

**EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE: 23 APRIL 2004**

**03/0923/FL: ERECTION OF 41 NUMBER DETACHED DWELLINGHOUSES  
TOGETHER WITH ALL RELATED ANCILLARY WORKS  
AT FORMER ROWALLAN CREAMERY SITE, GLASGOW ROAD,  
KILMARNOCK  
BY DAVID WILSON HOMES**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 It is proposed to develop the site for residential purposes and erect 41 two storey detached dwellinghouses, of 6 different types. Of these 41 dwellinghouses, it is proposed that 2 units will contain 3 bedrooms, 30 units will contain 4 bedrooms, and 9 units will contain 5 bedrooms.

1.2 Vehicular access to the site is proposed from a single point accessing onto Glasgow Road. An internal cul-de-sac with traffic calming terminates at a roundel with private driveways and three shared surface off-shoots accessing onto the internal road. A belt of landscaping is proposed to the site frontage along Glasgow Road, and an area of public open space is proposed in the southeastern corner of the site. The area of banking to the edge of the Fenwick Water has been shown not to be accessible open space.

1.3 In terms of finishes, it is proposed to finish all the dwellinghouses with grey concrete roof tiles, and facing brick clad walls.

**2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheets and that the issuing of the Decision Notice be withheld until the Solicitor to the Council has concluded a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 dealing with the matters itemised in Paragraph 8.4 of the report.**

### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the Report, the proposed development does not accord with the provisions of the development plan in terms of public and private open space provision, and the spacing of some of the dwellinghouses proposed. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the Report, there are material considerations relevant to this application. In arriving at a decision, an assessment requires to be made of whether these material considerations are of sufficient weight to justify a departure from the development plan in this instance.

3.2 Given the extent and location of open space provision in the vicinity of the site, the proposed development is considered satisfactory in terms of public open space provision. The Council's Design Guidance on New Residential Developments states that if it can be demonstrated that the provision of private open space is not reasonably possible and may prejudice an otherwise acceptable development then the Council may consider waiving this requirement particularly in town centre or brownfield locations. It is noted from the applicants supporting statement that the site is constrained. It is accepted in this case that an exception to private open space can be made on the grounds that this would otherwise prejudice an otherwise broadly acceptable development of the site. Whilst the development fails to entirely address the Councils Design Guidance, it is considered that the application probably represents close to the optimum financially viable solution that can be achieved on this brownfield site. Whilst the previous application for the site was withdrawn prior to determination, the current proposal represents a substantial improvement in comparison.

3.3 As is indicated in Section 6 of the Report, there are other material considerations relevant to the application which require to be given due weight in arriving at a decision. With regard to the consultation responses received, it is considered that the matters raised can be dealt with by means of appropriately worded conditions. The representations against the development require to be taken into account in arriving at a decision. It is considered that, on balance, these representations are not of sufficient weight to justify refusal of the application.

3.4 On balance, it is recommended that the proposed development should be approved subject to the imposition of appropriately worded conditions, and subject to a Section 75 Agreement under The Town and Country Planning (Scotland) Act 1997 to include the following obligations on the part of the developer: -

### Section 75 Agreement

- i) The provision of a financial contribution to the Council in accordance with Policy TLR 5 of the adopted East Ayrshire Local Plan; and
- ii) The future maintenance responsibility for any river bank protection measures required and access arrangements to the river bank.

### **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.

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KILMARNOCK  
BY DAVID WILSON HOMES**

**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, due to the nature of the proposed development which comprises 41 residential units, and the fact that the application is subject to objections.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The site extends to approximately 2.42 hectares and is located on the eastern side of Glasgow Road at the northern end of Kilmarnock. The site is currently occupied by buildings associated with the former Rowallan Creamery and slopes from Glasgow Road to the steeper bank of the Fenwick Water. The sole point of vehicular access to the site at present opens onto Glasgow Road.

2.2 A telecommunications mast is located directly adjacent to the site to the northeast with agricultural land bordering the remainder of this part of the site. The eastern portion of the site is bordered by the Fenwick Water with woodland and open agricultural land beyond. The south-western site boundary lies adjacent to existing residential development with established intervening tree cover to the north-west and Wardneuk Plantation to the easternmost part of the south-western site boundary.

