

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 10 SEPTEMBER 2004

**04/0512/FL: PROPOSED REMOVAL OF CONDITION 4 OF OUTLINE
PLANNING CONSENT 02/0293/OL (RESIDENTIAL DEVELOPMENT)
AT FORMER GARAGE SITE / RAILWAY CUTTING,
OFF LOGANGATE TERRACE, LOGAN**

APPLICATION BY MR J TRACEY

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought to remove condition 4 of outline planning permission 02/0293/OL to remove the obligation of the developer of the site to allow for a possible future footpath to be formed over part of the development site. Condition 4 states:

'Notwithstanding the approved plans, the area outlined in green on the approved plans shall not form part of the curtilage of the proposed dwellings and shall be left free from development to allow for a possible future footpath.'

REASON: To maintain and secure improved access to the countryside.'

1.2 Outline planning permission for up to two dwellinghouses was granted on 09 August 2002 on the application site, part of which comprised the route of a former mineral railway line and the remaining part comprised a former Local Authority garage centre, at that time in the ownership of the Council.

1.3 Condition 4 of the outline consent was imposed to secure the possible creation of a footpath along the greater length of the former railway line, as the proposed residential development could have prejudiced the formation of a continuous footpath. At the time of the submission of the outline application, the applicant provided a plan indicating the reservation of a 5 metres wide strip along the boundary of the site to allow the formation of a footpath.

2. RECOMMENDATION

2.1 It is recommended that the application be refused for the reason indicated on the attached sheet.

3. SUMMARY OF ANALYSIS

3.1 As is indicated in Section 5 of the report, the application is considered not to accord with the terms of the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of this application but these material considerations are not considered to be of sufficient weight to justify approval of this application.

3.2 The requirement under the terms of condition 4 of outline planning permission 02/0293/OL for proposed residential development within the site does not prevent the site from being developed. The applicant has not provided any information to support or justify the removal of the condition. It is however considered that the proposal to remove condition 4 of outline planning permission 02/0293/OL would prejudice the potential development of footpath networks utilising the routes of former rail lines.

3.3 It is considered that condition 4 of outline planning permission 02/0293/OL is reasonable, necessary in the interests of securing potential future development of footpath networks in line with Council policy, relevant to the development, is clearly worded and enforceable in accordance with good practice advice contained within Circular 41998 and Planning Advice Note 40: Development Control, issued by the Scottish Executive.

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 as this would not represent a significant departure from 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 the proposal is contrary to policy and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located on the southern edge of Logan, north of the Glenmuir Road. The site extends to 0.243 of an acre and comprises a former Council garage site that consists of a rough hardstanding and a former railway line that is currently in an overgrown condition. The site is bounded by Logangate Terrace and dwellinghouses to the north, dwellinghouses to the west, agricultural land to the east and Glenmuir Road to the south. The area of the former garage centre site was formerly in the ownership of the Council.

2.2 **Proposed Development:** Full planning permission is sought to remove condition 4 of outline planning permission 02/0293/OL to remove the obligation of the developer of the site to allow for a possible future footpath to be formed over part of the development site. Condition 4 states:

'Notwithstanding the approved plans, the area outlined in green on the approved plans shall not form part of the curtilage of the proposed dwellings and shall be left free from development to allow for a possible future footpath.'

REASON: To maintain and secure improved access to the countryside.'

2.3 Outline planning permission for up to two dwellinghouses was granted on 09 August 2002 on the application site, part of which comprised the route of a former mineral railway line and the remaining part comprised a former Local Authority garage centre, at that time in the ownership of the Council.

2.4 Condition 4 of the outline consent was imposed to secure the possible creation of a footpath along the greater length of the former railway line, as the proposed residential development could have prejudiced the formation of a continuous footpath. At the time of the submission of the outline application, the applicant provided a plan indicating the reservation of a 5 metres wide strip along the boundary of the site to allow the formation of a footpath.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Lugar and Logan Community Council has not responded to the consultation letter at the time of writing this report.

