

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE – 27 AUGUST 2002

APPEAL DECISIONS 01 OCTOBER 2001 – 31 JULY 2002

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to present to Committee an analysis of Appeal Decisions received from the Scottish Executive for the above period.

2. COMMENTARY

- 2.1 Table 1 shows sixteen appeal decisions received from the Scottish Executive, against refusals of planning, conservation area and advertisement consent. Five of the Appeals were sustained, ten were dismissed and one was withdrawn by the applicants.
- 2.2 In eight of the cases the dismissal of the appeal accorded both with the officer recommendation and the Committee decision. In only one case was an Appeal sustained contrary to both the officer recommendation and the Committee decision.

3. FINANCIAL AND LEGAL MATTERS

- 3.1 Four expenses claims were submitted by appellants further to these sixteen Appeals. Only one claim was upheld on the basis of the Council's "unreasonable" behaviour, item 4 in Table 1. The refusal of holiday lodges at Loudoun Castle Estate, when there had been similar approval in 1997, was considered to have put the appellants to unnecessary expense in circumstances where the application site had not changed over the intervening years.
- 3.2 A fifth expenses claim, submitted by a third party, was dismissed as it was unclear against whom the claim was made and there had been no unreasonable behaviour by either the appellant nor the Council, (Item 9).

4. RECOMMENDATION

- 4.1 **It is recommended that the Committee note the contents of the report.**

Stephen Chorley
Director of Development Services

(DVM/IMB)

21 August 2002

BACKGROUND PAPERS

- 1. Planning Application Numbers: 98/0372/FL, 98/0378/CA, 00/0840/FL, 00/0765/OL, 00/0733/AD, 01/0023/FL, 01/0109/FL, 01/0172/FL, 01/0230/FL, 01/0274/FL, 01/0346/FL, 01/0421, 01/0442/FL, 01/0501/F, 01/0518/FL, 01/0561/FL and associated papers.**

Any person wishing to inspect the background papers listed above should contact Dave Morris on 01563 576753.

