

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 28 JANUARY 2005

**04/1005/FL: PROPOSED ERECTION OF DWELLINGHOUSE WITHIN
GARDEN GROUND AT 11 MURRAY COURT, CUMNOCK**

APPLICATION BY MR. C. LIVINGSTONE

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the erection of a five apartment, single storey dwelling with attic accommodation and an integral garage. The layout of the plot indicates that the proposed dwellinghouse will front onto Bank Glen with the main ridgeline of the roof running parallel to it. A front building line of approximately 7 metres will be introduced into the plot.

1.2 The attic accommodation will comprise a family room and a bedroom. Daylighting of the family room will be effected by two velux roof lights on both the front and rear roof elevations of the proposed dwelling. The attic bedroom will have a window on the east gable elevation of the proposed dwelling.

1.3 Access to the plot will also be taken from Bank Glen with the layout plan showing the provision of a new 2 metres wide footpath constructed along the road frontage of the site and a vehicle turning area within the plot.

1.4 Although not forming part of the red line application site, the submitted layout plan indicates the acquisition of a further strip of the maintained open space to the rear of the existing dwelling at No. 11 Murray Court (19 metres by 4 metres). This is to address a shortfall of private open space that will result for that property in the development of the new dwellinghouse. The assimilation of this additional strip of land into the curtilage of No. 11 Murray Court would require to be the subject of a separate planning application. This strip of land is also in the ownership of the Council.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

3.1 As 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 Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application and it is considered that as some of the points of objection are pertinent and valid, these would also indicate refusal of the application is appropriate.

3.2 The overall concept of providing an additional dwellinghouse within the rear / side garden ground of 11 Murray Court appears somewhat contrived and development of the site will not be physically possible without an additional land adjoining Bank Avenue being included as an integral part of the overall development site. This additional area of land currently comprises part of a larger area of maintained public amenity open space which, although not specifically safeguarded in the adopted East Ayrshire Local Plan, is considered to be of significant amenity value and to contribute positively to the character and appearance of the wider Bank Avenue area. The loss of part of this area is not considered to be acceptable in amenity terms and the proposed development is not considered acceptable in terms of policy TLR9. This particular area of land, over which access to the development will be afforded, is in the ownership of the Council.

3.3 In order to provide a plot of sufficient size to accommodate the proposed new house, the extent of the private secluded open space attached to the existing house has been reduced to unacceptable levels. With regard to the existing house, the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan cannot be met. This is not considered acceptable in terms of policy.

3.4 In order to achieve minimum open space provision for the existing dwelling house, it is necessary for a further portion of the area of open space adjoining Bank Avenue to be purchased and included within the curtilage of the property as additional garden ground. This would further erode and fragment the remaining area of amenity open space, create an irregular boundary to the area and further diminish the existing high amenity value of the area. This is not considered to be in the best interests of the proper planning of the area.

3.5 It is considered that the proposed development would not only have an adverse impact on the amenity of the existing dwellinghouse at No. 11 Murray Court but also the amenity and privacy of adjacent properties.

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, the application will not require to be referred to the Development Services Committee because it would not represent a significant departure from the development plan.

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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04/1005/FL: PROPOSED ERECTION OF DWELLINGHOUSE WITHIN
GARDEN GROUND AT 11 MURRAY COURT, CUMNOCK

APPLICATION BY MR. C. LIVINGSTONE

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 an application for full planning consent which is to be considered by the Local Planning Committee under the scheme of delegation as the proposal is the subject of objections and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies on the south side of Bank Glen in Cumnock some 110 metres east of the junction of Bank Glen with Bank Avenue. The site lies immediately east of No. 11 Murray Court and to the north of No. 12 Murray Court. Areas of maintained open space lie to the east and west of the application site. The open space area to the east has recently been the subject of a detailed planning consent for the erection of four dwellinghouses (Ref. No. 04/0629/FL).

2.2 The application site is level and extends to approximately 464 m² and comprises the side garden area of No. 11 Murray Court (294 m²) and a strip of the maintained open space fronting onto Bank Glen (170 m²). The application site is currently divided by an existing 1.8 metres high vertical board fence that marks the boundary between the rear gardens of Nos. 8 to 11 Murray Court and the larger maintained open space linear strip of land on Bank Glen. This linear area of maintained open space was previously occupied by a former local authority library headquarters and is in the ownership of the Council.