2.3 **Proposed Development:** It is proposed to develop the site for residential purposes and erect 41 two storey detached dwellinghouses, of 6 different types. Of these 41 dwellinghouses, it is proposed that 2 units will contain 3 bedrooms, 30 units will contain 4 bedrooms, and 9 units will contain 5 bedrooms.

2.4 Vehicular access to the site is proposed from a single point accessing onto Glasgow Road. An internal cul-de-sac with traffic calming terminates at a roundel with private driveways and three shared surface off-shoots accessing onto the internal road. A belt of landscaping is proposed to the site frontage along Glasgow Road, and an area of public open space is proposed in the southeastern corner of the site. The area of banking to the edge of the Fenwick Water has been shown not to be accessible open space.

2.5 In terms of finishes, it is proposed to finish all the dwellinghouses with grey concrete roof tiles, and facing brick clad walls.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Countryside Services Manager has commented that the site of the Creamery currently has a chain link fence surrounding it. The fence should be retained or similar erected for two reasons: -

(i) In order to prevent young children gaining access to the river. The Fenwick Water can rise by over 1 metre within a couple of hours. This would be very dangerous for any unaccompanied children playing on the banks;

(ii) The woodland areas adjacent to the site do not have any formal paths running through them. This provides a refuge for wildlife such as Roe Deer, Foxes, Badgers, and Sparrow Hawks. Any increase in public usage from the proposed housing estate could only have a detrimental effect on the population of these animals.

***Noted. It is not proposed that the riverside areas or land bordering the site will be accessible to the public from the housing development. The applicant has clarified that they do not intend to promote public access due to the nature of levels that presently exist. Should planning permission be granted for the proposed development, appropriately worded conditions can be imposed to cover the type and location of all boundary treatment.***

3.2 East Ayrshire Council Roads and Transportation Division has stated that a Sustainable Urban Drainage System should be provided for the development. A drainage impact assessment needs to consider the existing culvert that runs through the site. The sightline required at the junction of the proposed access with Glasgow Road should measure  $x=4.5$  metres and  $y=90$  metres.

***Should planning permission be granted for the proposed development, an appropriately worded condition can be imposed to ensure that a SUDS arrangement to SEPA's satisfaction is***

***implemented within the development to deal with surface water drainage. Consideration has been given by the applicant to the existing culvert through the site (see Section 6 of the Report). The required sightline can be achieved wholly within the existing public road boundary.***

3.3 The contents of the Flood Risk Assessment are accepted by East Ayrshire Councils Roads and Transportation Division, who agree to the proposed 750mm diameter culvert through the development site. However, it will be necessary for the applicant to confirm the following: -

- (i) the proposed line of the culvert through the development site;
- (ii) Manhole construction details and proposed locations along the culvert;
- (iii) access arrangements to the riverbank for inspection and maintenance purposes;
- (iv) approval of the proposed drainage by SEPA and Scottish Water; and
- (v) the future maintenance responsibility for any river bank protection measures.

***Noted. Should planning permission be granted for the proposed development, appropriately worded conditions and notes to the applicant can be imposed to ensure that these matters are clarified to the satisfaction of the Roads and Transportation Division.***

3.4 Scottish Power has stated that SP Distribution has an operational sub-station within the vicinity of the site. Scottish Power object to the development as proposed on the basis that they have received no information as to whether the plant will be affected by the proposal and, if so, to what extent.

***The operational sub-station referred to is located to the southwest of the application site. As a consequence, the plant will not be affected by the proposed development.***

3.5 Transco has forwarded a copy of its record plan showing the location of their plant and has no objections to the proposed development as the site does not contain any Transco pipelines or apparatus.

***Noted.***

3.6 The Coal Authority has not identified any instability issues which would affect the determination of this planning application.

***Noted.***

3.7 Scottish Water has stated that a connection will be allowed for the proposed development as the proposed foul discharge is less than the previous flow from the Creamery.