Implementation Officer: Alan Neish

TABLE 1

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
1	98/0372/FL	30-32 London Road, Kilmarnock	Erection of 2 blocks of flats.	Approved with Conditions	Refused	Central Local Planning Committee 01 /06/ 01	Refused	21/03/02	Yes	No
<p>This was refused because the flats were detrimental to the character and historic merit of the London Road Outstanding Conservation Area, and therefore contrary to Policy ENV 4 of the EALP; also that the development would have a detrimental effect on adjacent residential properties by reason of noise, disturbance and overlooking. The Reporter concluded that the proposal would have a material adverse affect on the Outstanding Conservation Area and the setting of the adjacent Listed Building and that as a consequence it was contrary to policies in the Adopted Finalised Local Plan. He dismissed the Appeal.</p>										
2	98/0378/CA	30-32 London Road, Kilmarnock	Demolition of Vacant Buildings	Approve with Conditions	Refused	Central Local Planning Committee 01/06/01	Refused	21/03/02	Yes	No
<p>This was refused because the demolition would be detrimental to the architectural and historic qualities of the London Road Outstanding Conservation Area. The Reporter concluded that the economic problems associated with the commercial development of the site were compelling but not such as to justify the irrevocable demolition of the existing buildings. He dismissed the Appeal.</p>										
3	00/0840/FL	Craig House, by Crosshouse	Conversion to 11 Apartments and 14 dwelling-houses in the Grounds	Approve with Conditions	Refused	Development Services Committee 25/09/01	Approve with Conditions and Section 75 Agreement	21/03/02	No	No
<p>This was refused because the Committee considered the application would have an adverse environmental impact and because it was contrary to the development plan in terms of not being connected to agriculture or conversion of a derelict building. The Reporter concluded that the new build element was the minimum necessary, the house designs were sensitive to the location, the impact on natural heritage was limited, the restoration of the House was appropriate and that the adverse consultation responses could be addressed by conditions. Allowing the building and grounds to become a "wild area" was not tenable. The proposal should be approved subject to a Legal Agreement concerning a programme of restoration works in advance of any new build and a woodland management scheme.</p>										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
4	00/0765/OL	Loudoun Castle Estate, Galston	Holiday Lodges	Approve with Conditions	Refused	Northern Area Local Planning Committee 23-02-01	Approved with Conditions	22/10/01	Yes	Yes
<p>This was refused because it was considered by Committee to be detrimental to the visual amenity of the area. The Reporter concluded that as there had been a consent for Lodges in 1997 and there had been no change in the characteristics of the area, the thinking which had previously led to an approval should again prevail. The site was not visible from any important locations and did not impact adversely on the natural heritage. The proposal was substantially in accordance with Council Policy. An award of expenses was appropriate as the reason for refusal was inadequate to justify the change in the attitude on behalf of the Council and the Council had acted unreasonably.</p>										
5	00/0733/AD	Toll Service Station, Smallburn Road, Muirkirk	2 x 48 sheet advertising hoarding	Refuse	Refused	Southern Local Planning Committee 02/02/01	Refused	09/11/01	No	No
<p>This was refused because it was contrary to the Council's advert policies by reason of not temporarily screening a gap or redevelopment site and because it was detrimental to the character and visual amenity of the area due to its size. The Reporter concluded that there was generally a good level of amenity in the area against which the hoardings would be an incongruous feature. He dismissed the Appeal.</p>										
6	01/0023/FL	Borland Bank Cottage, Glasgow Road, Kilmarnock	Replacement Telecommunications Tower	Refuse	Refused	Northern Area Local Planning Committee 27/04/01	Refused	20/02/02	No	No
<p>This was refused because it would be an unduly prominent and conspicuous feature at a location close to houses on a busy route into Kilmarnock, And because it would have a detrimental impact on the surrounding area. The Reporter concluded that the proposal would be significantly more intrusive than the existing facility on site and that alternative sites should be explored. He dismissed the Appeal.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
7	01/0109/FL	Windyhill Farm, Newmilns	Conversion of two farm buildings to two dwelling-houses	Refuse	Refused	Northern Area Local Planning Committee 23/11/01	Refused	04/02/02	Yes	No
<p>This application was appealed on the basis of non-determination inside the statutory two month period. The view of the Committee was subsequently obtained to enable a submission to the Scottish Executive. The Committee agreed the application should be opposed as it did not meet Council policy in respect of conversions, the house design was below standard, the garden space was inadequate and the access arrangements were unacceptable. The Reporter accepted the reasons for refusal and dismissed the Appeal. He also turned down an expenses claim, seeing no unreasonable behaviour on behalf of the Council in referring to its non-statutory design guidance.</p>										
8	01/0501/FL	1/9 Portland Street, Kilmarnock	Alterations and Change of Use to Amusement Centre	Approve with Conditions	Refused	Central Local Planning Committee 9/11/01	Withdrawn	25/02/02	No	No
<p>This was refused by Committee as it would not be in accordance with RTC4 or TRC 20 of the EALP which reinforce the presumptions against amusement centres in the core shopping area. The Appeal was withdrawn because the lease was acquired by a rival operator.</p>										
9	01/0346/FL	Auchlin Mine by Skares	Site restoration using sludge cake and subsoil and planting/formation of Wetland	Refuse	Refused	Southern LPC 05/10/01	Refused	11/04/02	Yes, by third party!	No
<p>This was refused by Committee on the basis of traffic impact. The Reporter concluded that the Council's approval was justified, that the vehicle movements associated with this application would increase by 13% the HGV activity on the Skares Road and this additional impact was unacceptable. The appeal was dismissed, as was a third party claim for expenses.</p>										

