

## **EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE: 28 JUNE 2002**

**02/0071/FL AND 02/0072/LB: PROPOSED CHANGE OF USE FROM EXISTING (ASSEMBLY) CHURCH TO 2 RESIDENTIAL HOMES AT HURLFORD KIRK, MAIN ROAD, CROOKEDHOLM BY MR R JARVIE**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Consent is sought for the change of use and refurbishment of the church to form 2 residential homes. A total of 6 parking spaces are proposed to the front. Amenity open space would be formed for both units to the rear of the church hall. It is proposed to demolish an existing toilet block to accommodate the amenity space. The two units will be formed by dividing the church vertically along its entire length with each unit comprising 3 bedrooms on the ground floor and living accommodation on the upper floor. Each unit will be accessed from the existing main entrance to the church.

#### **2. RECOMMENDATION**

**2.1 It is recommended that both the planning and listed building applications be refused for the reasons shown on the attached sheets.**

#### **3. CONCLUSIONS**

3.1 As is indicated at para 5.2 of the report, the application is considered to be in accordance with the Adopted Kilmarnock Local Plan, but not the Ayrshire Joint Structure Plan. Therefore, given the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material consideration indicate otherwise. As is indicated in Section 6 of the report, there are material considerations relevant to this application and it is considered that these are generally not supportive of the application.

3.2 Given the age of the Adopted Local Plan, the Council has agreed that the EALP should be considered a prime material consideration. As is noted in Section 6 above, the proposal is contrary to the EALP.

#### **CONTRARY DECISION NOTE**

Should the Committee agree that the applications be approved contrary to the recommendation of the Head of Planning and Building Control and the advice of SEPA, the applications will require to be referred to Development Services

Committee in accordance with the Scheme of Delegation because approval would be contrary to the recommendation of SEPA and would require notification to the Scottish Ministers under the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997.

**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.**

## EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 28 JUNE 2002

02/0071/FL AND 02/0072/LB: PROPOSED CHANGE OF USE FROM EXISTING (ASSEMBLY) CHURCH TO 2 RESIDENTIAL HOMES AT HURLFORD KIRK, MAIN ROAD, CROOKEDHOLM BY MR R JARVIE

### Report by Head of Planning and Building Control

#### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present jointly for determination a full planning application and an application for listed building consent which are to be considered by the Local Planning Committee under the scheme of delegation because they have been the subject of objection and are recommended for refusal.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the vacant 'B' listed church and its immediate curtilage. The adjacent manse and rear hall do not form part of this application. The site is located to the north of the main road and is bounded to the east by the former manse, to the west by housing with fields to the north. The settlement boundary runs along the northern edge of the application site.

2.2 **Proposed Development:** Consent is sought for the change of use and refurbishment of the church to form 2 residential homes. A total of 6 parking spaces are proposed to the front. Amenity open space would be formed for both units to the rear of the church hall. It is proposed to demolish an existing toilet block to accommodate the amenity space. The two units will be formed by dividing the church vertically along its entire length with each unit comprising 3 bedrooms on the ground floor and living accommodation on the upper floor. Each unit will be accessed from the existing main entrance to the church.

#### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division has confirmed that there is no objection on the grounds of road safety. However, it is noted that the existing church lies within an area that has experienced flooding from the River Irvine overtopping the right bank. Occurrences recorded were December 1994 (considered to be a 1 in 67 year flood event), October 1995 and December 1999. This area has been known to flood on occasions previous to these dates. The information submitted by the applicant's engineer confirms that for the design flood event the floor would be submerged by up to 0.8m. This would not be acceptable. Measures to protect the property from inundation by the use of walls surrounding the

property would also not be acceptable. How would emergency services/medical attention access/egress the property in times of extreme floods?

The Council's application for the Flood Prevention Scheme for Crookedholm cannot be taken into consideration until such time as the proposals are approved and the construction works are in place.

