

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 16 AUGUST 2002

02/0361/FL: PROPOSED DELETION OF CONDITIONS 7 & 8 OF PLANNING APPROVAL 99/0541/FL TO ENABLE THE REMOVAL OF THE PLAY AREA AND REPLACEMENT OF SAME WITH A SUITABLE LANDSCAPED AREA AT NURSERY GARDENS, KILMARNOCK BY KLIN CONTRACTS LTD

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for the removal of the planning conditions Nos. 7 & 8 from Permission No: 99/0541/FL under which the development proceeded.

Condition Nos. 7 and 8 stated:

“7. Before any work commences on the site, a scheme for the provision of one equipped play area within the application site shall be submitted to and approved by the Planning Authority and this shall include:

- a) details of the type and location of play equipment, seating and litter bins to be situated within the play area;*
- b) details of the surface treatment of the play area, including the location and type of safety surface to be installed; and*
- c) details of fences to be erected around the play area.”*

REASON *To ensure the provision of adequate play facilities within the site.*

8. “Prior to the occupation of the last dwellinghouse within the development, all of the works required for the provision of the equipped play area included in the scheme approved under the terms of Condition 7 above shall be completed and thereafter that area shall not be used for any purpose other than as a play area.”

REASON *In order to retain effective planning control”.*

The applicant is seeking to remove the requirement to install the play area and replace it with a shrubbed landscaped area. The applicant initially proposed 4

pieces of play equipment comprising a swing for infants, a see saw and 2 rocking toys, however the play equipment has never been installed on site. The applicant proposes to landscape the area with grass and three individual trees.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 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 other material considerations.

3.2 There are material considerations relevant to the determination of the application. The applicant has submitted correspondence from 28 of the 45 householders within the estate of which 24 wish to have no play area and 4 would like the play facility retained. Not all residents responded this and not all residents are in agreement. The proposal is considered to be contrary to Policies RES 19 and RES 20 of EALP. Removal of the play equipment and play area would essentially leave a large residential development without any play area for local children, either forcing children to travel a longer distance to a play area or resulting in them playing on the street or within their own gardens thus reducing the opportunity to play with other children. The fear of vandalism to the play area and other anti-social behaviour is speculative at this stage and it is not considered to be of sufficient weight to override the benefits that arise from the application of Council policy which seeks amongst other things to provide equipped children's play areas. It is considered that the play area is well located, will be well supervised and it is not envisaged that problems of anti-social behaviour will occur due to the provision and location of the play area.

CONTRARY DECISION NOTE

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

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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CENTRAL LOCAL PLANNING COMMITTEE: 16 AUGUST 2002

02/0361/FL: PROPOSED DELETION OF CONDITIONS 7 & 8 OF PLANNING APPROVAL 99/0541/FL TO ENABLE THE REMOVAL OF THE PLAY AREA AND REPLACEMENT OF SAME WITH A SUITABLE LANDSCAPED AREA AT NURSERY GARDENS, KILMARNOCK BY KLIN CONTRACTS LTD

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 as it is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a regular shaped area of ground within the recently completed residential development of Nursery Gardens to the east of the town centre. The site occupies a fairly central position within the estate and is surrounded by residential properties to east and south and the access road servicing the properties to the north and west. The area is presently fenced off.

2.2 **Proposed Development:** Planning permission is sought for the removal of the planning conditions Nos. 7 & 8 from Permission No: 99/0541/FL under which the development proceeded.

Condition Nos. 7 and 8 stated:

“7. Before any work commences on the site, a scheme for the provision of one equipped play area within the application site shall be submitted to and approved by the Planning Authority and this shall include:

- a) details of the type and location of play equipment, seating and litter bins to be situated within the play area;*
- b) details of the surface treatment of the play area, including the location and type of safety surface to be installed; and*

c) details of fences to be erected around the play area.”

REASON To ensure the provision of adequate play facilities within the site.

8. *“Prior to the occupation of the last dwellinghouse within the development, all of the works required for the provision of the equipped play area included in the scheme approved under the terms of Condition 7 above shall be completed and thereafter that area shall not be used for any purpose other than as a play area.”*

REASON In order to retain effective planning control”.

2.3 The applicant is seeking to remove the requirement to install the play area and replace it with a shrubbed landscaped area. The applicant initially proposed 4 pieces of play equipment comprising a swing for infants, a see saw and 2 rocking toys, however the play equipment has never been installed on site. The applicant proposes to landscape the area with grass and three individual trees.

