

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 12 NOVEMBER 2004

**04/0670/FL: PROPOSED ERECTION OF 2 NO. DWELLINGS
AT: VACANT GROUND AT FAIRYHILL ROAD, KILMARNOCK
BY ABCS LTD**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the erection of 2 detached two-storey dwellings with associated garden ground to the front and rear of the dwellings. The proposed dwellings are of 3 bedroom accommodation with an integral garage. The proposed dwellings are to be finished in a brown facing brick and are similar in terms of design and external finishes to the adjacent modern dwellings on Fairyhill Road/ Barbadoes Place. The existing footpath is proposed to be upgraded to provide vehicular access to both dwellings from Fairyhill Road, while a bollard is proposed on the access road to prevent vehicular traffic accessing Barbadoes Place.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated at Section 5 of the report the application is considered to be contrary to the policies of the Adopted Local Plan. Therefore given the terms of Sections 25 and 37 of the Town and Country Plan (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

3.2 As is indicated in Section 6 of the report there are material considerations relevant to this application and they are not supportive of the development. The responses received from Outdoor Services and the objections are considered to be material in the determination of this application. Taking the material considerations together it is considered that a departure from the policies of the Adopted East Ayrshire Local Plan is not justified as the development would result in the loss of the only useable open space area which would be detrimental to the character, setting and amenity of the area. This area of open space contributes to the visual amenity of the area and provides a useable area for local residents and children. This view has also been supported by local residents as they consider it to be a play area for children.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning, Development and Building Standards it will not require to be referred to the Development Services Committee as there would be no 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, Development & 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 and recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is a grassed area of open space and extends to approximately 590 square metres in area. It is surrounded on the northern, eastern and western boundaries by modern semi-detached and terraced dwellings. To the south of the application site is the Kilmarnock Water and footpath from Fairyhill Place to Barbadoes Place.

2.2 **Proposed Development:** Full planning permission is sought for the erection of 2 detached two-storey dwellings with associated garden ground to the front and rear of the dwellings. The proposed dwellings are of 3 bedroom accommodation with an integral garage. The proposed dwellings are to be finished in a brown facing brick and are similar in terms of design and external finishes to the adjacent modern dwellings on Fairyhill Road/ Barbadoes Place. The existing footpath is proposed to be upgraded to provide vehicular access to both dwellings from Fairyhill Road, while a bollard is proposed on the access road to prevent vehicular traffic accessing Barbadoes Place.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Transco, Scottish Water, East Ayrshire Council Administration and Legal Services Division, East Ayrshire Council Environmental Health & Waste Management and East Ayrshire Council Roads and Transportation Division have no adverse comments to make in relation to this application

Noted.

3.2 Grange/Howard Community Council and Scottish Environment Protection Agency (SEPA) have not responded to their consultation letters at the time of writing this report.

Noted.

3.3 East Ayrshire Council Outdoor Services Division have objected on the grounds that this is the only area of useable public open space in the vicinity, allowing younger children to play nearer to their home as the nearest useable public open space is Howard Park which is across the busy McLelland Drive.

The objection from Outdoor Services is noted and carries significant weight as this area of open space contributes to the amenity of the surrounding residents.

4. REPRESENTATIONS

4.1 There are four objectors to the proposed development (including one from East Ayrshire Council Outdoor Service which is detailed in Section 3.3 of the report). A summary of the grounds of objection are as follows:

4.2 The application site is marked on the title deeds as a play area and under clause 5 of their title deeds they have a right of access to and use of the play area.

The right of access over the open space area is a legal matter between the developer and objectors and is not a planning consideration.

4.3 The Council maintains the land, it was assumed it would always be available as a play area. A “No Ball Games” sign was refused by the Council on the grounds that local children required a place to play.

East Ayrshire Council do not own the application site although the Council do maintain the area by cutting the grass.

4.4 The play area is regularly used by those in the development and to remove this area will significantly affect their lives.

Although the open space area has no play equipment, it is used as an informal play area and it contributes to the visual amenity of the site.

4.5 The application site is only a small piece of land and doesn't seem big enough for two houses. There is no room for houses with car parking spaces while there is no space for parking on Fairyhill Road.

The proposed dwellings can be accommodated satisfactorily on the site. East Ayrshire Council Roads Division have no adverse comments to make regarding access and car parking provision.

4.6 It might have been possible to build on the land at the time the surrounding houses were built but now the surrounding houses are occupied there is no room for construction traffic while there would be an unjustifiable level of noise, mess and inconvenience if building work was to take place with such a restricted access.

It is acknowledged that there would be some disturbance to adjacent properties during the construction of the two dwellings however this would be of a short term nature.

4.7 The developer indicates the proposed development is on Fairyhill Place but it is clearly on Fairyhill Road. If they've mistakenly bought the land, they can't build on land that the objector and their neighbours have a right over as per our title deeds.

The application forms state that the application site is located on Fairyhill Road. The right of access is a legal matter between the developer and the objectors.

4.8 The development will affect the privacy and exposure to sunlight of any adjacent property.

It is not considered that the proposed development would have a detrimental impact on the objector's property at number 8 Barbadoes Place as there is an existing 6.5 metre hedge screening the site while the upper floor windows of the proposed dwellings are to be finished in obscure glazing to the toilet and ensuite while the stair head window is proposed to be finished in stained glass. It is not considered that the proposed dwellings would have a significant detrimental impact on sunlight reaching the objector's property.

