

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 05 AUGUST 2005

**05/0195/FL: ERECTION OF TWO HOUSES
AT PLOTS 41 & 42 THE FIELDINGS, NEWMILL ROAD, DUNLOP,
KILMARNOCK
BY D A & J McMULLEN**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the erection of two detached bungalows of a similar design and external finish as the existing dwellings within The Fieldings. The bungalows are proposed to be finished in facing brick and natural slate.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report, the application is not in accordance with the Development Plan. 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.

3.2 As indicated at Section 6 of the report there are material considerations relevant to this application in the form of the consultation responses, of which both East Ayrshire Council's Outdoor Services Division and Dunlop and Lugton Community Council indicate the current application should be refused. It is considered that a departure from the policies of the Adopted East Ayrshire Local Plan is not justified in this instance as there is no play area within the immediate locality given the nearest area of recreational open space is located within Dunlop Park which would require children to cross the A735, Lugton Road, which

has no pedestrian crossing. Despite the applicants' request to make a contribution towards East Ayrshire Council's Leisure and Recreation Fund this factor does not outweigh the requirements of Policy RES 19 of The Adopted EALP which requires house builders to provide areas of recreational amenity space within their developments consisting of both active recreational space and landscaped amenity open space. Regardless of any contribution the applicant wishes to make to The East Ayrshire Council Leisure and Recreation Fund the original consent should be up-held and a play area should be installed within the identified area under the terms of Planning Consent 00/0217/FL.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning Development and Building Standards it will not be required to be referred to the Development Services Committee as there would be no significant breach of 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: 05 AUGUST 2005

05/0195/FL: ERECTION OF TWO HOUSES
AT PLOTS 41 & 42 THE FIELDINGS, NEWMILL ROAD, DUNLOP,
KILMARNOCK
BY D A & J McMULLEN

Report by Head of Planning, Development & Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation as it is subject to objections and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site extends to approximately 1048 square metres and is bound to the north-west, west and south by residential dwellings similar to the bungalow house types proposed by the developer on this site. To the east and north of the application site there are substantial hedgerows and trees with private open space associated with Struthers Farm Hotel beyond. The application site is currently used as a builder's compound by the developer and is overgrown and poorly maintained. The application site was originally proposed and approved as a toddler's play area associated with the housing development at The Fieldings. The establishment of this as a play area was a condition of the grant of planning consent (00/0217/FL) for the erection of 15 houses, at Phase 3 of the development. This has never been implemented by the developer despite enforcement action by this Division to have this play area constructed.

2.2 **Proposed Development:** Full planning permission is sought for the erection of two detached bungalows of a similar design and external finish as the existing dwellings within The Fieldings. The bungalows are proposed to be finished in facing brick and natural slate.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads and Transportation Division have no objections to the proposals and require the private driveway to be hard paved for a minimum distance of two metres from the rear of the footway edge of the public road to avoid over-carry of loose material onto the road/footway. They also stipulate the parking requirements for the proposed development shall consist of 2 off-road parking spaces and driveways of 6 metres in length by 4.8 metres wide. The Roads Division state that no fencing, hedges etc over 1 metre in height should be permitted to aid visibility, whilst any gates must only be able to open inwards, away from the public road and a vehicular crossing must be provided, which requires to be constructed in accordance with East Ayrshire Council's Roads Division specification.

The requirements of the Roads Division could be addressed by means of appropriately worded conditions should Members be minded to grant planning consent.

3.2 Transco have no objections to the application.

Noted.

3.3 The Dunlop and Lugton Community Council object to the application on the following grounds:

The Community Council are aware that the residents of The Fieldings are divided over the issue of the play area although, as there are young families within the development, the Community Council are of the opinion that the developer should be required to enter into a Section 75 Legal Agreement to ensure that a contribution is made to the local community in Dunlop equivalent to the cost of providing a play area.

The developer has indicated they are willing to contribute a sum of £25,000 towards East Ayrshire Council's Tourism and Recreation Fund under Policy TLR 5 of the Adopted East Ayrshire Local Plan. This is outlined in Section 5 of the report.

3.4 East Ayrshire Council's Outdoor Services Division object to the application on the following grounds:

The application site was supposed to be a play area for children within The Fieldings. The original planning consent should be upheld and a quality play area constructed for toddlers and juniors. The Outdoor Services Division have

also advised that the sum of money offered by the developer under the terms of Policy TLR 5 of the Adopted EALP is insufficient to meet the requirements of providing additional play equipment elsewhere in Dunlop.

Planning Application Reference No. 00/0217/FL, for the erection of 15 dwellings at Phase 3 The Fieldings, was granted subject to conditions, one of which stated that a play area was to be implemented prior to the completion of the eighth dwelling. It should be noted, however, that the play area has never been implemented despite enforcement action by this Division.

