

## **EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE: 21 MAY 2004**

**04/0301/FL: SUBSTITUTION OF HOUSE TYPE 50  
AT 1 RAASAY PLACE, KILMARNOCK  
BY PERSIMMON HOMES LTD**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 For the purposes of clarification the description is detailed as a substitution of house type. A statement in support of the application has been submitted on the applicant's behalf. This statement is addressed more fully in Section 4 of the report.

1.2 The circumstances of the application site are such that the house has been built and occupied for about two years now. The same house was considered in a planning application with wider scope at the Northern Area Local Planning Committee of 05 December 2003 (03/0196/FL). That application had a favourable recommendation but the entire application was subject to a hearing as a consequence of an objection being lodged solely in respect of the house in Plot 50. At the conclusion of the hearing it was determined to approve the application subject to a condition that the "house in Plot 50 is not approved". The reason for this condition was recorded as being "due to the detrimental impact on the residential and visual amenity of Plot 45", the house of the objector.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved; but that in the event that the application is refused, the Committee agree to the Planning, Development and Building Standards Division taking formal enforcement action to secure removal of the unauthorised house.**

#### **3. CONCLUSIONS**

3.1 As is indicated at Section 5 of the report the application is in accordance with the Adopted East Ayrshire Local Plan therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be granted unless material considerations indicate otherwise.

3.2 In respect of these considerations it is the Division's view that the proposed development can be favourably determined as having no significant detrimental impact on the immediate adjacent properties.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development Services Committee as it would not be a significant departure from Council Policy. The implications in respect of enforcement action are as explained above.

**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 application for planning permission that requires to be considered by the Local Planning Committee as it is subject to an objection.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site in this case comprises an existing house situated at 1 Raasay Place, Kilmarnock, formerly known as Plot 50 of Toponthank Area C. The house is a detached villa and is sited in its own garden ground at the entrance to Raasay Place which is an established cul-de-sac.

2.2 **Proposed Development:** For the purposes of clarification the description is detailed as a substitution of house type. A statement in support of the application has been submitted on the applicant's behalf. This statement is addressed more fully in Section 4 of the report.

2.3 The circumstances of the application site are such that the house has been built and occupied for about two years now. The same house was considered in a planning application with wider scope at the Northern Area Local Planning Committee of 05 December 2003 (03/0196/FL). That application had a favourable recommendation but the entire application was subject to a hearing as a consequence of an objection being lodged solely in respect of the house in Plot 50. At the conclusion of the hearing it was determined to approve the application subject to a condition that the "house in Plot 50 is not approved". The reason for this condition was recorded as being "due to the detrimental impact on the residential and visual amenity of Plot 45", the house of the objector.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Southcraigs Dean Community Council has not replied at the time of writing the report.

***Noted.***

### 4. REPRESENTATIONS

4.1 The individual who objected to the previous application has objected again to this new application. The relationship with the objector's property and the new house at Plot 50 was originally approved such that the villa was sited 1.8 metres from the objector's rear boundary fence as per planning approval 01/0237/FL. The circumstances on site are now such that the new house is sited at an average distance of 900 mm from that fence. The grounds of objection are similar to those raised previously as follows:-

1. The house at Plot 50 is detrimental to my own residential amenity.

***It is not considered that the circumstances of this house result in a sufficient additional impact by comparison with that originally approved as to justify the refusal of the application.***

2. It is overlooking and invading my privacy.

***The proposal has no such impact on the objector's property. There are no windows in the gable of the house facing her property.***

3. I have little or no natural light into the rear of my property.

***It is not considered that the proposal has a marked additional impact in this regard when compared with the original approval.***

4. It (the house) intrudes 400 mm into my property.

***There is not believed to be any such intrusion.***

5. The house in Plot 50 has no planning permission.

***The application seeks to rectify this situation.***

6. The house in Plot 50 will have a negative impact on the value of my property.

***Noted. This is not a valid planning consideration.***

7. Additionally the objector maintains that Persimmon Homes should offer compensation for her position.

***Again this aspect is not a valid planning consideration.***

4.2 As stated above a statement has been submitted in support of the application. For the Committee's benefit the submission clarifies the history of the site as follows:-

*"Planning permission has been granted for a dwellinghouse on this site as part of the overall residential development. Planning permission 01/0237/FL granted consent for an 'Ascot' house type on Plot 50. This involved a 2-storey dwellinghouse, which had a door and a window at ground level on the east elevation. The house was positioned 1m from the boundary of Plot 49 and 1.8m from the boundary with Plot 45.*

*Subsequently an application (ref. 03/0196/FL) was submitted for the substitution of a number of house types including the one on Plot 50. This application was for retrospective permission.*

*Following consideration by your department. The application was recommended for approval for the Northern Area Local Planning Committee on 05 December 2003. The application was subject to an objection relating to Plot 50 in that the proposed house would be closer to the house at Plot 45. On this basis the resident living on Plot 45 objected on the grounds that the proposed development is detrimental to the objectors property, is overlooking and invading the objectors privacy and the feu of the house intrudes into their land."*

The statement continues by quoting extracts from the Division's Report to the Local Planning Committee of 05 December 2003 and continues further by offering conclusions on the effect and validity of the condition which refused permission for the house in Plot 50 as being ultra vires.

