

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 28 JANUARY 2005

**04/1032/OL: PROPOSED DEVELOPMENT OF LAND FOR RESIDENTIAL
PURPOSES, TOP OF KINGS WAY, CUMNOCK**

APPLICATION BY J. BAILLIE & J. MCEWAN

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Outline planning permission is sought for the development of the site for residential purposes for two dwellinghouses. No detailed drawings of the layout or house types have been submitted at this stage. However, the applicants have submitted an indicative layout of the proposed development indicating the siting of two dwellings fronting onto a proposed extension of the Kings Way residential road.

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 but it is considered that they are not of sufficient weight to justify a departure from policy in this case.

3.2 The application under consideration is for a residential development of two dwellings on a site which partly lies within the settlement boundary of Cumnock and partly lies within the Rural Protection Area. The part within the settlement boundary relates to the former rail line which is a formal right of way. The proposed development would run contrary to the Council's stated strategy to promote such footpaths and rights of way, physically severing the footpath and

necessitating its diversion. This is not considered acceptable and is also considered contrary to good planning principles.

3.3 In terms of the encroachment into the Rural Protection Area, no justification has been provided for the development in this rural area. Furthermore, in the absence of any specific locational need for this residential development there is no justification for approval that would represent a significant departure from the development plan.

3.4 It is further considered that the proposed development would be visually prominent and because of its particular elevated location, it would diminish the landscape quality and character of the area.

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 require to be referred to the Development Services Committee because it would be 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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**04/1032/OL: PROPOSED DEVELOPMENT OF LAND FOR RESIDENTIAL
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APPLICATION BY J. BAILLIE & J. MCEWAN

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 because the proposed development is subject to objections, is partly contrary to policy and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies at the south end of Kings Way, Barshare in Cumnock. It lies approximately 40 metres south of the junction of Kings Way with Hemmings Way and lies adjacent to an existing vehicle turning area and former Local Authority houses at this location.

2.2 The site extends to approximately 0.13 hectare and lies on an elevated position at the southern end of Kings Way. The site comprises of a section of former rail line and part of a larger open agricultural field lying further south. The site is bounded to the south, west and east by the former rail line and agricultural land and by a small area of open space and existing residential properties on Kings Way to the north. The site is level and the former rail line is fenced off but the land appears to be grazed and is otherwise not discernible from the wider agricultural land use.

2.3 **Proposed Development:** Outline planning permission is sought for the development of the site for residential purposes for two dwellinghouses. No detailed drawings of the layout or house types have been submitted at this stage. However, the applicants have submitted an indicative layout of the proposed development indicating the siting of two dwellings fronting onto a proposed extension of the Kings Way residential road.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Division has no objection to the proposed development subject to conditions. No surface water must be allowed to discharge onto the public road. The existing turning head requires to be extended to 15 metres long and the existing footways extended and returned across the road. Any garages must be set back a minimum distance of 6 metres from the rear of the footway. The private driveways will require to be paved for a distance of 2 metres from the rear of the footway to avoid the overcarry of loose material onto the public road. Any gates will require to open inwards, away from the public road. Two no. off-road car parking spaces will require to be provided for each dwelling. The proposed driveways should not be less than 4.8 metres in length and 2.5 metres wide.

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

3.2 Scottish Water has no objection to the application. A separate drainage of foul and surface water will be required. A separate application will be required to Scottish Water for connection to the public sewerage system.

Noted.

3.3 The Scottish Environment Protection Agency has no objection to the proposed development provided the drainage arrangements are 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 connection to the existing sewage system, either in the public sewers or within the curtilage of the development. Surface water must be excluded from the foul drainage and should be discharged to a suitably designed Sustainable Urban Drainage System. All waste materials generated by this development that require to be removed such as construction, demolition wastes and surplus excavated material, must be removed from the site by licensed waste carriers. Waste must be removed to a site that has either an appropriate waste management licence or is registered with SEPA as exempt from licensing.