***Based on the information submitted by the applicant's own engineer and the above consultation response from the Roads Division it is confirmed that the property is at serious risk from flooding.***

3.2 The Scottish Environment Protection Agency (SEPA) has stated that the applicant should consult with Scottish Water regarding any connection to the public sewer. SEPA has no objection on the understanding that the foul drainage is connected to the public sewer. SEPA has also requested that they receive a written assurance from Scottish Water that the foul drainage arising from these properties, if permitted to connect into the local authority foul sewer, will not cause premature operation of the existing storm sewer overflows in the network to occur. SEPA has also reviewed the correspondence from the applicant's engineer and conclude that:

- A significant flood risk has been identified at the site
- Safe access and egress from the site may be difficult during flood events, and
- A flood risk assessment would be required to identify the flood risk, outline preventative measures and demonstrate that flooding elsewhere will not be exacerbated.

SEPA would further agree with the applicant's engineer, Dr. Riddell, that the planning application should relate to the present situation only.

Furthermore, this development lies within the historical floodplain of the River Irvine and lies within the Centre for Ecology and Hydrology indicative '100 year' flood envelope (i.e. that event with a 1% risk of occurrence in any one year). It would appear from SEPA's records that the site flooded during the December 1994 flood event on the River Irvine, and lies close to a flood flow pathway during major floods on the River Irvine.

SEPA would recommend that a flood risk assessment is carried out to determine the flood risk to the proposed development, outlining any flood prevention measures required. However, if the site lies within a flood flow pathway SEPA would be minded to notify the Scottish Ministers as per the Notification of Applications Direction 1997, should the Council be minded to approve the application.

SEPA have reviewed the correspondence received on behalf of the applicant, outlining options for the continued development of the site.

The information reiterates the substantial flood risk to the site, which is supported by the information SEPA holds.

The proposal to protect the site using walls, embankments and gates would clearly require further detailed engineering design to ensure adequate flood protection. This proposal, as well as the option to uplift floor levels, will result in the occupants being surrounded by floodwaters during flood events, thus preventing safe access and egress from the site. Furthermore, both options may also have an impact on local flood risk which, is as yet, un-quantified.

The proposed Crookedholm flood alleviation scheme, promoted by East Ayrshire Council will provide an integrated flood protection scheme for the Crookedholm area. The design will ensure that flooding elsewhere will not be exacerbated and that the defence infrastructure is to an adequate design and will be maintained for the long term. Therefore, SEPA would concur with the recommendation that planning approval be delayed until completion of the flood defence scheme for the area.

***Noted. Since there is a clear risk of flooding, acknowledged both by the applicant's own engineer and SEPA, any recommendation by the Council to approve the application would require to be notified to the Scottish Ministers. Were this Local Planning Committee to determine to approve this application, it would require to be referred to the Development Services Committee under the scheme of delegation because of the future notification procedures.***

3.3 Scottish Water has made the following comments:

A development of the type and size proposed can be serviced from an existing public water main located in the street adjacent to the site location.

Separate application will have to be made for the provision of site water mains if required, and service connections. Consultation should be made with Scottish Water regarding compliance with current byelaws and use of water for building purposes.

There is a public sewerage system to which a connection may be made. The developer should satisfy himself, by site investigation if necessary, that relative levels are such as will allow the development to be connected at a reasonable gradient.

The developer must make a separate application to Scottish Water for permission to connect to the public sewerage system.

Sustainable Urban Drainage Systems should be employed on the surface water drainage.

***Noted. Conditions and notes can be attached to any grant of planning permission regarding the issues raised by Scottish Water.***

3.4 Hurlford and Crookedholm Community Council have not responded at the time of writing.

***Noted.***

The following consultation responses have been received in respect of the listed building application:

3.5 The Scottish Civic Trust object to this application which would compromise the interior of the Category B listed church to too great an extent.

“Whilst we are keen to support any application which proposes the re-use of a redundant building the Trust believes, in line with paragraph 2.16 of Historic Scotland’s Memorandum of Guidance on Listed Buildings and Conservation Areas, every effort should be made to find a re-use which is as compatible and appropriate for the building as possible. This is usually a use which is as close to the original as possible and therefore, more often than not, compatible with the aesthetic and spatial qualities as possible.

Paragraph 2.16 of the Memorandum of Guidance states that “In considering whether a use is appropriate, authorities should pay particular attention to the architectural and historic features of the building, and endeavour to find a use which will preserve them”.