***Noted. Information submitted by the applicant indicates that the anticipated foul discharge volume from the proposed development is 168 cubic metres per day compared with over 200 cubic metres per day when the Creamery was operational.***

3.8 The Scottish Environment Protection Agency (SEPA) has stated that they have no objection in principle to the proposed development. All foul drainage from the site should be connected to the public sewer. Written confirmation should be sought from Scottish Water to ensure that the additional flow arising from this development will not cause or contribute to the premature operation of consented storm overflows and that sufficient capacity exists within the network to adequately treat the increased load.

**See Section 3.7 of the Report.**

3.9 Any planning permission granted should include a condition requiring the applicant to treat surface water from the site in accordance with the principles of the Sustainable Urban Drainage Systems Design Manual for Scotland and Northern Ireland, which was published by CIRIA in March 2000.

***Should planning permission be granted for the proposed development, an appropriately worded condition can be imposed to ensure that a SUDS arrangement to SEPA's satisfaction is implemented within the development to deal with surface water drainage.***

3.10 It is possible that previous uses at the site as a creamery may have resulted in land contamination although no details have been received relating to the site history or its condition. With regard to the National Waste Strategy Local Area Waste Plan, suitable provision should be made with regard to space for waste storage at individual properties and the development as a whole. Such provision should be in line with the Council's collection plans to address the recycling, composting, recovery, and disposal targets contained within the Area Waste Plan and implementation plan.

**On the issue of land contamination, the applicant has submitted a Ground Investigation Report dated February 2003. This Report concludes that a localised area of hydrocarbon contaminated materials should be excavated and removed to a suitable landfill site. Should planning permission be granted for the proposed development, an appropriately worded condition can be imposed to ensure that waste storage arrangements within the site are in line with Council's forthcoming collection plans.**

3.11 Southcraigs-Dean Community Council has stated that they have no objection to the application. However, the Community Council would like built into the conditions of planning that a contribution is made towards the provision of community facilities. The Community Council would make it clear that the inclusion of children's play areas would not be considered as an acceptable contribution.

***Noted. The applicant has indicated a willingness to provide a financial contribution under the terms of Local Plan Policy TLR 5.***

#### **4. REPRESENTATIONS**

Following re-notification of neighbouring parties, two letters of representation have been received in respect of the application, summarised below: -

4.1 There are trees on the border of my property at 52 Forest Grove and the Creamery site. These trees are now a considerable height and as such will affect the light for the houses built to the north of them. I would like the cutting down of these trees to be a condition of the planning permission as we do not wish to end up with the responsibility for their removal now that they are redundant for screening. I did not raise this point at the time of the Bryant application as they brought the matter to my attention and later in writing agreed to cut down the trees when the buildings were being demolished.

***Noted. As the trees in question are located outwith the application site, this matter cannot be made a condition of any planning permission issued, and the felling of the trees is a civil matter between the developer and the objector. This Division would not object to the felling of the trees in question which do not have protected status.***

4.2 NTL are actively engaged in promoting the sharing of sites throughout the UK. NTL fully endorses National Planning Policy Guideline 19 in its suggestion that existing sites should be utilised where possible to safeguard the amenities and character of an area in preventing mast proliferation in the rural and built environment. As a responsible site operator NTL uses very conservative guidelines set by the mobile phone operators, to determine precautionary exclusion zones from local housing. We have assessed our site [adjacent to Rowallan Creamery] with its present complement of antennas using the Mobile Operators Association (MOA) guidelines and it meets these guidelines with the planned housing development. However, should we wish to install additional operators at this location, the exclusion zones from housing, according to the MOA guidelines, would increase in size and overlap with the proposed housing which is much closer to our site than the existing housing. This will result in the

proposed development limiting our ability to maximise the sharing potential of the site, in line with government policy. We therefore object to the proposed development since it will prevent us from extending our business at this location.

