

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE – 11 OCTOBER 2006

APPEAL DECISIONS

01 APRIL 2005 – 30 SEPTEMBER 2006

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 21 appeal decisions received during the above period. Eleven appeals were sustained (approved), nine dismissed (refused) and one non-determination appeal was refused consistent with the agreed Committee view. Nine appeals concerned decisions taken by Committee contrary to the recommendation of officers and of these, six were sustained and determined consistent with the officer recommendation. Three of the nine resulted in the appeal being dismissed.
- 2.2** Four of the appeals concerned housing in the countryside; of these three were sustained and one dismissed. Three out of the four advertisement appeals were dismissed and three telephone mast appeals out of three were sustained.
- 2.3** It is noteworthy that, as within the previous Appeals reported to Committee, one of the sustained appeals has overturned a Roads Division requirement for a footpath extending to the adjacent town boundary.
- 2.4** Under the scheme of delegation the Planning, Development and Building Standards Division has been able to refuse a number of applications under delegated powers. Eight such refusals were appealed; four were sustained and four dismissed. Three advert appeals were dismissed and one sustained.

3. CALLED IN APPLICATIONS

- 3.1** One application was called in for determination by the Scottish Ministers during this period, the Erection of 92 Dwellinghouses at Rigg Road, Cumnock. This was in itself a rare occurrence and for that reason details of the outcome are included in the attached appendix as item 22.

4. FINANCIAL AND LEGAL MATTERS

- 4.1** Only one claim for expenses was received; in respect of a refused application for 16 houses at Hallhouse, Fenwick; and no award was granted by the Scottish Ministers.

5. RECOMMENDATION

- 5.1** It is recommended that the Committee:
- (i) Note the contents of the report.

James Lavery
Executive Director of Development and Property Services
21 September 2006
(DVM/SA) - FV

BACKGROUND PAPERS

1. Planning Application Numbers 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

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
1	04/0234/OL	Altonhill Farm, Kilmarnock	Agricultural Worker's House and Footpath	Appeal against conditions applied on planning consent	Approve with conditions including provision of footpath	Delegated 10 May 2004	Approve	05 April 2005	NO	NO
The appeal challenged conditions requiring a footpath link. The Reporter concluded that conditions requiring the provision on road safety grounds of a footpath extending from the new house in the countryside to the urban area of Kilmarnock were not reasonable and were not commensurate with the scale of the development. The appeal was sustained and the conditions 6 and 7 were deleted.										
2	04/0928/AD	Filling Station Forecourt, Hurlford Road Galston	Double sided free standing advert poster	Refuse	Refuse	Delegated 21 October 2004	Refuse	06 April 2005	NO	NO
The Reporter concluded that the advert had no relationship to the filling station of forecourt and that because of its size and height and detracton from the landscape, it was correct that the council had refused it.										
3	04/0933/AD	Q8 Service Station, Riccarton Road, Kilmarnock	Double sided free standing advert poster	Refuse	Refuse	Delegated 21 October 2004	Refuse	06 April 2005	NO	NO
The Reporter in dismissing the appeal concluded that the proposal would bring unnecessary clutter and damage to the environmental quality of the location and that existing advertising more than adequately met existing business needs.										
4	04/0983/AD	Q8 Service Station, Riccarton Road, Kilmarnock	Double sided free standing advert poster	Refuse	Refuse	Delegated 29 October 2004	Refuse	12 April 2005	NO	NO
This was a similar proposal at the Q8 complex which the Reporter considered had a similar adverse affect on the environmental quality of the area and could not be supported. Again the existing advertising more than adequately met existing business needs.										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
5	04/0494/OL	Hill Farm by Dunlop	Erection of Dwelling House	Refuse	NALPC: approve	Dev Services, 16 Nov. 2004: Refuse	Approve subject to conditions	13 June 2005	NO	NO

The Reporter concluded that working on the farm, albeit only on a three or four day per week basis constitutes a site specific locational need in terms of Policy G5 of the Structure Plan. A long family association with the farm was not considered to justify the proposal. Taken with the farm related work, the applicant's artist studio close to the site constitutes rural diversification. The applicant's occupation of the proposed house would constitute a rural enterprise consistent with Policy RES 13 (criteria ii) even if he were not full time engaged on the farm. The proposal was considered by the Reporter to be policy compliant and there were no material considerations to indicate refusal. Appeal sustained.