2.3 **Proposed Development:** Full planning permission is sought for the erection of a five apartment, single storey dwelling with attic accommodation and an integral garage. The layout of the plot indicates that the proposed dwellinghouse will front onto Bank Glen with the main ridgeline of the roof running parallel to it. A front building line of approximately 7 metres will be introduced into the plot.

2.4 The attic accommodation will comprise a family room and a bedroom. Daylighting of the family room will be effected by two velux roof lights on both the front and rear roof elevations of the proposed dwelling. The attic bedroom will have a window on the east gable elevation of the proposed dwelling.

2.5 Access to the plot will also be taken from Bank Glen with the layout plan showing the provision of a new 2 metres wide footpath constructed along the road frontage of the site and a vehicle turning area within the plot.

2.6 Although not forming part of the red line application site, the submitted layout plan indicates the acquisition of a further strip of the maintained open space to the rear of the existing dwelling at No. 11 Murray Court (19 metres by 4 metres). This is to address a shortfall of private open space that will result for that property in the development of the new dwellinghouse. The assimilation of this additional strip of land into the curtilage of No. 11 Murray Court would require to be the subject of a separate planning application. This strip of land is also in the ownership of the Council.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Property Services Section confirms that the Council owns part of the application site and is currently in negotiations with the applicant regarding the purchase of the land.

Noted.

3.2 The Scottish Environment Protection Agency has no objections in principle to the proposals subject to the drainage arrangement being to its satisfaction. All foul drainage from the development must be connected to the public sewerage system in accordance with Scottish Water requirements. The development must not entail the use of dual manholes for connections to the existing sewerage system, either in the public sewers or within the curtilage of the development. Surface water run-off should be kept separate from all foul drainage and should be discharged on site via a localised soakaway arrangement.

A note can be attached to any consent granted for the proposed development to advise the applicant to make early contact with SEPA regarding the drainage of the site.

3.3 Scottish Water has no objections to the proposed development although advises that the applicant should make contact with its Technical Advisor. A totally separate drainage system of foul and surface water sewers will be required.

A note can be attached to any consent granted for the proposed development to advise the applicant to make early contact with Scottish Water regarding the drainage of the site.

3.4 Transco and Power Systems have no objections to the proposed development.

Noted.

3.5 East Ayrshire Neighbourhood Services Outdoor Amenities Section states that it has no objections to the proposed development but indicates that any land held in its maintenance account damaged by the proposed development be reinstated to its satisfaction.

A condition can be attached to any consent granted for the proposed development to meet the requirements of the Outdoor Amenities Section.

The Section further states that the area of land requested for addition to No. 11 for garden ground be extended to the road to avoid fragmentation for maintenance.

As indicated in section 2.6 above, this does not form part of the red line application site and this will require to be the subject of a further application for planning permission.

3.6 Cumnock Community Council has no objection to the proposal.

Noted.

3.7 East Ayrshire Roads and Transportation Division has no objections to the proposed development subject to the following conditions:

- (i) no surface water must be allowed to discharge onto the proposed public road;
- (ii) access to the site must be taken via a standard driveway access crossing to East Ayrshire Roads standards;
- (iii) the garage must be set back a minimum distance of 6m from the rear of the footway;
- (iv) the private driveway will require to be paved for a minimum distance of 2m from the rear of the footway;
- (v) any gates will require to open inwards away from the proposed public road;
- (vi) any existing roadside services must be protected beneath the proposed access;

- (vii) visibility sightline splay areas of 2.0m by 20m will require to be formed and maintained at each access, with no obstruction greater in height than 1m allowed within these areas;
- (viii) a 2 metres wide footway to East Ayrshire Roads specification will require to be constructed along the frontage of the site. The formation of the footway shall not reduce the width of Bank Glen;
- (ix) two number off road parking spaces will require to be provided for the dwelling;
- (x) the proposed driveway should be not less than 4.8 metres in length by 2.5 metres wide;
- (xi) access and egress from the site will require to be taken in forward gear.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.