***It is noted that the existing mast and antenna comply with MOA guidelines in relation to the proposed development. With regard to future equipment on the mast, the potential for the proposed development to constrain the ability to site share at this mast, is not considered to be an issue of sufficient weight to justify refusal of the application.***

## **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 RES4 states that, within Settlement Boundaries, the Council will positively encourage 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 safeguarded or identified for particular development purposes on the Local Plan maps. Developments will be assessed against a set of four stated criteria, as follows:

- (i) impact on the surrounding natural and built environment and adjacent uses;

***The application site includes part of a Provisional Wildlife Site (Dean Estate Country Park) but it is not proposed to build on this portion of the site due to its sloping nature next to the riverbank. There are no adverse impacts on surrounding uses.***

- (ii) transportation and infrastructure implications;

***See comments provided in Section 3 of the Report.***

- (iii) compatibility with surrounding densities and housing types; and

***The proposal is considered broadly compatible with surrounding densities and house types.***

- (iv) compliance with the Council's Development Promotion and Design Guidance.

***Against the terms of Design Guidance Note 2: New Residential Development, the proposal is non-compliant in terms of minimum recommended distances between houses, the extent of public open space within the site, and the extent of recommended private garden ground in terms of size and proportion of several plots. These deficiencies are not considered to be of such significance in the circumstances of this brownfield site as to merit refusal of the application.***

5.4 Policy RES19 requires all housing developers to provide areas of recreational and amenity open space in their developments to the indicative basic standards set out in Schedule 3 of the Local Plan. The policy states also that the precise type, size, location and design of the open space required is dependent on the extent of existing open space provision in the vicinity and the recreational and amenity needs of the wider area.

***As the proposed development is for 41 dwellinghouses, the appropriate standard of amenity open space in accordance with Schedule 3 of the Local Plan would be 1230 square metres comprising a mixture of active recreational open space and amenity open space (including planted and landscaped areas). Open space is incorporated along the site frontage and to the southeastern corner which cumulatively comes close to achieving this level of provision.***

5.5 Policy RES22 requires all developers to observe the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan. The policy also allows those standards quoted to be relaxed in respect of the conversion of existing properties to flats where this can be fully justified by the developer and where considered appropriate by the Planning Authority.

***Several of the garden areas proposed fail to meet the private open space standards specified in the Local Plan. However, it is recognised that there may be a case for a relaxation in these standards given the brownfield nature of the site and the benefits to be obtained in this circumstance from a redevelopment of the site.***

5.6 Policy IND 8 states that proposals for alternative uses of land on premises currently or formerly used for industrial purposes shall be considered acceptable subject to the following criteria: -

- (i) the proposed use not being detrimental to surrounding established uses;

***The proposed residential use of the site is not in conflict with uses adjacent to the site.***

- (ii) the proposal meeting with the requirements of all other relevant Local Plan policies; and

- (iii) the existence of alternative industrial or business land or premises with potential for future employment use with the settlement concerned.

***Alternative industrial and business land is allocated in Kilmarnock within the East Ayrshire Local Plan. Other relevant policies are addressed below.***

5.7 Policy TLR 5 states that the Council will request all potential developers of residential sites comprising four or more houses, to enter into a Section 75 Agreement with the Authority for contributions towards the provision of appropriate leisure and recreational facilities within the area to which the development relates. Contributions will be at a level to be agreed by the Council, based on the expected number of houses and the level of need in a particular area for particular facilities.

***The applicant has indicated a willingness to provide a financial contribution of 1% of development costs to the Council under the terms of this policy.***

5.8 Policy ENV 17 states that in areas that are known to have flooded in the past, a precautionary approach to development will be pursued. The Council will require any developer wishing to develop land which has been known to flood in the past to fully investigate the implications of flood risk on their proposals and on adjoining land and property. Appropriate flood prevention measures should be incorporated into the design of their proposals so as to remove or reduce to an acceptable minimum, any adverse effects from flooding that may be experienced. The Council will consult with the Scottish Environment Protection Agency on any development proposals in areas of known flood risk in terms of the SEPA/Planning Authority Protocol on Flooding Issues and will expect developers to enter into agreements with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997, to provide and finance any necessary flood prevention infrastructure that may be required in association with their proposed developments.

