

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 15 DECEMBER 2006

**06/0824/FL: CHANGE OF USE OF FROM LANDSCAPE AREA TO
PRIVATE GARDEN GROUND AND RE-SITING OF BOUNDARY FENCE
AT LAND ADJACENT TO 12 FENWICK CLOSE, KILMARNOCK
BY MR & MRS MITCHELL**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The current planning application proposes to change the use of a section of the landscaped open space area into private garden ground for the property at 12 Fenwick Close, Kilmarnock. The proposal includes the provision of a 1.8 metre high closely boarded fence on the eastern and southern boundaries of the application site.

1.2 The proposal would result in the loss of part of the landscaped open space area located between Fenwick Place and Westfield Road and would restrict access Close.

2. RECOMMENDATION

2.1 It is recommended that the 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 considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 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 in Section 6 there are material considerations relevant to this application which are considered to be significant enough to support the refusal of the application. It is considered that the relationship between Hollybush Place/Fenwick Close and the development to the east, be it the former commercial garden centre or the subsequent Westfield Road housing site, has consistently been viewed as necessitating either the retention of the hedge or the planted buffer area or both to secure residential amenity. Whilst it is acknowledged that this buffer area has created past difficulties in terms of landscaping, on balance the principle of retaining this buffer area should be continued.

4. RECOMMENDATION

4.1 It is recommended that the application be refused for the reasons indicated 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 require to be referred to the Development Services Committee, as there would not be a significant breach of Council Policy.

Alan Neish
Head of Planning, Development and Building Standards Division

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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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 contrary to the Development Plan and is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises 78 square metres of the landscaped open space area situated between the rear gardens of the properties in Fenwick Close and the rear gardens of the houses in Westfield Road. The application site is located directly to the east and south of the property located at 12 Fenwick Close and forms a 2.7 metre wide strip along the eastern and southern boundary of the applicants' property.

2.2 It should be noted that the open space was provided as a landscaped buffer between the proposed residential units of Fenwick Close/Hollybush Place and the former Westfield garden centre previously located to the east of the current application site boundary. The provision of the landscape buffer was to ensure a reasonable level of residential amenity for the new residential units adjacent to the Westfield garden centre. Subsequently, the garden centre closed and the site was developed into the Westfield Road housing site. This housing development was conditioned to maintain the hedging along the open space, in the interests of the amenity between the two sites.

2.3 The application site is located within an area of landscaped open space which has been the subject of discussion between the owners, The Greenbelt Company, and the Council's enforcement officers. The original species of trees planted within the landscape buffer area were Salix Alba and Populus. However, these species of trees were considered to be inappropriate, as they grew too tall for this location. Consequently, the Greenbelt Company removed the Salix Alba and Populus tree species and replanted the area with an appropriate woodland tree mix. The existing hawthorn hedge located to the rear of the properties at Westfield Road was retained to form a visual screen

and prevent overlooking between the properties located at Fenwick Place/Hollybush Place and Westfield Road.

2.4 **Proposed Development:** The current planning application proposes to change the use of a section of the landscaped open space area into private garden ground for the property at 12 Fenwick Close, Kilmarnock. The proposal includes the provision of a 1.8 metre high closely boarded fence on the eastern and southern boundaries of the application site.

2.5 The proposal would result in the loss of part of the landscaped open space area located between Fenwick Place and Westfield Road and would restrict access through the open space area located between Westfield Road and Fenwick Close.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Southcraigs Community Council there is no Community Council at present for the Southcraigs area.

Noted.

3.2 Scottish Power have made no objection to the proposal.

Noted.

3.3 East Ayrshire Council's Arboricultural Officer - No reply at the time of writing this report.

4. REPRESENTATIONS

The application was advertised and one letter of objection, from two parties has been received in relation to the proposal. The point of objection is listed below:

4.1 The proposed re-siting of the boundary fence would require infilling of the garden space. The existing boundary fence sits above our boundary at a height of 6 feet, and the application would cause a water drainage problem from the site and affecting their rear garden.

It is acknowledged that the proposal includes the change of use of a 2.7 metre wide strip of the landscape area adjacent to the property at 12 Fenwick Close and the re-siting of the boundary fence. There is however no suggestion of land being in filled and thus the drainage arrangements will be unaltered.

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 (EALP).

Approved Ayrshire Joint Structure Plan (AJSP)

5.2 It is considered that there are not any policies in the Approved Ayrshire Joint Structure Plan relevant to the determination of this planning application.

Adopted East Ayrshire Local Plan (EALP)

5.3 Policy TLR 8 presumes against development on those safeguarded areas of public and private recreational or amenity open space and on other undeveloped land within settlement boundaries which contribute to the, setting, character and appearance of the settlement concerned. However, the following types of development on existing areas of maintained amenity or recreational open space will be considered appropriate, subject to compliance with all appropriate Council Development Promotion and Design Guidance:

- (i) laying out of new playing fields, bowling greens, putting greens;
- (ii) creation of all-weather sports facilities
- (iii) creation of a new children's play area: and
- (iv) development of pavilions or other ancillary facilities to serve any existing or proposed outdoor sport and recreational activities in the area.

The area does not constitute an area of public and private recreational or amenity open space as identified in the Local Plan maps but it is considered to comprise an area of undeveloped land within the settlement boundary of Kilmarnock which contributes to the setting, character and appearance of the settlement. It is considered that the removal of part of this open space area would be detrimental to the setting, character and appearance of the wider area. Approval for the change of use of this section of the open space would erode into the available buffer area and may lead to the ultimate loss of this significant area of open space which provides valuable amenity space for the surrounding area.

