

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: SEPTEMBER 2010 10/0253/PP: CHANGE OF USE FROM RESIDENTIAL TO PROVIDING DOG BOARDING AND SERVICES AT WEST LODGE, LANFINE ESTATE, NEWMILNS BY MS JULIA ASHTON

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=10/0253/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The proposal relates to the change of use of the site to allow the provision of dog boarding/kennels as well as day care and training services. This involves the use of the low stone outbuilding as well as other structures including an extension to this building formed from meshed steel with plastic profiled sheeting roof, a wooden hut structure and a small wooden playhouse/outhouse building. The application is partly retrospective in that the day care use is currently being carried out on site.

1.2 The applicant has advised that there will never be more than ten dogs on the premises at any one time with a maximum of six dogs boarding at one time. The proposed business will therefore be run as a small operation which minimises stress levels and provides more individual attention to each animal that stays there. The applicant has further advised that the area is safe for dogs and provides a good area for dog walking.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 8.1 The Town and Country Planning (Scotland) Act 1997 requires that applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. As indicated in Section 5 of the report there are various policies that relate to this development. It is considered that the proposal is contrary to key policies by virtue of its proximity to residential properties and the adverse affect that it could have on the established residential amenity of these properties by reason of noise associated with the proposed use.

3.2 As indicated in Section 6 there are material considerations relevant to this application. The Alteration to the East Ayrshire Local Plan which generally reflects the position of the existing Local Plan indicates that the application should be refused due to the potential impact to nearby residential properties. The letters of objection support this view with objectors fearful of the noise issue in particular which would also impact on the general residential amenity of the area. The letters of support point to the applicant's business success and the lack of noise at present. Whilst the business use itself would normally be supported in principle, it is considered that despite its apparent 'rural' location, the site is still in close proximity to residential properties which are likely to experience an increase in noise levels from the greater number of dogs at the site.

3.3 Furthermore, it is not considered that the proposed development could be made acceptable by means of planning conditions in this instance given the nature of development.

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 be required to be referred to Council, as such a decision would not be significantly contrary to the Local Development Plan.

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

NORTHERN LOCAL PLANNING COMMITTEE: 10 SEPTEMBER 2010

**10/0253/PP: CHANGE OF USE FROM RESIDENTIAL TO PROVIDING DOG
BOARDING AND SERVICES
AT WEST LODGE, LANFINE ESTATE, NEWMILNS
BY MS JULIA ASHTON**

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, to be considered by the Northern Local Planning Committee under the current scheme of delegation as it is subject to more than ten objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located outwith the settlement boundary of Newmilns and comprises the gatehouse to the Lanfine Estate and its associated outbuildings and curtilage. The dwelling is Category B listed and is single storey in nature with stone walls and a slate roof. There are various small outbuildings within the garden curtilage, the largest of which is a low stone and slate built byre type building. The site is located within the Lanfine Designed Garden and is also partially within the Lanfine Provisional Wildlife Site. The site is bounded by the remainder of the Lanfine estate to the south, west and east with an access road, the river and dwellings to the north.

2.2 **Proposed Development:** The proposal relates to the change of use of the site to allow the provision of dog boarding/kennels as well as day care and training services. This involves the use of the low stone outbuilding as well as other structures including an extension to this building formed from meshed steel with plastic profiled sheeting roof, a wooden hut structure and a small wooden playhouse/outhouse building. The application is partly retrospective in that the day care use is currently being carried out on site.

2.3 The applicant has advised that there will never be more than ten dogs on the premises at any one time with a maximum of six dogs boarding at one time. The proposed business will therefore be run as a small operation which minimises stress levels and provides more individual attention to each animal that stays there. The applicant has further advised that the area is safe for dogs and provides a good area for dog walking.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Councils Roads and Transportation Service has no objections to the development.

3.2 The Scottish Civic Trust has no objections to the development.

3.3 Historic Scotland has no objections to the development.

3.4 East Ayrshire Council Environmental Health Service has offered no objections to the development although it has provided comments on various pertinent matters. The Service notes that seven complaints have been received by the Out of Hours Noise Team between January 2008 and 4 July 2010 regarding dogs barking although no complaint was found to be actionable. Furthermore an Abatement Notice was served in April 2009 under Section 80 of the Environmental Protection Act 1990 in relation to the burning of waste including manure in the site. On this basis the Service states that suitable means for the storage and disposal of all waste from the business should be required. Noise mitigation measures should also be introduced both during construction and subsequent operation of the business.

Whilst a condition could be attached to any consent granted to regulate the disposal of waste, it is not considered feasible, given the nature of the noise source, to be able to apply a condition that was completely effective in preventing the occurrence of noise.