***Whilst the site is not known to have a history of flooding, the Flood Risk Assessment submitted by the applicant confirms that the development is not anticipated to be at risk from flooding.***

5.9 Policy ENV 18 states that in cases where a development is proposed on land which is known or suspected to be contaminated, the Council will require the developer to investigate and identify the nature of the contamination and detail the remedial measures to be undertaken to treat or remove the contamination, as an integral part of any submitted planning application. In this regard, developers will be required to carry out a Risk Assessment of the development site as detailed in PAN 33 (revised 2000): Development of Contaminated Land, Annex 1.

***A Site Investigation Report has been submitted by the applicant.***

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

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, the supporting statement submitted on behalf of the applicant, the planning history of the site, and the flood risk assessment submitted by the applicant

### Consultation Responses

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

### Representations

6.3 The representations received have been summarised in Section 4 of the Report and are not considered to be of such weight as to merit refusal of the application.

### Supporting Statement

6.4 The applicant has submitted a Supporting Planning Statement, as an attempt to illustrate the acceptability of the proposed development, the assessment and conclusions of which have been summarised as follows: -

6.5 *“Scottish Planning Policy promotes the preference for the development of brownfield sites for residential use rather than Greenfield sites and for industrial premises that have no prospect of being redeveloped for industrial use to be utilised for the provision of housing. In this regard the proposed development is consistent with the terms of SPP3. Likewise, the Development Plan contains a presumption in favour of residential development on brownfield sites”.*

6.6 *“In relation to residential density, the proposal shows the site accommodating 41 detached dwellinghouses. This represents a higher than normal density which has resulted in the reduction in active open space provision and the distance between dwellinghouses and side boundaries. Setting aside the general policy of encouraging higher density development to make a more efficient use of land, this higher density is necessary in economic terms. The development has been the subject of extraordinary development cost including the demolition of extensive hard standings and heavy structures of the existing Creamery buildings, the diversion of existing large culverts running through the site, the diversion of existing sewers running through the site, crushing and re-grading/distribution of materials arising from demolitions to create platform for development, the provision of retaining walls and slope retention measures to ensure stability of new land form, the grouting up of shallow mine workings, the use of special foundation techniques, e.g. vibro compaction and mini piling, and perimeter landscaping on slopes overlooking neighbouring watercourse. These additional development costs have the potential to undermine the overall development and therefore it is necessary to maximise the number of units on the site, to ensure that this derelict site can be redeveloped and make a positive and effective contribution to housing land. It is therefore our opinion that the proposed density is appropriate to the particulars of the site and the development is in keeping with the character of recent housing development in this area”.*

6.7 *“The standard minimum window-to-window distance between habitable rooms of 18 metres has been maintained where houses face each other. Where properties are closer than this they are positioned so as no direct overlooking occurs. Given the height, location, and orientation of the proposed houses, no houses are likely to result in significant overshadowing or appear oppressive or visually intrusive”.*

6.8 *“Private garden/amenity space is largely provided to the rear of the proposed houses. The guideline recommends that private open space be provided at a ratio of 60:40 and this is achieved in all but Plot 7. The guideline recommends a distance of 1.5 metres between any dwellinghouse and its side boundary. This proposal represents a higher than normal density. It is therefore considered that in order to achieve this, a reduction in the distance from 1.5 metres, as recommended, to 1 metre is the most effective way in which to achieve this having regard to amenity and privacy”.*

6.9 *“It is also the case that the active open space provision on the site has been reduced for the reasons noted above. It is the applicants position that a financial contribution to compensate for this reduction is appropriate in line with the general parameters set out in Policies RES 21 and TLR 5. It is our position that cognisance should be taken of the extraordinary development costs noted above in relation to any financial payment. It is also the case the applicant wishes to implement the application as soon as possible. In this regard there is concern*

*over the use of a Section 75 Agreement as a mechanism for securing this financial contribution. The Planning Circular on Planning Agreements suggests that Section 69 of the Local Government Act is an appropriate mechanism where financial contributions are involved. It is our preference to utilise this form of Agreement as opposed to the Section 75 Agreement in this regard, and assuming this can be concluded in an acceptable time frame”.*

*6.10 “In terms of aspect, the proposed development aims to take advantage of solar gain either by having gardens or principal rooms facing south. The linear approach means that the proposed house on the west side of the access road will benefit from south-west facing gardens, while the houses on the east side of the road are largely orientated to make front elevations as close to south facing as possible”.*