3.5 Strathclyde Police Community Liaison Division have verbally advised they have no objections to the proposals although would welcome the play area being formed to provide recreational facilities for the children of The Fieldings.

Noted.

4. REPRESENTATIONS

There are four objectors to the proposed development, including one from Dunlop and Lugton Community Council, which is detailed in paragraph 3.3 of the report and East Ayrshire Council's Outdoor Services Division, outlined at paragraph 3.4. There is one letter of support on behalf of The Fieldings Residents Association. A summary of the grounds of objection and of the letter of support is presented below.

4.1 The residents at No. 3 purchased their home in 1995 and were delighted that a play area was to be built for their children in The Fieldings, 10 years on there is still no play area which was a condition of the original planning application.

As detailed in response to paragraph 3.4 above there is a Planning Consent (Ref 00/0217/FL) in which there is a condition pertaining to the formation of a Play Area within Phase 3 of The Fieldings. This play area has never been constructed and remains a builder's compound associated with the development. As the play area has never been constructed the developer is in breach of the planning consent 00/0217/FL. Enforcement action has been taken by this Division in relation to the outstanding conditions.

4.2 Missives state that there is to be a play area in the development and that the residents have an ownership interest in a portion of all open space and

play areas in The Fieldings. Despite many of the residents owning a portion of this play area not all have received neighbour notification.

The applicant has confirmed that they are the owners of the land to which the planning application relates as indicated on ownership certificate A of the Planning Application form. The applicant has also confirmed, in writing, that they are the owners of the application site. As a result the applicant would not require to owner notify residents in the estate and would only require to neighbour notify dwellings or non-domestic property within four metres of the red-line application site.

4.3 The developer is now trying to build on the only remaining piece of open space in the development.

The application site, if utilised as a play area under the terms of Condition 2 of Planning Consent 00/0217/FL, would constitute the only area of open space within The Fieldings.

4.4 It is appreciated that the majority of the residents of The Fieldings are retired and have no wish for a play area although this will not always be the case and a play area will help to keep the children of the estate as safe as possible.

Phase 3 of The Fieldings development was granted consent by the Northern Area Local Planning Committee on 01 September 2000 where then, as now, concerns were raised by objectors in relation to Plots 41 and 42 being utilised as public amenity space. The development has always been proposed with an area of public open space as an integral part of the development and residents of The Fieldings have, therefore, been fully aware that such an area of open space was to be included within the estate. Strathclyde Police have also verbally stated that a small play area within the development would be beneficial, giving local children a safe location to play.

4.5 Without the play area in The Fieldings their children will be required to cross the main road to the playing field in Dunlop. This is contrary to the Council's Planning Guidance which stipulates housing developments such as this must provide a play area to ensure children's safety.

Members are referred to paragraph 5.5 of the report.

4.6 Concerns are raised in relation to the fact The Fieldings development is still a building site and that the roads have not been adopted, the drains have

never been cleaned and in relation to the builder's phasing of the development, by developing some plots before others.

The concerns of the objector, whilst noted, are not material planning considerations in the determination of this application.

4.7 One letter of support has been received from The Fieldings Residents Association which, the letter explains, expresses the wishes of 91% of the 35 Fieldings residents who are in favour of Plots 41 and 42 being developed for two dwellings rather than forming a play area. The Residents Association are concerned that to develop the area as a play area this could be used by people from outside The Fieldings for drug abuse or drinking alcohol as it is the case in other amenity areas. They are also concerned about the legal aspects relating to the cost of maintenance and insurance. The Residents Association state that at this point in time there are only 7 households with children in the development with the remainder being middle-aged or elderly residents. The Residents Association also explain that the developer has offered to contribute £25,000 towards Dunlop Park Regeneration Group should they be granted planning consent for the two dwellings at Plots 41-42.

The applicant has confirmed, in writing that they are prepared to make a contribution of £25000 towards the East Ayrshire Council Leisure and Recreation Fund under the terms of Policy TLR 5 of the Adopted EALP

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the Development Plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Local Plan (EALP).

The Approved Ayrshire Joint Structure Plan

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

The Adopted East Ayrshire Local Plan (EALP)

5.3 Policies RES 1, RES 19 and TLR 5 of the Adopted EALP are specifically relevant in the consideration of this application.

5.4 Policy RES 1 encourages and supports the residential development of those Development Opportunity Sites identified for housing purposes on their individual Local Plan maps and reserves them for residential and associated recreational and amenity open space development.

The application site lies within residential development site 171H. Policy RES 1 reserves such sites for residential and associated recreational and amenity open space development. This application site was specifically reserved for a play area and it is considered that removing it would be detrimental to the overall scheme as no other play areas exist within this housing development. The proposal is, therefore, contrary to EALP Policy RES 1.