3.5 East Ayrshire Access Panel North has advised that there is limited information to enable the Panel to comment properly.

3.6 Newmilns Community Council and the Architectural Heritage Society have not responded to the consultation letters at the time of writing.

4. REPRESENTATIONS

4.1 Six letters of objection from seven objectors and a petition with thirty signatures have been received in connection with this application. Furthermore three letters in support of the application have been received. A summary of the points of objection raised are listed below.

4.2 Noise. The applicant's dog(s) currently bark at all times including when any other dog walks past the gate of the site. The proposed development would shatter the peace of the area and more dogs barking in such a way would make life intolerable as the other side of the river is a residential area.

It is considered that the proposed location is in relatively close proximity to residential property within Newmilns, despite its rural

location outwith the settlement boundary of Newmilns. On this basis it is considered that potential noise impacts arising from the use could adversely impact on the residential amenity of the nearby residential area. This is further supported by the history of complaints received regarding noise, albeit that these have been relatively infrequent and not actionable in the instances where the complaints have been made.

4.3 The house is not in a rural location and is 50-60 yards from our front door and is opposite a group of houses and a play park.

It is accepted that the location of the development is approximately 50 metres from the residential properties at Persian Sands and is also near to an area of open space and a play park.

4.4 Concern that dogs are left to run around freely within the common access area and a high fence should be put in place to keep the applicant's dogs in at all times.

A condition could be attached to any consent granted for the development to provide details of all fences, etc. to ensure that they would be suitable to contain dogs.

4.5 Car parking – are all six spaces within the owners boundary? I assume that no parking will be allowed on the common access road?

There is a considerable space available at the side of the dwelling for parking and the Roads and Transportation Service has not raised any issues or objections in respect of car parking. Any parking on the private access road would be a private legal matter between both parties.

4.6 There is constant burning of horse and dog waste and smoke blows over our area which is not a pleasant smell and the proposed use would cause further smell.

This is predominantly an Environmental Health Service matter and it is noted that the Service has provided comments in this respect. However, any approval could include a planning condition requiring that waste arising as a result of the proposed development be disposed of by means other than burning and that no burning should take place at the site.

4.7 Some of the dogs that are there just now are running loose and intimidate people as they are walking past on the public right of way.

There is no public right of way immediately adjacent to the site but it is accepted that recreational use is made of the existing access road.

The issue of dogs running loose or intimidating people is not a material planning consideration. However, it is considered that proper management of the business with the use of appropriate segregation measures could minimise the intimidatory impact on passers by.

4.8 As indicated above there have been three representation letters in support of the proposal and the points of support are as follows:

4.9 My relatives use the dog care service and are delighted with it. I feel this service is a great asset to the community.

The principle of the business use is generally considered to be acceptable although such businesses should ideally be located in a more rural area, away from residential property.

4.10 I have been placing my dog with her and she has given him a new lease of life including curing my dog of a 'constant barking' condition.

The applicant's ability is noted although this particular point regarding barking demonstrates the potential problems for the nearby residential property that could be encountered due to this use.

4.11 I work shifts night and day and was worried about the noise but there is really no noise during the day or night from dogs she has at present. You get the odd bark as people pass but you get more from neighbours dogs. As long as the applicant is confident about the noise level not rising then she has my support.

The applicant has provided no information with regard to noise levels however this person seems to be in contradiction to the majority of nearby residents who have raised concerns over the proposed use and have highlighted the existing noise levels from the site.

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 Adopted East Ayrshire Local Plan (EALP).

East Ayrshire Local Plan

5.2 Policy SD 3 relates to development proposals within the Rural Protection Area which will be acceptable to the Council where the development meets five criteria.

The proposal relates to criteria (ii) of this policy in that a site specific locational need can be demonstrated through the general rural location where such uses are likely to be found.

5.3 Policy IND 6 relates to new business development on land not specifically identified for such uses and requires to be justified against eight separate criteria.

The proposed development is considered to be in compliance with or is not applicable to seven of the eight criteria including locational need, alternative land supply, economic benefit, transportation implications, loss of amenity open space, loss of agricultural land and impact on natural and built heritage resource. However, the proposal is considered to be contrary to part (iv) of this policy which relates to impact on surrounding environment and adjacent uses. Whilst this development is in the rural area, it is only marginally outwith the settlement boundary of Newmilns. A kennels/dog boarding service would normally be located in the rural area to reduce the potential for impacts on residential properties. In this instance the proposed development will be approximately 50 metres from the nearest residential properties at Persian Sands. This is a relatively quiet area with only an area of open space, the river and a minor access road separating the properties. Given this relatively close proximity to residential properties it is considered that the proposal will have an adverse impact on the amenity of adjacent residential properties particularly by virtue of noise impact.