*6.11 “The proposed development is of traditional design, similar in scale and character to the adjacent modern housing developments. The houses are typically 2 storey with pitched roofs. All of the proposed houses include garages, which will be finished in materials to match the proposed houses, as recommended in the guidance. Materials will be appropriate to the general location and will include tiles roofs and brick and render walls”.*

*6.12 “The proposed development meets the terms of the Council’s car parking provision for residential development. Each proposed house is served by a double width driveway and a double garage. This provision therefore exceeds the standard of 3 allocated spaces per 4 bedroom or more dwellinghouse. In terms of unallocated spaces, the standards require 4 spaces and this has been provided on site. The road layout has been designed to the Council’s guidelines and incorporates traffic calming measures, the use of materials to distinguish between road and parking surfaces, and shared surfaces as recommended in the guidance note. The proposed vehicular access to the site is designed to the Council’s Roads Standards and incorporates a 4.5 metre X 90 metre visibility splay. In this context, it is our opinion that the proposed development can be considered to be accepted in terms of the Council’s Design Guidance for New Residential Development”.*

*6.13 “In conclusion, the proposed development can be considered to be consistent with the Development Plan and the terms of SPP3 and generally complies with the Councils Design Guidance on New Housing Development. Where these recommended guidelines have not been met, we have explained why a relaxation is justified. We therefore respectfully request that planning permission is granted subject to any conditions considered appropriate. In particular, any financial contribution in relation to open space or recreational facilities should reflect the additional costs associated with this development and should not require the conclusion of a Section 75 Agreement. It is our opinion that a Section 69 Agreement under the Local Government Act is more appropriate in this instance and would allow the development to proceed in a*

more expeditious manner, thereby making an effective contribution to housing land”.

***With regard to the proposed financial contribution under the terms of Policy TLR 5, this would amount to 1% of built costs. The applicant has indicated built costs of approximately £2,900,000. In terms of the appropriate legal mechanism to deliver this contribution, a Section 75 Legal Agreement under the terms of the Town and Country Planning (Scotland) Act 1997 is considered appropriate in this instance in order to accord with the terms of the policy but also to make the agreement enforceable against successors in title, once formalised and recorded appropriately.***

### Planning History

6.14 03/0097/FL: A full planning application for the erection of 42 number new dwellinghouses along with ancillary works at the site was withdrawn on 12 September 2003.

### Flood Risk Assessment

6.15 A Flood Risk Assessment Report has been submitted by a suitably qualified chartered civil engineer. This considers proximity to the Fenwick Water, an existing culvert through the site, the site topography and the potential causes of on-site flooding. Recommendations address finished floor levels, the engineering of a new culvert and the formation of a safe flow route through the site in the unlikely event of culvert blockage at the Glasgow Road.

***The applicant has stated that they propose to create a flow channel utilising the proposed access road corridor and its associated construction to deliver a safe route to outfall in the event of extreme rainfall. The proposed finished floor levels of the dwellings are cognisant of findings of the Flood Risk Assessment. With regard to the existing culvert, the applicant proposes to divert and engineer a new culvert through the development site. The proposed surface water drainage is independent of the proposed culvert (as diverted). See also comments provided by East Ayrshire Council Roads and Transportation Division in Section 3 of the Report.***

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

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement for a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, with regard to the requirements contained within Section 8.5 of the report.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the Report, the proposed development does not accord with the provisions of the development plan in terms of public and private open space provision, and the spacing of some of the dwellinghouses proposed. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the Report, there are material considerations relevant to this application. In arriving at a decision, an assessment requires to be made of whether these material considerations are of sufficient weight to justify a departure from the development plan in this instance.

8.2 Given the extent and location of open space provision in the vicinity of the site, the proposed development is considered satisfactory in terms of public open space provision. The Council's Design Guidance on New Residential Developments states that if it can be demonstrated that the provision of private open space is not reasonably possible and may prejudice an otherwise acceptable development then the Council may consider waiving this requirement particularly in town centre or brownfield locations. It is noted from the applicants supporting statement that the site is constrained. It is accepted in this case that an exception to private open space can be made on the grounds that this would otherwise prejudice an otherwise broadly acceptable development of the site. Whilst the development fails to entirely address the Council's Design Guidance, it is considered that the application probably represents close to the optimum financially viable solution that can be achieved on this brownfield site. Whilst the previous application for the site was withdrawn prior to determination, the current proposal represents a substantial improvement in comparison.

