

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 12 OCTOBER 2005**

### **APPEAL DECISIONS**

**01 APRIL 2004 – 31 MARCH 2005**

#### **Report by Executive Director of Development and Property Services**

#### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present to Committee an analysis of Appeal Decisions received from the Scottish Executive for the above period.

#### **2. COMMENTARY**

2.1 Table 1 shows the outcomes in respect of ten appeal decisions received during the above period. Three of the appeal decisions followed the officer recommendation and subsequent Local Planning Committee decision. Two appeal decisions followed the officer recommendation, albeit the applications had been refused at Local Planning Committee. One sustained appeal overturned a Roads Division requirement for a footpath extending to the adjacent village. Finally, under revisions to the scheme of delegation the Planning, Development and Building Standards Division has been able to refuse advertisement applications under delegated powers. Four such refusals were appealed; two were sustained and two were dismissed.

#### **3. FINANCIAL AND LEGAL MATTERS**

3.1 In respect of one appeal decision, the Scottish Executive awarded costs to the appellants; which precise amount is still the subject of debate between the appellants and the Council.

#### **4. RECOMMENDATION**

4.1 **It is recommended that the Committee note the contents of the report.**

**James Lavery**  
**Executive Director of Development and Property Services**

29 September 2005  
(DVM/SA)  
FV-AN

### **BACKGROUND PAPERS**

1. Planning Application Numbers: 03/0078/FL, 02/0930/FL, 04/0301/FL, 04/0192/FL, 04/0754/AD, 04/0575/AD, 04/0903/AD, 04/0187/FL, 04/0216/FL, 04/0913/AD and associated papers.

Any person wishing to inspect the background papers listed above should contact Dave Morris on 01563 576753.

***Implementation Officer: Alan Neish***

**TABLE 1**

	<b>App No.</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Venue &amp; Decision Date</b>	<b>Appeal Decision</b>	<b>Appeal Decision Date</b>	<b>Expenses Claimed</b>	<b>Expenses Awarded</b>
1	03/0078/FL	Former garage site / railway cutting off Logangate Terrace, Logan	Alter Cond2c OPP Consent 02/0293/OL (Residential) to form Access from Glenmuir Rd	Refuse	Refuse	Southern LPC  20 June 2003	Refuse	05 April 2004	No	N/A
<p>The Reporter indicated that whilst residential development would improve the area and whilst adequate sight lines could be secured without a legal agreement, road safety would be compromised by the proposal as a result of the proximity of the access to the change of speed limit, the lack of a footpath and the potential hazard from parked cars. The appeal was dismissed.</p>										
2	02/0930/FL	Unit 2 Loreny Industrial Estate, Kilmarnock	Proposed waste transfer bay and installation of interceptor tank	Approve	Refuse	Central LPC 06 Feb 2004	Approve with conditions	18 Aug 2004	Yes	Yes, on the basis of the Council "acting unreasonably"
<p>The Central LPC considered the waste transfer bay to have an adverse affect on the area by reason of traffic and odour. The Reporter consider the proposal to be consistent with the development plan, noted that the highway authority was satisfied with traffic movement, noted the nearest houses were &gt; 200 metres distant and accepted that the type of waste would be unlikely to give rise to significant odour problems. It was also noted that there were no objections from the local residents or the Community Council.</p> <p>The Reporter agreed that costs should be awarded to the appellants; which amount has been the subject of discussions between the Council and the appellants.</p>										

	<b>App. No</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Venue &amp; Decision Date</b>	<b>Appeal Decision</b>	<b>Appeal Decision Date</b>	<b>Expenses Claimed</b>	<b>Expenses Awarded</b>
3	04/0301/FL	Plot 50 at 1 Raasay Place, Kilmarnock	Retrospective substitution of house type	Approve	Refuse	Northern Area LPC 21 May 2004	Approve Subject to conditions	01 November 2004	No	N/A

The appeal concerned a house occupied for some two years but constructed at a distance marginally closer to a neighbouring boundary than originally approved. The subsequent application was refused on the basis of detrimental impact on the visual and residential amenity of a neighbouring plot. An enforcement notice was served in respect of the breach which was also considered by the Reporter. The Reporter concluded there was no overlooking, no loss of privacy or of daylight. It was determined that the appeal should be sustained subject to the approval being conditioned to remove permitted development that might otherwise have enabled the formation of windows in the gable wall facing the adjoining property.