4. REPRESENTATIONS

4.1 Three letters of representation from five signatories have been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 The position of the house should be kept within the boundaries of Murray Court and access should preferably be taken from there also.

Without the area of open space being included in the plot, the available land within the confines of No. 11 Murray Court would not be sufficient to allow the development to proceed. The configuration of existing dwellings around the application site is such that access from Murray Court can not be readily achieved without significant detriment to the existing dwellinghouse.

4.3 If allowed to be built as shown on the plan, it would severely impact on the development for which we have just obtained planning approval. We feel that the proposed development would obscure vehicle visibility to plot 4 of our proposed development.

It is considered that the proposed development would have an adverse impact on the adjacent proposed development in terms of potential overlooking and privacy issues. No adverse comments have been received in respect of road safety issues.

4.4 Keeping the development within the privately owned ground we have no objection to but allowing this to go ahead with the already granted development at Bank Glen would surely create clutter in this corner.

It is considered that the layout of the proposed development will mean that the proposed dwellinghouse will poorly relate to the existing development at Murray Court and will not relate at all to the proposed new residential development at Bank Glen either in terms of layout or house styles.

4.5 It is understood that if the proposal is approved, the owner of the property at No.11 Murray Court would have to acquire an area of ground immediately north of his property to keep his required garden space. If this is the case, then this would open up the opportunity for other owners to apply for Council owned ground leading to the pleasant grassed area in Bank Glen being lost to property accesses or even building extensions which will surely detract from the attractive area presently experienced.

Although not forming part of the red line application site, the submitted layout plan indicates the acquisition of a further strip of the maintained open space to the rear of the existing dwelling at No. 11 Murray Court. However, it is considered that approval of the application could set an undesirable precedent for further fragmentation or complete loss of the area of open space, as suggested by the objector. This would be contrary to good planning principles.

4.6 There is the problem of drainage water, with my property being immediately downhill from the proposed development. With the already approved development at Bank Glen, this could cause problems for other properties in Bank Glen.

Neither Scottish Water nor SEPA has raised any particular issues regarding the drainage of the site. The applicant will require to address the issue of drainage of the site with Scottish Water and SEPA.

4.7 The proposed development site is outwith the existing site boundaries of Murray Court thus detracting from the character of the streetscape of Bank Glen. The proposal also erodes public open space and amenity use for local residents.

It is agreed that the proposed development will have a detrimental affect on the character and amenity of Bank Glen and will result in the partial loss of amenity open space.

4.8 A new residential property should conform to Schedule 4 of the East Ayrshire Local Plan.

The policy implications of the proposed development are fully discussed in section 5 below.

4.9 The close proximity of the proposed dwelling on the application site will overlook existing properties at Bank Glen, particularly No. 5 and 6 and intrude on privacy. It would also have an impact on daylighting particularly during the winter.

It is considered that the proposed development would not have a significant overlooking, loss of daylight or loss of privacy impacts for existing dwellings in Bank Glen, given the distance between the existing properties and the proposed dwelling, and the fact that the properties on Bank Glen have open aspects onto Bank Glen.

4.10 EAC Roads Guidance indicates that where there is no pavement any garage should be located 8 metres from the kerb. This may affect the proposed dwelling as the house design includes an integral garage.

The proposed development provides for the construction of a new 2 metres wide footpath. The Roads and Transportation Division has raised no adverse comments on the proposed development.

4.11 Local knowledge suggests that a main sewer is located along the length of the open space. The inspection access hatches located in this area may confirm this. Current good practice is to allow a 3 metre way leave either side of a main sewer for access and maintenance purposes. You may wish to contact Scottish Water in this respect.

Scottish Water has been consulted on the proposed development and has not raised any issues regarding infrastructure vested in the application site.

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).

Ayrshire Joint Structure Plan

5.2 There are no policies contained within the structure plan which are especially relevant to the proposed development.

Noted.