*"This condition has the effect of 'refusing' planning permission but is ultra vires as it is not appropriate to determine an application in such a way.*

*In order for a condition to be valid, it must meet the six tests and as a matter of policy, conditions should only be imposed where they are:*

- *Necessary*
- *Relevant to planning*
- *Relevant to the development permitted*
- *Enforceable*

- *Precise; and*
- *Reasonable”*

*“It is our opinion that Condition 1 fails two of the above tests, namely necessity and reasonableness for the following reasons.*

*It is therefore necessary to consider the reasoning for the imposition of the planning condition in terms of Circular 4/1998. The consent notice for approval of the application states the reason for refusal as ‘due to the detrimental impact on the residential and visual amenity of Plot 45’.*

*This does not present a strong argument for the imposition of the condition as a property will not be adversely affected by the proposal. Without repeating your Department’s own comments in relation to the neighbouring residents objection, the proposal only involves the moving of the gable of the house 900mm closer to the house at Plot 45. It is questionable if this will have any impact on the property at Plot 45 but this has to be considered in the context that there was always a dwellinghouse proposed at this location of a similar scale and height. What is also important to consider is that the original house proposed has a door and a window on the elevation that faced the house on Plot 45 whereas the house now proposed does not, thereby improving privacy of the house at Plot 45. Simply the condition is not necessary.*

*It is also unreasonable to ‘refuse’ planning permission for Plot 50 via a planning condition. Circular 4/1998 advises that a condition should not be imposed which effectively nullifies the benefit of the grant of planning consent. In this instance the condition completely removing the benefit of planning permission. As a result the condition is clearly unreasonable.*

*On the basis of above it is our opinion that the proposed development is entirely reasonable in planning terms and that the proposal does not adversely impact the property at Plot 45.”*

***The clarification on the exact finish to the gable end of the house proposed is noted.***

***It should be borne in mind that the original permission (01/0237/FL) that included the objector’s house also included a house at the rear with the gable facing the objector’s property. It is acknowledged that the new house in Plot 50 is closer to the objector’s property and that the impact is marginally increased as a consequence of that re-siting. However the increase in the impact arising from the presence of the house is not considered to be of sufficient scale to justify the refusal of the application. Additionally the ground floor***

***level of the new house sits lower than the ground floor of the objector's property, the house also sits 1.5 metres further north. The objector retains an appropriate level of rear garden ground with a proposed total separation from wall to wall with the new house of approximately 10 metres.***

***Consequently, it is considered that although the house as built is slightly closer to the objector's property than originally approved, the current application can be supported.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (2003).

5.2 Policy ENV 7 of the EALP is relevant and expects all developers to comply fully with the Council's Design Guidance and Policy documents relating to and advising on the particular type of development proposed.

5.3 The Design Guidance advises that new houses should not result in an unacceptable invasion of privacy or overlooking of properties adjoining the site. The height and position of houses must not have an oppressive, overshadowing or visually intrusive impact on neighbouring properties.

***It is considered that the house does not adversely affect the privacy or daylight enjoyed by adjoining properties due to its design, size and orientation. The materials used are compatible with those used elsewhere in the area. Sufficient garden ground has been provided. The other elements of the application are also considered to be acceptable when viewed against Policy ENV 7.***

***The proposal therefore accords with the Development Plan.***

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

6.1 The material considerations relevant to the determination of the application are the objection received, the planning history of Plot 50 and the supporting statement.

6.2. These considerations have been assessed and notwithstanding the determination of application 03/0196/FL in December last year it is considered

appropriate to recommend approval of this application.

6.3 This submission relates solely to the house, with updated plan of the house confirming the exact external appearance of the house in respect of window positions etc, and the supporting statement put forward on the applicant's behalf. The issue of the positions of windows could have been addressed by means of a Non Material Variation submission had the house been approved in December.

6.4 Accordingly it is the view of the Division that the positioning of a house 900 mm closer to the objector's rear fence than originally approved does not result in a significant increase in detriment to the objector's property.

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

7.1 There are no financial implications for the Council in determining this application.

7.2 Should the Committee agree to refuse the application, the house already constructed would be unauthorised. As a consequence it is considered that the Committee should consider whether it would be appropriate to initiate formal enforcement action against the unauthorised house.

## **8. CONCLUSIONS**

8.1 As is indicated at Section 5 of the report the application is in accordance with the Adopted East Ayrshire Local Plan therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be granted unless material considerations indicate otherwise.

8.2 In respect of these considerations it is the Division's view that the proposed development can be favourably determined as having no significant detrimental impact on the immediate adjacent properties.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved; but that in the event that the application is refused, the Committee agree to the Planning, Development and Building Standards Division taking formal enforcement action to secure removal of the unauthorised house.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards the application will not require to be referred to the Development Services Committee as it would not be a significant departure from Council Policy. The implications in respect of enforcement action are as explained above.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

13 May 2004  
(IW/MMM/SA)  
FV-DVM

### **LIST OF BACKGROUND PAPERS**

1. Application forms/Plans.
2. Statutory Notices and Certificates.
3. Consultations.
4. Letters of objection.
5. Adopted East Ayrshire Local Plan 2003.
6. Previous applications: 01/0237/FL; 03/0196/FL.

Anyone wishing to inspect the above papers please contact Ian Walker on 01563 576769.

***Implementation Officer: Dave Morris***

040301FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

04/0301/FL

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Site of Proposal:	Plot 50 1 Raasay Place KILMARNOCK
Nature of Proposal:	Proposed Substitution of House Type - Retrospective
Name & Address of Applicant:	Persimmon Homes Scotland Ltd Persimmon House 77 Bothwell Road HAMILTON ML3 0DW
Name & Address of Agent:	James Barr & Son 226 West George Street GLASGOW G2 2LN

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DPOs Reference: IW/MMM

The above FULL application should be granted.

**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.**