6	04/1045/FL	Towerhill Farm Kilmaurs	Erection of Cubicle Shed	Appeal lodged on the basis of non – determination of the application	Committee view secured as to merits of proposal; "Refuse"	Northern Area LPC 18 March 2005	Refused	06 July 2005	NO	NO
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The Reporter endorsed the Committee view that the proposal would not have a minimal impact, was insensitively sited and incapable of being screened. Residential amenity in terms of visual amenity, outlook, noise and odours would be substantially eroded. Recognising that the operational requirements of the farm were a material consideration, they were, though, not of sufficient weight to disregard the terms of the local plan which the proposal was inconsistent with for the above reasons. Appeal dismissed.

7	05/0016/FL	Western Road, Kilmarnock	12.5 metre telecommunications flexicell column	Approval subject to Conditions	Refuse	Central LPC 4 March 2005	Approve subject to conditions	14 July 2005	NO	NO
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Given the distance to the nearest houses and the site's location, the Reporter found that the column could be accommodated with out unacceptable detriment to the visual amenity of the area, that the appropriate Certifications had been provided and that the application was policy compliant. The appeal was sustained.

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
8	04/0031/FL	Land East of Waterslap, Laigh Fenwick	6 Detached private dwellings	Refuse	Refuse	Northern Area LPC	Approve subject to conditions	08 August 2005	NO	NO
<p>This application was refused by Committee on the basis of inconsistency with Policy and the felling of trees impacting on the high amenity value of the area. The Reporter concluded that this was a brown field site and that for that reason it was not against the principles of the EALP. Its development for residential purposes would be consistent with SPP 15 and PAN 72. The Reporter further concluded that development would not have a significant effect on the Conservation Area and consequently sustained the appeal by granting consent subject to conditions.</p>										
9	05/0147/FL	22 Main Road Waterside	Erection of LPG tanks & Gas dispersion wall & raising of ground level; (access road, LPG tanks & ground infill were linked to enforcement notice.)	Approval of 05/147/FL	Refuse	Northern Area LPC; 27 May 2005	Approve subject to conditions	30 August 2005	NO	NO
<p>The reporter concluded that the presence of a Safety Assessment and the evidence of the applicant's safety expert pointed to the proposed tanks being safe. He concluded that the tanks occupied a small proportion of the appeal site, there would be screen planting and the extent of service vehicle parking could be reduced by condition the amenity of the area and the adjacent listed buildings would be secured. Disturbance to neighbouring property from service vehicles would be limited and the proposal is policy compliant. The Reporter sustained the appeal and approved the application subject to conditions.</p>										
10	04/1217/FL	Lampost R19, Grassyards Road, Kilmarnock	8 metre "streetworks" monopole with cabinets.	Approval subject to conditions	Refuse	Central LPC 04 March 2005	Approve subject to conditions	20 Sept. 2005	NO	NO
<p>The Reporter concluded that the proposal, which was of a height slightly less than that of nearby lampposts, would not have an adverse affect on the nearby conservation area or listed west lodge gatehouse. The Reporter accepted that there were unlikely to be alternative better locations in the vicinity. The terms of NPPG 19 and PAN 62 were agreed to have been met and no weight should be attached to health matters, these being regulated by other bodies. The appeal was sustained and consent granted subject to conditions.</p>										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
11	04/0882/FL	Land west of Assloss Farm, Kilmarnock	18 metre high telecom lattice tower	Approve subject to conditions	Refuse	Northern Area LPC 18 March 2005	Approve subject to conditions	20 Sept. 2005	NO	NO
<p>The Reporter concluded that the wooded backdrop and the lattice tower design would mitigate any adverse affect of the development even though it was located in pleasant countryside. Sufficient effort had been put into establishing shared alternatives and the proposal was policy compliant in the above regards. The terms of NPPG 19 and PAN 62 have been met. There would be no adverse impacts from construction vehicles.. The appeal was sustained and the application approved subject to conditions.</p>										
12	05/0160/FL	22 Main Road, Waterside	Erection of Three, two storey Terraced houses	Approve subject to conditions	Refuse	Northern Area LPC 27 May 2005	Refuse	29 Sept. 2005	NO	NO
<p>The Reporter concluded that the increase in height of the proposed houses over those previously approved would have a significant impact on the setting of the nearby listed building; they would be over-dominant rather than subservient. The height of the proposed houses was an adverse issue in terms of the relationship to existing properties to the south of the site whose privacy would be impacted. These matters meant that the application was contrary to policies in the local plan particularly in terms of houses 1 and 2. The appeal was dismissed.</p>										
13	04/1227/FL	Hallhouse, Kilmaurs Road, Fenwick	16 detached dwelling houses	Approval subject to conditions	Refuse	Northern Area LPC 18 March 2005	Refuse	01 November 2005	YES	NO
<p>The Reporter concluded that the proposed houses designs were suburban in character and paid no heed to the conservation area, particularly so the house presenting a gable to Main Street. The loss of 41 trees over and above the 125 required to be felled because of their condition would prejudice this landscape feature in the Conservation Area. In addition the proximity of retained trees to proposed houses would likely lead to future pressure for their removal and the new planting proposed would not mitigate all this. The proposals were also considered to be contrary to policies in the local plan in terms of heritage conservation, density and design. The lack of a design statement was contrary to PAN 67.</p>										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
14	05/0001/OL	Land adjacent to Ivydene, Coalhall	Erection of Single House	Refuse	Refuse	Southern LPC 24 March 2005	Refuse	12 January 2006	NO	NO

