

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 14 JUNE 2002

**02/0328/FL: PROPOSED REMOVAL OF PLAY EQUIPMENT/PLAY AREA
AND FENCING 2 SIDES AND REPLACEMENT BY LANDSCAPED AREA –
VARIATION OF CONDITIONS NO. 5 & 6 OF
PLANNING CONSENT NO. 99/0030/FL
AT DEAN VIEW, KENNEDY GARDENS, KILMARNOCK
FOR MRS M CRAIG**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning consent is sought for the removal of play equipment and the play area and fencing on 2 sides and replacement by a landscaped area. Conditions No. 5 & 6 of planning consent No. 99/0030/FL stated:

“5. A detailed landscaping scheme including the areas of public space and the play area (including equipment to be provided by the developer) shall be submitted to and approved by the Planning Authority prior to commencement of any development and shall be implemented within one year from the date of commencement of the development. The scheme shall include a copy of the Deed of Conditions which will form part of the title to each individual property, passing the maintenance responsibilities onto all the house owners within the site, and shall also include the name and address of the factor responsible for the overseeing of the maintenance of these areas. Any of the trees, shrubs or play equipment removed without consent of the Planning Authority, or seriously damaged at any time thereafter, shall be replaced by trees, shrubs or play equipment similar to that originally provided, or as may be agreed in writing with the Planning Authority. The areas of public open space and the play area shall, once provided, be maintained thereafter to the satisfaction of the Planning Authority.

REASON *In the interests of visual amenity.*

6. *Further to Condition 5 above, the landscaping scheme submitted shall:-*

- (i) only propose ornamental trees such as Prunus, Kiku, Shidare, Satura, Prunus Pendula Rubra, Pyrus Pendula or Salix Caorea Pendula, within private gardens;*

- (ii) *ensure no berried or thorn forming shrubs are planted next to the play area;*
- (iii) *confirm that the phasing of the landscaping will ensure that bare rooted trees, if proposed, are only planted during the autumn and winter seasons;*
- (iv) *include details of play equipment to be provided; and*
- (v) *ensure that all tree stakes are treated with a preservative.*

REASON *In the interests of visual amenity”.*

The applicant is seeking to vary the above Conditions to remove the play area and play equipment and fencing and replace it with a shrubbed landscaped area. The play area includes two swings, one of which is for infants, climbing frame and slide, sea-saw, rocking toys and 2 benches. The play area is surrounded by a 1 metre high close boarded timber fence. The area is grassed around the perimeter with a wood bark surface for the play area. It is proposed to change the play area to a landscaped area of 5 flower beds filled with shrubs and plants.

2. RECOMMENDATION

2.1 It is recommended that the application is refused for the reasons 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 a petition signed by 52 residents from Kennedy Drive and Dean View seeking the removal of the play area and photographs showing vandalism to the play equipment and play area. Removal of the play area is also supported by Strathclyde Police. This is weighted against an objection from a local resident whose children use the play area on a regular basis and the policies of the EALP. The proposal is considered to be contrary to Policies RES 19 and RES 20 of the 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. Whilst

there is sympathy with the residents regarding vandalism to the play area and other anti-social behaviour, these are 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.

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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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 and subject to objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is a landscaped and play area within a residential area in the North of New Farm Loch. The site is surrounded to the North by residential properties, to the South by Niven Court, to the West by a footpath linking Dean View to Niven Court and to the East by residential properties and Kennedy Drive.

2.2 **Proposed Development:** Planning consent is sought for the removal of play equipment and the play area and fencing on 2 sides and replacement by a landscaped area. Conditions No. 5 & 6 of planning consent No. 99/0030/FL stated:

"5. A detailed landscaping scheme including the areas of public space and the play area (including equipment to be provided by the developer) shall be submitted to and approved by the Planning Authority prior to commencement of any development and shall be implemented within one year from the date of commencement of the development. The scheme shall include a copy of the Deed of Conditions which will form part of the title to each individual property, passing the maintenance responsibilities onto all the house owners within the site, and shall also include the name and address of the factor responsible for the overseeing of the maintenance of these areas. Any of the trees, shrubs or play equipment removed without consent of the Planning Authority, or seriously damaged at any time thereafter, shall be replaced by trees, shrubs or play

equipment similar to that originally provided, or as may be agreed in writing with the Planning Authority. The areas of public open space and the play area shall, once provided, be maintained thereafter to the satisfaction of the Planning Authority.

REASON In the interests of visual amenity.

6. *Further to Condition 5 above, the landscaping scheme submitted shall:-*

- (i) only propose ornamental trees such as Prunus, Kiku, Shidare, Satura, Prunus Pendula Rubra, Pyrus Pendula or Salix Caorea Pendula, within private gardens;*
- (ii) ensure no berried or thorn forming shrubs are planted next to the play area;*
- (iii) confirm that the phasing of the landscaping will ensure that bare rooted trees, if proposed, are only planted during the autumn and winter seasons;*
- (iv) include details of play equipment to be provided; and*
- (v) ensure that all tree stakes are treated with a preservative.*

REASON In the interests of visual amenity”.

