

## **EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE: 5 DECEMBER 2003**

**03/0196/FL ERECTION OF CONSERVATORIES AT PLOTS 38, 39 AND 60  
PLOT SUBSTITUTION AT PLOTS 43, 49 AND 50. GABION BASKETS  
AT PLOTS 38, 60 AND 61 AT TOPONTHANK AREA C KILMARNOCK  
BY PERSIMMON HOMES LTD**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 It is proposed to change the house types on three plots and install conservatory extensions onto three houses. It is also proposed to introduce sections of gabion basket treatment at the rear of three plots on the western boundary of the development site where the site bounds an existing ditch. In terms of the grading of the ground levels at these plots it has been deemed prudent by the developer to install the treatment as a precaution against the event of the ditch breaching its 'banks' at these sections.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved.**

#### **3. CONCLUSIONS**

3.1 As is indicated at Section 5 of the report the application is in accordance with the Adopted East Ayrshire Local Plan therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be granted unless material considerations indicate otherwise.

3.2 The proposed development does not conflict with Policy ENV 7 of the EALP as it is in accordance with advice detailed in the East Ayrshire Council Design Guidance. It is considered that the proposed development in all respects can be favourably determined as having no detrimental impact on the immediate adjacent properties.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control the application will not require to be referred to the Development Services Committee as it would not be a significant departure from 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 the determination a full application for planning permission that requires to be considered by the Local Planning Committee as it is subject to an objection.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site in this case involves new houses (now occupied ) at the Toponthank Area C housing site on the north side of Southcraig Avenue Kilmarnock. The site is nearing completion but earlier this year certain anomalies from the issued planning permissions were identified and subsequent to the investigation of those matters this retrospective application was submitted.

2.2 **Proposed Development:** It is proposed to change the house types on three plots and install conservatory extensions onto three houses. It is also proposed to introduce sections of gabion basket treatment at the rear of three plots on the western boundary of the development site where the site bounds an existing ditch. In terms of the grading of the ground levels at these plots it has been deemed prudent by the developer to install the treatment as a precaution against the event of the ditch breaching its 'banks' at these sections.

#### CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Roads and Transportation Division have confirmed that they have no objections to the application.

*The Roads Division were consulted also on the potential flooding issues and have offered comment on the retrospective nature of the gabion basket works which could be attached as a note to any consent if the Committee are of a mind to approve the application.*

***These comments note that as the gabions have been constructed, the relative landowners should be made aware of their responsibility, should the structure fail, and of the implications of liability for subsequent damage to adjacent properties. The structure of the gabions should be such as to prevent any damage resulting from scour.***

3.2 Southcraig Dean Community Council: No reply at the time of writing the report.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 One letter of objection has been submitted in connection with this application. The letter has been submitted on behalf of the resident living adjacent to Plot 50 and relates specifically to the change of housetype in this plot. The relationship with the objectors property and the new house at plot 50 was originally such that that villa was sited 1.8m from the objectors rear boundary fence. The circumstances on site are now such that the new house is sited at an average distance of 900mm from that fence. The grounds of objection are as follows:-

- The proposed development is detrimental to the objectors property.
- The development is overlooking and invading the objectors privacy.
- The eave of the house detailed in plot 50 intrudes into the objectors property.

***In response to these issues only the first point raises a valid planning consideration given the new houses design. There are no windows aspecting into the objectors property, and the third concern raises purely legal issues.***

***In the respect of the detrimental impact on the objectors property, it should be borne in mind that the original permission that included the objectors house also included a house at the rear with the gable facing the objectors property. It is acknowledged that the the new house in plot 50 is marginally closer to the objectors property and that the impact is increased as a consequence of that resiting. However the increase in the impact arising from the presence of the house is not considered to be of sufficient scale to justify the refusal of the application. Additionally the ground floor level of the new house sits lower than the***

***ground floor of the objectors property, the house also sits 1.5m further north. The objector retains an appropriate level of rear garden ground with a proposed total separation from wall to wall with the new house of approximately 10m.***

***Consequently, it is considered that although the house as built is closer to the objectors property than originally approved, the current application can be supported with regard to this aspect of the proposals.***

***The other aspects of the proposal in terms of conservatories and gabion features are also considered to be acceptable.***

## **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 East Ayrshire Local Plan (2003).

5.2 Policy ENV 7 of the EALP is relevant and expects all developers to comply fully with the Council's Design Guidance and Policy documents relating to and advising on the particular type of development proposed.

5.3 The Design Guidance advises that extensions shall be sited and designed to minimise any overlooking of neighbouring properties and to ensure maximum provision of privacy and daylighting. The materials and colours used in the construction of the extension should match the existing dwelling.

***It is considered that the proposed extension will not adversely affect the privacy or daylight enjoyed by adjoining properties due to its design, size and orientation. The materials used are compatible with those used elsewhere in the area. Sufficient garden ground will be left after the extension has been erected. The other elements of the application are also considered to be acceptable when viewed against Policy ENV 7.***

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

6.1 The principal material considerations relevant to the determination of the application are the statutory consultation responses and objection received, all as detailed in Sections 3 and 4 of this report.

6.2 It is not considered that any aspects of the consultations or representation received indicate that the application should be refused.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

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

7.2 Should the Committee agree to refuse the application, the works applied for in retrospect would be unauthorised and, dependent on the basis of that decision, consideration would have to be given to the requirement thereafter for any consequent enforcement action.

## **8. CONCLUSIONS**

8.1 As is indicated at Section 5 of the report the application is in accordance with the Adopted East Ayrshire Local Plan therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be granted unless material considerations indicate otherwise.

8.2 The proposed development does not conflict with Policy ENV 7 of the EALP as it is in accordance with advice detailed in the East Ayrshire Council Design Guidance. It is considered that the proposed development in all respects can be favourably determined as having no detrimental impact on the immediate adjacent properties.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control the application will not require to be referred to the Development Services Committee as it would not be a significant departure from Council Policy.

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

26 November 2003 (IW/SA)

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application forms/Plans.
2. Statutory Notices and Certificates.
3. Consultations.
4. Letters of objection.
5. Adopted East Ayrshire Local Plan 2003.

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

EAST AYRSHIRE COUNCIL  
TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

03/0196/FL

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Site of Proposal: Toponthank Area  
Kilmarnock

Nature of Proposal: Erection of conservatories at plots 38, 39 and  
60 plot substitution at plots 43, 49 and 50.  
Gabion baskets at Plots 38, 60 and 61 at  
Toponthank Area C Kilmarnock

Name & Address of Applicant: Persimmon Homes  
77 Bothwell Road  
Hamilton

Name & Address of Agent:

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DPOs Reference: IW/SA

The above FULL application should be granted.

Note to Applicants:

With regard to that element of the application pertaining to the formation of the gabion baskets, the relative landowners should be made aware of their responsibility, should the structure fail, and of the implications of liability for any subsequent damage to adjacent properties.

**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.**