

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 16 MARCH 2007

06/0630/FL: AMENDMENT TO PLANNING PERMISSION 05/0292/FL INCLUDING THE ERECTION OF 12 FLATS AND 6 TERRACED DWELLINGS AT PLOTS 72-89; AMENDMENT TO ELEVATIONS OF PLOTS 1-10; SUBSTITUTION OF HOUSE TYPE J ON PLOTS 11 & 12; AMENDMENT TO DESIGN OF HOUSE TYPE E; PROVISION OF ELECTRICAL SUB STATION ADJACENT TO PLOT 73; DELETION OF PLOT 74; DELETION OF FORMAL TEENAGE PLAY AREA; PROVISION OF TODDLER'S PLAY AREA; AMENDMENTS TO BOWLING GREEN AND RAILWAY STATION CAR PARKS AND INCREASE IN HEIGHT OF RETAINING WALL ALONG THE GLAZERT BURN IN RETROSPECT AT NEWMILL ROAD, DUNLOP BY DICKIE AND MOORE LTD

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought to amend planning consent 05/0292/FL to include the following:

- The erection of twelve flats and six terraced dwellings at plots 72 to 89;
- amendment to elevations of plots 1 to 10;
- substitution of house type J on plots 11 and 12;
- amendment to design of house type E;
- deletion of formal play area and provision of toddler's play area;
- amendments to bowling green and railway station car parks;
- provision of electricity substation adjacent to Plot 73; and
- increase in height of retaining wall along the Glazert Burn (In retrospect)

1.2 The previous planning application 05/0292/FL was approved at the Development Services Committee on 28 June 2005 for the demolition of existing buildings and erection of residential dwellings, class 4 commercial/business units, mini roundabout, speed table and associated road works. The Committee agreed to grant planning consent subject to additional conditions, one being the deletion of the commercial/ business units on the site. The current application seeks to replace the allocation for business units with twelve amenity flats and six terraced dwellinghouses.

1.3 The amenity flats are located at the vehicular entrance to the site adjacent to Newmill Road. Following discussions with Atrium Homes the applicants have indicated that the amenity flats will be specifically intended and designed for elderly ambulant disabled residents. In this regard they advise that the housing has been designed as adaptable lifetime homes comprising cottage flats with chairlift provision. The flats will front onto the entrance road and are formed over two storeys. The building will be finished

externally in grey concrete roof tiles, lead coping and skewers, off-white render with buff stone quoins and white upvc doors and windows surrounded by smooth cement banding.

1.4 The six terraced dwellings are split into two terraced blocks, one being located between the railway station car park and the terraced houses on Plots 1-10 the other adjacent to the proposed amenity flats and bowling club car park. The terraced dwellings will be finished externally in grey concrete roof tiles, lead coping, white dry dash render and white upvc doors and windows.

4.5 The application seeks to remove the designated play area which was proposed in the north eastern most corner of the site under the previous planning consent 05/0292/FL. The applicants submit that due to the requirements of SEPA and Scottish Water in relation to the SUDS arrangements for the northern section of the overall site and the topography of the area next to the burn following site clearance, it is no longer practical or feasible to provide a play area in the proposed location. In lieu of the provision of the play area on site the applicant propose to make a financial contribution to upgrade an existing facility elsewhere in Dunlop and this sum would be in addition to the financial contribution the applicant made in relation to the previous consent 05/0292/FL.

1.6 The applicants now propose to provide a toddler's play area immediately to the south of Plot 72 and adjacent to the car park entrance to the bowling club car park.

1.7 The amendments to the elevations of plots 1 to 10 seek to form a more traditional frontage that broadly reflects the style represented across the site. The amendment to house type E include alterations to the scale and design of the dwellinghouse to form a more traditional façade and includes the formation of a conservatory extension to the rear elevation. The substitution of house type J on plots 11 and 12 replaces house type F as previously approved under application 05/0292/FL.

1.8 The amendments to the station car park are retrospective and the car park and surrounding landscaping has been formed on site. The original application sought to form 20 car parking spaces and pedestrian entrance points to the railway platform. The current application forms 18 car parking spaces with a landscaped area and pedestrian access route to the north between the car park and Newmill Road. The amendments to the bowling green car park include the relocation of the entrance to the car park closer to plot 71 and reduction from 25 car parking spaces as provided under the previous consent 05/0292/FL to the formation of 17 spaces.

1.9 The amendment also proposes an electricity sub-station and the access serving it being located between the amenity flats and Plot 73 immediately adjacent to the bowling club car park.

1.10 Following the initial submission of this application, it was brought to the attention of the Planning Authority that the developer had significantly increased the ground levels of the southern half of the site, particularly the area adjacent to the Glazert Burn. Following an on-site inspection, it was deemed that the level of works undertaken would require planning permission and the developer was asked to submit an application. Following further discussions, it was accepted that the developer would amend this application to include these works and to reduce the height of the unauthorised retaining wall to a maximum of 3.0m. These details, including sections have now been submitted for consideration with this application.

2. RECOMMENDATION

2.1 It is recommended that the application should be approved subject to the conditions indicated on the attached sheet and that the issuing of the Planning Decision Notice be withheld until the Council has satisfactory concluded an Agreement with the applicants in respect of the matters detailed in Sections 5.8 and 7.1 of the report.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report the application is not strictly in accordance with the Development Plan. However, the previous consent has established the residential use of the site. Nevertheless, 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 It is though, the case that the principle of residential development of the entire site has been established through the granting of the earlier planning consent 05/0292/FL which reflects the Council's most up to date position on this site.

3.3 As indicated in Section 6 of the report there are relevant material considerations principally the granting of planning consent 05/0292/FL. The concerns of the objectors are noted however they are not considered to be of sufficient weight to justify a recommendation of refusal.

