

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 4 MAY 2001

**01/0111/FL – PROPOSED ERECTION OF FENCE, OUTBUILDINGS, DOG RUNS
AND CHANGE OF FRONT AND BACK DOOR AT 6 MELVILLE STREET
KILMARNOCK FOR MR AND MRS A JORDAN**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION:

1.1 The application in part is retrospective. The applicant is requesting permission for the following:-

(i) Two timber buildings have been erected to the side of the dwellinghouse on an existing tarmac hardstanding. The outbuilding comprises a combined floor area of 23.82 square metres in floor area. The outbuilding nearest the road is the larger of the two and both buildings are of wooden construction with grey felt roofs.

(ii) The buildings are enclosed to the east and south by a 1.5 metre high wire mesh dog run which is included within the terms of the application.

(iii) The applicants propose a timber vertical slatted fence of varying heights around the boundary of the rear and side garden. The fence would be 1.5 metres in height along the rear southern boundary increasing in height along the side boundary with 4 Melville Street and stopping to meet the timber outbuilding at its front elevation. The applicants initially proposed to continue the fence at 1.5 metres in height to meet the road then continuing along the road to the start of their driveway to a height of 1.2 metres. The applicants also initially advised of their intention to prune back the communal hedge although subsequently they have advised they will not undertake this work and will reduce the proposed fence so as not to extend it beyond the front building line of the dwellinghouse.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheet.

3. SUMMARY OF ANALYSIS

3.1 As indicated at paragraph 5.2 of the report it is considered that the application is 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 approved unless material considerations indicate otherwise.

3.2 There are other material considerations relevant to this application as indicated in Section 6 of the report and they are supportive of the proposal. The proposed development is consistent with the policies of the EALP. There are no objections from the Roads Division and therefore the proposal is not considered to present a road safety hazard. The dog run to the side and rear of the outbuildings is to receive screening by virtue of a fence which would be close boarded, and a condition can be added ensuring the continued presence of the boundary hedge. Both the fence and existing hedging would reduce the impact of the proposal on the adjacent residential properties to an acceptable degree.

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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01/0111/FL – PROPOSED ERECTION OF FENCE, OUTBUILDINGS, DOG RUNS AND CHANGE OF FRONT AND BACK DOOR AT 6 MELVILLE STREET KILMARNOCK FOR MR AND MRS A JORDAN

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 objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a two storey semi-detached dwellinghouse and associated front, side and rear garden ground. The site is on a slight slope and is of an irregular shape set in a cul-de-sac with other similar residential properties. The site is bound to the south and west by other residential properties, to the north by the access road serving the cul-de-sac and to the east by Melville Street beyond which are residential properties. The site lies within the Piersland Park Conservation Area and is generally of a high standard in terms of aesthetics, visual amenity and residential quality. A feature of the area is boundary hedging which is prominent throughout the residential estate as a whole.

2.2 **Proposed Development:** The application in part is retrospective. The applicant is requesting permission for the following:-

- (i) Two timber buildings have been erected to the side of the dwellinghouse on an existing tarmac hardstanding. The outbuilding comprises a combined floor area of 23.82 square metres in floor area. The outbuilding nearest the road is the larger of the two and both buildings are of wooden construction with grey felt roofs.
- (ii) The buildings are enclosed to the east and south by a 1.5 metre high wire mesh dog run which is included within the terms of the application.
- (iii) The applicants propose a timber vertical slatted fence of varying heights around the boundary of the rear and side garden. The fence would be 1.5 metres in height along the rear southern boundary increasing in height along the side boundary with 4 Melville Street and stopping to meet the timber outbuilding at its front elevation. The applicants initially proposed to continue the fence at 1.5 metres in height to meet the road then continuing along the road to the start of their driveway to a height of 1.2 metres. The applicants also initially advised of their intention to prune back the communal hedge although subsequently they

have advised they will not undertake this work and will reduce the proposed fence so as not to extend it beyond the front building line of the dwellinghouse.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Roads Division have advised that they have no objections to the proposed development. The Roads Division have further advised that the fence if installed as initially proposed around the front garden area would have no effect on the existing sightlines particularly when there is an existing hedgerow which is at present some 1.7 metres in height. In respect of pedestrian safety on to Melville Street, given the existing taller hedgerow which is not problematic at the moment, the Roads Division have advised that at the junction of the cul-de-sac with Melville Street, the existing sightlines exceed the required level in both directions.

