

EAST AYRSHIRE COUNCIL

**NORTHERN AREA LOCAL PLANNING COMMITTEE:
30 SEPTEMBER 2005**

**05/0030/FL: PROPOSED AMENDMENT TO CONDITION 1 OF PLANNING
PERMISSION 03/0037/FL RETROSPECTIVELY, TO REMOVE THE
REQUIREMENT FOR A STONE BOUNDARY WALL, REPLACE 1.8 METRES
HIGH CLOSE BOARDED FENCE WITH 1.0 METRE STOB AND WIRE FENCE
BETWEEN THE PROPERTIES AND REPLACE WALL TO REAR OF BARN
WITH 1.8 METRES CLOSE BOARDED FENCE
AT SHAW FARM, KILMAURS
BY QUEENSBRIDGE RESIDENTIAL**

**Supplementary Report by Head of Planning, Development and Building
Standards**

1. PURPOSE OF REPORT

1.1 This supplementary report is intended to clarify the enforcement issues relating to development activity at Shaw Farm, Kilmaurs. **This should not in any way be considered in the determination of any related planning application.**

2. ENFORCEMENT HISTORY

2.1 As indicated in the original report in September 2004, Breach of Condition Notices (BCN) were served by the Council on all parties having an interest in Shaw Farm. The breach was non-compliance with Conditions on Planning Consent 03/0307/FL including non-completion of the development in accordance with the approved drawings. These persons included the applicant, Queensbridge Residential, and also the three present owners and the relatively recent purchasers of the residential units at Shaw Farm, from Queensbridge Residential. These owners also constitute the objectors to the present planning application.

3. ENFORCEMENT PROCESS

3.1 A BCN can be served solely on any person who has carried out the development (ie the applicant, Queensbridge Residential). However, in line with other enforcement proceedings a BCN can also be served on the person/persons having an interest in the land affected (ie the landowners/objectors in this case). The Council chose to serve notices on all these parties at Shaw Farm,

consequently all became liable for compliance with the terms of the notice served in September 2004. Given that the development was incomplete at that time it would in hindsight have been more appropriate to serve the notice only on the developer.

3.2 A BCN notice should specify the planning permission to which it relates and the conditions which have been contravened, in order to establish the reasons for its service. The notice should also specify the steps required to be taken for the purposes of compliance and the period for such compliance, being not less than 28 days. In this case, the BCN related to three of the conditions on the original consent, two of which have now been complied with.

3.3 There is no right of appeal to the Scottish Ministers against a Breach of Condition Notice. However, recipients may make representations to the Planning Authority if they believe the notice to be unreasonable. The Planning Authority have the discretionary power to withdraw a notice at anytime. The withdrawal of a notice does not affect the Planning Authority's power to serve a further notice.

3.4 Under Section 145(9) of the Town and Country Planning (Scotland) Act 1997 non compliance with a BCN is an offence. A notice is breached if, at any time after the expiry of the compliance period:

- Any condition specified in the notice has not been complied with; and
- The specified steps have not been taken, or the specified activities have not ceased.

3.5 Section 137 of the 1997 Act provides that, where planning permission is subsequently granted so as to authorise any activity which a Breach of Condition Notice specified as being a contravention of a planning condition, or where a condition specified in the notice is discharged, the notice ceases to have effect in so far as it requires anyone to secure compliance with that condition. But Section 137(3) also specifically provides that, when a Breach of Condition Notice ceases to have effect, wholly or partly, in these circumstances, that does not discharge any person's liability for an offence of previously failing to comply, or not securing compliance, with the notice. In other words, a person can be prosecuted for a contravention of a Breach of Condition Notice occurring during any period prior to the date when the subsequent planning permission is granted or the relevant condition is discharged.

3.6 Penalties for contravention of a BCN are summary prosecution in the Sheriff or District Court. Prosecutions must be brought within 6 months of the date on which the offence was committed. If the offence is a continuing one there is a 6 month time limit which begins to run on the last date when the

offence was committed, although in such cases the prosecution can include the whole period of the offence.

3.7 It is a defence for those charged with an offence under Section 145(9) to prove:

- That they took all reasonable measures to secure compliance with the conditions specified in the notice; or
- Where the notice was served on them as having control of the land, that they no longer had control of it at the date when the offence is alleged to have taken place.

4. CONCLUSIONS

4.1 Since service of the BCN in September 2004, the submission of application 05/0030/FL and the passage of time, would dictate that the pursuit of breaches at Shaw Farm would most appropriately be undertaken through the service of a fresh Breach of Condition Notice. The Division has researched further the options available and, as indicated in 3.1 above, should it be considered that future enforcement action is required, such action could be focussed solely on the applicants as opposed to other parties. For clarity in that scenario, it would be appropriate to withdraw the earlier BCNs served in 2004.

