

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 23 MAY 2008**

**08/0189/FL: ERECTION OF GARDEN FENCE, GARDEN SHED AND  
PLAYHOUSE TO THE REAR OF A FLATTED DWELLINGHOUSE  
AT: 163 IRVINE ROAD, KILMARNOCK  
BY MR & MRS P GILFEATHER**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 The proposed development comprises the following 3 components all within the rear garden ground area of the lower left cottage flat, that ground measuring approximately 11 metres by 9 metres:-

- (i) a 2.13 metres by 2.13 metres faced light coloured timber garden shed/playhouse located in the north west corner of the application site within the rear garden;
- (ii) a 2.4 metres by 1.8 metres mid-red coloured timber garden shed located towards the western edge of the rear garden; and
- (iii) a 1.8 metres -1.98 metres dark timber fence, measured from ground level, to the west and northern boundaries of the application site which varies in height due to the sloping site levels.

1.2 This application is retrospective in nature and the applicants have submitted information in support of the application, stating that they apologise for not applying in advance however they were unaware that planning permission was required; and that the fence was erected not to cause annoyance but to afford them some privacy in their garden, and play space for grandchildren, who the applicants often look after due to their family circumstances. The applicants previously submitted an application for planning permission for the same fence, which had been originally been erected higher. The applicants were advised to withdraw that application, and in the interim period, the height of the fence was reduced to that indicated in the current application. The fence currently has a scalloped edge.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the Planning Application be approved subject to the conditions indicated on the attached sheet.**

### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of this report it is considered that the application is generally in accordance with the development plan. Therefore in accordance with the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise.

3.2 The use of the shed and the play house are ancillary to the enjoyment of the dwelling house. The design and location of both of the sheds is acceptable subject to the proposed condition that the mid-red coloured timber shed is finished to match the dark timber of the fence. The main issue remaining is the height and appearance of the fence, which in summary, is similar to other fences in the area, and appears higher in some parts due to the differing ground levels. It is considered that the fence does not detract from the visual amenity of the surrounding area, and it would therefore be unreasonable to refuse planning permission in this instance. It is also noted that the fence has been reduced in height since originally erected.

#### **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 not be a significant breach of Council Policy.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

**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 a full planning application which is to be considered by the Local Planning Committee under the scheme of Delegation because it has received more than 10 objections.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The application site comprises the lower left flatted dwellinghouse with garden area, within a block of 4 cottage flats, at 163 Irvine Road. The site is located within Bonnyton to the western edge of Kilmarnock. It is bound to the north, east and west by other similar residential properties and to the south by Irvine Road, beyond which is Annanhill Park. Rear gardens in the surrounding area are predominately bound by privet garden hedges which vary in height depending on existing ground levels. The garden ground of No. 163 slopes upwards to the north, and eastwards also. To the immediate north of the garden is the garden pertaining to 165 Irvine Road.

2.2 Proposed Development - The proposed development comprises the following 3 components all within the rear garden ground area of the lower left cottage flat, that ground measuring approximately 11 metres by 9 metres:-

- (iv) a 2.13 metres by 2.13 metres faced light coloured timber garden shed/playhouse located in the north west corner of the application site within the rear garden;
- (v) a 2.4 metres by 1.8 metres mid-red coloured timber garden shed located towards the western edge of the rear garden; and
- (vi) a 1.8 metres -1.98 metres dark timber fence, measured from ground level, to the west and northern boundaries of the application site which varies in height due to the sloping site levels.

2.3 This application is retrospective in nature and the applicants have submitted information in support of the application, stating that they apologise for not applying in advance however they were unaware that planning permission was required; and that the fence was erected not to cause annoyance but to afford them some privacy in their garden, and play space for grandchildren, who the applicants often look after due to their family circumstances. The applicants previously submitted an application for planning permission for the same fence, which had been originally been erected higher. The applicants were advised to withdraw that application, and in the interim period, the height of the fence was reduced to that indicated in the current application. The fence currently has a scalloped edge.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Bonnyton Community Council did not submit a response to their consultation.

***Noted.***

3.2 East Ayrshire Council's Housing Service have no objection subject to the fence being no more than 2 metres in height from current ground levels.

***Noted.***

3.3 East Ayrshire Council's Legal Services have no comment, as the council does not own any of the adjoining property.

***Noted.***

### 4. REPRESENTATIONS

Eight letters of objection have been received representing 7 parties plus one petition with 18 signatories. The issues raised by the letters of objection are: -

4.1 The appearance of the fence is unsightly and not in keeping with the surrounding area.

***The surrounding gardens are characterised by privet hedging, although there are a number of other fences evident of similar height and appearance as that proposed.***

4.2 The fence looks unsightly as it does not follow the contours of the area.

***The differing land levels account for the raised appearance of the fence and of the play house, however, this is true also for a number of other garden structures in surrounding gardens. It is considered that it would be unreasonable to single out the applicants' proposal in this regard unless the Council was minded to take enforcement action on similar garden fences and structures in the vicinity.***

- 4.3 The height of the fence is excessive, largely due to the differing land levels.

