a dedicated residential area we expect houses erected should be for residential use only.

***This application relates to a residential use and it is not proposed to pursue any other use at this location.***

4.8 We were of the opinion that a right of way to the park behind our house at no 1 Clockston Road, Galston to the play park and seat at the back was on the west side of our house making easy access for the people of Clockston Road and Cessnock Road available, and therefore not being blocked off completely for the building of the said houses. This we thought was most obvious owing to the fact that the Council had planted some trees exactly where we thought the pathway was.

***The land immediately to the west of the objectors house forms part of the application site but does not form part of a right of way. The Councils Property Services Division have confirmed that the Council do not own any part of the application site and that any maintenance or planting that may have been carried out has been done so on an irregular basis due to lack of maintenance of the land.***

4.9 I would think that those concerned would give some consideration (especially in being friendly to the environment) to keeping these trees and helping some of the older residents to have access.

***The planning function has no control over trees that are not the subject of Tree Preservation Orders or within a Conservation Area and as the trees on site do not fall within either of these two classes, the applicant can choose to remove trees if he wishes. However, following discussions the applicant intends to retain one of the two trees next to the boundary with No. 1 Clockston Road.***

4.10 As you will know doubt be well aware the entrance to the walkway at the bottom of Sorn Road is in this location through the Cessnock Woods, and has become increasingly busy. It would be a hazard especially to the aged folks and the very young who use this road as access to these walks if permission was granted without further thought as from what has been indicated in the "outline plans submitted to us, we can foresee maybe 6 cars and some works vans reversing into what is already a very narrow road, which accumulates in a merger of Clockston Road, Sorn Road and Cemetery Road.

***The Councils Roads and Transportation Division have raised no objections with regard to the development in respect of road safety, therefore it is considered that the development will raise no road safety issues.***

4.11 We think maybe a path way should be left where the trees are planted and would be much aggrieved if they should go.

***The creation of a path connecting Cessnock Road with the park to the rear of the development site is considered to be difficult to achieve without knock on effects to the proposed development and may lead to future maintenance and anti social behaviour issues as a path at this location would be narrow and abut directly onto the side of one of the proposed dwellinghouses and the objectors house. As this area would have little or no overlooking by these or other dwellings the safety of the path/lane could be questioned. The Council cannot impose a public right of access over private land, other than by promoting a Right of Way Order. No such Order has been suggested by the Outdoor Amenities Manager.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 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 purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (EALP).

### Adopted Ayrshire Joint Structure Plan

5.2 There are no policies within the Ayrshire Joint Structure Plan relevant to the determination of this planning application.

### Adopted East Ayrshire Local Plan

5.3 Policy TLR 8 states that there will be a presumption against development on those safeguarded areas of public and private recreational or amenity open space as identified on the Local Plan maps and on other undeveloped land within settlement boundaries which contributes to the setting, character and appearance of the settlement concerned. However, the following types of development on existing areas of maintained amenity or recreational open space will be considered appropriate, subject to compliance with all appropriate Council Development Promotion and Design Guidance:

- (i) Laying out of new playing fields, bowling greens, putting greens;
- (ii) Creation of all-weather sports facilities;
- (iii) Creation of new children's play areas; and
- (iv) Development of pavilions or other ancillary facilities to serve any existing or proposed outdoor sport and recreational activities in the area.

***The site lies within an area of safeguarded public open space. None of the above types of development are pertinent to this application. It is considered that a previous outline grant of permission (see 6.4 below) for three houses at this location has indicated that the Council considered the concept of residential development acceptable which would therefore weigh in favour of residential development at this location.***

5.4 Policy TLR 9 states that the development of both private and public recreational or amenity open space for purposes other than those described in Policy TLR8 above, will be permitted only in exceptional circumstances where:

- (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.

***It is broadly considered that the development does not meet the above criteria however the development will bring a form of enclosure to the space behind, confirming its original identity as open space for the housing development to the north and north west of the site which is still easily accessible to those outwith this estate via a short walk. The development is not considered to adversely effect the overall recreational and amenity value of the site as a considerable area remains as public open space and the Council previously considered that the development of the application site would not impinge upon the recreational value of the area.***

5.5 Policy ENV 7 of the Local Plan states that all developers will be expected to comply fully with the Council's existing and emerging Design Guidance and Policy documents relating to and advising on the particular type of development proposed. Developments which do not meet the required design standards detailed in these documents will require to be fully justified and may not be supported by the Council.