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

3.4 Power Systems and Transco have no objection in principle to the proposed development.

Noted.

3.5 Cumnock Community Council has not responded to the consultation letter.

Noted.

3.6 East Ayrshire Department of Neighbourhood Services has no objections.

Noted.

4. REPRESENTATIONS

4.1 Four letters of representations from seven signatories have been received objecting to the proposed development. The main points of objection are summarised as follows:

4.2 Only one letter of notification was distributed by the applicants, which meant we only heard of the proposed development second hand.

Correct neighbour notification procedures were undertaken by the applicants. The objectors were not notifiable neighbours in respect of this development.

4.3 The proposed houses would severely impair the view from our living room window and would also block out a lot of natural light.

The loss of a view is not a material planning consideration in the determination of this application and is not a valid reason for objecting to the proposed development. Notwithstanding the fact that this is an outline application and no details of the proposed dwellings have been provided, it is considered that there would be no significant loss of daylight given the location of the objectors' property.

4.4 This site is a right of way and a designated countryside area and is used by local residents. It encroaches onto farmland and must surely disrupt the movement of livestock.

The proposed development does impinge on an identified public right of way and will involve encroachment into the countryside outwith the identified settlement boundary of Cumnock. This is contrary to policy as indicated in Section 5 below. It is understood that the applicants intend to purchase the land from the farmer of the land and is therefore unlikely to impact on land or livestock management.

4.5 One of the applicants is in breach of the conditions of the lease to his last plot of land.

This matter is not relevant to the determination of the current application.

4.6 If the development goes ahead, the street lighting at the top of Kings Way would have to be moved to allow access.

Should permission be granted, the relocation of such street furniture would be at the applicants' expense and to the requirements of the Roads and Transportation Division, which has offered no objections to the proposed development.

4.7 For water and sewerage my property is at the end of line and if new properties have to be connected, this will cause major inconvenience and disruption in my property.

Scottish Water has raised no objections to the proposed development. Access to any infrastructure that may be vested in the objectors' property is a legal matter to be resolved between them and the applicants. Access to water and sewerage infrastructure may already be secured through wayleave agreements but this is not a material consideration in the determination of this application.

4.8 There is also the issue of privacy in my property that would be looked directly into from both these properties.

The current application is in outline only and it is difficult at this stage to properly assess any potential loss of privacy due to overlooking issues. It is considered that appropriate conditions could be attached to any consent granted at a Reserved Matters stage to adequately address any potential loss of privacy.

4.9 As the applicant is employed by the Council, it is hoped he will not receive preferential treatment to allow him to build in the countryside.

The application will be determined in accordance with the provisions of the development plan and any material considerations, not on the basis of the personal situation of the applicant.

4.10 When I purchased this property I was assured by the Council that no properties would ever be built on the site of the old railway line as this was deemed a right of way. If this goes ahead I feel it would have an adverse affect on the value of my property.

Each planning application requires to be considered on its merits having regard to the provisions of the development plan and material considerations, regardless of alleged assurances of no further development in this area. The proposed development does impinge on an identified public right of way. This is contrary to policy as indicated in Section 5 below. The alleged devaluation of property is not material to the consideration of this application.

4.11 Intimation of the application has not been given to the objectors.

The applicants undertook correct neighbour notification procedures. The objectors were not notifiable neighbours in respect of this development.

4.12 The types of houses proposed are unsuitable for the area.

The application is in outline only and no details of the proposed house types have been submitted at this stage.

4.13 The proposed development would cause additional traffic on the narrow access road and there is no provision for turning at the access to the proposed development.

The proposed development would not result in any significant increase in traffic on Kings Way and would not prejudice road or pedestrian safety. The Roads and Transportation Division has not objected to the proposed development and has recommended appropriate conditions with regard to the turning head and existing footpaths, should consent be granted.