5.4 Policy IND 10 advises that business development outwith settlement boundaries will be acceptable where it relates to one or more of five criteria and can also be justified against its impact on the surrounding environment and uses, transportation and infrastructure implications, loss of agricultural land and impact on natural and built heritage resources.

The proposal is considered to be compliant with criterion (iii) relating to sympathetic business developments related to appropriate rural activities. As noted at 5.3 above, dog kennels/boarding is an acceptable rural use where the general lack of nearby properties minimises any adverse impact. However in this instance, the location is near to dwellings within the settlement boundary and as such will have an adverse impact on them by way of noise and disturbance which is contrary to the requirements of this policy.

5.5 Policy ENV 4 relates to the effect on the appearance and setting of listed buildings.

The proposal involves the use of an existing stone outbuilding and various other smaller buildings and enclosures. These are relatively small in scale and as such are not considered to adversely affect the appearance or setting of the B listed property.

5.6 Policy ENV 5 seeks to protect, preserve and enhance historic gardens and designed landscapes.

The application site is within the Designed Garden and Landscape boundary however it is also within the garden of the Lodge House and as such the small outbuildings/structures are viewed as a minimal impact to the wider Garden and Designed Landscape.

5.7 Policy ENV 14 seeks to ensure that developments relating to the rural area have minimal impact on the rural environment.

The proposal does not adversely affect any of the five criteria of this policy including impact on agricultural land, built heritage or other resources, natural heritage resources, the water environment or peat.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the Alteration to the East Ayrshire Local Plan, the consultation responses, letters of objection, letters of support, the planning history and the impact upon the amenity of the area.

Alteration to the East Ayrshire Local Plan, Finalised Draft with Modifications

6.2 Policy SD 3 advises that new developments will be located within the settlement boundaries unless the development has a justified need for a countryside location.

Kennels/dog boarding uses are generally accepted as requiring a rural location given the potential impact on neighbouring properties through noise. This site is located outwith the settlement boundary and as such could be described as 'rural' despite its close proximity to the settlement of Newmilns.

6.3 Policy SD 5 relates to development outwith settlement boundaries which will only be acceptable where it meets one of five criteria.

The proposal is considered to meet with criterion (ii) which relates to rural diversification through the development of a business use that has a justified need for a rural area.

6.4 Policy IND 5 advises that new business development outwith settlement boundaries will be encouraged and considered acceptable where it relates to one of six criteria.

The proposal relates to criteria (iii) and (v) of this policy. Criterion (iii) refers to a business use with a clearly demonstrated requirement for a rural location. The kennels type use is normally found in a rural area where impact on residential amenity is normally less than in a residential area. Criterion (v) relates to home working under policy IND 11 and as noted below is considered to be contrary to the terms of this policy.

6.5 Policy IND 6 relates to development which falls within criteria two to six of policy IND 5 and will only be supported if they meet with one of five criteria.

As the development falls within criteria (iii) and (v) of IND 5, this policy is applicable. In this case the proposal is considered to be contrary to criterion (i) of this policy as, despite the location of the development outwith the settlement boundary, it is still in close proximity to a number of residential properties. These properties could suffer an adverse effect by reason of noise from the proposed use to the detriment of existing residential amenity.

6.6 Policy IND 11 is in connection with working from home and advises that developments within Class 4 of the Use Classes Order will be supported subject to four criteria.

The proposal is considered to be contrary to criterion (iii) of this policy as it is considered that the use will impact adversely on other residential properties in the area. The dwellings at Persian Sands within the settlement boundary are only 50 metres from this site and as such are at risk from suffering adversely from this use, particularly with regard to noise impact in this quiet area.

6.7 Policy ENV 4 relates to the effect on the appearance and setting of listed buildings.

The proposal involves the use of an existing stone outbuilding and various other smaller buildings and enclosures. These are relatively small in scale and as such are not considered to adversely affect the appearance or setting of the B listed property.

6.8 Policy ENV 8 seeks to protect, preserve and enhance historic gardens and designed landscapes.

The application site is within the Designed Garden and Landscape boundary however it is also within the garden of the Lodge House and as such the small outbuildings/structures are viewed as a minimal impact to the wider Garden and Designed Landscape.

6.9 Policy ENV 17 seeks to ensure that developments relating to the rural area have minimal impact on the rural environment.

The proposal does not adversely affect any of the five criteria of this policy including impact on agricultural land, built heritage or other resources, natural heritage resources, landscape character, the water environment or peat.