4.9 They are concerned that a through road may be created in place of the current cul-de-sac to provide access to the development, which naturally would increase noise and traffic in this area and cause annoyance and nuisance.

East Ayrshire Council Roads and Transportation Division have no adverse comments to make in relation to the proposed development. The applicant proposes that a bollard be placed at the end of the access road to prevent vehicular traffic accessing Barbadoes Place from Fairyhill Road.

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 are 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 (1999) and the Adopted East Ayrshire Local Plan (EALP).

The Adopted Ayrshire Joint Structure Plan

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

The Adopted East Ayrshire Local Plan (EALP)

5.3 Policies **RES 4** and **TLR 8** of the Adopted EALP are specifically relevant in the consideration of this application.

5.4 Policy **RES 4** encourages the sympathetic residential development of gap, infill or other redevelopment sites, including those sites created through the large scale demolition of existing housing, not specifically safeguard or identified for particular development purposes on the Local Plan maps. Developments will be assessed against the following criteria :-

- (i) Impact on the surrounding natural and built environment and adjacent uses
- (ii) Transportation and infrastructure implications.
- (iii) Compatibility with surrounding densities and housing types.
- (iv) Compliance with the Council's Development Promotion and Design Guidance.

The site adjoins an existing modern housing development to the northern, western and eastern boundaries of the application site at Fairyhill Road and Barbadoes Place, while the proposed dwellings are of a similar design and proposed to be finished in similar external materials to the existing dwellings. It is however considered that the loss of the open space would have a detrimental impact on the amenity of the surrounding housing development given that the application site comprises the only area of useable open space within the development

5.5 **Policy TLR 8** states 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.

5.6 **Policy TLR9** is also relevant and states that the development of open space for purposes other than those in Policy TLR 8 will only be permitted in exceptional circumstances where:

- (i) laying out of new playing fields, bowling greens, putting greens;
- (ii) creation of all weather sports facilities; and
- (iii) creation of new children's play areas.

The proposal is considered to be contrary to Policies TLR8 and TLR9 of the Adopted East Ayrshire Local Plan. It is considered that the loss of open space would have a detrimental impact on the character, setting and amenity of the surrounding housing. Although the application site does not constitute a formal play area with play equipment, it does provide an informal area where children can play and kick a ball. It comprises the only area of useable open space within the development and furthermore it contributes to the visual setting of the area.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the planning history of the site, consultations and representations received which are detailed in Sections 3 and 4 of the report.

Planning History

6.2 KL/W/86/95 Erection of private housing development at Fairyhill Road/Barbadoes Road, Kilmarnock by ABC Services Ltd.
Approved by Committee 21 November 1986.

Members are advised that the application approved on 21 November 1986 identified the vacant ground subject to this application as public open space.

Consultations and Representations

6.3 The consultations and representations received are addressed in Sections 3 and 4 of the report. The consultation response by East Ayrshire Council Outdoor Services Division is material in the determination of this application as the development would result in the loss of the only useable piece of public open space within the development. The concerns of Outdoor Services are also echoed by the objectors with the regard to the loss of the useable open space area.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in determining this application.

8. CONCLUSIONS

8.1 As indicated at Section 5 of the report the application is considered to be contrary to the policies of the Adopted Local Plan. Therefore given the terms of Sections 25 and 37 of the Town and Country Plan (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

8.2 As is indicated in Section 6 of the report there are material considerations relevant to this application and they are not supportive of the development. The responses received from Outdoor Services and the objections are considered to be material in the determination of this application. Taking the material considerations together it is considered that a departure from the policies of the Adopted East Ayrshire Local Plan is not justified as the development would result in the loss of the only useable open space area which would be detrimental to the character, setting and amenity of the area. This area of open space contributes to the visual amenity of the area and provides a useable area for local residents and children. This view has also been supported by local residents as they consider it to be a play area for children.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons indicated 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, Development and Building Standards it will not require to be referred to the Development Services Committee as there would be no significant breach of Council policy.

Alan Neish
Head of Planning and Building Control

04 November 2004 (BD/SA)
FV-DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices and certificates.
3. Consultation responses.
4. Adopted East Ayrshire Local Plan.
5. Approved Ayrshire Joint Structure Plan.
6. Planning Application No. KL/W/86/95.

Anyone wishing to inspect the above papers please contact Barry Douglas on 01563 576770.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

04/0670/FL

Site of Proposal: Vacant Ground
Fairhill Road
Kilmarnock

Nature of Proposal: Proposed Erection of 2 No Dwellings

Name & Address of Applicant: ABCS Ltd
16a Fairhill Road
KILMARNOCK
KA1 1TA

Name & Address of Agent:

DPOs Reference: BD/SA

The above full application should be refused for the following reasons:

(1) The proposed development is not in accordance with Policies RES 4, TLR 8 and TLR 9 of the Adopted East Ayrshire Local Plan as the loss of the open space area would be detrimental to the setting, character and appearance of the residential development. The proposed developed would also result in the loss of the only useable area of open space to the detriment of 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.**