4.2 It remains the case that the enforcement implications (if any) arising from considering planning application 05/0030/FL should not weigh in the Committee's determination of the application.

5. RECOMMENDATION

5.1 It is recommended that the Committee note the content of this report.

Alan Neish
Head of Planning, Development and Building Standards

23 September 2005
(WS/MMM)

EAST AYRSHIRE COUNCIL

**NORTHERN AREA LOCAL PLANNING COMMITTEE
02 SEPTEMBER 2005**

**05/0030/FL : PROPOSED AMENDMENT TO CONDITION 1 OF PLANNING PERMISSION 03/0037/FL RETROSPECTIVELY, TO REMOVE THE REQUIREMENT FOR A STONE BOUNDARY WALL, REPLACE 1.8M HIGH CLOSE BOARDED FENCE WITH 1.0 METRE STOB AND WIRE FENCE BETWEEN THE PROPERTIES AND REPLACE WALL TO REAR OF BARN WITH 1.8M CLOSE BOARDED FENCE.
AT SHAW FARM, KILMAURS
BY QUEENSBRIDGE RESIDENTIAL**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The proposal aims to amend condition 1 of Planning Permission 03/0037/FL with regard to sections of boundary treatment within the application site. This proposal aims to:

- Remove the requirement to erect a 1.2m boundary stone wall to the front of the properties adjacent to the access road,
- To utilise 1m high stob and wire fences to divide the rear garden ground of the three residential units, in place of the 1.8 metre high close boarded fence previously approved, and
- Replace the wall to the rear of the barn with 1.8m close boarded fence.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the condition on the attached sheet.

3. CONCLUSIONS

3.1 The proposed development accords with the terms of Section 25 and Section 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, the material considerations are supportive of the application and the alterations to the approved development are acceptable.

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 such a decision would not represent a substantial departure from 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.

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE 02 SEPTEMBER 2005

**05/0030/FL : PROPOSED AMENDMENT TO CONDITION 1 OF PLANNING PERMISSION 03/0037/FL RETROSPECTIVELY, TO REMOVE THE REQUIREMENT FOR A STONE BOUNDARY WALL, REPLACE 1.8M HIGH CLOSE BOARDED FENCE WITH 1.0 METRE STOB AND WIRE FENCE BETWEEN THE PROPERTIES AND REPLACE WALL TO REAR OF BARN WITH 1.8M CLOSE BOARDED FENCE.
AT SHAW FARM, KILMAURS
BY QUEENSBRIDGE RESIDENTIAL**

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 from six individuals.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is a converted farmhouse and associated outbuildings which have been subdivided and converted into three residential units under planning permission 03/0037/FL.

2.2 **Proposed Development:** The proposal aims to amend condition 1 of Planning Permission 03/0037/FL with regard to sections of boundary treatment within the application site. This proposal aims to:

- Remove the requirement to erect a 1.2m boundary stone wall to the front of the properties adjacent to the access road,
- To utilise 1m high stob and wire fences to divide the rear garden ground of the three residential units, in place of the 1.8 metre high close boarded fence previously approved, and
- Replace the wall to the rear of the barn with 1.8m close boarded fence.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Road's and Transportation Division have no objection to the proposal.

Noted

3.2 Kilmaurs Community Council have not responded at the time of writing the report

Noted

4. REPRESENTATIONS

Three letters of objection have been received from six objectors in relation to this proposal. They raise the following issues ;

4.1 The developer should be made to build as per the original approved plans.

Under the terms of the Town and Country Planning (Scotland) Act 1997 the developer is required to carry out the development in accordance with the approved drawings for the appropriate planning permission. The planning legislation does not require for the developer to complete the development within a given timescale. However it should be noted that if the developer was granted approval (ie this application) to amend the development scheme then said amended approval would be the appropriate drawings to be implemented.

4.2 The row of large boulders (across the front of the properties) does not present a permanent boundary to the front of the property.

The positioning of large boulders across the frontage of the development is not considered to be development and does not require planning permission.

4.3 The use of the 1 metre high, stob and wire boundary fence offers no privacy and is more suited to fencing in farm animals rather than between residential units.

It is considered that, due to the rural location of the site and the considerable length of the garden areas, the use of 1m high stob and wire fencing to divide the approximately 60 metre long rear garden ground of the residential units is acceptable in this location. The subdivision of this area by 1.8m high fences would introduce visual clutter to the detriment of the visual amenity of the rural area.

