

**EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 04 FEBRUARY 2005**

**04/1123/FL: PROPOSED CHANGE OF USE FROM PUBLIC OPEN SPACE  
AND THE REPLACEMENT OF EXISTING BOUNDARY FENCE  
AT 40 LARGS AVENUE, KILMARNOCK  
BY MR D TIZZARD**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Full planning consent is sought for the change of use of approximately 31 square metres of public open space to private garden ground and for the replacement of the existing boundary fence to the front and side of the property. The proposed fence to the front of the property is shown as being 0.90 metres high and is open boarded and constructed of light oak coloured wood. This is to replace the existing decorative white metal fence, approximately 0.4 metres high. The proposed fence to the north boundary of the site (adjoining the public open space) is shown as approximately 1.8 metres high from the rear of the application site to the rear building line; the height then drops to 0.9 metres to the front boundary of the site for a distance of 9.5 metres. This fence is also open boarded and constructed of light oak coloured wood.

**2. RECOMMENDATION**

**2.1 It is recommended that the application be approved.**

**3. CONCLUSIONS**

3.1 As is indicated at Section 5 of the report, the application is in accordance with the Adopted East Ayrshire Local plan and therefore, given 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 As is indicated in Section 6 of the report there are material considerations relevant to this application. The consultees have no adverse comments to make regarding the proposed development. With regard to the letters of objection it is considered that sufficient open space will remain within the immediate area to compensate for the loss of a small area of public open space.

3.3 To take account of a reference in the submitted drawings to the "possible" fence style, it would be appropriate to condition the submission of final fence design details.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development Services Committee because there would be no significant breach of 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, Development and Building Standards**

**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 subject to objections.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The application site is a detached modern two-storey villa, constructed in the 1970s and located on Largs Avenue within the Dean Estate. The property is surrounded by similar detached properties of the same age and design. Immediately to the north of the application site is an area of public open space, while to the east of the application site is a steep embankment of mature trees.

2.2 **Proposed Development:** Full planning consent is sought for the change of use of approximately 31 square metres of public open space to private garden ground and for the replacement of the existing boundary fence to the front and side of the property. The proposed fence to the front of the property is shown as being 0.90 metres high and is open boarded and constructed of light oak coloured wood. This is to replace the existing decorative white metal fence, approximately 0.4 metres high. The proposed fence to the north boundary of the site (adjoining the public open space) is shown as approximately 1.8 metres high from the rear of the application site to the rear building line; the height then drops to 0.9 metres to the front boundary of the site for a distance of 9.5 metres. This fence is also open boarded and constructed of light oak coloured wood.

## 8. CONSULTATIONS AND ISSUES RAISED

3.1 New Farm Loch Community Council, Transco and East Ayrshire Council's Outdoor Amenities have no adverse comments to make regarding the proposed development.

***Noted.***

## 4. REPRESENTATIONS

There are three objectors to the proposed development and their grounds of objection are as follows:

8.1 This section of public open space has already been downsized and any further loss would be inappropriate. If this application is approved, this will open up further opportunities for other people to make similar applications, resulting in less safe areas for children to play in. The area subject of this application provides space for children to play unsupervised, and avoid the roads and parked cars. The open areas give children and parent the opportunity to use an area which is open and more public than through the wooded area. If this space is taken away piece by piece this will leave an accident waiting to happen.

***Each planning proposal is to be determined on its own merits and therefore an application should not be refused due to the possibility that future applications may or may not be made to change the use of further areas of open space into private open ground. It is considered that there is a sufficient amount of public open space in the immediate area and that the proposed change of use would not lead to a significant loss of amenity space within the Dean Estate. A sizeable area of open space will remain. Any future applications which did lead to such a loss can be determined on their merits at that time.***

8.1 Open spaces, like parks, greens and woodlands, contribute to local residents' quality of life, and give a neighbourhood its own distinctive character. The encroachment of these areas will mean these qualities are lost.

***As stated above, it is considered that the extent of public open space which this application removes is very small. Consequently, it is not considered that this proposal affects the amenity of the surrounding area as a sizeable area of open space remains.***

- 8.1 Any drainage works should be carried out on current property grounds and should not require more land from the play area.

***There are no planning reasons to prevent the applicant from using additional space for drainage, and it is not considered that this would in any way impact upon the amenity of the surrounding area.***

## **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) and Ayrshire Joint Structure Plan. The Structure Plan addresses issues of a more strategic nature requiring that prime importance be applied to the Local Plan.

### Adopted East Ayrshire Local Plan

- 8.1 Policy TLR8 presumes against development on safeguarded areas of public and private, recreational or amenity open space and on other undeveloped land within settlement boundaries which contributes to the setting, character and appearance of the settlement concerned. Policy TLR9 of the EALP is also relevant and permits the development of private and public recreational or amenity space in exceptional circumstances where:
- i) alternative provision of equal community benefit and accessibility can be made available within close proximity to the site; or
  - ii) there is a clear, long term excess of pitches, playing fields and amenity open space in the wider area.

***It is considered that due to the location of the development in close proximity to the Dean Country Park and the availability of open space in the immediate area, the proposal would not be detrimental to the amenity of other residential properties in the area. Furthermore the proposal involves taking only a small area of space for private garden ground. The proposal would not lead to a significant loss of public open space within the area.***

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

6.1 The principal material considerations relevant to the determination of the application are the consultation replies detailed in Section 3 of the report and the letters of objection received, detailed in Section 4 of the report and planning history.

### Consultation Responses and Representations Received

6.2 It is not considered that any aspects of the consultation replies or the letters of objection received indicate that the application should be refused.

### Planning History

6.3 04/0029/FL: Proposed Change of Use of Public Open Space and Erection of Extension and Fence at 2 Glenlivet Place approved on 05 March 2004. This proposal involves the incorporation of 41 squares of public open space to private garden ground along the northern boundary of this area of open space.

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

7.1 There are no financial or legal implications for the Council in the determination of this application. The open space area is in the combined ownership of the residents of the Dean Estate.

## **8. CONCLUSIONS**

8.1 As is indicated at Section 5 of the report, the application is in accordance with the Adopted East Ayrshire Local plan and therefore, given 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 As is indicated in Section 6 of the report there are material considerations relevant to this application. The consultees have no adverse comments to make regarding the proposed development. With regard to the letters of objection it is considered that sufficient open space will remain within the immediate area to compensate for the loss of a small area of public open space.

8.3 To take account of a reference in the submitted drawings to the "possible" fence style, it would be appropriate to condition the submission of final fence design details.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved.**

### **CONTRARY DECISION NOTE**

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

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

26 January 2005  
(CP/MMM)

FV/MMM

### **LIST OF BACKGROUND PAPERS**

1. Application form and plan.
2. Statutory Letters/Certificates.
3. Consultation Replies.
4. Letters of Representation.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted East Ayrshire Local Plan.

Anyone wishing to inspect the above papers please contact Claire Peters on 01563 576779.

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

04/1123/FL

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Site of Proposal: 40 Largs Avenue  
KILMARNOCK

Nature of Proposal: Proposed Change of Use of Public Open  
Space and the Replacement of Existing  
Boundary Fence

Name & Address of Applicant: David J Tizzard  
40 Largs Avenue  
KILMARNOCK

Name & Address of Agent:

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DPOs Reference: (CP/MMM)

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

1. Notwithstanding the submitted details, a final fence style design shall be submitted to and approved by the Planning Authority prior to the commencement of development and thereafter implemented as approved.

REASON In the interests of visual and residential amenity.

**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.**