Noted.

3.2 West of Scotland Water have advised that the application may involve building over an existing public sewer. The developer must contact WOSWA prior to starting work on site in order to discuss whether diversion or protection is required.

Noted. If Members choose to grant consent, an appropriate advisory note can be attached bringing these comments to the applicant's attention.

3.3 The Piersland Bentinck Community Council have not to date, responded to their consultation letter.

Noted.

3.4 Environmental Health and Waste Management have advised that their officials visited the site and they have also checked records of previous complaints in this area and none pertaining to 6 Melville Street were found. The official who visited the property found the kennels to be well managed at the time of the visit and at the time of writing the consultation response, the Division had no evidence on which to base a change in observations. Should the Environmental Health Division receive any complaints regarding smell from the kennels, these will be fully investigated although no odour problems or potential problems were observed during the visit. This Division has advised that the official visiting the property entered through a gate into the back garden where there were 4 dogs in total. Two of these dogs were in the existing run and they both retreated quietly back into the kennels. There was no evidence of any great quantity of dog foulings, other than one stool and the paved run would seem to be cleaned regularly as the paving slabs were free from any other debris. During the course of the visit, the neighbour entered his garage and started his car. The neighbour's garage is directly adjacent to the dog kennels and there was no adverse reaction from the dogs with regard to noise. Environmental Health further advised that if residents adjacent to the kennel feel aggrieved by the level of dogs barking, it was well within their rights to instigate a private action in terms of the Civic Government (Scotland) Act 1982.

Noted. These comments are of specific relevance as regards the objections raised in Section 4 of this report.

3.5 Legal Services have advised that there are no comments relative to the proposed development.

Noted.

4. REPRESENTATIONS RECEIVED

A total of 7 letters of objection were received to the proposal.

4.1 The erection of fences at this property would create a hazard for anyone exiting this cul-de-sac by car, as it would be impossible to see pedestrians on Melville Street itself. As this part of the street is in use every day by schoolchildren, there could be a liability for any accident concerning them.

Noted however Members are referred to the comments of the Roads Division as discussed in paragraph 3.1 above. It should also be noted that the area of fence, to which the objector refers, has been taken out of the scheme being considered. This Division has the agreement of the applicant through his agent, to delete both this front section of fence from the proposal and to retain part of the communal hedge.

4.2 The residential estate has been designated a conservation area and it is considered that the layout and height of fences and garages are not in keeping with the rest of the area and will result in the degradation and general deterioration of the estate. It is also considered that both the fence and dog run will be located too close to the existing hedge which would make the upkeep of the hedge impossible.

Noted. The area is part of the Piersland Park Conservation Area and is generally of high amenity value being visually attractive and featuring low noise and disturbance and good quality housing. An area which is designated a Conservation Area does not mean that development cannot take place, but such development needs to be tightly controlled. The estate is characterised by houses finished in traditional materials with boundary hedging and tree lined streets. The properties in the estate do have varying styles of boundary treatment with some properties having fences, brick walls and/or hedging. The applicant has agreed to delete the most prominent section of fencing which was to project beyond the front building line of the larger timber outbuilding. He has also agreed to retain the hedging which is a dominant feature in the estate. It is also noted that the two outbuildings that have been erected are a standard style of garden hut and given this is a residential area; it is not considered that these will be out of keeping with the surroundings.

4.3 If permission is granted, the proposed development will have a detrimental effect on the market value of surrounding properties.