The Reporter indicated that the proposal was in conflict with the development plan and only an assessment of the material considerations might support the application. In that regard, the Reporter supported the definition of the site at this location as being part of the Rural Protection Area. Reference to existing planting as merely "scrub" undervalued its habitat value and the formation of an access and subsequent possible pressure from any occupiers would likely prejudice this feature and local amenity and character. The Reporter concluded that, despite the appellant's references to SPP15, SPP3 and PAN 72, there "was nothing in them which is intended to undermine or nullify basic development control in the countryside as expressed in the development plan policies which have highest weight in terms of Section 25 of the Act". The house had no functional need and the Reporter had "misgivings" about the road safety implications of the house. The appeal was dismissed.

15	05/0832/AD	Flat 8/6, Low Glencairn Street, Kilmarnock	Externally illuminated, 48 sheet, gable mounted advert hoarding	Refuse	Refuse	Delegated 30 August 2005	Approved	01 Feb. 2006	NO	NO
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The Reporter identified this as a mixed use area where there was already advertising beyond that required to identify local businesses and the amenity of the area would not be further compromised. The Council's suggestion that the hoarding would be detrimental to road safety was diminished by its being partly screened by existing trees in longer views and the nearby traffic signals being a dominant feature from which attention would not be unduly drawn to the advert. The appeal was sustained.

16	04/1018/OL	Old Station Yard, Dunlop Road, Lugton	Residential Develop.	Approve subject to conditions	Refuse	Northern Area LPC 28 October 2005	Approve subject to conditions	15 March 2006	NO	NO
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The application was refused because it was detrimental to the visual amenity of the surrounding area, given the prominence of the site. The Reporter assessed the proposal concluding it was consistent with the Structure Plan and the policies of the EALP, particularly concluding that, although in Outline, there was no reason why a sympathetic development with an appropriate landscaping treatment could not bring about a significant improvement in the visual amenity of the area. The appeal was sustained and the application approved subject to conditions.

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
17	05/0884/FL	Peking House, 25 Wallace Street, Galston	Installation of Security Shutters	Refuse	Refuse	Delegated 19 October 2005	Refuse	15 March 2006	NO	NO
<p>The Reporter considered that the shutters were of a design that did not comply with the policies in the EALP and associated design guidance. The presence of other long standing but inappropriate shutters was considered to be capable of being addressed when they came to be replaced, at which time suitable designs consistent with policy and associated guidance would be sought. Given that the applicant was advised in advance about the unsuitability of the shutters eventually erected, and subject of the appeal, and that removable shutters would also be consistent with the Memorandum on Listed Buildings and Conservation Areas, the Reporter determined that there were no material considerations to justify approval contrary to the EALP and dismissed the appeal.</p>										
18	05/0349/FL	Adjacent to Tesco, 112 Glasgow Road, Kilmarnock	Erection of pod for Automatic Telling Machine, (in retrospect).	Refuse	Refuse	Delegated 13 May 2005	Approve	29 March 2006	NO	NO
<p>The Reporter's decision was based solely on the material considerations in terms of design and visual amenity. Although conceding that the "pod" had a somewhat temporary appearance, it was not seen as being particularly prominent or visually intrusive, nor out of keeping with its surroundings. It was not viewed by the Reporter as not having a significant effect on the amenity of the area, however, because its appearance was to a degree "temporary" and it did not integrate well into the area, a three year temporary consent was granted.</p>										
19	05/1224/FL	42 Woodlands Grove, Kilmarnock	Two storey extension to dwelling house	Approve subject to conditions	Refuse	Central LPC 03 Feb. 2006	Refuse	25 July 2006	NO	NO
<p>The Reporter considered the extension against policy ENV 7 of the EALP and determined that the extension would have a significant effect on the amount of sunlight reaching the conservatory and garden of the adjoining house. Taken with nearby trees, there would be little sunlight reaching the adjoining house's conservatory for 6 months of the year. The appeal was dismissed.</p>										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
20	05/0798/FL	Vacant Land south of the A759, opposite Moorfield Industrial Estate	Erection of stable and Formation of a Access	Refuse	Refuse	Central LPC 03 Feb. 2006	Refuse	06 Sept 2006	NO	NO

