

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 23 NOVEMBER 2001

**01/0586/FL: PROPOSED CHANGE OF USE OF FOOTPATH TO PRIVATE
GARDEN GROUND
AT 21 AND 19 CUMBRAE DRIVE, KILMARNOCK
BY MR G LOGAN**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.2 It is proposed to close off the footpath where it lies between 21 and 19 Cumbrae Drive and change the use of the public footpath to private residential garden ground shared between the two properties.

2. RECOMMENDATION

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

3. CONTRARY DECISION

3.1 Should the Committee agree that the application be approved contrary to the recommendation, there would be no requirement for the application to be referred to the Development Services Committee as there would be no significant breach of policy.

4. SUMMARY OF ANALYSIS

4.1 As indicated in paragraph 5.2 of the report, it is considered that there are no relevant policies in the Adopted Plan and therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 greater weight should be given to the material considerations. The main consideration in this instance is the loss of the planned pedestrian friendly link through Wardneuk to the detriment of sections of the community and the ambiguous nature of any advantage that would be gained for that same community in spite of the potential benefit for the applicant and his immediate neighbour.

**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 the 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 as the proposal has been subject to an objection and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises a tarmaced footpath between two houses on Cumbrae Drive, Kilmarnock. The footpath provides a pedestrian link to, and ultimately through, an area of open space commonly known as the 'compound'. It links the north area of Wardneuk to Eriskay Place and the local facilities of primary schools, shops etc. The tarmaced footpath links to a slabbed path in the compound proper and has been an established part of the area since the houses were completed approximately 25 years ago.

2.2 **Proposed Development:** It is proposed to close off the footpath where it lies between 21 and 19 Cumbrae Drive and change the use of the public footpath to private residential garden ground shared between the two properties.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transport Division have confirmed that the footpath is not part of the adopted public footpath network.

Noted. This lack of adoption refers to the manner of finish and design of the footpath.

3.2 Strathclyde Police have confirmed that they view the footpath as a 'crime generator' and its closure would reduce this potential. Any closure would need to be accompanied by adequate signage and good physical barriers to prevent any continued use.

Noted. This issue is cited by the applicant as the main reason for the proposal (see paragraph 4 below). Following any closure of the footpath, there may be some initial uncertainty resulting in activity to the rear of the two properties, however eventually the consequence of closing off the footpath may be additional pedestrian movements in Islay Place.

3.3 The Council's Property Unit have commented that whilst they note the anti-social behaviour being experienced in the area, they advise of doubts as to whether the proposal would result in a solution to the problem. Indeed they confirm a concern that the nuisance could merely be diverted elsewhere.

Noted.

3.4 East Ayrshire Council Community Services have confirmed that they are aware of the nuisance element but confirm that the path is well used and that the local residents may not be happy with the loss of the link.

Noted.

3.5 The North West Community Council have not responded at the time of writing this report.

Noted.

4. REPRESENTATIONS

One letter of objection has been submitted in respect of this application from a nearby resident who lives adjacent to the south end of the 'compound'. The grounds of objection relate to the following matters:-

4.1 The link to the north has been used as a public right of way for more than 25 years and its closure would result in inconvenience to the users of the footpath. Many members of the local community use the footpath on a daily basis. In particular, it is used by children and their parent/carers to get to the local schools. If this footpath is closed I feel serious safety issues might be raised if children are forced to walk on busier streets to get to school.

Noted. Although the link is not a formally recorded right of way its long established nature is acknowledged.

4.2 In support of the application the applicant has confirmed the following:-

- (i) There is a growing problem of youths gathering and loitering in the lane drinking and damaging property. The closure of the lane will prevent such activities.

Noted. The nuisance experienced is a matter for the Police to investigate, and it is considered that the proposal is likely to be only a very localised solution and the same problem can be diverted elsewhere perhaps still in the 'compound'.

- (ii) Due to the problem there is a frequent turnover of ownership in the immediate area with consequent loss of house value.

Noted. This matter is not a valid planning consideration.

- (iii) The lane is poorly constructed and badly drained and is therefore only used weather permitting.

Noted. It is therefore assumed that in bad weather the nuisance is not generated to the same degree.