The applicant is seeking to vary the above Conditions to remove the play area and play equipment and fencing and replace it with a shrubbed landscaped area. The play area includes two swings, one of which is for infants, climbing frame and slide, sea-saw, rocking toys and 2 benches. The play area is surrounded by a 1 metre high close boarded timber fence. The area is grassed around the perimeter with a wood bark surface for the play area. It is proposed to change the play area to a landscaped area of 5 flower beds filled with shrubs and plants.

2.3 The applicant has submitted a supporting letter with the planning application (on behalf of the residents of Kennedy Gardens) outlining the reasons why they want the play area and play equipment removed. A petition signed by 52 residents of Dean View and Kennedy Drive has been submitted seeking the removal of the play area. Photographs have also been submitted showing vandalism to the play areas with broken glass and beer cans within the play area.

The applicant has stated in the supporting letter that young men who appear to be in their early twenties have been using it as a football park. When the ball goes over the fence they jump over it to retrieve the ball with no regard for whatever plants may be in the garden that they are entering. On another

occasion one of the residents observed two teenagers brazenly having sex in the park. Boys of 9 or 10 years have been playing golf in the play area using the clubs to strike the play equipment and attack the shrubbery, stones, pieces of bark, cans and bottles are thrown at the surrounding houses. One man exercises his 3 dogs in it. The residents have particular concerns for the health and safety of the young children for whom the park was initially designed. Teenagers have been urinating down the chute and doing their needs in the play area. In some cases, the teenagers have been using threatening behaviour towards the younger ones in an effort to discourage them from using the facility. Residents have cleared bottles, beer cans and broken glass away from the site in an effort to keep the area in a respectable condition. They have been told that drugs and syringes have been found in the park. They have discovered that the teenagers are not from this area. The residents feel that they are paying for the maintenance of a facility that their children cannot use. The play equipment has been vandalised, the trees uprooted and snapped and the fencing has had to have several pieces of wood replaced as the teenagers have systematically destroyed it. All of these costs have been passed back to the homeowners via the Factor. As the light nights and school holidays approach the problem will escalate. Residents have been contacting the police regularly but with so few police on patrol particularly over the weekend, if a more serious incident occurs then obviously that takes priority and manpower is diverted elsewhere. The location of the play area is also unsatisfactory, with a bypass only minutes away it is possible for someone to drive into the lay-by next to the park virtually unnoticed and abduct a child. One of the local police officers highlighted this issue. They have noted that the Council have granted permission for the play park to be removed from McGregor Drive and other areas over the years following residents' complaints. These were removed prior to the recent Health and Safety legislation.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Strathclyde Police have commented that the play area has been the subject of much discussion in recent months. The play area was designed and created to give local children a safe environment in which to play. The equipment sighted within the area is predominantly designed for young children of early or pre-school years. Unfortunately since its construction it has continually been subjected to acts of vandalism despite additional patrols by local community officers. The youths using this area are from surrounding estates and appear to have no sense of ownership or sense of responsibility. This has resulted in the play area not being used as intended. They consider that the inclusion of a play area within an estate is beneficial for providing a safe environment for the local children to develop. The location of play areas is paramount, being sited centrally with plenty of natural surveillance affording maximum security to those using these facilities.

At the time of various onsite visits it was evident that it was not a safe environment for a young child. The location of the play area offers virtually no natural surveillance from the surrounding houses. A footpath runs down one side of the area from the houses in Dean View to Kennedy Drive. As this footpath emerges onto Kennedy Drive visibility is limited and there is the danger a child could wander from the play area onto the roadway at this location. Also there is a potential, however slight for a child to be removed without the knowledge of its parents. They feel that the best course of action is to remove the play area. The proposals to replace it will help to reduce its attraction and ensure that it remains as a landscaped area and not abused by youths playing ball games.

It is not the specific function of the Planning Authority to control anti-social behaviour. This is a matter for the Police to address. Furthermore the provision of a play area would not ordinarily in itself generate anti-social behaviour and as such they are routinely provided within new residential developments in close proximity to residential properties. The play area is located within the heart of the residential development and is overlooked by properties on Kennedy Drive and Dean View. A footpath does run along the side of the play area linking Dean View with the adjacent Council housing estate. Whilst the Police believe that there is potential however slight for a child to be removed without parental knowledge, a similar situation could arise if no play area was sited here and children were playing in the street or in the open space area as proposed.

3.2 New Farm Community Council has no objections to the proposed development.

Noted.

3.3 Department of Community Services, Outdoor Amenities has been advising the applicant on which species of shrubs could be planted. They may appear to be thinly planted to start with depending on the size of shrubs but will be correctly spaced once they become established.

Noted.

4. REPRESENTATIONS

One letter of objection has been received and the points raised are as follows:

4.1 The objector has a young family and the use of the play area in the estate is deemed as being a valuable acquisition for the area and was part of the reason why they chose to buy the house.

The play equipment was provided specifically to form an area of active recreational open space for young children. A development of this nature might reasonably be expected to have a significant resident proportion of young children.