4.14 I am 100% behind my neighbours and all of their concerns. Is there no small piece of ground safe from these would be self-builders? I blame the stream of DIY programs giving people big ideas without showing the distress and upheaval they cause to elderly and retired people. It won't be long until our peace is shattered up this end of the town with the area behind Kings Way marked out for affordable rented accommodation which I hope never goes ahead either.

Noted.

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 (2003). The application site relates to an area of land located partly within the settlement boundary of Cumnock and partly within the Rural Protection Area.

Ayrshire Joint Structure Plan

5.2 Policy G5 states that development proposals in the Rural Protection Area shall normally be limited to the use of land within settlements. Outside settlements, development proposals shall conform to the structure plan only where the development:

- A has a demonstrated site-specific locational need;
- B can be justified in terms of social and economic benefit to the community;
- C contributes to rural land diversification; or
- D provides for the operational needs of agriculture and forestry.

No justification for the proposed development has been made by the applicants in terms of the above criteria. The proposed development is therefore considered contrary to structure plan policy.

East Ayrshire Local Plan

5.3 Policy RES2 states that, with the exception of dwellings covered by Policies RES13 and 14 below, proposals to extend the greenfield supply of land for residential development outwith, but adjacent to, the settlement boundaries will not be acceptable unless five stated criteria are fully satisfied, these being:

- (i) there is a demonstrated shortfall in the supply of effective housing land within the East Ayrshire Housing Market Area;
- (ii) the site can be demonstrated to be effective and contribute to output during the shortfall period;
- (iii) the proposal meets the terms of the Housing Development Strategy of the Local Plan;
- (iv) road access and all other services and infrastructure can be provided to the standards required by the relevant public and statutory service providers; and
- (v) the proposal accords with the Council's policies with regard to design and layout and has minimal impact on the visual and natural environment.

The proposed development does not meet any of the above criteria and cannot be considered acceptable in terms of this particular policy.

East Ayrshire Local Plan

5.4 Policy RES 13 is supportive of residential development of houses in the Rural Protection Area only where it can be demonstrated that the houses are required on a permanent basis for one of four stated purposes, these being;

- (i) for a full time agricultural or forestry worker employed directly on the land to which the proposed house relates;
- (ii) for a worker employed by a rural enterprise or tourism related activity and where the requirement for that worker to live on the site is essential to the economic operation of the activity concerned;
- (iii) as an essential and integral part of an authorised proposal which necessitates the provision of on-site staff accommodation; or
- (iv) as an enabling development for the conversion of a large rural residential or institutional property, as detailed in Policy RES8 above.

None of these circumstances are pertinent to the current application

The policy also states that developments for which a site-specific locational need cannot be demonstrated to the satisfaction of the Council will not receive Council support.

No site specific locational need for the proposed houses has been demonstrated by the applicants and the application cannot therefore be supported in terms of this element of the policy.

5.5 Policy RES17 states that residential development in the countryside will not be permitted in nine stated circumstances. A number of those circumstances are pertinent to the application, those being:

- (iv) where the development would constitute an inappropriate extension of development into the countryside from existing settlement boundaries;

The proposed development is considered to represent a significantly inappropriate extension of development into the countryside from the existing settlement boundary of Cumnock, extending as it does over a major public right of way running along the former railway line linking Cumnock and Logan. The former railway line itself forms the settlement boundary of Cumnock in the vicinity of the site and

constitutes a visually strong and defensible edge to the settlement. The proposed development would severely disrupt the smooth, curved line of the footpath and, as well as being highly visually intrusive, would be highly detrimental to the overall character, appearance and amenity of the area. The development of housing on top of the right of way would be highly inappropriate in terms of this particular section of policy RES17.

(viii) where, in the opinion of the Council, the development would be unduly visually prominent, break the skyline when viewed from a public road, adversely affect the amenity and appearance of remote areas, wild areas or particularly picturesque locations, or diminish the natural or designed landscape quality and character of the area; or

It is considered that the proposed development would be highly visually prominent, being located on the skyline when viewed from locations elsewhere in Drumbrochan and Barshare. It is also considered that the development would diminish, because of its particular elevated location, the landscape quality and character of the area.