Policy ENV 13 of the EALP expects, in summary, development to have minimum visual impact on the rural area. The Reporter considered that this was not the case with the proposed stable building which was of an industrial appearance, elevated above the road and could not be adequately screened with planting. The Reporter considered the site to be remarkably small for any accommodation of grazing horses and expressed himself anxious that successors in title might wish to secure a house to tend the animals and for purposes of security. He dismissed the appeal.

21	05/0769/OL	Balgreen Farm Holybush	Proposed Erection of 4 Dwelling houses	Refuse	Refuse	Delegated refusal following weekly list	Approve	06 Sept 2006	NO	NO
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Four houses were proposed in outline as an extension to a steading redevelopment in the Rural Protection Area. They were refused for failing to meet the relevant policy's justifying criteria. The Reporter accepted that the proposal offended the development plan but, reflecting on SPP15, argued that the wording in the document permitted ways, other than absorption into the local plan, to embrace the "overarching themes and vision" of the SPP. "Day-to-day development control remains one appropriate way – not the sole way or the principal way – in which the said themes and vision may be delivered on the ground." In that sense he viewed the SPP as "a major supportive consideration in this appeal". The Reporter considered the emerging development plan to carry very little weight in the determination. The site in terms of location, accessibility, layout and the fact it appeared to have been "left over" from the steading redevelopment, presented a strong pragmatic case for allowing the appeal. Notwithstanding Council concerns about precedent, "the fact remains that the particular circumstances of this unusual site, with so much development already approved alongside, strongly warrant the success of the appeal," concluded the Reporter. He sustained the appeal.

22	05/0226/FL	Rigg Road, Phase 1, Cumnock	Proposed Development for the Erection of 92 Dwelling Houses	Refuse	Approve	Dev Services Committee Approve 25 June 2005	Call in decision:- Refuse	Scottish Ministers decision date:- 01 Aug. 2006	NOT APPLICABLE	NOT APPLICABLE
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This application, whilst not strictly in respect of an appeal, does concern a decision taken by the Scottish Ministers relative to an application called in by them and subsequently determined following a public local inquiry. This housing proposal was recommended for refusal at the Southern Local Planning Committee. That Committee agreed to approve the application, a decision later endorsed by the Development Services Committee on 28 June 2005 who determined that it was an acceptable departure from the development plan because:-

i] “there is currently a need for the significant release of land for housing development in and around the settlement of Cumnock, notwithstanding the review of the East Ayrshire Local Plan which is presently underway and as a part of which the supply of housing land will be examined with a draft plan expected towards the end of this year, and ii] the proposed development includes the provision of a new emergency access off Bute Road which would also serve as an emergency access to the wider Holmhead area, thereby enhancing public safety, subject to the imposition of appropriate conditions to ensure that the emergency access is not available for general vehicular access”.

The Reporter concluded that the application was contrary to policies ADS3, G5 and L5 of the Ayrshire Joint Structure Plan and policy COMM3 of the Finalised Draft Ayrshire Joint Structure Plan. He also stated that it would be contrary to policies SD3, RES2 and RES13 of the Adopted East Ayrshire Local Plan. In terms of relevant national planning policy, the Reporter concluded that the proposal was not positively supported by SPP1, SPP3 or PAN38. Furthermore he indicated that the figures in the latest housing audit do not support the claims that there is a shortfall of housing sites measured against the requirements set out in the development plan and the emerging structure plan. Summing this up, he stated that “the granting of planning permission would be premature pending an imminent review of the Local Plan at a time when there is no demonstrated shortfall in the current housing land supply”.