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3.5 It is considered that the development will add to the amenity of the area, by providing a range of modern housing of different sizes and tenure to meet housing demand in the Dunlop area.

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 it will require to be referred to the Development Services Committee, as there would be a significant breach of 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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REPORT BY HEAD OF PLANNING, DEVELOPMENT AND BUILDING STANDARDS

1. PURPOSE OF REPORT

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

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is approximately 5.7 hectares in area and comprises the area previously occupied by Howies of Dunlop which is accessed off Newmill Road. The remainder of the application site was formerly occupied by Hapland Mill which was demolished many years ago and lies adjacent to Glazert Burn. The developer has commenced the erection of houses on the top part of the site and has carried out site re-grading works. The application site also includes Newmill Road and the junction at Newmill Road, A735, Lugton Road and Station Road.

The application site is surrounded to the north by a Bowling Green and mix of modern and traditional residential properties, to the south and east by agricultural land and to the west by the main Kilmarnock and Glasgow railway line and, beyond, the railway station and residential properties.

2.2 **Proposed Development:** Full planning permission is sought to amend planning consent 05/0292/FL to include the following:

- The erection of twelve flats and six terraced dwellings at plots 72 to 89;
- amendment to elevations of plots 1 to 10;
- substitution of house type J on plots 11 and 12;

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- deletion of formal play area and provision of toddler's play area;
- amendments to bowling green and railway station car parks;
- provision of electricity substation adjacent to Plot 73; and
- increase in height of retaining wall along the Glazert Burn (In retrospect)

2.3 The previous planning application 05/0292/FL was approved at the Development Services Committee on 28th June 2005 for the demolition of existing buildings and erection of residential dwellings, class 4 commercial/business units, mini roundabout, speed table and associated road works. The Committee agreed to grant planning consent subject to additional conditions, one being the deletion of the commercial/ business units on the site. The current application seeks to replace the allocation for business units with twelve amenity flats and six terraced dwellinghouses.

2.4 The amenity flats are located at the vehicular entrance to the site adjacent to Newmill Road. Following discussions with Atrium Homes the applicants have indicated that the amenity flats will be specifically intended and designed for elderly ambulant disabled residents. In this regard they advise that the housing has been designed as adaptable lifetime homes comprising cottage flats with chairlift provision. The flats will front onto the entrance road and are formed over two storeys. The building will be finished externally in grey concrete roof tiles, lead coping and skews, off-white render with buff stone quoins and white upvc doors and windows surrounded by smooth cement banding.

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2.6 The application seeks to remove the designated play area which was proposed in the north eastern most corner of the site under the previous planning consent 05/0292/FL. The applicants submit that due to the requirements of SEPA and Scottish Water in relation to the SUDS arrangements for the northern section of the overall site and the topography of the area next to the burn following site clearance, it is no longer practical or feasible to provide a play area in the proposed location. In lieu of the provision of the play area on site the applicant propose to make a financial contribution to upgrade an existing facility elsewhere in Dunlop and this sum would be in addition to the financial contribution the applicant made in relation to the previous consent 05/0292/FL.

2.7 The applicants now propose to provide a toddler's play area immediately to the south of Plot 72 and adjacent to the car park entrance to the bowling club car park.

2.8 The amendments to the elevations of plots 1 to 10 seek to form a more traditional frontage that broadly reflects the style represented across the site. The amendment to house type E include alterations to the scale and design of the dwellinghouse to form a more traditional façade and includes the formation of a conservatory extension to the rear elevation. The substitution of house type J on plots 11 and 12 replaces house type F as previously approved under application 05/0292/FL.

2.9 The amendments to the station car park are retrospective and the car park and surrounding landscaping has been formed on site. The original application sought to form 20 car parking spaces and pedestrian entrance points to the railway platform. The current application forms 18 car parking spaces with a landscaped area and pedestrian access route to the north between the car park and Newmill Road. The amendments to the bowling green car park include the relocation of the entrance to the car park closer to plot 71 and reduction from 25 car parking spaces as provided under the previous consent 05/0292/FL to the formation of 17 spaces.

2.10 The amendment also proposes an electricity sub-station and the access serving it being located between the amenity flats and Plot 73 immediately adjacent to the bowling club car park.

2.11 Following the initial submission of this application, it was brought to the attention of the Planning Authority that the developer had significantly increased the ground levels of the southern half of the site, particularly the area adjacent to the Glazert Burn. Following an on-site inspection, it was deemed that the level of works undertaken would require planning permission and the developer was asked to submit an application. Following further discussions, it was accepted that the developer would amend this application to include these works and to reduce the height of the unauthorised retaining wall to a maximum of 3.0m. These details, including sections have now been submitted for consideration with this application.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division have no objections but have raised the following concerns:

- (a) The reduction in parking provision for the railway station from 20 no. to 18 no. This is liable to increase on street parking.
- (b) The reduction in parking provision for the bowling club from 25 no. to 18 no. This is liable to increase on street parking.
- (c) The provision of a toddler's play park adjacent to the main access road without details of segregation and access.
- (d) The proposed changes in road levels adjacent to Plots 34 to 37. These plots were considered to be particular at risk from flooding from road water run off; as indicated in our memo to Planning dated 12 January 2005, and required the finished floor levels to be raised. Any

subsequent raising of the road level will require an additional increase in finished floor level of these dwellings.

With regards to Roads concerns relating to the reduction in the size of the car parks, it is considered unlikely that this will result in any increase in on –street parking, as these are both additional parking areas for Dunlop and are likely to improve parking within the village.

Details of the toddler’s play area are still to be submitted and it is likely these will include segregation details from and access to the public highway. A planning condition can be attached to any consent to ensure these details are submitted.

The developer is aware of Roads concerns regarding possible flooding and has altered their proposal accordingly.