4	04/0192/FL	Vacant Land at Arran Avenue, Kilmarnock	Proposed residential development of 17 units	The appeal concerned the Council's failure to determine the proposal in two months.	Refuse, had the non determination appeal not been lodged.	Central LPC 20 August 2004	Refuse	08 Nov 2004	No	N/A
---	------------	-----------------------------------------	----------------------------------------------	-------------------------------------------------------------------------------------	-----------------------------------------------------------	-------------------------------	--------	-------------	----	-----

The application for 17 houses was subject to appeal on the basis of non-determination. The Central LPC was, as a consequence not able to determine the application but did, on 20 August 2004, conclude that had it been able to take a decision, such decision would have been one of refusal on the basis of non compliance with the development plan; in respect of adverse impact on existing houses, inadequate road layout, car parking and driveways and non-provision of adequate private & public open space. The Reporter found that the development "offends the development plan provisions "fairly comprehensively" and dismissed the appeal.

	<b>App. No</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Venue &amp; Decision Date</b>	<b>Appeal Decision</b>	<b>Appeal Decision Date</b>	<b>Expenses Claimed</b>	<b>Expenses Awarded</b>
5	04/0754/AD	Q8, 10 – 14 Rigg Street Stewarton	2 single sided free standing advert display units	Refuse, using delegated powers	Refuse, using delegated powers	N/A 26 August 2004	Approve subject to conditions	07 January 2005	No	N/A

The application was refused under delegated powers, in summary, because of its detrimental effect on the visual amenity and general character of the surrounding area and because it was over prominent, visually intrusive and not associated with the petrol filling station. The Reporter noted the generally commercial character of the area and considered that the level of advertising was no more and no less than was required to draw attention to the premises. The decision to sustain the appeal was subject to a condition that the signage not be illuminated when the premises were closed for business.

6	04/0575/AD	Grange Service Station, 58 Irvine Road, Kilmarnock	1 double sided free standing advertising unit	Refuse, using delegated powers	Refuse, using delegated powers	N/A 01 July 2004	Refuse	16 Nov 2004	No	N/A
---	------------	----------------------------------------------------	-----------------------------------------------	--------------------------------	--------------------------------	---------------------	--------	-------------	----	-----

This retrospective Advertisement application was refused under delegated powers because of its detrimental effect on the visual amenity and general character of the surrounding area and because it was over prominent, visually intrusive and not associated with the petrol filling station. The Reporter noted the established residential character of the area and that the sign would directly face several houses. It would be out of place, would add to clutter and offered no improvement to the site or area. The appeal was dismissed.

7	04/0903/AD	19 Kilmaurs Road, Kilmarnock	Freestanding and wall mounted signs	Refuse, using delegated powers	Refuse, using delegated powers	N/A 07 October 2004	Refuse	04 March 2005	No	N/A
---	------------	------------------------------	-------------------------------------	--------------------------------	--------------------------------	------------------------	--------	---------------	----	-----

The Reporter considered that the shop was provided with low key and minimal signage in a largely residential area. The new advert would be an extraneous feature detracting from the good visual amenity of the locality. The appeal was dismissed.

	<b>App. No</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Venue &amp; Decision Date</b>	<b>Appeal Decision</b>	<b>Appeal Decision Date</b>	<b>Expenses Claimed</b>	<b>Expenses Awarded</b>
8	04/0187/FL	2A Newmill Road, Kilmarnock	Change of Use from vehicle repair workshop to Class 1 retail	Approve subject to conditions	Approve subject to conditions	Central LPC 04 June 2004	Refused to remove condition	21 March 2005	No	N/A
<p>Planning application 04/0187/FL was approved subject to a number of conditions including no. 5 that required the closure of the existing vehicular access, this on the advice of the Roads Division. The Reporter considered the appellant's submissions but concluded that traffic and pedestrian safety would be detrimentally affected by continued use of the existing, (albeit historic), entrance. The Reporter found condition 5 to be justified and refused to vary or remove it.</p>										
9	04/0216/FL	Land Opposite Cairndale Cottage, Moscow	Erection of Agricultural Cottage, Garage and Agricultural Building	Approve Subject to conditions under delegated powers	Approve Subject to conditions under delegated powers	N/A  22 June 2004	Appeal against Condition 5 sustained	22 March 2005	No	N/A
<p>Full planning consent for the erection of this agricultural worker's house was granted subject to a number of conditions including number 5 that required the formation of a footpath from the site to Moscow. This was a requirement of the Roads Division but was seen as unreasonable by the appellants and subsequently by the Reporter who sustained the appeal, finding the requirement for the path to be unnecessary and unreasonable given the scale of the proposal.</p>										
10	04/0913/AD	Burnpark Filling Station, Ayr Road, Kilmarnock	4 single sided freestanding advertising display units	Refuse, using delegated powers	Refuse, using delegated powers	N/A  15 October 2004	Approve	22 March 2005	No	N/A
<p>This was an application located in a small commercial enclave within a residential area. The Reporter did not view the proposal as additional clutter nor as having an adverse impact on residential amenity. The appeal was sustained subject to the illumination of the advert being switched off outwith business hours.</p>										