Noted.

3.2 East Ayrshire Council Access Section has not responded to the consultation letter.

Noted.

4. REPRESENTATIONS

4.1 None.

5. ASSESSMENT AGAINST THE 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 Adopted East Ayrshire Local Plan (2003).

East Ayrshire Local Plan (2003)

5.2 Under Policy TLR 7 of the Local Plan the Council will seek to develop a definitive strategic and local footpath and cycleways network, priority being given to the development of such links between settlements, including use of disused railway lines.

The proposal would be contrary to Policy TLR 7 because it would interrupt the line of the disused railway rendering it incapable of potential future use as a footpath/cycleway from Cumnock to Lugar and beyond. Condition 4 of the planning consent for outline application 02/ 0293/ OL was included expressly to allow for such a possible future footpath to be created through safeguarding an appropriate part of the solum of the former railway line south of the curtilage of the proposed residential

development. Therefore in terms of this Policy the proposal is unacceptable

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

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

Consultations

6.2 There are no consultation responses that would suggest refusal of the application is appropriate.

Planning History

6.3 Outline planning permission was granted on 9 August 2002 for the development of land for residential purposes (Ref. No. 02/093/OL). A subsequent full application for the removal of Condition 2(c) of this consent was refused on 20 June 2003 (Ref. No. 03/0078/FL). Condition 2 of this outline planning permission required access to the site to be taken from Logangate Terrace. A subsequent appeal to the Scottish Ministers against this decision was dismissed on 05 April 2004 (Ref. No.P/PPA/190/108).

6.4 The site formed part of a larger site for which planning permission was refused on 26 April 1990 for the formation of vehicular access to the public road and the use of land for the disposal of non-toxic waste (Ref. No. CD/89/404).

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application as the site is now in the full ownership of the applicant.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered not to accord with the terms of the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of this application but these material considerations are not considered to be of sufficient weight to justify approval of this application.

8.2 The requirement under the terms of condition 4 of outline planning permission 02/0293/OL for proposed residential development within the site does not prevent the site from being developed. The applicant has not provided any information to support or justify the removal of the condition. It is however considered that the proposal to remove condition 4 of outline planning permission 02/0293/OL would prejudice the potential development of footpath networks utilising the routes of former rail lines.

8.3 It is considered that condition 4 of outline planning permission 02/0293/OL is reasonable, necessary in the interests of securing potential future development of footpath networks in line with Council policy, relevant to the development, is clearly worded and enforceable in accordance with good practice advice contained within Circular 41998 and Planning Advice Note 40: Development Control, issued by the Scottish Executive.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reason indicated on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as this would not represent a significant departure from policy.

Alan Neish
Head of Planning, Development and Building Standards

25 August 2004
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.

2. Statutory Notices and Certificates.
3. Letter of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Outline planning permission reference 02/0293/OL.
7. Previous application 03/0078/FL and appeal P/PPA/190/108
8. Planning permission reference CD/89/404.

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

Implementation Officer: Dave Morris

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 04/0512/FL

Location	Former Garage site / Railway cutting, off Logangate Terrace, Logan
Nature of Proposal:	Proposed alteration to condition 4 of outline planning consent 02/0293/OL (residential development)
Name and Address of Applicant:	Mr J Tracey 78 High Road SALTCOATS
Name and Address of Agent	Mr. J. Robertson 25 Wilson Avenue KILMARNOCK KA3 7AP

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

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

1. The proposed removal of Condition 4 of planning consent 02/0293/OL would result in the loss of part of the application site safeguarded for possible future use for the development of a footpath. The proposed development is therefore contrary to the provisions Policy TLR7 of the adopted East Ayrshire Local Plan which indicates that the Council will seek to develop a definitive strategic and local footpath and cycleways network with priority being given to the development of such links between settlements, especially where these utilise existing disused railway lines.

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