3.2 Scottish Water have no objections to the application. They advise that the grant of planning permission does not guarantee a connection to Scottish Water’s Infrastructure and a separate application would be required to connect to Scottish Water’s infrastructure. They further comment that Corsehouse and Amlaird Water Treatment Works and Dunlop Sewer Treatment Works currently have sufficient capacity to service the proposed development.

The advice of Scottish Water can be addressed by attaching a note to any grant of planning permission.

3.3 Scottish Environment Protection Agency have provided the following comments on the application:

- The applicant will require to confirm with Scottish Water that the additional volume of flow arising from these dwellings can be connected into the public sewerage system and that it will not cause or contribute to the premature operation of existing consented sewer overflows downstream of the site.
- The SUD’s strategy for the site has been agreed in principle with SEPA and SEPA would expect the developer to ensure that the treatment volume (Vt) to be provided at the site is augmented, if required, to take account of the design layout now proposed at the site, particularly if this alteration will result in additional volumes of surface water runoff being generated.
- If any engineering works are planned in the vicinity of the watercourse these activities may require to be licensed by SEPA to ensure compliance with the terms of The Water Environment (Controlled Activities) (Scotland) 2005. These activities include any changes to the bed or banks of the watercourse and/ or alterations to the existing riparian zone. These works could include landscaping/ bank protection works and must be discussed with SEPA prior to works commencing at the site.

The comments of SEPA with regard to SUDS and consented sewer overflows downstream of the site can be addressed by attaching conditions to any grant of planning permission. An advisory note can be attached to any grant of planning consent in relation to engineering works in the vicinity of the watercourse.

3.4 East Ayrshire Council Environmental Health, Licensing and Community Safety Division advise that the comments previously offered in consultation responses regarding the development of this site are substantially unchanged, in that there should be no nuisance to nearby residents from site activities (e.g. dust, burning of waste, noise outwith normal dayshift patterns, etc). Our Contaminated Land Officer, Chris Johnson, previously advised that a full site investigation survey undertaken appeared to be comprehensive enough; however, for this to be satisfactorily concluded the developer should provide verification that any required works have now been implemented.

Some minor bins storage details required clarification in the original application; these have been addressed and resolved with our Cleansing Service.

The requirements of Environmental Health and Waste Management can be addressed by attaching conditions to any grant of planning consent.

3.5 East Ayrshire Council Outdoor Amenities have not responded in respect of the application.

Noted.

3.6 Network Rail have no objection in principle to the proposal.

Noted.

3.7 East Ayrshire Council Access Officer has not responded in respect of the application.

Noted.

3.8 Dunlop and Lugton Community Council object to the development on the following grounds

1. Retrospective approval for construction of retaining structure along boundary with Glazert Burn

Dunlop and Lugton Community Council object in the strongest possible terms to the unauthorised construction of the retaining structure adjacent to the Glazert Burn and insist that East Ayrshire Council uses the range of powers provided in the Town and Country Planning (Scotland) Act 1997 to enforce its removal and demand reinstatement of site levels to that authorised by Planning Permission 05/0292/FL. Failure to take action on this serious

breach of planning legislation will demonstrate that East Ayrshire Council condones the irresponsible actions of the developer and the effect will be to significantly undermine public confidence in the planning system.

It is the view of the Community Council that this breach of planning control unacceptably affects public amenity and that it is not in the public interest to allow the structure to remain. There are a number of reasons for taking this view:

- the height and form of the structure prevents the creation of an attractive informal pathway to allow access to the riverbank as required under Condition 10 of Planning Permission 05/0292/FL, and compromises the opportunity to enhance adjacent public walking routes and woodland areas.
- the height and form of the structure creates a dangerous climbing opportunity for children, and relies on individual householders maintaining adequate enclosure to prevent the risk of falling from back gardens
- the structure is built close to (possibly on top of) an existing live sewer creating the potential for damage due to increased ground pressure from the weight of retained soil and leaving insufficient access for maintenance and repair. (refer enclosed photos)
- the structure is inappropriate in a rural setting and has a significant detrimental impact on the surrounding natural environment and the visual amenity of the site
- there is no evidence to verify the long term integrity of the structure and failure of any part of it would have serious consequences for any houses constructed on the made up ground

Given that the development had commenced on site and a number of the houses in the northern part of the site were built or under construction, and as the retaining wall was not readily visible or affecting the public outwith the site, it was deemed appropriate to withhold enforcement action to seek an acceptable solution with the developer through negotiation. The Council did not fail to take action, but acted quickly on being advised of this breach and these lengthy discussions have resulted in the proposal before us today. The developer now proposes the wall to be a minimum of 3.0m in height, not significantly higher than that given consent originally.

The wall does not prevent passage along the bank of the burn, although it does narrow at some points. The developer has indicated a willingness to install a walkway to the rear of Plots 34 to 43, however, it is considered unlawful for the Planning Authority to condition this requirement, if it is to form part of a public footpath network.

Any question of danger arising from the wall is a private legal matter for the developer, in terms of his site security and a completion of development will likely form part of any factoring agreement, but will remain a private legal matter,

The sewer at the base of the wall is to be closed off and diverted through the road to the front of Plots 34 to 43, approval of this proposal will result in the retaining wall being reduced significantly, resulting in a more acceptable solution for this semi-rural location.

2. Alteration to site levels

The current application proposes a number of adjustments to the road levels, general site levels, and finished ground floor levels from those approved in Planning Permission 05/0292/FL. The effect of these amendments is to raise the general level of the southern half of the development by at least 2-3 metres and cause the introduction of various retaining structures, including that referred to above. This significantly changes the character of the development, adversely impacts its relationship to the immediate site environment and visually affects the appearance of the village from a number of wider viewpoints. The Community Council consider that these changes compromise the ability of the development to take advantage of the natural features of the site, in particular its relationship to the Glazert Burn, and therefore should not be permitted. As noted above, the Community Council objects to the irresponsible action of the developer in proceeding to implement a number of these changes prior to approval being granted and urges East Ayrshire Council to utilise the relevant enforcement powers available.