This is not a material planning consideration.

4.4 It is not considered that the keeping of four large dogs in a kennel is appropriate to a quiet cul-de-sac in a residential estate where the obvious noises and smells associated with 4 dogs would be impossible to conceal. It is more an activity which would be better suited to a rural location or smallholding.

There is no evidence to show that the applicants are carrying out a business at the property. When the matter was first investigated the applicants advised this Division that the dogs are their own and are kept for their own personal enjoyment. The dogs are kept for showing and not as part of a breeding business.

4.5 Neighbour notification has not been undertaken to properties which should have been notified and in some instances has been served incorrectly without the required location plan.

The applicants agent was requested to undertake neighbour notification once again and has certified that this has now been done.

4.6 It is asked that Members undertake a site visit as it cannot be conducive to healthy living with the advent of four dogs being fed, watered, and toiletted in such a confined area.

Members are referred to the comments from Environmental Health as discussed in paragraph 3.4 of this report. These comments advise that upon inspection, the kennels appear well run and maintained with there being no evidence of smell or odours arising from the keeping of the dogs.

4.7 The enclosure around the kennel has been built over an existing inspection chamber for the main sewer. If there were a blockage in the sewer there would be no access to this chamber. This has not been referred to on the drawings.

There is not requirement to show any manhole on the plans. This is not a material planning consideration and is a matter which falls under the jurisdiction of West of Scotland Water who are the Water and Sewerage Authority. This organisation has been consulted in this connection and has made no adverse comments as detailed in paragraph 3.2 of this report.

4.8 The plans show that no trees are to be felled and this is incorrect. A Rowan tree has already been felled and a hut erected instead.

The applicants agent has advised that a Rowan tree was removed some twelve months ago and this tree was approximately 10-12 feet in height and approximately 6 inches in width. There are no Tree Preservation Orders in force, which cover the application site although this site does lie within a Conservation Area and in this respect, written permission from the Council via this Division is necessary to remove any trees or carry out works to trees. Since the tree has already been removed it is not possible to survey it to confirm how valuable it was. As such, if Members choose to grant planning permission for this development and in order to regularise the matter to some degree, a condition requiring that a replacement tree of suitable species and size be planted within the application site could be applied.

4.9 The outbuildings that are used to kennel the dogs mean that there is a constant smell in the vicinity. This will be prominent especially in the summer months and results in neighbours being unable to open windows of their house nearest the kennel as if they do so, their property smells of the kennels.

Members are again referred to the comments from Environmental Health as discussed in Section 3.4 of this report. The visit to the property by Officials of that Division did not highlight any problems regarding smell or odour and noted that the dog run was well maintained and clean. A condition could be attached to any planning consent if granted to ensure that the use is operated without detriment to adjoining properties in terms of noise, smell or general disturbance.

4.10 The communal hedge has been damaged by dogs urinating against it and with chemicals used in the cleaning of the run. It is of concern that the fence will be positioned close to the hedge and that could restrict adequate provision for future hedge growth. Objection is also offered on the basis that the proposed fence does not continue around the entire property (it does not run along the boundary with 8 Melville Street where there is an existing hedge which is roughly 6 feet in height). It is considered that if the existing hedge were encouraged to grow it would provide adequate privacy. Furthermore the boundary of the two properties at 4 and 6 Melville Street, is the middle point of the hedge. Both parties should agree any changes or alterations to the hedge.

Any changes to the communal hedge in terms of permission of the relevant owners is a legal matter and not a material planning consideration. It is noted that the further growth of the hedge would be preferable to the installation and erection of a fence however, it would also be preferable to ensure a closed boundary to screen the dog run from neighbours. As has been mentioned in this objection, if damage is done to the hedge, this would affect its continued presence and in this connection a fence appears to be the most obvious solution. This is particularly so when it is limited to the rear garden area and will not be so visible from the front of the property. As previously discussed, the applicants have offered to reduce the fencing

to the front of the property and retain the hedge and it is considered that such measures can be appropriately conditioned if planning consent is granted. It is however recommended that the condition state that the fence be close boarded rather than vertical timber slats and it could also be stated that the hedge not be trimmed until it reaches the same height as the fence.

