

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 15 DECEMBER 2006

**06/0992/FL: REMOVAL OF CONDITION NO.5 OF PLANNING CONSENT
99/0387/FL TO REMOVE A HEDGE AND CHANGE OF USE OF OPEN
SPACE TO PRIVATE GARDEN GROUND AND THE ERECTION OF A
FENCE
AT LAND TO REAR OF 11 WESTFIELD ROAD, KILMARNOCK
BY MRS ELIZABETH MCLEAN**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The current planning application proposes to remove part of the existing hedge and change the use of the landscaped open space area to the rear of No. 11, into private garden ground for the property at 11 Westfield Road, Kilmarnock. The proposal includes the provision of a 1.8 metre high fence on three sides of the application site to incorporate it into the existing garden, although a section of natural hedge would be retained to form a boundary to the south of the site. The new fence will match the existing fence, in terms of materials and size.

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

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 256 square metres of the landscaped open space area situated between the rear gardens of the properties in Hollybush Place and the rear gardens of the houses in Westfield Road. The application site is located directly behind 11 Westfield Road and forms an approximate 10 metre deep strip along the western rear 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 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, this 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 Hollybush Place and Westfield Road.

2.4 **Proposed Development:** The current planning application proposes to remove part of the existing hedge and change the use of the landscaped open space area to the rear of No. 11, into private garden ground for the property at 11 Westfield Road in Kilmarnock. The proposal includes the provision of a 1.8 metre high fence on three sides of the application site to incorporate it into the existing garden, although a section of natural hedge would be retained to form a boundary to the south of the site. The new fence will match the existing fence, in terms of materials and size.

2.5 The proposal would result in the loss of part of the landscaped open space area located between Hollybush 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 Scotland Gas Networks have no objections to the proposal

Noted.

4. REPRESENTATIONS

The application was advertised and three letters of objection with 5 signatories have been received in relation to the proposal. The points of objection are listed below:

4.1 The existing field hedge is a natural boundary between the Cala cul-de-sac and the cul-de-sac streets at Fenwick Close / Hollybush Place offering privacy to both sets of house owners.

The proposal includes the removal of part of the existing hawthorn hedge which is conditioned to be retained and maintained in planning consent 99/0387/FL to protect the residential amenity of area. It is considered that the proposed removal of this section of mature hawthorn hedge would result in

a loss of privacy to the adjoining residential properties, to the detriment of the amenity of the area.

4.2 The proposal would cause the loss of habitat and green belt area.

The proposal includes the change of use of a section of a larger network of open space within the area which is considered to be of community, recreational and amenity benefit. The inclusion of this area of open space to garden ground would physically disrupt and fragment the open space network, to the detriment of the amenity of the area. It would also result in the loss of this valuable wildlife corridor within this predominantly residential area.

4.3 The removal of the hedge located to the rear of Westfield Road will cause a loss of privacy to the residential properties.

It is considered that the proposed removal of part of the mature hawthorn hedge would result in some reduction in the level of privacy to surrounding residential properties, thereby adversely affecting the residential amenity of the area. In addition the existing hawthorn hedge was conditioned to be retained and maintained in planning consent 99/0387/FL in order to protect the residential amenity of area.

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 contributes 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.

Whilst the area does not constitute an area of public and private recreational or amenity open space as identified in the Local Plan maps, 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 the 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 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 public space which 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 Westfield Road would physically disrupt and fragment the open space network, to the detriment of the amenity 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 letters 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 Three letters of objection have been received in connection with the application raising issues regarding the loss of access to the amenity space for maintenance purposes and the loss of privacy to the residential properties.

Planning History

6.4 Planning permission (KL/W/FL/76/310L) granted on 26/03/96 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 06/08/99). Condition number five of planning consent 99/0387/FL states that the existing hedgerow adjacent to Hollybush Place and Fenwick Close shall be retained and maintained at a height no greater than two metres. The current proposal would include the removal of part of the existing hedge which forms the rear boundary of the property at 11 Westfield Road. It is considered that the removal of this hedge would have an adverse effect on the existing residential amenity of the neighbouring properties.

6.6 Planning permission (04/1037/FL) was granted on 13/12/04 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 affect issues of access to, or maintenance of the open space or involve the removal of the existing hedge. However, the applicants have failed to acquire this land and it remains as part of the open space area.

6.7 Planning permission 04/0934/FL was granted on 18/02/05 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 be retained. As a result of the proposal a section of the existing hawthorn hedge was removed. However in this instance, the removal of the section of the hedge 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 Taking into account that the proposal includes the removal of the full depth of open space at this location it is considered that the proposal would result in a significant detrimental impact on the residential amenity of the area. In addition, the proposal includes the removal of part of the existing mature hedge which bounds the rear of the property at 11 Westfield Road, conditioned for retention in the original planning consent for the dwellinghouses located in Westfield Road. It is considered that this hedge should be retained as its removal would adversely affect the residential and visual amenity of the neighbouring properties and result in the loss of a valuable landscape 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

05 December 2006
(DW/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

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 06/0992/FL

Site of Proposal:	Land to Rear 11 Westfield Road KILMARNOCK
Nature of Proposal:	Removal of Condition No. 5 from Planning Consent 99/0837/FL to Remove a Hedge and the Change of Use of Open Space to Private Garden Ground and the Erection of a Fence.
Name & Address of Applicant:	Mrs Elizabeth McLean 11 Westfield Road KILMARNOCK KA3 6GA

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 this sizeable 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.
3. The proposed development would detract from the residential and visual amenity of the surrounding area as a result of the removal of this section of mature hedging, situated to the rear of 12 Westfield Road.

**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.**