The adjustments to levels and any internal retaining features will not be readily visible from outwith the site and will eventually be incorporated into the internal landscape of the development and will not significantly affect any neighbouring properties.

In terms of the works next to the burn, the revised Scheme, if approved, will not significantly change the area next to the burn from that proposed under Consent No. 05/0292/FL, which agreed a retention feature, albeit lower, in the same area. The topography of the surrounding area, with the higher ground immediately to the south of the burn is a significant material consideration in the acceptability of this element of the overall development.

3. Public open space

Dunlop and Lugton Community Council note the intention of the developer to delete the provision of a formal teenage play area, and the new proposal for the provision of a toddler's play area. While in principle the Community Council can accept these amendments, there is a lack of detail of what will be provided in both these areas of the site, and an overall lack of detail regarding the provision and treatment of public open space, in particular the requirement

of condition 10 of Planning Permission 05/0292/FL relating to the riverside walkway.

The Community Council consider that the open space provision has not been considered adequately in the context of the Local Plan, and the developer has failed to pay due regard to the indicative base standards expected and as currently presented has failed to demonstrate the provision of suitable areas of recreational and amenity open space as an integral part of their development proposals. It is particularly noted that Policy RES20 indicates (para vii) that developers should ensure that all open spaces are provided, as appropriate, with footpaths for both access and leisure walking, linking with adjacent open spaces wherever possible. A walkway along the riverbank (and not through the development) must be considered as a key element of the open space strategy and it should not be compromised by the construction of the retaining structure referred to in point 1 above.

A planning condition can be imposed to require details of the toddler's play area and to ensure its implementation. The developer has offered a cash equivalent for the loss of the teenage area under the TLR.5 contribution.

The open space is considered appropriately located throughout the site and as stated previously, the Council would be unable to condition a public right of way through the site, as it would be unlawful and could fall if subsequently challenged.

4. Amendments to the railway station car park

The attention of the Council is drawn to the fact that the station car park as indicated in this application has already been completed, and therefore has been constructed without Planning Permission. The Community Council are of the view that whatever the circumstances, no organisation should be allowed to disregard planning legislation and proceed without proper approvals being in place.

In relation to the amended layout of the station car park, the Community Council are disappointed that the new proposals make no provision for direct pedestrian access to the station, nor do they make any provision for short term waiting to allow pick-up and set-down (as required under Condition 18 of Planning Permission 05/0292/FL). It is also disappointing that no consideration seems to have been given to the possibility of buses stopping at or near the railway station. These are all matters that could have been pursued with the Developer had he not proceeded to construct the facility prior to any opportunity for consultation.

The Council's attention is also drawn to the fact that the application form indicates a provision of 20 car parking facilities, yet the drawing shows only 18.

East Ayrshire Council are asked to note the Community Council's concerns regarding this breach of planning procedures, and their disappointment that an opportunity has been missed to provide an integrated and attractive facility to encourage greater utilisation of train services. The Community Council would support any action by East Ayrshire Council requiring the developer to provide a more appropriate facility than that constructed.

The number of car parking spaces has changed from the original consent and is indeed now for 18. Given the changes in land and position of the car park relative to Newmill Road, it is not readily possible to achieve direct pedestrian access to the station, without losing even more spaces, or to provide any pull in/drop off facilities. This proposal is a major improvement to station parking and will hopefully facilitate/encourage usage of the train. This is a benefit to all residents in Dunlop.

5. Amendments to bowling green car park

The Community Council are surprised that the applicant has reduced the car parking provision for the bowling green from 25 spaces in the original application to 17 in this amendment. There is no justification for this, and it would seem that the reduction in car park area (along with reductions in the adjacent open space) have been made solely to allow an increase in the number of housing units on this part of the site.

The access to the bowling green car park has also been moved further into the area of the housing development site, increasing the number of vehicle movements within the residential area and creating potential noise and disturbance to residents. It is also the case that on many occasions during the bowling season, visiting teams arrive by bus, and the location and configuration of the new position of the car park access takes no account of the manoeuvrability requirements of larger vehicles.

The Community Council note that Planning Permission 05/0292/FL attached a condition (32) requiring the car parking spaces for the bowling club to be provided on site prior to the occupation of any dwelling houses on site. This condition should be attached to any approval that may be granted to amend the car parking arrangements for the bowling club.

The Community Council object to the amendments to the bowling green car park and urge East Ayrshire Council to seek alternative design proposals from the applicant for the layout of the area of the site incorporating plots 72-74 and the bowling green car park.

Similar to the station car park, the numbers have changed from the original submission, however, the crucial consideration is that a significant number of dedicated spaces will now be available for the use of the bowling club, again a significant improvement on the situation within the village prior to development.

The car park is now complete and the access and layout fit well with the surrounding uses, whilst affording easy access to the bowling club, with minimal disruption to future residents within the site.

6. Breach of planning conditions

The Planning Permission to which this application for amendment relates (05/0292/FL) was granted subject to 32 planning conditions, and the Community Council would expect these to be adhered to. It is therefore disappointing that on a number of occasions since work commenced on site it has been brought to the attention of the Community Council (and to East Ayrshire Council Enforcement Officers) that some of these conditions have been disregarded or breached. Knowing that construction work on this development will affect the Dunlop community for 3-4 years, the Community Council has sought to establish a working relationship with the developer, however, a number of concerns remain. Accordingly the Community Council seek the support of East Ayrshire Council in ensuring that the developer adopts a responsible attitude and respects the sound reasoning behind the planning conditions attached to any permission relating to this development site.

Should East Ayrshire Council be minded to approve the current application, appropriate conditions should be attached to ensure that the residential amenity of the Dunlop community is adequately protected.