In the case of redundant ecclesiastical buildings the guidance acknowledges that they “pose a sensitive problem” and that “acceptance of a suitable alternative use may be the only means to preserve both the building itself and its contribution to the character and appearance.”

We are unaware of any evidence that demonstrates that the only suitable re-use for this building is as two residential units. We would be surprised if, for example there is no community use for this fine and capacious church. Such a use would avoid the need to remove the organ or indeed all the pews and we would question whether it has been marketed as such or whether any feasibility studies have been undertaken. Therefore, until we are satisfied that a more appropriate use cannot be found we would be unable support this scheme.

With regard to the proposed scheme, we do not believe that the proposed vertical split of the interior is an appropriate design solution. The height and expanse of the interior is an important part of the aesthetics of this building especially that of the roof-scape and its timbers. The Trust would therefore suggest that if re-use as two dwellings is deemed acceptable then a horizontal division would be far more acceptable. This would allow for almost equal accommodation albeit that the upper storey flat would be the more flamboyant of the two units. Such an approach would provide two adequately lit units and

allow for the double height and span of the roof space and galleries, to be fully appreciated and less physically compromised.

In addition we lament the wholesale removal of the pews and the organ and would recommend that if permission is granted for any re-use that involves their removal then the Royal Commission on the Ancient and Historic Monuments of Scotland should be allowed to record the interior with them in it beforehand.

We therefore cannot support this application as it is currently proposed and strongly recommend that it be refused.”

***Noted. It is considered that, in principle, the use of the church for residential accommodation is acceptable and that the proposed vertical split is considered to be a preferred option, providing two aesthetically pleasing units which reflect the design of the Kirk. Para 2.15 of the Memorandum of Guidance states that “new uses for old buildings may often be the key to their continued survival”. It is considered that in this instance the proposed use and the manner of achieving it, is acceptable.***

3.6 The Architectural Heritage Society of Scotland has confirmed the proposal is acceptable in principle. The Society does object to the retrospective works being carried out at the church and “the haphazard working methods currently employed.” “The Society are not convinced that the applicant/owner takes his duties and responsibilities seriously when entrusted with a ‘B’ listed Ingram building.

The proposal to sub divide the Church vertically seems to be the best solution, although we suspect that the first floor rooms cannot remain open to the rafters. It is the detail of the scheme which seems unclear from the drawings and which will be all important in producing homes worthy of their ‘shell’.

Given the apparent lack of control of the work in hand it is vital that all decorative plaster mouldings, bosses, doors/door frames are protected during conversion. There are some particularly fine angels at the base of the balcony arches which must be covered by protective padding while ladders/scaffolding are being used; similarly with the gilded decorative Corinthian capitals.

The fine gate-post cap-stones at the entrance have already been slightly chipped. The ironwork – fencing and gates – must be protected and conserved. Also the two trees in the front garden should be fenced off to avoid further damage.

With regard to the front garden, care should be taken to keep it open, and as now, not to suburbanise it, by fencing, mono-block or other domestic detail. Hard standing for the four car-parking spaces proposed already exists. Bin stores, washing greens, etc, should be kept to the rear.

The question of repointing was discussed with the architect and owner, as the white mortar repairs detract from the building. Until all stonework requires repointing, the current 'jointing' should be camouflaged with some form of breathable coating.

The question of the Tower was also raised. If the (slate) belfry shutters require repair, the tower must continue to be well ventilated. The bell should NOT be removed

We believe the stained glass windows should be protected during conversion. The large modern south window is most vulnerable and has already been damaged.

If/when this application is approved, the question of what to do with the artefacts removed will arise. Is the Council actively working with an Architectural salvage firm to ensure re-use/recycling of pitch pine and decorative ironwork? The current application could recycle some timber, but only a small proportion in this conversion.”