8.3 As is indicated in Section 6 of the Report, there are other material considerations relevant to the application which require to be given due weight in arriving at a decision. With regard to the consultation responses received, it is considered that the matters raised can be dealt with by means of appropriately worded conditions. The representations against the development require to be taken into account in arriving at a decision. It is considered that, on balance, these representations are not of sufficient weight to justify refusal of the application.

8.4 On balance, it is recommended that the proposed development should be approved subject to the imposition of appropriately worded conditions, and subject to a Section 75 Agreement under The Town and Country Planning (Scotland) Act 1997 to include the following obligations on the part of the developer: -

### Section 75 Agreement

- iii) The provision of a financial contribution to the Council in accordance with Policy TLR 5 of the adopted East Ayrshire Local Plan; and
- iv) The future maintenance responsibility for any river bank protection measures required and access arrangements to the river bank.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheets and that the issuing of the Decision Notice be withheld until the Solicitor to the Council has concluded a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 dealing with the matters itemised in Paragraph 8.4 of the report.**

### **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**

15 April 2004  
(RD/MMM)

FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letters of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Planning application reference 03/0097/FL.
8. Flood Risk Assessment.
9. Supporting Information submitted by applicant.

Anyone wishing to inspect the above background papers should contact Robert Duncan on 01563 576790.

***Implementation Officer: Dave Morris***

030923FL

## EAST AYRSHIRE COUNCIL

## TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1997

03/0923/FL

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Site of Proposal:	Former Rowallan Creamery Glasgow Road KILMARNOCK KA3 6AB
Nature of Proposal:	Proposed Erection of 41 Detached Dwellinghouses Together with all Related Ancillary Works
Name & Address of Applicant:	David Wilson Homes 251 Springhill Parkway GLASGOW G69 6GA
Name & Address of Agent:	Drew Deans Design 11 Dryburgh Walk Moodiesburn GLASGOW G69 OH

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DPOs Reference: RD/MMM

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

1. Apart from where the conditions listed below require otherwise, the proposed development shall be carried out in accordance with the application form received on 08 March 2004, the amended site plan received by the Planning Authority on 09 January 2004, and the other stamped approved plans.

REASON To ensure that the development is carried out in accordance with approved details.

2. Notwithstanding the terms of Condition 1 above, prior to the commencement of works on site, samples of all materials to be used for the external finishes of the buildings and surfaces of the internal access road and

parking spaces shall be submitted to and approved in writing by the Planning Authority and thereafter implemented as approved.

REASON To ensure that full details of all the external finishes of the buildings and internal road and parking spaces including colours, are agreed.

3. Notwithstanding the terms of Condition 1 above, prior to the commencement of works on site, details of a Sustainable Urban Drainage System and its maintenance following installation shall be submitted to and approved in writing by the Planning Authority. Prior to the occupation of any dwellinghouses within the site, the SUDS arrangement approved under the terms of this condition shall be installed and be fully operational.

REASON To ensure for the provision of adequate surface water drainage within the site.

4. External construction works shall take place only between 8 am and 6pm, Monday to Friday, and between 9 am and 5 pm on Saturday. No such works shall be undertaken at any time on Sunday.

REASON In the interests of the residential amenity of the surrounding area.

5. Notwithstanding the terms of condition 1 above, prior to the commencement of works on site, details of any security and safety fencing required during the period of site development shall be submitted to and approved in writing by the Planning Authority.

REASON In the interests of the residential amenity of the surrounding area.

6. Notwithstanding the terms of condition 1 above, a landscaping scheme shall be submitted to and approved in writing by the Planning Authority prior to the commencement of any development, and shall be implemented not later than the next appropriate planting season after the development has been carried out, and shall be maintained thereafter to the satisfaction of the Planning Authority.