The developer has submitted information to purify a number of conditions on the original consent. The concerns surrounding the unauthorised retaining wall and the submission of this revised application have precluded any enforcement action. However, it is proposed to impose a number of similar conditions on this consent as the original to safeguard the amenity of the residents. The developer has been willing to discuss issues constructively as they have arisen on site and it is envisaged that this good working relationship will prevail throughout the duration of the development.

7. Lack of consultation on discharge of planning conditions

Under the terms of the planning legislation, it falls to the Council to be solely responsible for the discharge of any planning conditions on a consent. It is unlawful to require the agreement of a third party to purify a condition, as that party would then control whether or not planning proceeded, which is the responsibility of the Planning Authority.

3.12 East Ayrshire Council Roads and Transportation, Flooding Section had raised the following concerns;

There is concern regarding the stability of the permacrib retaining wall adjacent to the Glazert Burn. The applicant must submit design details and calculations showing the foundation detail and how the system is tied in to the slope. Confirmation of the long term durability of the wall will be required as well as future maintenance responsibilities. The toe of the wall would appear to be susceptible to erosion from the burn during high river levels.

The flood flow path for the extreme rainfall events should be contained within the road corridor before discharging into the adjacent watercourse, the house levels at the lower end of the site indicate that a number of properties could be affected by the 1 in 200 year rainfall event, therefore consideration must be given to garden and finished floor levels in relation to the adjacent road level to avoid flooding of properties during these situations. Finished floor levels or air bricks should be a minimum of 500mm above road level.

Following discussions with the applicant, the Council's Flooding Section are satisfied with the construction of the crib wall and provided the developer contacts SEPA with regard to work next to the burn, have no objections to the proposal.

4. REPRESENTATIONS

4.1 The proposals were advertised in the Kilmarnock Standard. There are 8 objectors to the proposed development including one from Dunlop and Lugton Community Council which is detailed in Section 3.8 of the report. The objectors raise the following concerns:

4.2 The trees which have been removed are different from those specified in the original consent.

The applicant accepts that the TPO'd trees adjacent to the Glazert Burn have been removed in error. He proposes to plant replacement trees on the open area in the north eastern corner of the site and compensate the community for the loss through a financial contribution to the TLR 5 fund.

4.3 The timber retaining wall next to the Glazert Burn is seen as a "time bomb" for the future. They are concerned about the retrospective nature of this element of the proposal and believe it was done with a total disregard to planning and contrary to the original consent, and want it removed.

The original consent (05/0292/FL) drawings proposed a degree of retention in a roughly similar position to the timber retaining wall referred to. The applicant accepts the wall is higher than originally envisaged and regrets the retrospective nature of the proposal. It is considered that the present proposal for a minimum height of 3.0m retaining wall, reduced in places from the

present on site situation is an acceptable solution. The applicants have certified the stability of the wall and confirmed no adverse affect on the flood assessment for the adjacent burn. Given the relatively secluded location of the wall, away from direct public outlook, it is considered that this solution is acceptable.

4.4 The flats will overlook neighbouring properties, obstruct their view and affect the saleability of these properties.

The proposed flats are located across Newmill Road, opposite the junction to the Fieldings and given the separation distance, will not adversely affect the residential properties opposite.

The right to a view and any affect on the value of neighbouring properties are not material planning considerations.

4.5 It is considered that the infrastructure and the schools cannot cope with the scale of development.

Consent has already been granted for the majority of the residential units on this site and no objections were received from any service departments. The proposed housing association units and six houses, will not significantly impinge on the infrastructure proposed for the development.

4.6 Further concerns have been raised with regard to the increase in the height of the retaining wall next to the Glazert Burn, these being that;

- it has an adverse effect on the local environment/amenity
- it is an unsympathetic development showing little regard to the character of the area
- adverse impact of this structure including, noise during construction, nuisance, smell and visual appearance
- the adverse environment effect on the immediate area, through possible leaking of the timber preservative into the burn

As stated earlier the proposed 3.0m height of the retaining wall, in the position proposed, is not considered so detrimental to the amenity of the surrounding area, as would warrant refusal of the application. With regard to the technical issues of construction, stability, flooding and leaching to the burn, the applicant's engineer has certified the structure as stable and acceptable. He has also confirmed no adverse affect on the flooding assessment for the burn and SEPA have raised no objections to the proposal.

4.7 The retaining wall structure adjoins the objector's property and is considered to be a significant blight on the landscape when viewed from either side of the watercourse.

The retaining wall is located within the applicant's ground and does not impact on any neighbouring land. Given the topography of the area adjacent to the Glazert Burn, it is considered that this structure can be accommodated without any significant detrimental impact on the surrounding area.

4.8 It is considered that the proposed walkway along the bank of the Glazert Burn will be very uninviting because of the scale of the structure and will discourage people from using it.

Although originally proposed as part of a public walkway from the south-western to the north-eastern corner of the site, it is considered unlawful to impose a public right-of-way in this area, as it would require connections to the public footpath network at either end across third parties ground which could not be achieved without the consent of the third party owners and inclusion within this application site.

The applicant has advised that he would still be prepared to provide a walkway link to the rear of Plots 34 to 43, however, this would not comprise part of the public footpath network.

4.9 It is claimed that the assessment of the original proposal (05/0292/FL) was based on a very different topography to that which exists now. If the present ground levels were envisaged it is likely the conclusion would be different. Concerns were raised at that time about the location and design of open space within the site and how it would integrate into the surrounding natural features such as the burn. The resulting assessment assumed full advantage would be taken of the setting of the Glazert Burn.

The current land form hides the burn from the development in the most part and therefore no advantage can be taken.