East Ayrshire Local Plan

5.3 The site constitutes a development located partly within the garden ground of an existing dwellinghouse and partly on an area of public maintained open space, both located within the settlement boundary of Cumnock. The application therefore requires to be assessed against both the provisions of local plan policy RES4 (which relates to redevelopment sites) and policy RES5 (which relates to the subdivision of existing house curtilages).

5.4 Policy RES4 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 a set of four stated criteria, as follows:

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

It is not considered that the proposed development will have any adverse impact on the surrounding natural or built environment.

(ii) transportation and infrastructure implications;

There are no adverse infrastructure implications arising from the proposed development.

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

It is considered that the proposed development is in keeping with surrounding densities and house types.

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

The development complies with the Council's approved Design Guidance for new residential developments.

5.5 Policy RES5 states that, within Settlement Boundaries, the Council will be supportive of the sub-division of existing house curtilages for the development of dwellinghouses subject to three criteria being met, as follows:

(i) the proposal being fully in keeping with the existing residential character and appearance of the area within which it is located;

The proposed development of a dwelling house on the site is considered to be in keeping with the existing residential character and appearance of the area.

- (ii) the proposal meeting all the design requirements of the Council and not creating unacceptable damage to the amenity of surrounding properties; and

The application requires to be assessed against the Council's approved design guidelines regarding new residential developments. While the proposal is considered to meet the design requirements of the Council, it is considered that the development could adversely affect the amenity of the property within whose grounds it is proposed and adjacent properties, both existing and already with planning consent.

- (iii) acceptable levels of privacy being maintained to neighbouring properties and to the new housing proposed.

It is considered that the development could adversely affect the amenity of the property within whose grounds it is proposed as the development will reduce the amount of secluded private open space attached to the existing dwelling house on the site to a level which does not meet the standards detailed in the adopted East Ayrshire Local Plan. The proposed dwelling will also have attic accommodation with roof lights that will face directly onto the rear garden area of No. 12 Murray Court. Furthermore with the approval of residential development on the site lying to the east of the application site, the attic bedroom will have a window facing directly onto the adjacent proposed plot. This is considered to have a significant adverse impact on the privacy of adjacent properties.

5.6 The policy also states that backland development will not be permitted in certain stated circumstances, as follows;

- (i) where this would adversely affect the amenity of the area;

It is considered that the proposed development of an area of maintained public open space as an integral part of the development site will be detrimental to the overall character and amenity of the area and could set a precedent for further inappropriate fragmentation of the public open space area as evidenced by the need for further acquisition of land to meet private open space requirements for No. 11 Murray Court.

- (ii) where this would adversely affect the setting of either the proposed or original building on the site; or

It is considered that the development could adversely affect the amenity of the property within whose grounds it is proposed as the development will reduce the amount of secluded private open space attached to the existing dwelling house on the site to a level which does not meet the standards detailed in the adopted East Ayrshire Local Plan required for residential developments..

- (iii) where this would adversely affect the amenity of neighbouring properties.

It is considered that the development will adversely also affect the amenity of neighbouring properties in respect of overlooking and privacy issues

5.7 Policy RES22 requires all developers to observe the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan. The policy also allows those standards quoted to be relaxed in respect of the conversion of existing properties to flats where this can be fully justified by the developer and where considered appropriate by the Planning Authority.

The proposed layout meets the Council's minimum standards for private open space provision in so far as the proposed dwelling house is proposed. However, in order to provide a plot of sufficient size to accommodate the proposed new house, the extent of the private secluded open space attached to the existing house has been reduced to unacceptable levels. With regard to the existing house, the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan cannot be met. This is not considered acceptable in planning policy terms.

5.8 Policy TLR9 states that the Council will only permit the development of private and public recreational or amenity open space for purposes other than those described in Policy TLR8 above, in the following circumstances:

- (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) alternative provision of equal community benefit and accessibility can be made available within close proximity to the site; or
- (iii) there is a clear, long term excess of pitches, playing fields and amenity open space in the wider area.

The development of a house on the site is not classed as an acceptable development in terms of policy TLR8 and none of the three circumstances quoted above is pertinent to the current application site.

It is considered that the proposed development is contrary to Policies RES5, RES22 and TLR9 of the adopted East Ayrshire Local Plan.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received and relevant planning history.