***The retrospective works and the current methods of working are not relevant to the determination of this application and are being dealt with by means of the Council's enforcement procedures. The issues raised regarding the protection of items within the church itself and its curtilage can be covered by means of condition should the application be approved.***

3.7 Historic Scotland have provided the following comments:

“The Historic Buildings Inspectorate is satisfied with the principle of this conversion, but has its reservations about the ability of the project to meet good conservation standards. This is a very high quality building, and therefore significantly more information will be required than has been submitted on this occasion. Due to the quality, size and complexity of the building, the Inspectorate strongly recommends that the application receives approval or in principle approval from Building Control prior to the issuing of listed building consent as unforeseen changes to the listed building consent are unlikely to be acceptable. Likewise, the Inspectorate would recommend that annotated drawings setting out a full schedule of repairs of the external fabric is provided to ensure that the applicant is aware of the extent of expenditure required at the earliest stage. In particular, the extent of stone repairs, the type of mortar to be used, and the extent of replacement of roof slates should be clarified. With regard to alteration, the agent should provide 1:5 scale drawings of the proposed escape windows so their impact on the appearance of the building can be assessed. The drawings should also specify the colours and finishes of all the external woodwork and ironwork.”

With regard to the details submitted for fire escape windows at this building the Inspectorate feel that this is a difficult problem and that unless Building

Control will grant a relaxation for these, they will have to accept their installation in the positions marked on the drawings submitted originally.

***Noted. Further details and information were submitted by the applicant's agent and forwarded to Historic Scotland. Nevertheless, the above comments remain applicable with Historic Scotland confirming the outstanding problem with fire escape windows. No building warrant relaxation has been granted for this development at the time of writing this report.***

#### **4. REPRESENTATION**

An objection has been received from the Scottish Civic Trust which is detailed in para 3.5 above.

#### **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 Ayrshire Joint Structure Plan (AJSP) and the Adopted Kilmarnock Local Plan.

5.2 Within the Adopted Local Plan the policies relevant to the determination of this application are Policy Nos. 4.7.13, 4.8.4, 4.8.6 and 5.6.8. Since it is not considered that the alterations are detrimental to the character of the building the proposal is considered to be acceptable in terms of the policies of the Adopted Local Plan.

5.3 The proposal accords with Policy E19 of the AJSP since the proposal is not considered to have an adverse effect on a listed building. However, the proposal is contrary to Policy G2 since there will be "an unacceptable danger by means of flooding."

#### **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of this application are the East Ayrshire Local Plan, Finalised Version with Modifications (2001), Government Guidance on Listed Buildings and Conservation Areas as contained within the Memorandum of Guidance NPPG 7: Planning and Flooding the consultation responses, the objection detailed above and information submitted by the applicant.

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 East Ayrshire Local Plan (Finalised Version with Modifications) (EALP) should be considered as a prime material consideration.

6.3 The policies relevant to the determination of this application in the EALP are Policies RES 7, ENV 1, 2 and 4, RES 22 and ENV 17.

6.4 Policy RES 7 encourages the rehabilitation and conversion to residential use of existing and traditionally designed and constructed buildings subject to a number of criteria.

***The proposal involves minimal change to the external appearance of the building with more substantial alterations proposed internally. However, the alterations are not considered to be detrimental to the character of the building and the proposal is considered to be acceptable in terms of Policy RES 7.***

6.5 Policies ENV 1, 2 and 4 seek to protect, preserve and enhance listed buildings and encourage the retention, restoration, renovation and re-use of listed buildings where the development is sympathetic to the building concerned.

***It is considered that the principle of these policies has been met although specific detailing would be required to be dealt with by conditions should the application be approved.***

6.6 Policy RES 22 requires that all developments meet the minimum 100m<sup>2</sup> of private open space per dwelling unit.

***The amenity space identified at the rear of the site adequately meets the requirement of Policy RES 22. A condition could be attached to any grant of planning permission to identify and sub-divide the relevant areas for each unit.***

6.7 Policy ENV 17 states that the precautionary approach should be pursued in areas that are known to have flooded in the past. The policy requires any developer to fully investigate the implications of flood risk on their site and on adjoining land and property. Appropriate flood prevention measures should be incorporated into the design of the proposals so as to remove or reduce to an acceptable minimum, any adverse effects from flooding that may be experienced. Developers will be expected to enter into agreements with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997, to provide and finance any necessary flood prevention infrastructure that may be required in association with their proposals.

***The applicant has not submitted a full flood risk assessment for consideration by the relevant bodies and no flood prevention measures have been proposed. Consequently, the proposal is contrary to Policy ENV 17.***

6.8 NPPG 7: Planning and Flooding provides guidance on a wide range of planning and other measures which should ensure that decisions in relation to areas of existing and future development take account of flood risk.