Furthermore, the assessment was based on committed site levels provided at that time. These levels have now been dramatically altered without recourse to the Authority and the current application seeks to address this. It is considered that the changes have created a serious detrimental impact on the overall visual amenity of the site and in particular, the setting of the burn and impact of the retaining structure on adjacent land and property.

The policies stated also supported this and advised that a good use of natural features should be undertaken to create a sense of place.

It is now considered that the impact on the surrounding natural and built environment and adjacent uses now has a negative impact, in particular with respect to our clients land ownership and outlook.

The response in the planning report stated that the development has been designed to minimise the impact on adjacent residential properties and goes

on to state that “the open space provision has been sited to maximise the location of the site adjacent to the burn and its natural surrounding.”

We would contend that erection of the retaining structure effectively negates all of the above and should not be allowed.

The topography of the site is indeed key to any assessment of the surrounding natural features. The main feature for this site is clearly the Glazert Burn and its surroundings. However, it is important to note that the housing layout from Plots 34 to 43 plus the retaining feature remain similar to the original proposal. The site slopes down towards the burn and it was always proposed to turn the development’s ‘back’ to the burn. The open spaces at either end, the SUDS basin and the former play area, were visually prominent and served as linkages for the walkway along the burn, this remains relatively unchanged in the latest amended scheme.

The setting of the burn was not one gained in a wider landscape context, but was intended to provide a secluded, possibly small enclosed gorge either side of the burn. It was proposed to be very specific to the burn and would never become part of the wider landscape setting of the overall development.

4.10 Central government policy advises that new housing should take account of the wider context and integrate into the neighbourhood. The original report claimed to take advantage of its location adjacent to the Glazert Burn and road setting.

We contend that the Council has been misled in that the current retaining structure does the opposite, i.e. the development now turns its back on the burn, which is contrary to what was expected and, if known at the time, is likely to have been considered unacceptable. It clearly remains unacceptable and should be removed or at the very least reduced to a lower height.

It is considered that the rural setting in and around the Glazert Burn has been seriously eroded and the residential amenity of the area seriously compromised by this significant structure.

Furthermore, it is quite clear from the original Committee Report referred to above that the assessment placed a great emphasis on the requirement to take advantage of the Glazert Burn. This has been seriously undermined by the developer’s unauthorised actions and we would urge the Council to refuse this aspect of the current proposal.

The layout remains very similar to that proposed under the original consent. The topography of the site and the surrounding area was likely to result in the type of development proposed. As stated previously the burn sits at the lowest point within the site, with the land on the opposite side of the burn, to the south, being very steep and sloping sharply to agricultural fields, this could

not be practically integrated into a housing layout on this site. In terms of the remaining boundaries, these are notable for the presence of a railway-line, road and a cul-de-sac road and associated verge, which in themselves effectively enclose the site. The only remaining element to which the site could have related would have been the bowling club. Both parties, the developer and the club have chosen to separate the uses, with the only common link being the car park. It is considered that the landscape concerns are overstated and fail to properly assess the topography of the site and surrounding 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 (1999) and the Adopted East Ayrshire Local Plan.

Ayrshire Joint Structure Plan (AJSP)

5.2 The proposed development does not raise issues of a strategic nature.

East Ayrshire Local Plan

5.3 Policy IND 5 safeguards the majority of the application site for business, industrial and storage and distribution uses.

It is considered that approval of the previous planning consent 05/0292/FL has now established the acceptability of residential on this site, particularly as this remains a live and implementable consent.

5.4 Policy RES 4 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 the following criteria:

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

The housing proposal will not significantly impact on the surrounding natural and built environment and will unquestionably better integrate with these than the previous commercial operations on the site. The layout will present a

greater and more open layout with open space areas blending into the adjoining open rural boundaries.

- (ii) transportation and infrastructure implications;

The proposal does not have any significant transport or infrastructure implications.

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

The proposal is for a modern housing development, which is likely to be less dense than the traditional development pattern to Dunlop village, whilst still relating to the existing village.

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

The revised layout, in all its elements, is considered to be acceptable and in accordance with the Council's Design Strategy.

5.5 Policy RES 22 requires developers to observe the minimum private open space criteria and standards detailed in Schedule 4 of the Local Plan.

The proposed development is considered to accord with the private open space standards for the houses and flats. However, it should be noted that the standards quoted in Schedule 4 of the local plan may be relaxed at the discretion of the Council where considered appropriate. The layout presented is considered acceptable to the Council.

5.6 The proposed development is considered to accord with the wider provision of Policies RES 19 and RES 20 in terms of recreational and amenity open space.

5.7 Policy ENV 7 expects all developers to fully comply with the Council's Design Guidance. The Design Guidance requires that all development is based on good design practice and incorporates sensitive design features in keeping with good design principles. A sense of place should be created using distinctive housing designs, good use of the natural features of the development site and the formation of new attractive open space and public amenity features through sensitive landscaping and parking. Housing layouts shall include a variety of house types of differing sizes suitable for a wide range of households. The height and position of houses must not have an oppressive, overshadowing or visually intrusive impact on neighbouring properties.

It is considered that the proposed development accords with Policy ENV 7 and the Design Guidance as the housing has been sited and designed to minimise its impact on adjacent residential

properties whilst being compatible with the surrounding area. The proposed development will provide modern housing which will be compatible with the modern housing (The Fieldings) on the adjacent site. The open space provision has been sited to maximise the location of the site adjacent to the Burn and its rural surrounding.

5.8 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.

The applicants have indicated that they are willing to make a contribution to the TLR 5 fund. The developer points out that they contributed £40,000 towards the TLR 5 fund for the original submission, as well as around £100,000 to provide the station and bowling green car parks and for improvement works to the bowling club building, now all completed.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the letters of representation received which are detailed in Sections 3 and 4 of the report, SPP3 Planning for Housing, the planning history and the impact on the amenity of the surrounding area.