Consultation Responses

6.10 The consultation responses do not raise any issues that would warrant refusal of this application. The points raised by Environmental Health should be noted given the history of noise complaints although it should be further noted that these were not substantiated. These noise complaints relate to the site prior to this proposed use and as such it could be expected that noise levels will increase.

Impact on Amenity

6.11 In terms of visual amenity the proposed use offers little or no adverse impact. However, in terms of residential amenity it is considered that the proposal is likely to result in a noise impact which will cause an adverse affect to the nearby residential properties at Persian Sands.

Letters of Objection

6.12 The points raised by the objectors relate primarily to noise being the main concern. The site, despite being outwith the settlement boundary, is still in close proximity to residential dwellings in Newmilns. This close proximity is likely to lead to an increase in noise levels with more dogs present at the site, to the detriment of these properties. The other points raised by the objectors, whilst noted, are not considered to carry significant weight.

Letters of Support

6.13 The points raised in the letters of support relate mainly to the applicant's good quality of service and high standards, the business being an asset to the community and the current arrangements creating very little noise disturbance.

Planning History

6.14 Planning application 04/0027/FL for a proposed extension to the existing house was approved with conditions on 15 July 2004.

6.15 Listed building application 04/0073/LB for a proposed extension to house was approved with conditions on 23 July 2004.

6.16 Enforcement Notice DP/030/09/0357, for the unauthorised operation of boarding kennels, was served on the owners/ occupiers of West Lodge on 8 March 2010. The provisions of this enforcement notice required discontinuance of the unauthorised use and further action in this respect has been held in abeyance, pending the determination of this application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council with regard to the determination of this application. Legal implications may arise in pursuit of enforcing the provisions of the aforementioned Enforcement Notice, should the Committee refuse planning consent.

8. CONCLUSIONS

8.1 The Town and Country Planning (Scotland) Act 1997 requires that applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. As indicated in Section 5 of the report there are various policies that relate to this development. It is considered that the proposal is contrary to key policies by virtue of its proximity to residential properties and the adverse affect that it could have on the established residential amenity of these properties by reason of noise associated with the proposed use.

8.2 As indicated in Section 6 there are material considerations relevant to this application. The Alteration to the East Ayrshire Local Plan which generally reflects the position of the existing Local Plan indicates that the application should be refused due to the potential impact to nearby residential properties. The letters of objection support this view with objectors fearful of the noise issue in particular which would also impact on the general residential amenity of the area. The letters of support point to the applicant's business success and the lack of noise at present. Whilst the business use itself would normally be supported in principle, it is considered that despite its apparent 'rural' location, the site is still in close proximity to residential properties which are likely to experience an increase in noise levels from the greater number of dogs at the site.

8.3 Furthermore, it is not considered that the proposed development could be made acceptable by means of planning conditions in this instance given the nature of development.

9. RECOMMENDATION

9.1 It is recommended that this application be refused for the reasons listed 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 be required to be referred to Council, as such a decision would not be significantly contrary to the Local Development Plan.

Alan Neish
Head of Planning and Economic Development

DW/HM
31 August 2010

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Forms/Plans.
2. Statutory Letters/Certificates.
3. Consultations.
4. Adopted East Ayrshire Local Plan.
5. Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications).
6. Letters of representation.
7. Planning application 04/0027/FL.
8. Listed building application 04/0073/LB.
9. Enforcement Notice DP/030/09/0357

