

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 23 JANUARY 2003

**02/0861/FL: PROPOSED CHANGE OF USE OF FOOTPATH TO GARDEN
GROUND AT UNADOPTED FOOTPATH BETWEEN EAST GARGIESTON
AVENUE AND NORTH GARGIESTON ROAD, KILMARNOCK
FOR MR JOHN McROBERT**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The applicant proposes to close the footpath. Part of the footpath off North Gargieston Road would be incorporated within the curtilage of the property at No. 8 North Gargieston Road. The remaining section of footpath would be incorporated into no. 18 East Gargieston Avenue.

2. RECOMMENDATION

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

3. CONCLUSIONS

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 There are no policies within the EALP which would significantly affect the determination of this application and so the greatest weight should be attached to other material considerations. The consultation responses, letters of support and objection have raised significant issues in respect of the determination of this application.

3.3 Whilst the footpath is unadopted, it was developed originally as part of the estate. It has been used over time as a safe, convenient pedestrian thoroughfare providing dedicated pedestrian access between the cul-de-sacs of North Gargieston Road and East Gargieston Avenue. Owing to its nature the path is an obvious benefit to children and the elderly and is a feature of the estate which provides a beneficial access route whose presence is supported by the letters of objection.

3.4 The footpath is unadopted and does not appear to be well maintained. It is relatively overgrown in sections although regardless is a benefit to residents. It is surrounded by fencing of neighbouring properties which create an effective security barrier to these properties.

3.5 The consultation responses, and supporting information are all noted however it is considered that these are not of sufficient weight to justify a recommendation of approval to allow the removal of the footpath.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the Head of Planning and Building Control, the application 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 because it is the subject objections and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises an unadopted tarmacadam footpath providing a pedestrian link between North Gargieston Road and East Gargieston Avenue. The footpath is located to the rear and side boundary of residential properties in a private housing estate located to the north of the A71 accessed from Holmes Road. The application site is surrounded entirely by residential properties.

2.2 **Proposed Development:** The applicant proposes to close the footpath. Part of the footpath off North Gargieston Road would be incorporated within the curtilage of the property at No. 8 North Gargieston Road. The remaining section of footpath would be incorporated into no. 18 East Gargieston Avenue.

2.3 The applicant has submitted the following information in support of his application:-

(i) The footpath was originally formed as an access to a 'play area' that was never constructed. The ground was incorporated under a previous planning application several years ago. As some of the objectors are relatively new residents they would not be aware that the footpath was not designed as a specific link to the cul-de-sacs and is therefore effectively redundant. The applicant has pointed out that other cul-de-sacs in the vicinity do not have such footpaths.

(ii) The applicant has submitted that the footpath is unadopted and does not form a short cut. Its removal will not result in a significant increase in walking distances with an increased distance of approximately 8 metres.

(iii) The removal of the footpath will not constitute a road safety hazard. The Council's "Roads Development Guidelines" allow for designed shared surfaces with service strips. Both North Gargieston Road and East Gargieston Avenue have been designed as a safe shared surface under these guidelines and there are also safe refuges in both cul-de-sacs adjacent to the shared surface that can be used if necessary.

(iv) It is presumed that if there were a perceived danger to pedestrians especially children, parents would take a responsible attitude in teaching road safety. A shared surface is not constructed as a playground but is there for the benefit of vehicles and pedestrian traffic. Traffic flow is no different (or greater) than in any other similar residential cul-de-sac.

(v) All residents in both streets, would be well aware of the shared surface road layout prior to purchasing their property.

(vi) The footpath is unadopted and is not therefore maintained. It is currently well overgrown at the edges with weeds/grasses/shrubs etc and the surface is starting to break up. Even if maintenance could be undertaken by residents, this would be difficult to sustain.

(vii) The removal of the footpath will not inconvenience anyone living locally and will help prevent a nuisance caused by irresponsible dog owners who use the area as a toilet. It will also reduce the use of gardens as a rubbish dump and stop vandalism thereby increasing security to the applicant's and his neighbours properties in addition to giving peace of mind.

2.4 Nine parties have also written letters in support of the application and the points raised are as follows:-

(i) The footpath serves no real purpose and tends to attract teenagers at night as a meeting place.

(ii) The removal of the footpath will benefit the area by reducing the amount of litter and dog fouling and the nuisance value that has plagued the estate since it was constructed some 18 years ago.

(iii) The footpath was originally meant as an access for children from both cul-de-sacs to gain entry to a play area. This was never constructed and there is therefore no reason for the footpath.

(iv) The removal of the footpath will not create a road safety hazard or cause inconvenience. It will remove the facility for non-local people entering the cul-de-sacs with no intended purposes.

(v) Residents living in the houses immediately to the footpath experience on a regular basis, damage to their property.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division have no objections and advise that the footpath is not required by their Division.

Noted.

3.2 Strathclyde Police have advised that the existing unadopted footpath serves no real purpose and appears to be in a poor state of repair with very limited lighting. This footpath may serve as an access point for potential thieves to adjacent gardens creating a security risk. There is very limited natural surveillance from the houses due to the height of the boundary fences and relatively narrow width of the footpath. It is recommended that planning permission be granted for this application as the proposed changes would be beneficial in addressing crime prevention and the fear of crime. It should also be noted that in any new development Strathclyde Police's Architectural Liaison Officers would advise against the provision of a footpath of this type.

Noted. The footpath was formed as part of the original estate and is an integral part of the layout. It provides a convenient traffic-free pedestrian link between the cul-de-sacs without having to utilise the public road network. Whilst the shared surface road is designed for use by both pedestrians and traffic, the footpath provides for pedestrians to travel in safety without conflict with other road users.