Consultations and Representations Received

6.2 The consultations and representations received have been fully addressed in Sections 3 and 4 of the report. It is not considered that these highlight issues that are of such weight as to merit refusal of the application; rather where there are concerns these have been satisfactorily addressed in the submission or can be dealt with by conditions.

SPP3: Planning for Housing

6.3 SPP3 encourages the provision of well located high quality new housing. New housing should make a positive contribution to the built and rural environment and should be designed and laid out to provide lasting benefits. Achieving quality is therefore important. The overall design of the development should be fully addressed, particularly matters such as layout of roads, footpaths and the relationship to existing development nearby. There should be provision of a choice of housing types.

Planning History

6.4 03/0679/OL: Proposed Upgrading of Access Road and Creation of New Residential Development in Outline at site of Former Hapland Mill, Stewarton Road, Dunlop. This outline application was approved on 23 January 2004 for residential development on southern section of the application site.

6.5 04/0688/RM: Proposed Change of Use to form Residential Development comprising 11 No. Detached Houses with Associated Roads and Footpaths and Formation of New Access Roadway/site at Hapland Mill, Stewarton Road, Dunlop. This application has been sisted by the applicant pending the outcome of the present application under consideration.

6.6 04/1036/FL: Proposed Re-development of Site for Residential Purposes Industrial Yard Parkhead, Newmill Road, Dunlop. This application was by the same applicant as the application under consideration and involved the Howies site excluding the Hapland Mill site. It was withdrawn by the applicant on 22 March 2005.

6.7 05/0292/FL: Proposed Demolition of Existing Building and Erection of Residential Dwellings, Mini Roundabout, Speedtable and Associated Roadworks, conditionally approved 14 October 2005.

Impact on the Amenity of the Area

6.8 The site lies within the settlement boundary for Dunlop, close to the village centre and railway station. It is considered that the redevelopment of this area for housing will significantly enhance the appearance and character of the surrounding area. The open space distribution relates well to the development within the site and affords opportunities for linkages to the adjoining countryside.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 The applicant's agreement to make a contribution to the Sports, Leisure and Recreation Fund in terms of Policy TLR 5, will require a formal agreement to be entered into between the Council and the applicant.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report the application is not strictly in accordance with the Development Plan. However, the previous consent has established the residential use of the site. Nevertheless, 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 It is though, the case that the principle of residential development of the entire site has been established through the granting of the earlier planning consent 05/0292/FL which reflects the Council's most up to date position on this site.

8.3 As indicated in Section 6 of the report there are relevant material considerations principally the granting of planning consent 05/0292/FL. The concerns of the objectors are noted however they are not considered to be of sufficient weight to justify a recommendation of refusal.

8.4 As indicated in Section 6 of the report there are relevant material considerations principally the granting of planning consent 05/0292/FL. The concerns of the objectors are noted however they are not considered to be of sufficient weight to justify a recommendation of refusal. Their concerns with regard to the detrimental effect of the retaining wall do not outweigh the overall benefits in developing this site. The wall will not significantly affect any neighbouring property, but will alter the appearance of the area around the burn. This however will not be to such an extent as would warrant refusal of the application.

8.5 It is considered that the development will add to the amenity of the area, by providing a range of modern housing of different sizes and tenure to meet housing demand in the Dunlop area.

9. RECOMMENDATION

9.1 It is recommended that the application should be approved subject to the conditions indicated on the attached sheet and that the issuing of the Planning Decision Notice be withheld until the Solicitor to the Council has satisfactory concluded an Agreement with the applicants in respect of the matters detailed in Sections 5.8 and 7.1 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 it will require to be referred to the Development Services Committee, as there would be a significant breach of Council Policy.

Alan Neish
Head of Planning, Development and Building Standards

8 March 2007 (WS/SA)

LIST OF BACKGROUND PAPERS

1. Application Form and Plans
2. Statutory Notices/Certificates.
3. Consultation Responses.
4. Letters of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted East Ayrshire Local Plan.
7. SPP3: Planning for Housing.
8. Planning Application 03/0679/OL.
9. Planning Application 04/0688/RM.
10. Planning Application 04/1036/FL.
11. Planning Application 05/0292/FL.

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

06/0630/FL

Site of Proposal:	Parkhead Newmill Road DUNLOP KA3 4AX
Nature of Proposal:	Amendment to planning permission 05/0292/FL including the erection of 12 flats and 6 terraced dwellings at plots 72-89; amendment to elevations of plots 1-10; substitution of house type j on plots 11 & 12; amendment to design of house type e; provision of electrical sub station adjacent to plot 73; deletion of plot 74; deletion of formal teenage play area; provision of toddler's play area; amendments to bowling green and railway station car parks and increase in height of retaining wall along the glazert burn in retrospect at Newmill Road, Dunlop by Dickie and Moore Ltd
Name & Address of Applicant:	Dickie and Moore Ltd Building 1 Waverly House Hamilton Business Park HAMILTON ML3 0QA
Name & Address of Agent:	Lawrence McPherson Associates The Atrium 6 New Road AYR KA8 8EX

DPOs Reference: WS /SA

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

- (1) Details of the landscaping within the site, in terms of species and numbers, as well as confirmation of the maintenance arrangements for the landscaped areas within the application site shall be submitted to and approved by the Planning Authority in writing within 2 months of the date of this consent and implemented as approved thereafter.

REASON To ensure the future maintenance of the landscaped areas in the interest of residential amenity.

(2) All future occupants of the proposed dwellings shall be made fully aware of the location of the toddler's play area, details of the play equipment, on-site drainage, the SUDS detention basin, the retaining wall next to the Glazert Burn and maintenance arrangements for these items prior to the purchase of any dwellinghouse. Details of how future occupants of the proposed dwellings are to be informed of these approved items shall be submitted to and approved by the Planning Authority within 2 months of the date of this consent.