	App. No	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
10	01/0172/FL	68 Irvine Road Kilmaurs	Change of Use of Engineering Works to Bus Garage Depot	Approve Subject to Condition	Refused	Northern Area LPC 26/10/01	Approve Subject to conditions	01/05/02	No	No
<p>The Committee refused the application contrary to officer recommendation because “the development would be detrimental to residential amenity by reason of noise and general disturbance”. The Reporter concluded that problems of access, boundary treatment and parking surface could be resolved by conditions and that the Police and Environmental Health had powers to address idling of engines. A 5 year trial period set against specific conditions including operating hours would leave the operations substantially in the applicants hands. A parallel appeal against an enforcement notice was sustained and the deemed planning application was granted on the same basis as for the formal planning application.</p>										
11	01/0442/OL	Site of former Kyle Knitwear, Newton Terrace, Catrine.	Erection of 7 dwellinghouses	Refuse	Refused	Southern LPC 07/09/01	Refused	14/05/02	No	No
<p>This proposal was refused by Committee because it would involve a loss of industrial land contrary to Policy 4.4.3A of the Adopted Catrine – Sorn Local Plan, contrary to Policy IND 5 of the East Ayrshire Local Plan and contrary to the site’s designation for industrial use in the EALP. The Reporter concluded that safeguarding the site was appropriate and could; as with residential use; preserve or enhance the character of the Conservation Area at this location.</p>										
12	01/0230/FL	30 Main Street Newmilns	Installation of roller shutters	Refuse	Refused	Northern Area LPC 03/08/01	Refused	27/05/02	No	No
<p>The Committee refused this application on the basis of the shutters being contrary to the Council’s Design Guidance and Policy ENV 7 of the East Ayrshire Local Plan. They would also by reason of their size and projection on the main elevation have a detrimental impact on the amenity of the Outstanding Conservation Area. The Reporter concluded that the shutter housing was visually harmful and intrusive and that, when lowered, the shutters would be inappropriate, unattractive and have a detrimental impact on the streetscene. It would undermine the Council’s efforts to improve the area. The Reporter dismissed the Appeal but extended to 6 months the period for complying with the associated Enforcement Notice.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
13	01/0561/FL	Cumnock Depot Ayr Road, Cumnock	15 metre, lattice telecom mast	Approve with Conditions	Refused	Southern LPC 02/11/01	Approved with Conditions	03/07/02	No	No
<p>The proposal was refused by Committee contrary to the officers recommendation because it was detrimental to the visual amenity of the area. The Reporter concluded that only limited, distant views of the mast would be available and these were of a structure in an industrial/commercial area where the effect on visual amenity would not be significant. The Appeal was sustained and the mast approved with conditions.</p>										
14	01/0274/FL	2 Mackie Avenue, Stewarton	Proposed extension to house to form bedroom	Refuse	Refused	Northern Area LPC 26/10/01	Approved with Conditions	09/07/02	No	No
<p>The Committee refused the application because, by reason of its scale, design and projections above the ridgeline, it would have a detrimental effect on visual amenity and would be contrary to the Adopted Stewarton Local Plan and the Council's design guidance as embraced by the EALP. The Reporter concluded that the dormer would not dominate the building, would be visible only from a limited area and that the Council had displayed flexibility elsewhere in determining such proposals. The Reporter sustained the Appeal.</p>										

	App No.	Site Address	Proposed Development	Recommendation	Decision	Venue & Decision Date	Appeal Decision	Appeal Decision Date	Expenses Claimed	Expenses Awarded
15	01/0421/FL	Bellow Mill, Muirkirk Road, Lugar	1½ storey dwelling and change of use of agricultural to domestic use.	Refuse	Refused	Southern LPC 07/09/01	Refused	22/07/02	No	No
<p>The application was refused, being contrary to Policies RES 14 and SD 4 of the EALP and there being no specific locational need, it not being an addition to a defined group of houses and it not being for combined residential/workplace use. The proposal was contrary also to Policy RES 15 of the EALP and would set a precedent for isolated residential development. The Reporter concluded the location to be detrimental to the Conservation Area and that the weight to be attached to the EALP should be significant to the extent of rejecting the development plan. Consequently the appeal should be dismissed.</p>										
16	01/0518/FL	Plot 2 Mote Toll, Ochiltree	Erection of one dwellinghouse	Refuse	Refused	Southern LPC 07/09/01	Refused	29/07/02	No	No
<p>The Committee refused the application because it was contrary to RES 13 and SD3 of the EALP and there was no specific locational need, because it would set a precedent for isolated residential development and because the design was not appropriate to the particular location. The Reporter concluded that the development would be contrary to the Ayrshire Joint Structure Plan, that whilst the site was "brownfield" it was not a scar on the landscape and that the formation of footpaths and a service lay-by would further suburbanise the essentially rural location. He dismissed the Appeal.</p>										

AGENDA