NPPG 7 states that “the susceptibility of land to flooding is a material consideration in deciding a planning application.” While retaining the presumption in favour of proposals which accord with the development plan, flooding must still be taken into account as a material consideration in deciding planning applications.” “Where necessary, planning authorities should seek expert advice from SEPA, through a Flood Appraisal Group, the developer, or independently in assessing the risk from flooding.” “In development control work, planning authorities should as appropriate, through discussion with the Flood Appraisal Group and/or in consultation with the responsible authorities:

Generally for all locations

- Routinely consider whether risk of flooding is a relevant issue by applying a checklist of flood related indicators (such as the history of flooding, recent changes in land use, infrastructure and the location of existing significant culverts);
- Refuse applications for development which would create an unmanageable risk of flooding.”

***On the basis of the guidance contained in NPPG 7 and the consultation responses from both East Ayrshire Council’s Roads and Transportation Division and SEPA it is clear that the current application is unacceptable. The Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 ensures that where the planning authority intend to approve an application contrary to the advice of SEPA that there is a risk of flooding, the planning authority shall notify the application to the Scottish Ministers who shall decide whether to call in the application.***

6.9 The Memorandum of Guidance states that “new uses for old buildings may often be the key to their continued survival.”

“2.16 The best use for an historic building is usually for the use for which it was designed and wherever possible this original use, particularly if it is a residential or ecclesiastical use, should continue.

If the use of the building has been changed from its original purpose, it should be considered whether it can revert to it. But in many cases it must be accepted that the continuation of the original use is not a practical proposition and it will often be essential to find appropriate alternative uses. In considering whether a use is appropriate, authorities should pay particular attention to the architectural and historic features of the building, and endeavour to find a use which will preserve them.”

“2.18 The greatest problems arise when large buildings, built for needs which have ceased to exist, become vacant. Because of their importance and position in the townscape or landscape, their demolition would cause a radical and undesirable change in the appearance and character of the area.

Many successful conversion schemes have been carried out. Old warehouses and granaries etc are now being used for housing, workshops, squash courts, restaurants, hotels, community and art centres.

Redundant ecclesiastical buildings pose a sensitive problem, as it is sometimes thought that such a building should not be used for purposes regarded as incompatible with years of use for worship. Nevertheless, unless funds are available to retain a redundant ecclesiastical building in good repair, the acceptance of a suitable alternative use may be the only means to preserve both the building itself and its contribution to the character and appearance of the area.”

2.20 “Planning authorities should be flexible in dealing with applications for changes of use of buildings of architectural or historic interest. Consent for change of use should not be refused except for specific and major difficulties which cannot be overcome by attaching reasonable conditions to planning permission of listed building consent.”

***In this instance it is understood from the applicant that the title deeds prevent re-use of the church as a place of worship. Consequently, a new use for the building must be considered. The proposed use as residential accommodation is considered to be acceptable with the submitted design being the preferred option to create 2 units.***

***However, as is stated in para 2.20 of the Memorandum applications for change of use “should not be refused except for specific and major difficulties which cannot be overcome by attaching reasonable conditions.” The issue of flooding has been highlighted in the consultation responses by both the Roads Division and SEPA in addition to the applicant’s own engineer. The risk of flooding is detailed in paras 3.1 and 3.2 above and is also referred to in para 6.8, NPPG: Planning and Flooding. It is concluded that since the applicant has not proposed any flood prevention measures and there has been no full flood risk assessment submitted, the current proposal is unacceptable. It is also not reasonable to attach any conditions which relate to another application, not yet determined and with no timescale for implementation. Consequently, it is considered that no consent should be granted until the flood prevention measures have been completed.***

In support of the application the applicant’s agent has submitted the following information:-