4.11 If planning permission were granted, this would set a precedent for future Council planning policy in this respect since no such development currently exists in this housing estate.

The applicants are applying for permission for the outbuildings together with the dog runs. There is no evidence that a business is being operated from the application site in this connection and the dogs are kept for domestic purposes only. Under the Town and Country Planning (General Permitted Development) Scotland Order 1992 planning permission is not required to keep animals (such as dogs) as domestic pets and therefore the use of the outbuildings is not an issue. This would not be the case if the applicants were keeping dogs within the sheds for business purposes but as stated before there is no evidence to suggest that this is the case. The sheds are of a standard domestic design and it is not considered that to approve the outbuildings would set an undesirable precedent. The area is a residential one and whilst it is a Conservation Area, it would be unreasonable to withhold permission as there are other properties with timber structures (such as garages and huts or sheds) in their gardens. The comments of Environmental Health which do not suggest any adverse impact on surrounding properties are again of relevance. It is not considered that there will be any adverse precedent set, should planning permission be granted.

4.12 The dogs bark whenever neighbours are in their rear garden or near their garage. It has been submitted to this Division that one Alsatian in particular is aggressive and is the loudest of the pack, which encourages the other dogs to bark. This neighbour in particular advises he works nightshift and is kept off sleep by dogs barking and his six year old daughter is extremely scared of this dog. He advises she is scared to play in the garden, get her bicycle from the garage and has nightmares.

Noted. Members are again referred to Environmental Health comments which advise that when an official visited the site, the dogs were not aggressive, and were well behaved.

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 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 Policy 4.7.2 of the Adopted Kilmarnock Local Plan is of relevance in the consideration of this application. This Policy states that in all Conservation Areas, there shall be a presumption against the erection of, demolition of, or alteration to any building which in the opinion of the planning authority is detrimental to the character of the conservation area.

As discussed earlier in this report, the outbuildings which have been erected are of a standard style which are prominent in residential estates. They are located behind the front building line of the dwellinghouse within the side/rear garden area. The dog run is also located to the side, rear and with the proposed fence arrangement as amended the proposal will be screened adequately and should not be detrimental to the amenity or character of the conservation area. It is also noted that there are other timber structures within properties located in the conservation area used for domestic purposes.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal other material considerations relevant to the determination of this application are the East Ayrshire Local Plan Finalised Version with Modifications, (EALP), the letters of representation and consultation responses.

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 East Ayrshire Local Plan Finalised Version should be considered as a prime material consideration.

6.3 Policy ENV 4 of the EALP is relevant and states that the Council will seek to ensure that all development within or affecting the setting of a conservation area is sympathetic to the area in terms of its layout, size, scale, design siting, materials and colour of finish. Wherever possible, proposals should have due regard to the architectural and historic qualities of the area concerned.

As detailed previously in this report, the application is not considered to be detrimental to the character of the Conservation Area. The proposal is not deemed to be contrary to the EALP. The outbuildings are of a generally standard style appropriate and widely used in residential estates. The positioning of the buildings is not beyond the front building line of the dwellinghouse which reduces their prominence in the neighbourhood.

6.4 The consultations and representations have been considered previously and are not considered to be such as to preclude a favourable recommendation.

7. FINANCIAL AND LEGAL IMPLICATIONS

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

8. CONCLUSIONS

8.1 As indicated at paragraph 5.2 it is considered that the application is 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 approved unless material considerations indicate otherwise.

8.2 There are other material considerations relevant to this application as indicated in Section 6 of the report and they are supportive of the proposal. The proposed development is consistent with the policies of the EALP. There are no objections from the Roads Division and therefore the proposal is not considered to present a road safety hazard. The dog run to the side and rear of the outbuildings is to receive screening by virtue of a fence which would be close boarded, and a condition can be added ensuring the continued presence of the boundary hedge. Both the fence and existing hedging would reduce the impact of the proposal on the adjacent residential properties to an acceptable degree.