Consultations Responses

6.2 The consultation responses received do not indicate that the application should be refused.

Representations

6.3 It is considered that the points of objection relative to the loss of public open space and loss of amenity resulting from the proposed development are material considerations in the determination of this application.

Planning History

6.4 A planning application (Ref. No. 04/0629/FL) for the erection of four dwellings at Bank Glen was approved by the Southern Local Planning Committee on 08 October 2004. Due to the proposed layout of this approved development and the relationship to the proposed dwellinghouse under this current application, it is considered that there would be potential overlooking and loss of privacy arising if the current application is approved.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 Financial and legal implications will arise from the sale of the part of the application site that is in Council ownership. The Council has a financial interest in the site, but should the Committee be minded to approve this application, it would not require to be notified to the Scottish Ministers as it would not represent a significant departure from policy and it is not subject to a substantial body of objection.

8. CONCLUSIONS

8.1 As 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 Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application and it is considered that as some of the points of objection are pertinent and valid, these would also indicate refusal of the application is appropriate.

8.2 The overall concept of providing an additional dwellinghouse within the rear / side garden ground of 11 Murray Court appears somewhat contrived and development of the site will not be physically possible without an additional land adjoining Bank Avenue being included as an integral part of the overall development site. This additional area of land currently comprises part of a larger area of maintained public amenity open space which, although not specifically safeguarded in the adopted East Ayrshire Local Plan, is considered to be of significant amenity value and to contribute positively to the character and appearance of the wider Bank Avenue area. The loss of part of this area is not considered to be acceptable in amenity terms and the proposed development is not considered acceptable in terms of policy TLR9. This particular area of land, over which access to the development will be afforded, is in the ownership of the Council.

8.3 In order to provide a plot of sufficient size to accommodate the proposed new house, the extent of the private secluded open space attached to the existing house has been reduced to unacceptable levels. With regard to the existing house, the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan cannot be met. This is not considered acceptable in terms of policy.

8.4 In order to achieve minimum open space provision for the existing dwelling house, it is necessary for a further portion of the area of open space adjoining Bank Avenue to be purchased and included within the curtilage of the property as additional garden ground. This would further erode and fragment the remaining area of amenity open space, create an irregular boundary to the area and further diminish the existing high amenity value of the area. This is not considered to be in the best interests of the proper planning of the area.

8.5 It is considered that the proposed development would not only have an adverse impact on the amenity of the existing dwellinghouse at No. 11 Murray Court but also the amenity and privacy of adjacent properties.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons listed 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, the application will not require to be referred to the Development Services Committee because it would not represent a significant departure from the development plan.

Alan Neish
Head of Planning, Development and Building Standards

16 January 2005
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letters of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Previous applications 04/0629/FL

Anyone wishing to inspect the above background papers should contact Nicola Monroe on 01563 555485.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 04/1005/FL

Location	11 Murray Court CUMNOCK
Nature of Proposal:	Proposed erection of dwelling within garden ground
Name and Address of Applicant:	Mr. C. Livingstone 108 Barrhill Road CUMNOCK
Name and Address of Agent	N/A

DPO's Ref:
PPO's Ref: Hugh Melvin

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

1. It is considered that the development will adversely affect the amenity of the property within whose grounds it is proposed as the development will reduce the amount of secluded private open space attached to the existing dwelling house on the site to a level which does not meet the standards detailed in the adopted East Ayrshire Local Plan. The proposal is therefore contrary to Policy RES5 of the adopted East Ayrshire Local Plan.
2. It is considered that the proposed development of an area of maintained public open space as an integral part of the development site will be detrimental to the overall character and amenity of the area and could set a precedent for further inappropriate fragmentation of the public open space area. The proposal is therefore contrary to Policy RES5 of the adopted East Ayrshire Local Plan.
3. In order to provide a plot of sufficient size to accommodate the proposed new house, the extent of the private secluded open space attached to the existing house has been reduced to unacceptable levels. With regard to the existing house, the minimum standards for the provision of private open space detailed in Schedule 4 of the Local Plan cannot be met. The proposal is therefore contrary to Policy RES22 of the adopted East Ayrshire Local Plan.

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