

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 7 DECEMBER 2001

**01/0766/FL: PROPOSED ERECTION OF GARDEN FENCE AT 9
MACKENZIE DRIVE KILMARNOCK BY MR ALAN KILPATRICK**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought for the erection of a garden fence along the side garden boundary with the dwellinghouse at 11 MacKenzie Drive. The application is retrospective and the fence has been erected of solid timber construction on top of an existing brick wall. The fence extends to an overall height of 1.8 metres over the entire side boundary of the rear gardens of both properties and it has been treated in a red cedar colour. The applicant has advised that the fence was erected in order to prevent any further damage and vandalism to the applicant's property.

2. RECOMMENDATION

2.1 **It is recommended that the application be approved.**

3. CONTRARY DECISION

3.1 Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application will not require to be referred to the Development Services Committee because there would be no significant breach of policy.

4. SUMMARY OF ANALYSIS

4.1 As indicated in Section 5 of the report there are no applicable policies in the Adopted Kilmarnock Local Plan and therefore greater weight should be attached to the other material considerations.

4.2 Similarly, there are no relevant policies within the EALP which would affect the determination of this application and so the greatest weight should be attached to the other material considerations. With regard to the letter of objection the fence which has been erected is of a fairly standard design, external finish and overall height. It is not visually unattractive and the concerns regarding right of access are not a planning matter and should be separately addressed through the legal process.

Alan Neish
Head of Planning and Building Control

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 and Building Control

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 it is subject to an objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a two storey end terraced dwellinghouse and its curtilage. The site is located within an established residential area and is bound to the east and south by other residential properties, to the north by an area of open space and to the west by the Park School.

2.2 **Proposed Development:** Full planning permission is sought for the erection of a garden fence along the side garden boundary with the dwellinghouse at 11 MacKenzie Drive. The application is retrospective and the fence has been erected of solid timber construction on top of an existing brick wall. The fence extends to an overall height of 1.8 metres over the entire side boundary of the rear gardens of both properties and it has been treated in a red cedar colour. The applicant has advised that the fence was erected in order to prevent any further damage and vandalism to the applicant's property.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The New Farm Loch Community Council have not replied to their consultation letter at the time of writing this report.

Noted.

4. REPRESENTATIONS RECEIVED

There is one letter of objection to the proposed development.

4.1 The fence was built without planning permission. The application was submitted thereafter which is too late to ask neighbours if they have any objections.

The application is of a retrospective nature and the fence is a breach of planning control. The applicant has erected the fence at their own risk without the benefit of planning consent.

4.2 The fence has been built to deceive as the side facing the neighbour comprises an ugly brick wall with no coping stone and an untidy cement finish where the gate used to be to allow access for 11 MacKenzie Drive.

The right of access is a legal matter and not a material planning consideration. The existing brick wall does not require planning consent in terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The brick infill of the former gate matches the facing brick of the wall. The fence is of a standard design, is not visually unattractive and is in keeping with other fences located in residential areas.

4.3 The objector seeks co-operation to improve the design of the fence from their property or to have the wall and fence removed and the boundary treatment reinstated as was there previously.

The fence is not considered to be visually unacceptable and there is not therefore considered to be any planning requirement to reinstate the boundary treatment as it was prior to the works taking place.

5. DEVELOPMENT PLAN STATUS

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 Kilmarnock Local Plan (1985). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 Notwithstanding the age of the Adopted Local Plan the proposal would fall to be considered against this document and its associated policies. There are however no relevant policies and therefore greater weight should be placed on the 'other material considerations' as identified in Section 6 of this report.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the East Ayrshire Local Plan Finalised Version with Modifications (EALP), the consultation responses, representations received and the impact on the amenity of residential properties.

East Ayrshire Local Plan, Finalised Version with Modifications

6.2 The Council has agreed that the EALP should be considered as a prime material consideration. In terms of the EALP the application site is located in a residential area within the settlement boundary of Kilmarnock. There are no relevant policies within the EALP and therefore greater weight should be attached to the other material considerations.

Consultation Replies and Representations Received

6.3 There have been no adverse consultation responses received. The points raised in the letter of objection have been discussed in Section 4 of this report. The fence is not an alien feature to the existing established residential area and whilst the objections have been noted, these are not considered to be of such significance that would warrant refusal of the application. The concerns raised regarding access are a legal matter and can be addressed through the legal system. Any requirements specified in the title deeds, such as rights of access, do not preclude the granting of planning permission, neither does the grant of planning permission prevent the exercise of any party's legal rights.

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 there are no applicable policies in the Adopted Kilmarnock Local Plan and therefore greater weight should be attached to the other material considerations.

8.2 Similarly, there are no relevant policies within the EALP which would affect the determination of this application and so the greatest weight should be attached to the other material considerations. With regard to the letter of objection the fence which has been erected is of a fairly standard design, external finish and overall height. It is not visually unattractive and the concerns regarding right of access are not a planning matter and should be separately addressed through the legal process.

9. RECOMMENDATION

9.1 It is recommended that the application be approved.

Alan Neish
Head of Planning and Building Control

27 November 2001 (FF/SA)
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Certificates.
3. Consultation replies.
4. Letter of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted Kilmarnock Local Plan.
7. East Ayrshire Local Plan Finalised Version with Modifications
8. Approved Strathclyde Structure Plan.

Anyone wishing to inspect the above background papers should contact Fiona Finlay on 01563 576768.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0766/FL

Site of Proposal: 9 MacKenzie Drive
KILMARNOCK

Natural of Proposal: Proposed Erection of Garden Fence

Name & Address of Applicant: Mr Alan Kilpatrick
9 MacKenzie Drive
KILMARNOCK KA3 7EG

Name & Address of Agent:

DPOs Reference: FF/SA

The above FULL application should be granted.

AGENDA

**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.**