- (iv) There is an alternative route off Islay Place.

Noted. That route was only paved after it was informally created by other residents and was not planned with the original estate.

The applicant summarises that the proposal would bring four benefits as follows:-

- Put a stop to vandalism.
- Allow the Police to concentrate on more important matters.
- Save insurance claims.
- Stop falling house prices.

These conclusions are noted but are by no means certain. Indeed the latter three are ultimately not valid planning considerations. In essence the proposal places the interests of a small group against the interests of the community and, on balance, the long established nature of the link which was the only planned link through the open space is considered to be more critical.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) 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 Structure Plan and Adopted Kilmarnock Local Plan (1986). 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 could be said to fall to be considered against Policy 4.7.11 which states that the Planning Authority shall allow the integration of small parcels of public amenity space into private garden curtilages where this does not affect the existing provision of public open space.

Noted. However the reason for this policy is to allow the planned loss of small areas which are difficult to maintain. As the proposal does not concern an area of open space as such, it is not addressed by the Adopted Plan. Accordingly it is considered that the merits of the application should be assessed against the other material considerations. The circumstances of the application are such that the proposal would cut off the original pedestrian link through the heart of Wardneuk. Although less direct alternative routes are available the footpath is considered to be a fundamental link which should not be disposed of particularly when the net benefit is both limited in planning terms and is difficult to fully assess.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The other principal material considerations relevant to the determination of the application are the East Ayrshire Local Plan Finalised Version with Modifications (EALP) the impact on the amenity of the area/adjacent properties and the representations.

6.2 East Ayrshire Local Plan (Finalised Version with Modifications)

As stated above, 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. The most relevant applicable policy is Policy TLR 8 which presumes against the loss of safeguarded areas of public and private recreational or amenity open space.

As stated in response to para 5.2 above the proposal involves the closure of a pedestrian link which is used by the community and whilst it is not specifically contrary to the policy its loss is considered to be significant in the local context. It is acknowledged that there are alternative routes available but they all involve routes along formal roads. The footpath link was designed to avoid such areas for the benefit of the community in regard to safety aspects.

6.3 Impact on the Amenity of Area/Residents

It is clear that the closure is being proposed as a response to a real impact on the applicant and his neighbour. However it must be noted that there is indeed a possibility that the nuisance may only be diverted to another area. The impact of the loss of the link on the other residents or the area as a whole is difficult to quantify but, given the above, it is considered on balance to be more prudent to allow the existing access to remain.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in determining this application.

8. CONCLUSIONS

8.1 As indicated in paragraph 5.2 of the report, it is considered that there are no relevant policies in the Adopted Plan and therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 greater weight should be given to the material considerations. The main consideration in this instance is the loss of the planned pedestrian friendly link through Wardneuk to the detriment of sections of the community and the ambiguous nature of any advantage that would be gained for that same community in spite of the potential benefit for the applicant and his immediate neighbour.

8.2 It is not considered on balance that the immediate local benefits of the proposal outweigh the wider public disbenefit and refusal of the application would therefore be appropriate.

9. RECOMMENDATION

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

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

14 November 2001
(IW/MMM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices/Certificates.
3. Consultations.
4. Letter of objections.
5. Stewarton Adopted Local Plan.
6. East Ayrshire Local Plan (Finalised Version with Modifications).
7. Approved Ayrshire Joint Structure Plan.
8. Approved Strathclyde Structure Plan.

Anyone wishing to inspect the above papers please contact Ian Walker on 01563 576769.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0586/FL

Site of Proposal: 21 & 19 Cumbrae Drive
KILMARNOCK

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

Name & Address of Applicant: Messrs Logan and Graham
21 & 19 Cumbrae Drive
KILMARNOCK KA3 2JW

Name & Address of Agent: Mr G Logan
21 Cumbrae Drive
KILMARNOCK KA3 2JW

DPOs Reference: IW/MMM

The above FULL application should be refused on the following grounds:-

The proposed development would be detrimental to the residential amenity of the surrounding community by reason of the loss of direct safe pedestrian access to the amenity public open space and to wider community facilities.

**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.**