3.3 The Grange Howard Community Council have objected to the application on the following grounds:-

- (i) Residents have used the footpath regularly for almost 20 years and its permanent loss would be detrimental to the residential amenity of the area;
- (ii) Children who live in the two roads connected by the footpath use it as a safe and traffic-free means of access between their homes;
- (iii) Any change of use such as proposed would require to be acknowledged by all affected residents as being to their joint benefit;
- (iv) The Community Council does not have a policy of condoning commonly and regularly used public ground being taken over for private use without apparent good reason.

It should be noted that the footpath does appear to be in regular use as a safe thoroughfare particularly for the young and elderly. If the footpath were to be removed, pedestrians would have to walk along the road surface shared with motorists as opposed to a safer separate footpath.

4. REPRESENTATIONS RECEIVED

Seven letter of objection have been received regarding the proposed development (including one from Grange Howard Community Council detailed in Section 3.3). The points raised are detailed as follows:

4.1 The elderly, disabled and young children (both of primary school and pre-school age) use the footpath as a safe walkway. North Gargieston Road does not have a footpath and it would result in a road safety hazard as people would be forced to walk on the road surface and it is presumed that this is the reason why the footpath was formed when the estate was built. It is not considered that the closure of the lane will benefit any residents in North Gargieston Road.

The footpath contributes towards the residential amenity of the estate and many residents will have purchased properties aware of its existence. The cul-de-sacs have been designed as shared surfaces and although pedestrians and vehicular traffic utilise the road, the footpath offers pedestrians the choice to travel without conflict with other road users.

4.2 There are some 25-30 cars in North Gargieston Road at any one time and the footpath is required to avoid using the road to gain access to South Gargieston Drive. There is limited pedestrian walkway in South Gargieston Avenue although this is not so heavily populated with traffic. The signpost informing drivers that North Gargieston Road may have children at play is often obscured by foliage and not immediately obvious to unfamiliar visitors to the area.

Noted. It is considered that the footpath offers pedestrians (particularly children and the elderly) the option of walking between cul-de-sacs and elsewhere, limiting conflict with vehicular traffic.

4.3 Residents in East Gargieston Avenue purchased their property owing to its location and a through pathway to North Gargieston Road to enable children to move around safely within the estate. The route is used by the young as a daily access route to North Gargieston Road from East Gargieston Avenue and if it were to be taken away, children would be left to walk on the road and whilst it is unadopted, residents contribute towards its maintenance.

Noted. It is considered that the footpath forms an appropriate route for pedestrians and one that was designed as part of the estate.

4.4 Only the unadopted footpath provides a safe refuge from passing traffic on North Gargieston Road for the many young children who are able to play safely.

The shared surface of the public road network is not designed specifically as a play area for children. It is however recognised that the footpath provides a safe environment for pedestrians away from vehicular traffic.

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 no relevant policies within the Adopted Kilmarnock Local Plan 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 planning history, consultations detailed in Section 3 and representations detailed in Section 4.

East Ayrshire Local Plan Finalised Version with Modifications

6.2 The Adopted Local Plan is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the EALP should be considered a prime material consideration. There are however no policies within this document regarding proposals for the loss of footpaths.

Planning History

6.3 The residential estate was granted planning permission in outline (KL/W/79/333) on 4 April 1980. Further reserved matters approval was granted on 26 March 1982. The play area was never installed on site.

6.4 Planning permission (ref no. 98/0734/FL) was granted subject to conditions by the Central Local Planning Committee on 5 February 1999. Permission was granted for the change of use from open space to private garden ground of the area originally detailed for the play area and a triangular area of open space adjacent to properties which bound the footpath.

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 There are no policies within the EALP which would significantly affect the determination of this application and so the greatest weight should be attached to other material considerations. The consultation responses, letters of support and objection have raised significant issues in respect of the determination of this application.

8.3 Whilst the footpath is unadopted, it was developed originally as part of the estate. It has been used over time as a safe, convenient pedestrian thoroughfare providing dedicated pedestrian access between the cul-de-sacs of North Gargieston Road and East Gargieston Avenue. Owing to its nature the path is an obvious benefit to children and the elderly and is a feature of the estate which provides a beneficial access route whose presence is supported by the letters of objection.

8.4 The footpath is unadopted and does not appear to be well maintained. It is relatively overgrown in sections although regardless is a benefit to residents. It is surrounded by fencing of neighbouring properties which create an effective security barrier to these properties.

8.5 The consultation responses, and supporting information are all noted however it is considered that these are not of sufficient weight to justify a recommendation of approval to allow the removal of the footpath.

9. RECOMMENDATION

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

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the Head of Planning and Building Control, the application 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

14 January 2003
(FMF/MS)
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application forms and plans.
2. Statutory Notices/Certificates.
3. Consultation Responses.
4. Adopted Kilmarnock Local Plan.
5. Approved Ayrshire Joint Structure Plan.
6. East Ayrshire Local Plan Finalised Version with Modifications.
7. Approved Strathclyde Structure Plan.
8. Letters of support and objection.
9. Letters of supporting information from the applicant.

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

Implementation Officer: Dave Morris

Form TP24

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 02/0861/FL

Location: Unadopted Footpath Between
East Gargieston Avenue & North Gargieston Road
KILMARNOCK

Nature of Proposal: Proposed Change of Use from Footpath to Garden
Ground

Name & Address of Applicant: Mr John McRobert
8 North Gargieston Road
KILMARNOCK KA1 1TE

Name & Address of Agent:

DPO's Ref: FMF/MS

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

The footpath would result in the loss of a pedestrian access to the detriment of the overall amenity and character of the residential estate.

**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.**