4.4 The close board fence at the rear of the barn is not in keeping with the property.

It is considered that the use of the 1.8metre high timber fencing to prevent overlooking between the interior of the adjacent dwellinghouses at this location is acceptable.

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 Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no structure plan policies directly relevant to this application.

Noted.

East Ayrshire Local Plan

5.3 Policy ENV 7 of the East Ayrshire Local Plan indicates that all proposals shall accord with the requirements of the Council's existing and emerging design guidance. The Council's Design guidance on residential development requires that in relation to boundary treatments the materials used shall be compatible with the area in which they are located.

5.4 As indicated above, it is considered that due to the rural location of the site and the considerable length of the garden areas, that the use of 1m high stob and wire fencing to divide the approximately 60 metre long rear garden ground of the residential units is acceptable in this location. The subdivision of this area by 1.8m high fences would introduce visual clutter to the detriment of the visual amenity of the rural area and create a more suburban appearance to the site.

5.5 The provision of a boundary wall to farm steadings which abutt an access track is not a common feature in the West of Scotland. It is considered that the proposal to delete the 1.2m high boundary wall to the front boundary of the properties is acceptable. However a condition should be attached to any grant of consent requiring that a stob and wire fence be provided to form boundary enclosure to the garden areas of the development which front onto the access road.

5.6 With regard to the replacement of the section of existing walling at the rear of the barn with 1.8m high timber fencing, it is considered that the use of the 1.8metre high timber fencing to prevent overlooking between the interior of the adjacent dwellinghouses at this location is acceptable. The location is not

visually prominent and the materials used in the screening are secondary to the need to provide an effective screen to avoid overlooking.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the letters of objection, consultation responses, the planning history of the site and the impact on amenity.

Consultation Responses

6.2 The consultation responses do not indicate that the application should be refused.

Planning History

6.3 Planning application 03/0037/FL was approved on 19 May 2003 for the proposed change of use, rehabilitation and minor rebuild of existing farm buildings to form two dwellinghouses, alterations to existing farmhouse, upgrade access road and form turning head at Shaw Farm, Kilmarnock.

6.4 A Breach of conditions enforcement notice in relation to the breach of planning conditions of planning permission 03/0037/FL was served on the 16 September 2004.

Letters of Objection

6.5 None of the issues raised in the letters of objection merit refusal of the planning application.

Impact on amenity

6.6 As indicated above it is considered that the proposed amendment to the residential development will not have a detrimental impact on the residential amenity of the properties and will result in a more sympathetic solution given the rural location due to the reduction in the intrusive built form of the 1.8m high fence.

7. FINANCIAL AND LEGAL IMPLICATIONS

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

8. CONCLUSIONS

8.1 The proposed development accords with the terms of Section 25 and Section 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, the material considerations are supportive of the application and the alterations to the approved development are acceptable.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the condition on the attached sheet.

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 such a decision would not represent a substantial departure from Council Policy.

Alan Neish
Head of Planning, Development and Building Standards

23 August 2005
(CSI/RH)

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 (2003).
5. Approved Ayrshire Joint Structure Plan (1999).
6. Planning application reference 03/0037/FL
7. Enforcement file Dp/030/04/160
8. Objections.

Anyone wishing to inspect the above background papers should contact Craig Iles, Senior Planning Officer 01563 576772.

050030FLShawFarmKILMAURSRH

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 05/0030/FL

Site of Proposal: Shaw Farm
Kilmaurs
KILMARNOCK, KA3 2PR

Nature of Proposal: Proposed amendment to condition 1 of
Planning Permission 03/0037/FL
retrospectively to remove the requirement for a
stone boundary wall, replace 1.8m high close
boarded fence with 1.0 metre stob and wire
fence between properties and replace wall to
rear of barn with 1.8m close boarded fence

Name & Address of Applicant: Queensbridge Residential
Per Jones Lang Lasalle
150 St Vincent Street
GLASGOW
G2 5ND

Name & Address of Agent: Jones Lang Lasalle
150 St Vincent Street
GLASGOW
G2 5ND

DPOs Reference: CSI/RH

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

1. Notwithstanding the approved plans, a post and wire, one metre high fence shall be erected along the boundary between the garden ground of the residential units and the access road, as identified in blue on the approved plans within 2 months of the date of this consent, and thereafter shall be retained and maintained, unless otherwise agreed in writing by the Planning Authority.

REASON In the interest of visual amenity.

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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
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