4.2 The allegations of misuse from neighbouring children is a concern however they feel that under proper supervision by residents in the area, ie neighbourhood watch, this could keep a tight control on this concern.

It is not the specific function of the Planning Authority to control anti-social behaviour and is a matter for the Police to address. The play area is overlooked by a number of houses.

4.3 The people responsible for submitting the petition never at any time came up and asked the objector to sign or ask their views on this matter. They have a young family and would realise their views on this matter.

Noted.

4.4 When purchasing their property it was made crystal clear by the site sales agent that the play area was to be part of the estate and exactly where its location was going to be therefore any complaints surrounding the play area should have been considered before purchasing any property within the surrounding area. It was also made clear that all estate residents would have to pay factor fees for the up-keep of this area. Being a swing park and with daily use by children it is only expected that things would get broken and would have to be replaced.

Noted. Responsibility for and maintenance of the play area and landscaped area is contained within the title deeds of each property.

4.5 The objector would take the necessary action to ensure that the play area remains where it is and in fact after all it was put there for a reason and that was for children to play in and it is part of their children's daily uses.

All householders of the Ogilvie residential development own the play area and surrounding landscaped area. If planning consent was granted for removal of the play area and its replacement by

landscaping, the consent of all owners of the play area would be required prior to implementation of the consent. This would be quite separate from the planning process.

4.6 They are unhappy with the proposals to remove the park and landscape it as a seating area. If the park were to be removed the whole area should be taken away, ie swings, chute and fences leaving an open space which has no attraction for anybody to visit or play on. Their opinion is that the park should remain the way it is and residents should accept this and stop trying to change things that they already knew was going to be there in the first place.

The applicant proposes to remove all play equipment seating and the fencing on 2 sides and replace it with 5 flower beds filled with shrubs and plants.

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 Adopted 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 greatest weight should be placed to 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 to the East Ayrshire Local Plan Finalised Version with Modifications (EALP); the consultation responses and letter of objection.

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. Ogilvie Homes as developers of the above residential development complied with the terms of the above policy by providing open space and a play area for the children of the new properties. There was discussion between the developer, the Planning Division and Outdoor Services to ensure that the play equipment proposed was appropriate for this location. The residents of Niven Court were also consulted following a request by the Central Local Planning Committee during the consideration of the application that local residents close to the area of the site where the play area is proposed be consulted on the type of facility that was proposed. Following this consultation exercise, no objections were received. The play area provided is of high quality and has a high play value. The play area is used by local children and this has been confirmed by the objector (a local resident) whose children use it on a daily basis. Whilst there is sympathy with the problems

experienced by some of the residents regarding vandalism and gangs of youths congregating at the play area, this is an increasing problem associated with play areas throughout Scotland. It is considered that these are essentially matters which should be dealt with by Strathclyde Police. If the play area is removed it would leave a large residential area without a play area for local children. This would either force children to travel longer distances to a play area (nearest one being the Kay Park or the newly installed play area within the Henry Boot residential development) with greater risk of abduction or accidents; or they would play on the street or within their own gardens thus losing out in opportunities to play with other children and develop further social skills.

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 the Kay Park, which is a considerable distance from the above residential development. 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.

Consultations

6.4 The consultations responses have been highlighted in Section 3 of this report. The comments of Strathclyde Police are noted, however they are not of such significance that would warrant removal of the play area contrary to Council policy.

Letter of Objection

6.5 The comments of the objector are addressed in Section 4 of this report and are material in the determination of this application. The objector is a resident of this area whose young children use the play area on a daily basis. The applicant has submitted a petition signed by 52 residents of Dean View and Kennedy Drive seeking the removal of the play area. Whilst there is sympathy regarding the anti-social behaviour occurring, it is not the function of the Planning Authority to control anti-social behaviour but rather that is a matter to be addressed by Strathclyde Police.

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 other material considerations.

8.2 There are material considerations relevant to the determination of the application. The applicant has submitted a petition signed by 52 residents from Kennedy Drive and Dean View seeking the removal of the play area and photographs showing vandalism to the play equipment and play area. Removal of the play area is also supported by Strathclyde Police. This is weighted against an objection from a local resident whose children use the play area on a regular basis and the policies of the EALP. The proposal is considered to be contrary to Policies RES 19 and RES 20 of the 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. Whilst there is sympathy with the residents regarding vandalism to the play area and other anti-social behaviour, these are 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.

9. RECOMMENDATION

9.1 It is recommended that the application is refused for the reasons 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

06 June 2002
(PC/MMM)

FV/MMM

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.

Anyone wishing to inspect the above papers please contact Pamela Clifford on 01563 576772.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0328/FL

Site of Proposal: Dean View
Kennedy Gardens
KILMARNOCK

Nature of Proposal: Proposed Removal of Play Equipment/Play Area and Fencing 2 Sides and Replacement by Landscaped Area – Variation of Conditions No. 5 and No. 6 of Planning Consent No. 99/0030/FL

Name & Address of Applicant: Mrs Marion Craig
28 Dean View
Kennedy Gardens
KILMARNOCK KA3 7SY

Name & Address of Agent:

DPOs Reference: PC/MMM

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

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