2.4 The applicant has provided a copy of a standard pro-forma letter from residents of Nursery Gardens. Of a total of 49 dwellinghouses he has provided responses from 28 householders. Of these responses, 24 state their wish to have the requirement for the play area to be removed with one resident stating his belief that most children are left unsupervised and are noisy and undesirable. Four householders express a wish for the retention of the play area with one resident stating that the play area was one of the main reasons for choosing their home. This resident believes her children would be safer playing where they can be supervised. If there was no play area, the children would be encouraged to wander off and the nearest play area to the development being in Piersland Park is too far way for young children. This resident also feels that residents who would prefer no play area knew when purchasing that play facilities were proposed and questions why these residents chose their property.

2.5 The applicant also states that he was approached by a number of residents who expressed concern of the likelihood of vandals misusing the play area. These residents stated they would prefer landscaping and as such the applicant undertook the above noted survey.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Strathclyde Police have stated that the location of the proposed play area is a new build estate located at Nursery Gardens, Kilmarnock. They offer details of the criminal activity recorded in recent months ranging from car theft to drug misuse and house breaking.

They state that on viewing the proposed area the following would be of concern:-

The facility could become an attraction for local youths to congregate during the evening. As a result of this, property within and outwith the facility could be subject to damage. I.e. residents gardens and vehicles.

The Planning Authority are not responsible for controlling anti-social behaviour which would be a Police matter. It is considered that this play area being located centrally within the development and surrounded by residential properties, offers an ideal play area which is open to view and children can play on a supervised basis. The provision of a play area does not automatically generate anti-social behaviour and Council Policy requires play areas in new residential development for the benefit of local children the development of their social skills and to provide a safe play environment off public roads. The site is centrally located within the development and it is considered that it subject to surveillance by neighbours and less likely for that reason to be an attraction for congregating youths.

3.2 Piersland Bentinck Community Council have not replied to their consultation letter at the time of writing this report.

Noted.

3.3 The Department of Community Services (Play and Recreation Division) have no comments to make regarding the removal of equipment. They advise that they can only comment on the play value of equipment.

Noted.

3.4 The Department of Community Services (Outdoor Amenities) advise consultation with the Recreation Section. They advise that much of the surrounding areas play equipment has been removed on safety grounds and replacement will be staggered over several years due to budget restrictions. This means that the nearest play area to the site will be Howard Park.

Noted. Howard Park is some considerable distance from the development across many busy roads and effectively not available therefore for unsupervised younger children.

4. REPRESENTATIONS

4.1 No letters of representation have been received. The applicants approaches to local residents are detailed in Section 2 of the report.

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 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 policies specifically relevant to this proposal 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) and the consultation responses.

East Ayrshire Local Plan Finalised Version with Modifications

6.2 The Adopted Kilmarnock Local Plan is considerably out of date and it is therefore appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the EALP should be considered as a prime material consideration. Policy RES 19 of EALP requires all housing developers to provide areas of recreational and amenity open space as an integral part of their development proposals and to make provision for the future maintenance of these areas once formed to the satisfaction of the Council. Policy RES 20 states that in formulating their development proposals, developers should ensure that:-

- (i) *areas of open space are of a size and configuration that is easily maintainable. Larger areas of well located, consolidated open space should be provided in preference to a series of smaller, individual areas scattered throughout the proposed development site;*
- (ii) *proposed areas of open space link, wherever possible, with other areas of adjacent existing open space;*

- (iii) *the proposed areas of open space are safe and secure, overlooked if possible by adjacent properties;*
- (iv) *play areas, kick about areas and games pitches are provided as required by the Council's Head of Leisure Services;*
- (v) *play equipment and facilities for the disabled and those with special needs are provided as considered appropriate;*
- (vi) *areas of open space are attractively planted and, where appropriate, use plant species to encourage wildlife; and*
- (vii) *all open spaces are provided, as appropriate, with footpaths for both access and leisure walking, linking with adjacent open spaces wherever possible.*