REASON To ensure residents are fully aware of the location of these items in the interest of residential amenity.

(3) During the period of construction works, the developer of the site shall ensure that adequate and continuing measures are taken such that roads and footpaths adjoining the site are maintained free from mud and other material carried from the site by construction and any other vehicles.

REASON In the interests of public and road safety.

(4) No materials other than topsoil shall be brought into the site for the purposes of infilling or upraising ground levels without the prior written consent of the Planning Authority.

REASON In order to control the development of the site and materials used in the making up of ground levels.

(5) Any changes in the finished floor levels, road levels, proposed ground levels approved of less than 750mm, shall be notified and approved by the Planning Authority in writing prior to their implementation. Higher increases will require the submission of a further planning application, prior to implementation.

REASON In order to ensure that the proposed levels are implemented in accordance with the approved details.

(6) The final details of the Sustainable Urban Drainage System and its maintenance following installation shall be submitted to and approved in writing by the Planning Authority. The Sustainable Urban Drainage System shall thereafter be formed and maintained on site in accordance with the approved details prior to the occupation of any of the dwellinghouses.

REASON To ensure adequate drainage is provided.

(7) A remediation scheme to deal with the contamination arising from industrial usage of the site, as it relates to Plots 20-55 and adjoining land to leading to the site boundary shall be submitted to and approved in writing by the Planning Authority. The scheme shall contain details of proposals to deal with contamination to include:-

1. The nature, extent and type (s) of contamination on the site
2. A site specific risk assessment of all relevant pollutant linkages
3. Remediation measures to treat/remove contamination to ensure the site is fit for the use proposed
4. Measures to deal with unsuspected contamination discovered during construction works
5. Condition of the site on completion of de-contamination measures
6. Details of measures to remove all pipes underground services on site as a result of the previous use and remedial measures to fill the ground levels following their removal.

Before any residential unit on Plots 25-55 is occupied the measures to de-contaminate that part of the site shall be fully implemented as approved by the Planning Authority.

REASON In the interests of public safety and residential amenity.

(8) On completion of the remedial works approved under the terms of Condition (7) above and prior to any of the residential units being occupied, the developer shall submit a report which shall be approved in writing to the Planning Authority confirming that the works have been carried out in accordance with the remediation plan.

REASON To provide verification that remediation of contamination has been carried out in accordance with the remediation plan.

(9) Any works to trees including felling shall commence after not less than 14 days notice has been given to the Planning Authority and arrangements made for the supervision of works by a representative of the Planning Authority.

REASON To ensure the proper supervision of the works in the interests of visual amenity.

(10) Notwithstanding the submitted plans, a 1.8 metre high boundary fence and structural planting shall be provided along the rear boundaries of Plots 24 to 33, details of which shall be submitted to and approved by the Planning Authority within 2 months of the date of this consent and shall be implemented prior to the occupation to any dwellinghouses to which it relates.

REASON In the interests of residential and visual amenity.

(11) Notwithstanding the submitted plans details of the design and construction of all fences and walls to be erected on the site shall be submitted to and approved 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 amenity.

(12) Notwithstanding the submitted plans a 1.8 metre high fence shall be erected along the western boundary of the site, next to the railway line, details of its design and location shall be submitted to and approved by the Planning Authority within 2 months of the date of this consent and shall be implemented prior to the occupation of Plots 20 – 24.

REASON In the interests of safety and residential amenity.

(13) All construction traffic shall take access to the site from Newmill Road at all times.

REASON In the interests of road safety.

(14) Notwithstanding the submitted plans, details of the treatment of the boundary adjacent to Plots 62-68 shall be submitted to and approved by the Planning Authority within 2 months of the date of this consent and shall be implemented prior to the occupation of the dwellinghouses to which it relates.

REASON In the interests of residential and visual amenity.

(15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any order revoking and re-enacting that order, permitted development Classes 1, 3, 4, 5 and 7 of Schedule 1 of said Order are hereby removed in relation to Plots 34 to 43 as shown on Drawing No. 671L(-)003V.

REASON To enable the Planning Authority to retain control over future development of the site in the interests of residential amenity.

(16) Details of the toddler's play area, adjacent to Plot 72, shall be submitted to and agreed in writing by the Planning Authority within 2 months of the date of this consent. These details shall include a suitable access to public road boundary fencing along the public road and adjoining bowling club access and car park. Thereafter, the approved scheme shall be implemented upon the occupation of more than 50% of the houses within the site and subsequently maintained in accordance with the approved details.

REASON To ensure a satisfactory play area is achieved and in the interests of the amenity of the surrounding area.

(17) External construction work and deliveries to the site shall only take place between 08.00 a.m. to 6.00 p.m. Monday to Fridays, 08.00 a.m. to 1.00 p.m. on a Saturday and at no time on a Sunday or Public Holidays.

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

NOTES TO APPLICANT

1. The applicant should satisfy him/herself as to the suitability of the site for construction purposes.
2. Early contact is advised with Blackwater SAC on 0141 418 4093 or at 95 Kilbirnie Street, Glasgow G5 8JD.
3. 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 with the overall framework recommended in the design manual for SUDS published by CIRIA.
4. The SUDS shall be discussed in accordance with the recommendations contained in the CIRIA manual on SUDS.
5. The applicant shall make early contact with Scottish Water Developer Services, Clyde House, 419 Balmore Road, Glasgow, G22 6NU regarding sewer and water connections.
6. The applicant should make early contact with SEPA, Redwood Crescent, Peel Park, East Kilbride G74 5PP with regard to a Construction Method Statement for construction works in close proximity to the watercourse.
7. The applicant shall contact the Council's Roads and Transportation Division (Tel. 01563 576358) with regard to any traffic management, road construction or works involving the Glazert Burn, within one month of the date of this consent.

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