***It is considered that the proposal generally meets with the Council's Design Guidance Number 2: New Residential Development in terms of layout, house design and the appearance of the surrounding area.***

5.6 Policy RES 22 of the Local plan requires all developers to observe the minimum private open space criteria and standards detailed in Schedule 4 of the Local Plan. The standards quoted may however, be relaxed at the discretion of the Council in respect of the conversion of existing properties to flats where the case for such a relaxation can be fully justified by the developer and where considered appropriate by the Planning Authority.

***The proposal meets the standards for open space as set out in Schedule 4 of the East Ayrshire Local Plan.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation response and representations received that are addressed in Sections 3 and 4 of this report, the planning history of the site and the impact on the amenity of the area.

## Consultation Responses

6.2 It is not considered that any aspects of the consultation responses have raised any issues that would warrant refusal of this application.

## Representations Received

6.3 The concerns of the objectors with regard to overlooking are considered to be unsubstantiated as the design, orientation and distance to the nearest dwellinghouse creates little or no overlooking. The points raised with regard to roads and accesses was not supported by the consultation response of the Roads and Transportation Division. The trees are not covered by any statutory protection and the access for a path would be difficult to form without adverse impacts on the development site and possible future impacts with regard to maintenance, vandalism and anti social behaviour, issues often found in relation to narrow lanes with little or no direct overlooking to ensure the safety of those using the lane.

## Planning History

6.4 Planning application 99/0274/OL for proposed plots for 3 detached dwellinghouses was approved subject to conditions on 6 August 1999.

***It is considered that the planning history of the site. The outline consent effectively established a principle of residential development on this site despite the Local Plan designations.***

6.5 Application KL/E/77/30G for a change of use of the application site to private open space (for grazing of horse) was refused consent in April 1981 as the proposed use was considered to be detrimental to the visual and residential amenity of the area.

6.6 Planning application KL/E/77/30 seeking full planning permission was approved on 21 April 1977 for the erection of 72 houses on land to the north of the current application site. A subsequent outline application for 1 dwellinghouse was refused on the 20 May 1977, on the area of the site identified as plot 1 on the submitted drawings, as it was considered that the ground was unsuitable for building purposes. This was followed by an application for 35 houses on the western half of the housing site off Cessnock Road. This was submitted with an engineers report that stated that the ground was suitable for construction and was approved on 26 July 1978. A subsequent application for 47 houses on the eastern half of the housing site, which includes the current application site as part of the area of public open space, was approved on 21 September 1978.

## Impact on the amenity of the Area

6.7 It is considered that the proposal will have a limited impact on the amenity of the surrounding area. The application site is currently a grassed area set aside in the local plan as an area of open space. This space allows easy access to the open space area from Cessnock Road although no formal access paths are to be found within the application site. It is considered that the loss of this space will not significantly affect the amenity of the area as the open space behind the application site will remain and can be accessed from Burnawn Place, a short walk from Cessnock Road. The area of open space was to be used primarily as open space for the “new” estate incorporating Sorn Place, Burnawn Place etc and is considered to be larger than necessary for this area as the estate also includes play areas separate from the application site. Therefore the loss of a small part of this open space, on an existing residential street is considered to be acceptable. The design and positioning of the houses are such that minimal effects to the area and neighbouring property should occur with regard to overlooking and the overall design of the area.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 The applicant is prepared to voluntarily contribute £2000, by formal agreement, towards the improvement and maintenance of the open space to the north and north east of the application site to offset the loss of the open space at the application site. It is considered that should the committee be minded to approve the application, the release of planning consent should be delayed until such time as the contribution has been confirmed as being received.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the application is considered to be a significant departure from the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