The above policy sets out the approach adopted by the Council in relation to the provision of open space and play areas within new housing developments. Klin Homes as developers of the above residential development require to comply with the terms of the above Policy by providing a play area and during the consideration of the original application, there was discussion between the developer, the Planning Division and Outdoor Services to ensure that the location of the play area was appropriate. The play area is located centrally within the development and there is no evidence to suggest that once installed, there will be problems with anti-social behaviour, as youths would have to walk through the residential area to get to the Play Area. If the request to delete the play area is accepted, it would leave a large residential area without a play area for its local children. Children would either then be forced to travel long distances to the nearest play area in Howard Park or Piersland Park with a greater risk of accidents or obstruction. Alternatively children could be forced to play on the street or within their own gardens thus losing the opportunity to interact with other children and develop social skills. The location of the play area within the development is well supervised and thus it will be possible for children to play safely. The initial plans lodged by the developer proposed a play area for younger children who are not able to play elsewhere on an unsupervised basis.

6.3 Policy RES 21 states that where a development is proposed which would necessitate the provision of open space and that development is located adjacent or in close proximity to an area of existing open space in need of upgrading or improvement, the Council may as an alternative to providing new open space areas, require the developer through an appropriate Section 75

Agreement to upgrade and improve the existing open space area and provide for the maintenance of that area for a specified period to be agreed.

This option is not considered appropriate as the closest play area is either Howard Park or Piersland Park, which are both a considerable distance from the above residential development particularly as regards younger children. It was considered appropriate at that time to locate a play area within the heart of the new residential development in order to maximise the advantage of the facility and this is still considered to be the most appropriate solution. The information presented by the applicant is noted although is not considered to be of such significance that would warrant setting aside Council Policy. Play areas are located within new residential developments to offer children a safe area in which to play. There has been no evidence presented which would suggest that this play area would attract anti-social behaviour or vandalism to a degree warranting removal of the facility. Such matters are for Strathclyde Police to address.

Consultations

6.4 The consultations responses have been highlighted in Section 3 of this report.

7. FINANCIAL AND LEGAL IMPLICATIONS

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

7.2 Legal implications (enforcement action), may arise if the application is refused and the applicants did not subsequently install the appropriate equipment.

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 other material considerations.

8.2 There are material considerations relevant to the determination of the application. The applicant has submitted correspondence from 28 of the 45 householders within the estate of which 24 wish to have no play area and 4 would like the play facility retained. Not all residents have responded and not all residents are in agreement. The proposal is considered to be contrary to Policies RES 19 and RES 20 of EALP. Removal of the play equipment and play

area would essentially leave a large residential development without any play area for local children, either forcing children to travel a longer distance to a play area or resulting in them playing on the street or within their own gardens thus reducing the opportunity to play with other children. The fear of vandalism to the play area and other anti-social behaviour is speculative at this stage and it is not considered to be of sufficient weight to override the benefits that arise from the application of Council policy which seeks amongst other things to provide equipped children's play areas. It is considered that the play area is well located, will be well supervised and it is not envisaged that problems of anti-social behaviour will occur due to the provision and location of the play area.

9. RECOMMENDATION

9.1 It is recommended that the application is 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 and Building Control, it will not require to be referred to the Development Services Committee as there would be no significant breach of Council policy.

Alan Neish
Head of Planning and Building Control

7 August 2002
(FMF/MM/IMB)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letter of Objection.
5. Adopted Kilmarnock Local Plan.
6. East Ayrshire Local Plan Finalised Version with Modifications.

7. Approved Ayrshire Joint Structure Plan.
8. Approved Strathclyde Structure Plan.
9. Planning Permission No 99/0541/FL.

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

Implementation Officer: Dave Morris

020361FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0361/FL

Site of Proposal: Nursery Gardens
KILMARNOCK

Nature of Proposal: Proposed Deletion of Conditions 7 & 8 of
Planning Approval 99/0541/FL to Enable the
Removal of the Play Area and Replace Same
with a Suitable Landscaped Area

Name & Address of Applicant: Klin Contracts Ltd
27 John Finnie Street
KILMARNOCK KA1 1BL

Name & Address of Agent:

DPOs Reference: FMF/MMM

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

1. The removal of the play equipment and play area is contrary to the provisions of Policies RES 19 and RES 20 of the East Ayrshire Local Plan Finalised Version with Modifications which requires the provision of active recreational open space including appropriate equipped play areas , in relation to developments such as that under consideration. The removal of the play equipment and play area would leave a large residential development without such facilities to the detriment of residential amenity.

**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.**

AGENDA