REASON To ensure that adequate landscaping is provided within the site and that it is subsequently maintained, in the interest of residential and visual amenity.

7. Notwithstanding the terms of condition 1 above, prior to the occupation of any of the dwellings to which they relate, the internal road layout and vehicle car parking spaces shall be provided and operational, in accordance with the approved plans to the satisfaction of the Council as Planning Authority.

REASON To ensure appropriate parking facilities are available within the site for incoming residents.

8. Notwithstanding the terms of condition 1 above, prior to the start of any decontamination works required on the site, the Planning Authority shall be given a minimum of 7 days' written notice.

REASON To provide the Planning Authority with adequate notice to arrange the monitoring of any decontamination works.

9. Notwithstanding the terms of condition 1 above, details of the location, design and construction of all boundary features, fences and walls to be erected on the site shall be submitted to and approved in writing by the Planning Authority before any development commences on the site.

REASON To allow the Planning Authority to control the design and construction of such features in the interests of visual and residential amenity.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or any order or enactment replacing this, no extensions or garages (unless forming part of the approved layout plan) shall be erected on the site unless a further specific planning application is submitted to and approved by the Planning Authority.

REASON To enable the Planning Authority to ensure that such structures are provided in a manner compatible with the visual amenity of the area.

11. Prior to the commencement of development on site the applicant shall submit written confirmation of the suitability of the proposed bin storage arrangement to accommodate the Council's 3-bin re-cycling scheme and revised drawings indicating any proposed bin store details. Thereafter, any bin storage shall be provided as agreed by the Planning Authority.

REASON In the interests of visual amenity and public health.

12. Prior to the commencement of works on site, details of the proposed line of the new culvert in the site, including manhole details and localities along the culvert, shall be submitted to the Planning Authority for approval in writing. Prior to the occupation of any dwellinghouses within the site, the culvert arrangement approved under the terms of this condition shall be installed and be fully operational in accordance with the approved details.

REASON To allow for the provision of adequate drainage within the site.

13. Notwithstanding the submitted plans, prior to the occupation of the first dwellinghouse within the site, visibility splay areas of 4.5 metres by 90 metres shall be provided on both sides of the access at the junction with Glasgow Road with no obstruction to visibility greater than 1 metre in height being allowed thereafter within these areas.

REASON To enable drivers of vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit.

14. Glasgow Road shall be kept clear of mud or other deposited materials at all times during the construction of the houses hereby approved. This shall be undertaken by means of mechanical brushing as appropriate.

REASON In the interests of road safety.

Notes to Applicant:

1. Prior to the commencement of development on the site, the applicant should satisfy himself as to the suitability of the site for construction purposes.
2. A copy of the consultation responses received from Transco and The Coal Authority are attached. The developer is strongly advised to note same and take any appropriate recommended action.
3. SEPA have advised that all drainage arrangements should be to the public sewer and consideration given to the use of Sustainable Urban Drainage (SUDS) techniques for the disposal of surface water. SEPA have further advised that any waste arising should be disposed of at a suitably authorised site. The developer is advised to contact SEPA at 2 Alloway Place, Ayr, KA7 2AA, Tel 01292 294 000, particularly with regard to confirming the consequences, if any, of surface water drainage connection to the public sewer.
4. The applicant should make early contact with Scottish Water at their Office at 35 Glenburn Road, Prestwick, KA9 2NS, Tel 0845 601 8855.
5. Following the advice in Note 4 above, the developer is advised that the Council does not currently have a general agreement with Scottish Water in relation to the maintenance of public SUDS. Proposals for site specific arrangements which may require to involve the developer or other third parties will be considered within the overall framework recommended in the design manual for SUDS published by CIRIA. The developer should not assume that East Ayrshire Council will undertake maintenance unless there is a site specific agreement to that effect. Where the developer

makes his own maintenance arrangements, the Council will require to be convinced that these will work without impact on Council interests.

6. The applicant will require to secure the necessary Roads Construction Consent, details of which should be discussed with the Roads and Transportation Division of East Ayrshire Council.
7. The applicant should contact Scottish Power to discuss alteration/protection of their apparatus within the site.

**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.**