- 6.10
1. "The church organ was removed prior to our client purchasing the church. We understand that it was donated to the church in Mauchline.
  2. We understand that the Kirk was privately sold to Mr Jarvie. Prior to this we have no knowledge as to whether there were any consultations between the Church of Scotland or East Ayrshire Council as to the proposed usage of the property.
  3. We would strongly disagree with the viewpoint that a split horizontally would be more aesthetically pleasing and would respond as follows:
    - the church itself lends itself aesthetically to verticality. The window/buttress panel design repeats itself on both east and west elevations. The south elevation where the main focal point is situated again is sympathetic to either elevation.
    - a vertical party wall also gives both end users a spectacular atrium space in the main living quarters and in our opinion, is a key selling point to any end user. As opposed to a horizontally split which would be poorly lit on the ground floor area due to restricted window sizes.
    - our intentions always have been as far as practically possible to utilise ballustrading, pews, stained glass, ornate plaster works within the design scheme.
  4. Please note that as an Architectural Practice we understand the concerns shown by the Civic Trust, however we fail to understand why they cannot generally support the project. Our opinion would be although certain alterations have to be made, the external appearance of the building will be privately maintained by subsequent purchasers for many years to come and will remain unchanged.
  5. Our understanding is that Historic Scotland are in general support of the project, subject to various conditions."

In addition to the above, a summarised flood risk assessment has also been submitted which confirms that "there is a flood risk to the Kirk during the design event, with the depth of submergence of the floor of the Kirk being up to 0.8 m. As this is unlikely to be acceptable to the planning authority and insurers, I am of the opinion that measures will need to be taken to reduce the risk."

The three options are:

1. "It is clearly unrealistic to raise the existing floor level and with the building being listed, any major works would be difficult. However, one option might be to construct a new ground floor raised, say 1m above one existing floor."
2. "To provide protection around the site by the use of a bund or wall." "Some arrangement of gates or a ramp would need to be devised for the site entrance."
3. "Await completion of the flood alleviation scheme for Crookedholm."

If planning consent is required before the Council's flood alleviation scheme has been confirmed by the Scottish Ministers there are only 2 options:

1. "Take the risk that the Council's works may not be completed before occupancy and then agree with insurers acceptable cover on this basis and also agree with the Council that no pressure would be applied for such works before or following flooding."
2. "Provide a defence around the perimeter of the property." The level of the wall would need to be about 1.9 m above road level. "The construction of a wall at the levels and strength required will be very costly and visually intrusive."

6.11 The applicants agent has also submitted further comments, summarised as follows:

"We find the treatment of this project within the context of the present time only as unacceptable. Our understanding is that funds will be in place for the proposed flood prevention scheme, albeit 2 to 3 years away.

However, if the Church/Hall/Manse were still occupied by the previous owner, access/egress to the Church is still a problem. It significantly decreases with the proposed change of use. Our client has sold off the Manse/Hall and we understand that the Hall is being utilised as commercial premises with 7 people employed therein.

We would surmise that there is no present application to Planning for this change of use. We would state that if Planning Permission were applied for, East Ayrshire Planning Department would also recommend for refusal, hence putting business and employment at risk.

If these applications are refused, this would have serious consequences not only for my client, but also for the surrounding area in terms of insurance renewals (business and residential). We understand that one major insurance company will not underwrite anything within a potential flood flow pathway unless a flood prevention scheme is in place. A negative decision would significantly add to this. We would also point out that if left for a significant period of time, the project would be unviable and the Church would be left vacant until vandalism, fire or the elements (or all three) took their toll. Our

client has already had a break-in this week with the Church lying vacant. We therefore state that there is a greater practical risk to Health and Safety with this as opposed to a “design flood”.

Our client has an end user for the residence once Planning Permission is granted.

Our client would certainly give assurances as to the access/egress issue in that he is prepared to purchase a dinghy with an outboard motor and provide maintenance for it until such times as flood prevention measures are in place.”

***Noted. The information submitted on flooding by the applicant confirms that there is a flood risk to the Kirk. On the basis of this information, the consultation responses from both East Ayrshire Council’s Roads Division and SEPA and also the advice contained in NPPG 7: Planning and Flooding, it is clear that the site is subject to flood risk. Furthermore, the means of resolving this risk are some way from implementation. The availability or otherwise of insurance cover is not directly a planning consideration, however it is clear that planning authorities should similarly not support development in circumstances where it is not secure from possible inundation.***

#### Consultation Replies

6.12 The consultation replies, principally SEPA, the Council’s Roads Division and the Scottish Civic Trust, indicate that approval of the application would be inappropriate.