9. RECOMMENDATION

9.1 It is recommended that this application be approved subject to the conditions on the attached sheet.

Alan Neish
Head of Planning and Building Control

25 April 2001 (FMF/SA)
FV/DM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices.
3. Public Advertisements.
4. Statutory Consultations.

5. Letters of representation.
6. Adopted Kilmarnock Local Plan.
7. East Ayrshire Local Plan Finalised Version with Modifications.

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EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0111/FL

Site of Proposal	6 Melville Street KILMARNOCK
Nature of Proposal	Proposed Erection of Fence, Outbuildings, Dog Runs and Change of Front and Back Door
Name & Address of Applicant	Mr and Mrs A Jordan 6 Melville Street KILMARNOCK KA3 7AN
Name & Address of Agent	B Line Design Ltd 25 Wilson Avenue KILMARNOCK KA3 7AP

DPO's Reference FF/SA

The above FULL application should be granted subject to the following conditions.

1. The proposed development shall be carried out in accordance with the application form received 13 February 2001 and the location plan received 25 January 2001, the site layout plan ref. JOR/01 received 25 January 2001, the dog run elevation plan received 5 February 2001 and the fence details received 5 February 2001.

REASON: To ensure that development is carried out in accordance with the approved details.

2. Notwithstanding the submitted plans, no works are approved to the hedging forming the boundary of the application site to the east, south and west boundaries with the residential properties at 4 Melville Street and 8 Melville Street. Said hedging shall be retained on site to the satisfaction of the Head of Planning and Building Control unless the separate written permission of the Planning Authority is received.

REASON: In order to ensure the continued protection of the boundary hedging which is a dominant feature within the Piersland Park Conservation Area and makes a valuable contribution to the amenity and character of the conservation area.

3. Notwithstanding the submitted plans, the fence to be erected along the boundaries of the application site shall be "close-boarded" in design. The fence shall be erected within one month of the date of this permission to the satisfaction of the Head of Planning and Building Control and shall be erected without causing any damage to the existing boundary hedging along the eastern, southern and western boundaries. In erecting the

fence the applicant shall ensure that adequate space is left to ensure the continued maintenance and growth of the hedge.

REASON: In order to protect the amenity and character of the conservation area and to ensure that the fence is erected to protect the residential amenity of neighbouring properties without causing damage to the existing boundary hedging.

4. Notwithstanding the approved plans, the planning permission granted for the fence approved under the terms of Condition 2 above, does not include permission for the section of a fence marked in orange on the eastern and northern site boundaries of the site plan.

REASON: In order to protect the amenity and character of the conservation area and to ensure that the fence is erected to protect the residential amenity of neighbouring properties.

5. Within one month of the date of this permission, details of the species of a replacement tree to be planted within the application site shall be submitted in writing to the Head of Planning and Building Control. Said species of tree shall be planted in the first available planting season (November 2001 – March 2002) as agreed by the Head of Planning and Building Control.

REASON: In order to ensure a replacement tree for that which was previously removed without the prior written permission of the Head of Planning and Building Control.

6. The use of the outbuildings hereby granted planning permission, shall be restricted to private use incidental to the enjoyment of the dwellinghouse on the site and no commercial activity shall be carried out in or from the outbuildings.

REASON: In order to safeguard the residential amenity of the surrounding area.

7. The dog run hereby granted planning permission shall operate without detriment to adjoining residential properties by reason of noise, dirt, smell or general disturbance.

REASON: In order to safeguard the residential amenity of neighbouring properties.

NOTES

1. The applicant is advised to make early contact with West of Scotland Water, 35 Glenburn Road, Prestwick to discuss whether diversion or protection of any existing public sewers is required.

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