5.5 Policy RES 19 requires house builders to provide areas of recreational amenity space within their developments to a basic standard of 300 square metres per 10 houses consisting of both active recreational space and landscaped amenity open space, as outlined in Schedule 3 of The Adopted EALP.

As this phase of the development at The Fieldings was granted planning consent subject to the inclusion of a play area, to remove it would be contrary to the terms of EALP Policy RES19. As is stated above no other play areas exist in the immediate vicinity, as children from the Fieldings would require to cross and walk down Newmill Road which has no pedestrian footway on the right-hand side of the carriageway coming from The Fieldings and then cross the A735 Lugton Road, which has no pedestrian crossing in order to access recreational open space. It is considered that its removal would be detrimental to both the amenity of the area and its inhabitants.

5.6 In addition to the above policies, Policy TLR5 states that the Council will request all potential developers of residential sites comprising four or more houses, to enter into a Legal Agreement with the Authority for contributions towards the provision of appropriate leisure and recreational facilities within the area to which the development relates.

The applicant has submitted written confirmation that they are willing to provide £25,000 towards the East Ayrshire Council Leisure and Recreation Fund, under the terms of Policy TLR 5 of the Adopted EALP.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

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

Consultations and Representations

6.2 The consultations and representations received are addressed in Sections 3 and 4 of the report, of which the consultation responses received from East Ayrshire Council's Outdoor Services Division and Dunlop and Lugton Community Council are not favourable. The responses from the objectors are largely related to the loss of open space/play area, ownership interests in the application site and the fact that The Fieldings is still a building site. The letter of support from The Fieldings Residents Association is largely related to the potential undesirable users of such a play area, the maintenance costs for the residents and the fact they feel that a play area is not necessary given the small number of children currently resident in The Fieldings.

Planning History

6.3 00/0217/FL: Proposed Erection of 15 Dwellings at Phase 3, The Fieldings, Dunlop - Approved with Conditions by Northern Area Local Planning Committee on 01 September 2000. Condition 2 of the above consent relates to the provision of a play area at the location of this application site. The developer has not complied with the terms of this condition and enforcement action has been taken in relation to this breach of the conditions.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are financial and legal implications for the Council in the determination of this application should members approve this application, contrary to the recommendation of The Head of Planning and Building Standards, as a Legal Agreement will be required in relation to the applicants contribution towards the East Ayrshire Council Leisure and Recreation Fund.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is not in accordance with the Development Plan. 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.

8.2 As indicated at Section 6 of the report there are material considerations relevant to this application in the form of the consultation responses, of which both East Ayrshire Council's Outdoor Services Division and Dunlop and Lugton Community Council indicate the current application should be refused. It is considered that a departure from the policies of the Adopted East Ayrshire Local Plan is not justified in this instance as there is no play area within the immediate locality given the nearest area of recreational open space is located within Dunlop Park which would require children to cross both Newmill Road and the A735, Lugton Road, which has no pedestrian crossing. Despite the applicants' offer to make a contribution towards East Ayrshire Council's Leisure and Recreation Fund this factor does not outweigh the requirements of Policy RES 19 of the Adopted EALP which requires house builders to provide areas of recreational amenity space within their developments consisting of both active recreational space and landscaped amenity open space. Regardless of any contribution the applicant wishes to make to the East Ayrshire Council Leisure and Recreation Fund, the original consent should be upheld and a play area should be installed within the identified area under the terms of Planning Consent 00/0217/FL.

9. RECOMMENDATION

9.1 It is recommended that the planning application be refused for the reason on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning Development and Building Standards it will not be required to be referred to the Development Services Committee as there would be no significant breach of policy.

Alan Neish
Head of Planning Development and Building Standards

22 July 2005
(BD/MMM)

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Representations.
5. Adopted East Ayrshire Local Plan.
6. Approved Ayrshire Joint Structure Plan.
7. Planning Application no: 00/0217/FL.

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

Implementation Officer: Dave Morris

050195FL

AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0195/FL

Site of Proposal: Ground at The Fieldings (Plots 41 & 42)
Newmill Road
Dunlop
KILMARNOCK KA3 4BA

Nature of Proposal: Proposed Erection of Two Houses

Name & Address of Applicant: D A and J McMullen
5A Gowanbrae
Fauldhouse
EDINBURGH EH47 9HH

Name & Address of Agent: Nicoll Design
184 Main Street
PRESTWICK KA9 1PG

DPOs Reference: BD/MMM

The above FULL application should be refused on the following grounds:

1. The proposed development would be contrary to Policies RES 1 and RES 19 of The Adopted East Ayrshire Local Plan as the proposed development would lead to the loss of an area of open space identified as a play area within the Housing Development.

**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.**