5.6 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 application is in outline only. However, from the block plan submitted with the application, it is considered that the Council's private open space standards would probably be achievable.

5.7 Policy TLR7 encourages the creation and promotion of strategic long distance cycle routes and footpath links, giving priority to the development and promotion of new circular routes and footpath links between settlements.

The footpath along the former railway line already links the settlements of Cumnock and Logan and is a designated right of way. The proposed development would run contrary to the Council's stated strategy to promote such footpaths and rights of way, physically severing the footpath and necessitating its diversion. This is not considered acceptable and is also considered contrary to good planning principles.

The proposal is not considered acceptable in planning policy terms, being contrary to policies RES 2, RES13, RES17 and TLR7.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses and representations made.

Consultation Responses

6.2 None of the consultation responses have raised any issues which would indicate that the application should be refused although a number of issues would require to be resolved. These could be addressed either through conditions or appropriate notes attached to any consent granted for the proposed development.

Representations

6.3 It is considered that the representations made in respect of the impact of the development on the right of way and encroachment into the countryside are valid and have merit in that the policy assessment would presume against the proposed development. It is considered that other points of objection are not valid or material to the determination of this application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As 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 but it is considered that they are not of sufficient weight to justify a departure from policy in this case.

8.2 The application under consideration is for a residential development of two dwellings on a site which partly lies within the settlement boundary of Cumnock and partly lies within the Rural Protection Area. The part within the settlement boundary relates to the former rail line which is a formal right of way. The proposed development would run contrary to the Council's stated strategy to promote such footpaths and rights of way, physically severing the footpath and necessitating its diversion. This is not considered acceptable and is also considered contrary to good planning principles.

8.3 In terms of the encroachment into the Rural Protection Area, no justification has been provided for the development in this rural area. Furthermore, in the absence of any specific locational need for this residential development there is no justification for approval that would represent a significant departure from the development plan.

8.4 It is further considered that the proposed development would be visually prominent and because of its particular elevated location, it would diminish the landscape quality and character of the area.

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 require to be referred to the Development Services Committee because it would be a significant departure from the development plan.

Alan Neish
Head of Planning, Development and Building Standards

19 January 2005
HM/HM/SMB
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letters of representation.
4. Adopted East Ayrshire Local Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).

Anyone wishing to inspect the above background papers should contact Mr. Hugh Melvin on 01563 555481.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 04/1032/OL

Location	Top of Kings Way CUMNOCK
Nature of Proposal:	Proposed development of land for residential purposes.
Name and Address of Applicant:	J. Baillie and J. McEwan
Name and Address of Agent	N/A

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

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

1. The proposed development would constitute the erection of two new dwellings partly in the countryside without agricultural justification and contrary to the policy criteria relevant in respect of Policy RES13 of the Adopted East Ayrshire Local Plan. The proposal would therefore not be in accordance with Policy G5 of the Approved Ayrshire Joint Structure Plan and Policy RES13 of the Adopted East Ayrshire Local Plan.
2. The proposed development is considered to represent a significantly inappropriate extension of development into the countryside from the existing settlement boundary of Cumnock. It is further considered that the proposed development would be highly visually prominent and would diminish, because of its particular elevated location, the landscape quality and character of the area. The proposal would therefore not be in accordance with Policy RES 17 (iv) and (viii) of the Adopted East Ayrshire Local Plan.
3. The proposed development would encroach on a formal Right of Way and development of the site would run contrary to the Council's stated strategy to promote such footpaths and rights of way, physically severing the footpath and necessitating its diversion. This is not considered acceptable and is also considered contrary to good planning principles. The proposal would therefore not be in accordance with Policy TLR7 of the Adopted East Ayrshire Local Plan.
4. The proposed development, if approved, would set an undesirable precedent for further inappropriate encroachment from the settlement boundary into the countryside and loss of public footpaths and Rights of Way to the detriment of amenity.

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