

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 13 SEPTEMBER 2001

**01/0435/FL: PROPOSED FORMATION OF DOG RUNS AND RABBIT RUN WITH
MODIFICATIONS AT 82 MURE AVENUE KILMARNOCK
BY S THOMSON**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning consent is sought for the erection of two dog runs and a rabbit run to the rear of a residential property. The dog runs and rabbit run are 1.8 metres in height with timber panels and wire mesh above. The wire mesh and timber panels are attached to three timber sheds integral to the various runs. The runs are to be roofed over using wire mesh. The sheds are used by the dogs as kennels and for the storage of household and garden goods. There is an existing 2.1 metre high closely boarded fence between Nos. 82 and 80 Mure Avenue. This application is largely retrospective as the development has already been erected on site with the exception of the addition of a roof. It is this feature which distinguishes this application from one determined some 3 months ago. The applicant intends to renew some of the existing rotten timber panels.

2. RECOMMENDATION

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

3. SUMMARY OF ANALYSIS

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

3.2 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 non-policy material considerations. With regard to the objections based on noise from the dogs and smell from the dog runs, Environmental Health have not raised any objection to the development. Smell and odour from the dog runs can be kept to a minimum if the dog runs are well maintained and clean. A condition could be attached to any grant of planning consent to ensure that the use is operated without detriment to adjoining properties in terms of noise, smell or general disturbance. There have been complaints in the past regarding noise from the dogs. The keeping of dogs does not require planning consent and the applicant could keep the dogs in the backyard with no dog runs and without requiring planning consent. The dog runs provide a self contained

area for the dogs. If residents feel aggrieved by the level of barking they may instigate a private action in terms of the Civic Government (Scotland) Act 1982 and action can also be taken by Environmental Health regarding nuisance under the Environmental Protection Act 1990. Two letters of support have been submitted from adjacent residents stating that the dogs and kennels do not present a problem. To further enhance the situation, a condition can be attached to any grant of planning consent restricting the use of the dog runs by the dogs to between the hours of 9.00 a.m. and 6.00 p.m.

3.3 The design of the dog runs is considered acceptable. The dog runs are screened on all three boundaries of the site by 2 metre high closely boarded fences. The presence of 2 metre high fences reduces the impact of the development on the adjacent residential properties. The dog runs are not readily visible from the Western Road or adjacent residential properties. It is considered that a recommendation of approval could be justified as any problems regarding noise and smell from the dog runs can be controlled fully through attaching a condition to the grant of planning consent with regard to these matters, through the nuisance provisions of Section 80 of Environmental Protection Act 1990 or by a private action taken by an individual as detailed previously.

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 objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a two storey detached dwellinghouse and its curtilage. The site is surrounded to the north by Western Road and to the south, west and east by residential properties.

2.2 **Proposed Development:** Full planning consent is sought for the erection of two dog runs and a rabbit run to the rear of a residential property. The dog runs and rabbit run are 1.8 metres in height with timber panels and wire mesh above. The wire mesh and timber panels are attached to three timber sheds integral to the various runs. The runs are to be roofed over using wire mesh. The sheds are used by the dogs as kennels and for the storage of household and garden goods. There is an existing 2.1 metre high closely boarded fence between Nos. 82 and 80 Mure Avenue. This application is largely retrospective as the development has already been erected on site with the exception of the addition of a roof. It is this feature which distinguishes this application from one determined some 3 months ago. The applicant intends to renew some of the existing rotten timber panels.

2.3 The applicant has submitted a supporting statement stating that the runs have been formed principally for the comfort and welfare of the 4 dogs and one rabbit by providing a secure and controlled environment. The dogs and rabbit are all family pets and all the dogs are pedigree dogs which are showed regularly at dog shows in Scotland, Ireland and UK. The runs are used as a means to keep the dogs which are capable of breeding apart as well as separating the dogs from the rabbit. The dogs are kept in the runs during the day and are kennelled inside the house at night. The runs permit the dogs to have a limited amount of exercise as their health and welfare would be compromised if they were to remain within the house all day. Without the runs the dogs would either have to be kept inside all day or remain in the rear garden. The applicant has stated that the runs are cleaned regularly and no noise abatement order has been issued by Environmental Health. The runs have been designed at this scale to permit the dogs to be secured within the property when the applicant is absent. The

boundaries of the property are surrounded by timber fencing and the runs are not readily visible from outside the property.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads Division and West of Scotland Water, Scottish Environment Protection Agency and Transco have no adverse comments to make regarding the proposed development.

Noted.

3.2 East Ayrshire Council Environmental Health and Waste Management have commented that this situation is not ideal, however any refurbishment or upgrading to the existing runs would be an improvement as the dog and rabbit runs are in a somewhat shabby condition. They have informed the applicant that a high level of hygiene must be maintained within the runs and that she has a legal responsibility to ensure that the dogs do not cause any nuisance through excessive barking, noise etc and to dispose of any waste material in a hygiene manner. It may be of use to include conditions to the applicant with regard to nuisance provisions under the Environmental Protection Act 1990, Section 80.

Noted.

4. REPRESENTATIONS

There are two letters of objection to the proposed development.

Two letters of support have also been received to the proposed development.

4.1 The noise of the dogs – bouts of barking at all hours. Police have been called regarding the noise (not by the objector but by tenants in Onthank) as the noise was prohibitive. It is inappropriate for dogs to be kennelled outside due to noise resulting from dogs barking day and night.

Both the applicant and objector have been contacted regarding the police being called to investigate the complaint of barking dogs. The applicant has stated that they returned one weekend to find a letter from someone in Onthank regarding dogs barking even though the dogs were not there. The applicant called the police and informed 80 Mure Avenue regarding this letter. The objector believes that the complaint was over one and a half years ago and as the police file complaints in date order and they are unable to provide any details of the above complaint.