8.2 As indicated in Section 6 there are material considerations relevant to this application. The consultees raised no issues that would warrant refusal of the applications. The issues raised by the objectors, whilst noted, are not considered to carry sufficient weight to allow a recommendation for refusal of the applications. The planning history of the site carries considerable weight, particularly the most recent approval, in outline, for three dwellinghouses. This application considered that the loss of the open space required for the three dwellings would be acceptable as sufficient open space is retained to serve the estate to the north of the application site and the proposal was also in keeping

with the residential nature of the area. It is considered that the scale and positioning of the two dwellinghouses is such that a minimal impact on the surrounding area and neighbouring properties will occur.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions on the attached sheet and that the issuing of the planning decision notice be withheld until a legal agreement is concluded with the applicant in respect of the voluntary financial contribution as stated in paragraph 7.1 of the report; or until such voluntary contribution has been received by the Division.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, it will not require to be referred to the Principal Planning Committee as there would be no significant breach of Council Policy.

**Alan Neish**  
**Head of Planning and Economic Development**

09 August 2007  
DW/RH  
FV/DVM

## LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letters of representation.
5. Adopted East Ayrshire Local Plan.
6. Approved Ayrshire Joint Structure Plan.
7. Planning Application No: 99/0274/OL.
8. Planning Application No: KL/E/77/30.
9. Planning Application No: KL/E/77/30G.

Anyone wishing to inspect the above papers please contact David Wilson, Planning Officer, on 01563 576779.

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

07/0302/FL

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Site of Proposal: Plot of land at Cessnock Road  
GALSTON  
KA4 8LW

Nature of Proposal: 07/0302/FL: Erection of two dwellinghouses

Name & Address of Applicant: Murdoch Property Developments  
22E Maxwood Road  
GALSTON  
ML3 0QA

Name & Address of Agent: D M architectural Services  
17 Forge Road  
AYR  
KA8 9NN

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DPOs Reference: DW/RH

The above FULL application should be granted subject to the following conditions: -

1. The proposed development shall be carried out in accordance with the application form and plans received on 02 April 2007 and the plans received on 17 July 2007.

REASON To ensure the development is carried out in accordance with the approved plans.

2. Notwithstanding the plans hereby approved, details of the exact location, design, materials and style of the boundary treatments, including all soft landscaping, shall be submitted to, and approved in writing, by the Planning Authority prior to any development commencing on site and shall be implemented approved on site prior to the occupation of the dwellinghouse.

REASON In the interests of visual amenity.

3. Prior to any work commencing on site, details and samples of all external finishes shall be submitted to and approved in writing by the Planning Authority and thereafter shall be implemented on site as approved.

REASON In the interest of visual amenity.

4. No surface water shall discharge from the application site onto the public road at any time.

REASON In the interests of road safety.

5. The private accesses to the development shall be hard paved for a minimum distance of five metres from the rear of the footway edge of the public road and shall be implemented prior to the occupation of the dwellinghouses.

REASON To prevent the overcarry of loose material onto the public road in the interests of road safety.

6. Any future gates shall require to only open inwards, away from the public road.

REASON In the interest of road safety.

7. Before any work commences on site, details of a Sustainable Urban Drainage System, to treat and minimise surface water run-off, and its maintenance following installation, shall be developed to the requirements of the Scottish Environment Protection Agency (SEPA) and submitted to and approved in writing by the Planning Authority. The Sustainable Urban Drainage System shall thereafter be formed and maintained on site in accordance with the approved details prior to the occupation of any of the residential units.

REASON To ensure that adequate drainage is provided.

8. Details of foul drainage arrangements shall be submitted to and approved in writing by the Planning Authority prior to development commencing on site and shall be implemented and operational on site prior to the occupation of the dwellinghouses and thereafter maintained in accordance with the approved details.

REASON In the interests of public health and residential amenity.

9. Notwithstanding the plans hereby approved, a plan showing the location and details of the tree to be retained on site, including how the tree shall be protected during construction, shall be submitted to and approved in writing by the Planning Authority prior to any work commencing on site and implemented thereafter as approved.

REASON To safeguard the environmental quality of the area.

#### NOTES

1. Any relocation of street lighting columns to accommodate the new access to the development will require to be located no less than 1 metre from the access.
2. The applicant must contact Craig McMurray of the Council's Roads Division to discuss the effects of the proposed works on the existing watercourse.
3. The applicant must contact the Council's Outdoor Amenities Section to discuss the effect of the proposed works on any Council held land.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 576790.**