## **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 is indicated at para 5.2 of the report, the application is considered to be in accordance with the Adopted Kilmarnock Local Plan, but not the Ayrshire Joint Structure Plan. Therefore, given the terms of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material consideration indicate otherwise. As is indicated in Section 6 of the report, there are material considerations relevant to this application and it is considered that these are generally not supportive of the application.

8.2 Given the age of the Adopted Local Plan, the Council has agreed that the EALP should be considered a prime material consideration. As is noted in Section 6 above, the proposal is contrary to the EALP.

## **9. RECOMMENDATION**

**9.1 It is recommended that both the planning and listed building applications be refused for the reasons shown on the attached sheets.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the applications be approved contrary to the recommendation of the Head of Planning and Building Control and the advice of SEPA, the applications will require to be referred to Development Services Committee in accordance with the Scheme of Delegation because approval would be contrary to the recommendation of SEPA and would require notification to the Scottish Ministers under the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997.

**Alan Neish**  
**Head of Planning and Building Control**

18 June 2002 (YN/SA)  
FV-DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letters of Objection.
5. Correspondence from/to the applicant.
6. Adopted Kilmarnock Local Plan.
7. East Ayrshire Local Plan (Finalised Version with Modifications).
8. Approved Strathclyde Structure Plan.
9. Approved Ayrshire Joint Structure Plan.
10. NPPG 7: Planning and Flooding.
11. Memorandum of Guidance on Listed Buildings and Conservation Areas.

Anyone wishing to inspect the above papers should contact Yvonne Nisbet on (01563) 576771.

TP 24

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0071/FL

---

Site of Proposal:	Hurlford Kirk Main Road CROOKEDHOLM
Natural of Proposal:	Proposed Change of Use from Existing (Assembly) Church to 2 Residential Homes
Name & Address of Applicant:	Mr R Jarvie C/o 21 Portland Road KILMARNOCK KA1 2BT
Name & Address of Agent:	Thomson Dawes Architects 21 Portland Road KILMARNOCK KA1 2BT

---

DPOs Reference: YN/SA

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

1. The proposal is contrary to the advice contained in NPPG 7: Planning and Flooding since the proposal is on a site where there is an unacceptable risk of flooding.
2. The proposal would be contrary to Policy G2 of the Ayrshire Joint Structure Plan which is not supportive of development proposals which have a significant adverse effect or present unacceptable danger by means of flooding.
3. The proposal would be contrary to Policy ENV 17 of the East Ayrshire Local Plan (Finalised Version with Modifications) since no appropriate flood prevention measures have been incorporated into the design of the proposals

such as to remove or reduce to an acceptable minimum, any adverse effects from flooding that may be experienced.

4. In the absence of details confirming precisely what measures would mitigate the site's potential for flood inundation, it would be inappropriate to approve the submitted details when mitigation measures might impact on the character of the listed building.

TP 24

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0072/LB

---

Site of Proposal:	Hurlford Kirk Main Road CROOKEDHOLM
Natural of Proposal:	Proposed Change of Use from Existing (Assembly) Church to 2 Residential Homes
Name & Address of Applicant:	Mr R Jarvie C/o 21 Portland Road KILMARNOCK KA1 2BT
Name & Address of Agent:	Thomson Dawes Architects 21 Portland Road KILMARNOCK KA1 2BT

---

DPOs Reference: YN/SA

The above LISTED BUILDING application should be refused for the following reasons:

1. The proposal is contrary to the advice contained in NPPG 7: Planning and Flooding since the proposal is on a site where there is an unacceptable risk of flooding.
2. The proposal would be contrary to Policy G2 of the Ayrshire Joint Structure Plan which is not supportive of development proposals which have a significant adverse effect or present unacceptable danger by means of flooding.
3. The proposal would be contrary to Policy ENV 17 of the East Ayrshire Local Plan (Finalised Version with Modifications) since no appropriate flood prevention measures have been incorporated into the design of the proposals such as to remove or reduce to an acceptable minimum, any adverse effects from flooding that may be experienced.

4. In the absence of details confirming precisely what measures would mitigate the site's potential for flood inundation, it would be inappropriate to approve the submitted details when mitigation measures might impact on the character of the listed building.

**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**