

EAST AYRSHIRE COUNCIL
DEVELOPMENT SERVICES COMMITTEE

9 MAY 2000

ANALYSIS OF APPEAL DECISIONS 01 NOVEMBER 1999 – 31 MARCH 2000

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.

2. INTRODUCTION

2.1 A previous report on Appeals was submitted in the same format to the Development Services Committee on 11 November 1999 and it is proposed to submit further reports at 6 monthly intervals.

3. COMMENTARY

3.1 The analysis shows in Table 1 in the last 6 months 2 appeals have been decided and in both cases the decisions of the Council have been overturned by the Scottish Executive Reporters. It should be noted that, in this same period, a further 2 appeals have been lodged with the Scottish Executive. As reported to Development Services Committee in November 1999 the Executive had approved an application following an appeal for the erection of 3 Storage Units and 4 Industrial Units at 88 Galston Road, Hurlford. This application was refused by the Northern Local Planning Committee contrary to officer recommendation on grounds of road safety. Since reporting this decision to Committee the Scottish Executive Reporter also awarded costs for "unreasonable behavior" which were approximately £2,500.

3.2 The decision of the Northern Local Planning Committee to refuse a residential development at Draffen, Loudoun Street, Stewarton has also attracted an award of expenses against the Council for "unreasonable behavior". The decision to refuse was taken contrary to officer recommendation and against a background of the site being included as a proposed residential development in the Finalised Kilmarnock and Loudoun Local Plan and having had a previous planning application granted. The committee refused "the application on the grounds that the application constitutes an over development of housing provision in Stewarton, giving rise to an unsustainable demand upon secondary education facilities and exacerbating the shortfall in leisure facilities. These matters are sufficient to outweigh the provision of the Finalised Kilmarnock and

Loudoun District Plan, as a result of its age and (in respect of the supply of land for housing) the inaccuracy of the housing provisions due to “windfall” sites and density of development on other sites.” The Reporter concluded that against this background “the Council reached its decision without reasonable planning grounds for doing so.”

3.3 Since the Local Planning Committee decision on the Draffen site, the Finalised East Ayrshire Local Plan has been approved. As this plan represents the most recent view of the Council it carries substantial weight in the context of planning decisions. Given the Reporter’s conclusions on the Draffen appeal and the weight that should be attached to the East Ayrshire Local Plan, there is a likelihood that a decision to refuse a proposal which is a specified site for such a development in the Local Plan could be similarly challenged on appeal. It is suggested therefore that the Scheme of Delegation should be amended to ensure that such decisions if taken by a Local Planning Committee should be referred to the Development Services Committee for determination. This would be similar to the existing scheme which ensures that the Development Services Committee deals with applications that are referred from the Local Planning Committees as the relevant Committee decides against officer recommendation and recommends approval of an application site which is a significant breach of Council policy.

3.4 Specifically this would mean that decisions by a Local Planning Committee to refuse a proposal which is recommended for approval by officers and is an identified site in the Local Plan should be referred to the Development Services Committee for determination.

4. FINANCIAL AND LEGAL IMPLICATIONS

4.1 Although the East Ayrshire Local Plan does not form part of the Development Plan, as is indicated in para 3.3 above this plan carries substantial weight in determination of planning applications. Given that the Plan has only recently received Committee approval it is appropriate to determinate applications in accordance with its policies and its land use allocation, unless material considerations indicate otherwise. This proviso means that members continue to have discretion when determining planning applications and are not bound to follow officer recommendations. However, a decision to refuse planning permission which is not supported by the East Ayrshire Local Plan will require appropriate reasons for refusal which can be defended in any future appeal of the decision.

4.2 Members are reminded that appellants have an opportunity to seek expenses if it is found that a planning authority has acted unreasonably or vexaciously. If a refusal of planning permission is based on unreasonable reasons, the Council will almost certainly face a successful claim for expenses, which claim shall have to be met from existing budgets. Further, if a pattern were

to emerge of successful appeals against decisions of any particular local planning committee, together with related awards of expenses, then the view could be taken that the Council has unnecessarily and unreasonably incurred financial liabilities and the external auditors may require to consider whether the matter is in accordance with Section 102 (3) of the Local Government (Scotland) Act 1973. This provision allows for surcharge where the auditor is of the opinion that a loss has been incurred by the Council due to the negligence or misconduct of any person or by the failure of a local authority to carry out any of their statutory duties. A pattern of awards of expenses in successful appeals, given that such awards can only be made where the authority is found to have acted unreasonably, could lead the Auditor to form such a view, particularly where the original committee decision went against the professional advice received from officers.

5. RECOMMENDATION

5.1 That the Committee note that the proposals in relation to paragraph 3.4 will be dealt with under the regular review of the Scheme of Delegation which will be considered at the Council Meeting of 29 June 2000.

Stephen Chorley
Director of Development Services

3 May 2000 (AN/SA)
FV-AN

BACKGROUND PAPERS

Any person wishing to inspect the background papers listed above should contact Alan Neish on 01563 576767.

Implementation Officer: Alan Neish c/o Andersson, Sandra

I:/comrep/ANAL-APPEALDEC

TABLE 1

APPEALS BY APPEAL DECISION DATE 01 OCTOBER 1999 AND 31 MARCH 2000

APP. NO	SITE ADDRESS	PROPOSAL	DECISION	DECISION DATE	APPEAL DECISION	APPEAL DECISION DATE
99/0265/FL	Draffen Loudoun Street STEWARTON	Residential Development	Refused	10.9.99	Approved with Conditions	29.3.2000
99/0300/FL	Caponacre Industrial Estate CUMNOCK	Formation of a go-kart track	Refused	02.7.99	Approved with Conditions	24.2.2000

AGENDA