5.4 Policy TLR 9 states that the development of both private and public recreational or amenity open space for purposes other than those described in Policy TLR8 will be permitted only in exceptional circumstances where:

- (i) the retention or enhancement of the facilities can best be achieved by the redevelopment of part of the site and where the development would not adversely affect the overall sporting, recreational and amenity value of the site itself; or
- (ii) there is a clear, long term excess of pitches, playing fields and amenity open space in the wider area.

The proposal is for the removal of a section of open space that forms part of a larger network of open space within the wider area which is considered to be of community and amenity benefit. In this instance, the proposal to incorporate some of the open space area into garden ground of number 12 Fenwick Close would physically disrupt and fragment the open space network, to the detriment of the character and appearance of the surrounding area and would adversely affect the residential amenity of surrounding properties.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

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

Consultations responses

6.2 The consultation responses received raised no objections to the proposal.

Representations received

6.3 One letter of objection has been received in connection with the application raising issues regarding infilling of garden ground and water drainage problems resulting from the proposed re-siting of the boundary fence and the change of use of the open space to private garden ground.

Planning History

6.4 Planning permission (KL/W/FL/76/310L) granted on 26 March 1996 for the erection of dwellinghouses required that a landscape buffer be provided between the proposed residential units and the existing Westfield Garden Centre along their south western boundary. The landscape buffer was to ensure a reasonable level of residential amenity for the new residential units adjacent to the existing garden centre.

6.5 Subsequently the garden centre closed and the site was developed into the Westfield Road housing site (Planning Permission 99/0387/FL dated 06 August 1999). The current proposal would include the removal of part of the existing landscaped open space which separates the residential

properties at Fenwick Close from Westfield Road. It is considered that the removal of this area of open space would disrupt and fragment of the open space network resulting in an adverse effect on the residential amenity of the neighbouring properties.

6.6 Planning permission (04/1037/FL) was granted on 13 December 2004 for the change of use of a section of the landscape buffer to private garden ground to the rear of 9 & 10 Hollybush Place Kilmarnock. In this instance the location of the proposal did not adversely affect issues of access to the open space or result in any detrimental fragmentation of the wider open space network. However, the applicants have failed to acquire these areas to date and the site remains as part of the landscape buffer.

6.7 Planning permission 04/0934/FL was granted on 18 February 2005 for the change of use of open space to private garden ground at the rear of 18 Westfield Road. However, in this case, the application site boundary did not cover the complete depth of the landscaped area thereby ensuring that access through the open space would not be restricted. As a result of the proposal a section of the open space was removed. However in this instance, the removal of the section of open space concerned did not result in any significant detrimental impact on the residential amenity of the surrounding properties.

6.8 An application (06/0816/FL) to extend the garden ground of 12 Westfield Road into the open space buffer zone was withdrawn on 20 November 2006.

Impact on Amenity

6.9 The proposal includes the removal of a 2.7 metre wide strip of open space which would result in the disruption and fragmentation of the wider open space network, originally provided as open space to enhance the character and appearance of the surrounding area. Taking into account that the proposal includes the removal of a section of open space at this location it is considered that the proposal would result in an adverse affect on the visual and residential amenity of the neighbouring properties and result in the loss of a locally valuable landscape and habitat feature.

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 As is indicated in Section 5 of the report the application is not considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 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 in Section 6 there are material considerations relevant to this application which are considered to be significant enough to support the refusal of the application. It is considered that the relationship between Hollybush Place/Fenwick Close and the development to the east, be it the former commercial garden centre or the subsequent Westfield Road housing site, has consistently been viewed as necessitating either the retention of the hedge or the planted buffer area or both to secure residential amenity. Whilst it is acknowledged that this buffer area has created past difficulties in terms of landscaping, on balance the principle of retaining this buffer area should be continued.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons indicated 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 require to be referred to the Development Services Committee, as there would not be a significant breach of Council Policy.

Alan Neish
Head of Planning, Development and Building Standards

06 December 2006
(JL/MMM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Consultation Responses.
3. Letters of Objection.
4. Adopted East Ayrshire Local Plan (2003).
5. Statutory Notices and Certificates.
6. Relevant Planning Applications:
KL/W/FL/76/310L; 99/0387/FL; 04/0934/FL; 04/1037/FL; 06/0816/FL

Anyone wishing to inspect the above papers please contact Jane Little, Planning Officer, on 01563 576768.

Implementation Officer: Dave Morris
06082FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 06/0824/FL

Site of Proposal: Land Adjacent to 12 Fenwick Close
KILMARNOCK

Nature of Proposal: Change of Use from Landscaped Area to
Private Garden Ground and Re-siting
Boundary Fence

Name & Address of Applicant: Mr & Mrs Mitchell
12 Fenwick Close
KILMARNOCK
KA3 6FF

Name & Address of Agent: D M Hall
45 Bank Street
IRVINE
KA12 0LL

DPOs Reference: JL/MMM

The above FULL planning application should be refused for the following reasons:-

1. The proposed development does not comply with the requirements of Policy TLR 8 of the East Ayrshire Local Plan because the removal of part of the existing open space buffer would be detrimental to the setting, character and appearance of the wider area.
2. The proposed development does not comply with the requirements of Policy TLR 9 of the East Ayrshire Local Plan because the removal of part of the open space buffer would be detrimental to the residential amenity of the area.

**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.**