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

Implementation Officer: Dave Morris

East Ayrshire Council

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 10/0253/PP

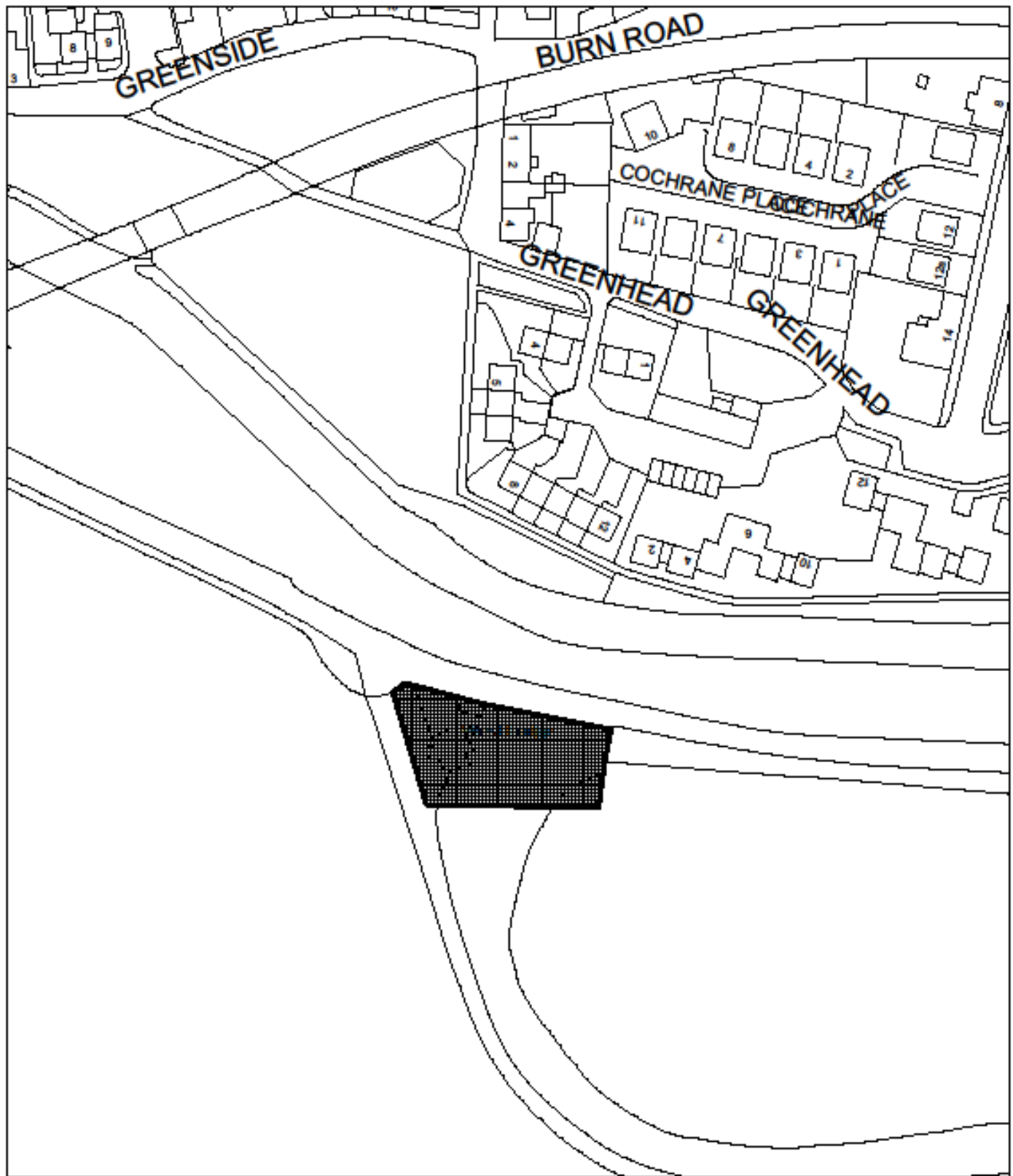
Location	West Lodge Lanfine Estate Newmilns East Ayrshire
Nature of Proposal:	Change of use from residential to providing dog boarding and services
Name and Address of Applicant:	MS Julia Ashton West Lodge Lanfine Estate Newmilns KA16 9JP
Name and Address of Agent	



Officer's Ref: David Wilson
01563 576779

The above application for planning permission should be refused for the following reasons:

1. The proposed development would be contrary to Policies IND6 and IND10 of the Adopted East Ayrshire Local Plan as the proposed use will have an adverse impact on the surrounding environment and adjacent uses by reason of noise.
2. The proposed development would be contrary to Policy IND5 of the Alteration to the Adopted East Ayrshire Local Plan as the proposed use relates to a business development in residential outbuildings and is not in accordance with Policy IND 11.
3. The proposed development would be contrary to Policy IND6 of the Alteration to the Adopted East Ayrshire Local Plan as the proposed use is not compatible with surrounding land uses given its close location to a number of residential properties and the likely impact the proposed use would have on the established residential amenity of these properties.
4. The proposed development would be contrary to Policy IND11 of the

Alteration to the Adopted East Ayrshire Local Plan as the proposed use will impact adversely on the established residential amenity of existing properties in the area by reason of noise impact.



<p>Title/Location West Lodge, Lanfine Estate</p> <p> Newmilns</p> <p> Application No. 10/0253/PP</p>	<p>East Ayrshire Council</p> <p>Department of Neighbourhood Services Planning & Economic Development Service. 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk</p> <p>Com Date: 10/09/2010</p> <div style="text-align: right;">  </div>
<p>Key</p> <div style="display: flex; align-items: center;">  <p>Application Site</p> </div>	

This map is reproduced from the Ordnance Survey material with permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office(C) Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. East Ayrshire Council. 100023409.