***As discussed at 4.2, the height of the fence appears higher in areas due to the contours of the area. In effect, however, if a fence was staggered at different height levels to accommodate these contours, the appearance would most likely be unacceptable.***

- 4.4 The playhouse is in an overly high/elevated position.

***As discussed in 4.2 and 4.4, above, the garden is steeply sloped, and there are neighbouring structures in equally, if not more, elevated positions.***

- 4.5 The construction work is inadequate.

***The standard of construction work is not a planning consideration.***

- 4.6 The application is retrospective.

***It is standard practice for all Planning Authorities (following guidance from Scottish Government), to seek retrospective applications for works that do not have consent, unless it is not in the public interest to do so.***

- 4.7 The amount of wooden features constitute a fire hazard.

***This is not a material planning consideration.***

- 4.8 The playhouse is in fact a summer house.

***The use of garden structures cover a wide range of uses which are incidental to the enjoyment of the dwelling house, therefore no additional planning control is required over such use.***

## 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.

### Approved Ayrshire Joint Structure Plan

5.2 This application does not raise any strategic issues that would warrant assessment against this plan, and the proposed development therefore falls to be assessed against the adopted EALP.

### Adopted East Ayrshire Local Plan (EALP)

5.3 Policy ENV 7 is relevant and states that all developers will be expected to comply fully with the Council's existing Design Guidance and documents relating to and advising on the particular type of development proposed. The Design Guidance requires all free standing wooden garages to be erected within the curtilage of a dwellinghouse to be located behind the front building line of the property and incorporate a dual pitched roof.

***The two structures are not garages as such, however the timber play house has a dual pitched roof, and is located more than 5 metres from the dwelling. The shed has a single pitched roof and is located 2 metres from the dwelling. As discussed in paragraph 5.3 above, the overall size and scale of the playhouse is considered to be in line with the Council's Design Guidance. The single pitch roof of the other timber shed is not considered to be detrimental to the surrounding area and otherwise is acceptable.***

***The fence height does appear higher in some areas, due to the differing ground levels of gardens in the direct vicinity of the application site, however, it is no higher than a number of other structures in the area, including a neighbouring fence to the east or the adjacent greenhouse in the garden to the immediate north. The fence is painted in a dark wood shade, similar to others in the area.***

## 6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material consideration relevant to the determination of this application are the letters of representation, statutory consultation responses and the planning history of the site.

## Representations Received

6.2 The issues raised by the letters of objection are covered in Section 4 of this report.

## Consultation Responses

6.3 The responses obtained through the statutory consultation process have not raised any concerns relative to the proposal that would warrant its refusal.

## Planning History

6.4 A previous planning application (07/0874/FL) for the erection of a rear fence of a higher height at this site was withdrawn by the applicants and has been replaced with this current application which incorporates the 2 garden sheds in addition to the fence.

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

7.1 There are no financial implications for the Council in the determination of this application.

7.2 If members of this Committee refused planning permission, enforcement action would require to be initiated, potentially leading to the service of an enforcement notice.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of this report it is considered that the application is generally in accordance with the development plan. Therefore in accordance with the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise.

8.2 The use of the shed and the play house are ancillary to the enjoyment of the dwelling house. The design and location of both of the sheds is acceptable subject to the proposed condition that the mid-red coloured timber shed is finished to match the dark timber of the fence. The main issue remaining is the height and appearance of the fence, which in summary, is similar to other fences in the area, and appears higher in some parts due to the differing ground levels. It is considered that the fence does not detract from the visual amenity of the surrounding area, and it would therefore be unreasonable to refuse planning permission in this instance. It is also noted that the fence has been reduced in height since originally erected.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be granted subject to the conditions indicated on the attached sheet.**

### **CONTRARY DECISION NOTE**

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

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

12 May 2008  
(MF/KW/IMB)  
FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form, Plans and Photographs.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Representations
5. EAC Design Guidance/ Adopted East Ayrshire Local Plan
6. Applicant's Supporting Statement.

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

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL  
TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

08/0189/FL

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Site of Proposal: 163 IRVINE ROAD  
KILMARNOCK  
KA1 2LA

Nature of Proposal: ERECTION OF GARDEN FENCE,  
GARDEN SHED AND PLAY HOUSE  
TO REAR OF A FLATTED DWELLING

Name & Address of Applicant: MR & MRS P GILFEATHER  
163 IRVINE ROAD  
KILMARNOCK  
KA1 2LA

Name & Address of Agent:

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DPOs Reference: MF/KW/IMB

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

1 The development hereby approved shall be implemented in accordance with the application form and drawing numbers Elevations of Shed1, Elevations of shed 2, Aerial View of Rear Garden received by the Planning Authority on 25<sup>th</sup> February 2008.

REASON To ensure that the development is implemented in accordance with the details as approved.

2 The shed with the single pitched roof shall be painted to match the dark timber of the fence within three months of the date of this consent

REASON In order to safeguard the property itself and the amenity of the surrounding area.

**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.**