The applicant has stated that the runs stabilise the dogs and keep them from running about the backyard. The dogs only bark when someone is at the applicant's house or at the backyard. Two of the dogs are also muzzled. Within this present proposal the applicant intends to erect a wire mesh roof

to the dog runs so they are self-contained. The roof will stop any missiles landing in the runs and distressing the dogs.

4.2 The smell that emanates from the runs in hot weather, even when hosed daily.

If the dog runs are well maintained and cleaned, smells or odour emanating from the dog runs should be minimised. Environmental Health have stated that a high level of hygiene must be maintained within the runs and any waste material disposed of in a hygienic manner. The applicant has stated that they are pedigree dogs and it would be unreasonable and detrimental to the welfare of the dogs to keep them in dirty and unhygienic conditions.

4.3 The deeds to the properties in Mure Avenue state that no more than one dog per household is to be kept and that no kennels shall be built in the rear of the premises. If this is the legal position unless she has had sanction from elsewhere to apply for planning permission to ignore this, how can the Planning Department consider granting planning permission.

The title deeds are a legal document associated with each property. The terms of the title deeds do not preclude the grant of the planning consent. Similarly the grant of any planning consent would not preclude separate compliance with or enforcement of the title deeds.

4.4 If one person were allowed to keep dogs outside, other people would be entitled to do the same. Such a situation would be very detrimental to the area.

No planning consent is required for the keeping of dogs. It is the construction of the dog runs that requires planning approval.

4.5 Two letters of support have been received for the proposed development from adjacent residents. They have stated that the dogs or kennels do not present a problem as they are well looked after and they have not noticed any smell at all since they have been there.

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 and representations received, planning history and the impact on the amenity of residential properties.

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.

6.3 Planning Application No. 01/0207/FL: Proposed Formation of Dog Runs and Rabbit Run was refused planning consent on 1 June 2001 by the Central Local Planning Committee on the grounds that it would be detrimental to residential amenity.

The present proposal for dog runs has been modified from the previous proposal in an attempt to address the Committee's concerns. It is intended to erect a wire mesh roof on the dog runs, thereby making them more self contained. It will prevent missiles, materials and stones entering the dog runs which often distress the dogs and cause them to bark.

6.4 There is no evidence that a business is being operated from the application site and the dogs are being kept for domestic purposes only.

6.5 The comments of Environmental Health and Waste Management have been detailed in Section 3.2 of the report. The objectors' main concerns are smell and noise from the dogs. If the dog runs are well maintained and cleaned there should be no problems regarding smell and odour. There have been previous complaints regarding noise from the dogs, however Environmental Health can take action with regard to nuisance under the Environmental Protection Act 1990 Section 80. Furthermore if residents feel aggrieved by the level of dogs barking they may instigate a private action in terms of the Civic Government (Scotland) Act 1982.

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 this 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 non-policy material considerations. With regard to the objections based on noise from the dogs and smell from the dog runs, Environmental Health have not raised any objection to the development. Smell and odour from the dog runs can be kept to a minimum if the dog runs are well maintained and clean. A condition could be attached to any grant of planning consent to ensure that the use is operated without detriment to adjoining properties in terms of noise, smell or general disturbance. There have been complaints in the past regarding noise from the dogs. The keeping of dogs does not require planning consent and the applicant could keep the dogs in the backyard with no dog runs and without requiring planning consent. The dog runs provide a self contained area for the dogs. If residents feel aggrieved by the level of barking they may instigate a private action in terms of the Civic Government (Scotland) Act 1982 and action can also be taken by Environmental Health regarding nuisance under the Environmental Protection Act 1990. Two letters of support have been submitted from adjacent residents stating that the dogs and kennels do not present a problem. To further enhance the situation, a condition can be attached to any grant of planning consent restricting the use of the dog runs by the dogs to between the hours of 9.00 a.m. and 6.00 p.m.

8.3 The design of the dog runs is considered acceptable. The dog runs are screened on all three boundaries of the site by 2 metre high closely boarded fences. The presence of 2 metre high fences reduces the impact of the development on the adjacent residential properties. The dog runs are not readily visible from the Western Road or adjacent residential properties. It is considered that a recommendation of approval could be justified as any problems regarding noise and smell from the dog runs can be controlled fully through attaching a condition to the grant of planning consent with regard to these matters, through the nuisance provisions of Section 80 of Environmental Protection Act 1990 or by a private action taken by an individual as detailed previously.

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

4 September 2001 (PC/SA)
FV-DM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices/Certificates.
3. Letters of objection and support.
4. Adopted Kilmarnock Local Plan.
5. East Ayrshire Local Plan with Modifications.
6. Planning Application No. 01/0207/FL
7. Approved Strathclyde Structure Plan.
8. Approved Ayrshire Joint Structure Plan.

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

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0435/FL

Site of Proposal: 82 Mure Avenue
KILMARNOCK KA3 1TT

Nature of Proposal: Proposed Formation of Dog Runs and Rabbit
Run with Modifications

Name & Address of Applicant: S Thomson
82 Mure Avenue
KILMARNOCK KA3 1TT

Name & Address of Agent:

DPOs Reference: PC/SA

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

1. The use of dog runs and rabbit run shall be restricted to private use incidental to the enjoyment of the dwellinghouse on the site and no related commercial activity shall be carried out in or from the site.

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

2. The dog runs shall be occupied and maintained such that there is no 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.

3. The existing fences along the western, eastern and northern boundaries of the site shall be retained in tact. If these fences are removed, they shall be replaced by a fence of similar design and height.

REASON In the interests of residential amenity.

4. The dog runs shall only be occupied by the dogs between the hours of 9.00 a.m. and 6.00 p.m.

REASON In the interests 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