

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 20 FEBRUARY 2004

**03/0350/FL: REMOVAL OF CONDITION 8(ii)
OF APPLICATION NO. 97/0350/FL REQUIRING PROVISION OF PLAY AREA
BETWEEN PLOTS 2 AND 3 – NOS. 45 AND 47 TOWERHILL AVENUE,
KILMAURS
BY MR M KIRKLAND**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 It is proposed to delete the conditional requirement for the play area and consequently remove the area. The applicant has submitted a letter in support of the application detailing the justification for the application. This relates to issues of:-

- The inappropriate position of the area;
- Anticipated traffic safety considerations;
- The perceived likelihood of the area attracting undesirable elements;
- The existing play areas off Braehead Terrace is better located, well used and safer.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report approval of the application would be contrary to the 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 refused unless the material considerations indicate otherwise.

3.2 There are material considerations relevant to the determination of the application. These include objection from local residents whose children could use the play area on a regular basis and the policies of the EALP. The proposal is considered to be contrary to Policies RES 19 and RES 20 of the EALP. Removal of the play equipment and play area would essentially leave a large residential development without any play area for local young children, either forcing children to travel a longer distance to a play area or resulting in them playing in the street or within their own gardens thus reducing the opportunity to play with other children. Concerns over anti-social behaviour are regrettable but are not considered to be of sufficient weight to override the benefits that arise from the application of Council policy which seeks, amongst other things, to provide equipped children's play areas.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Building Control, it will not require to be referred to the Development Services Committee as there would be no significant breach of 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 determination a full application for planning permission that is required to be considered by the Local Planning Committee under the scheme of delegation because it has been subject to objection and is recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The site in this instance is the area of land immediately adjacent to No. 47 Towerhill, Kilmaurs, to the south of an access road to a sewage pumping station. The area was formed as amenity space part of an earlier planning consent at Towerhill Avenue; application No. 97/0205/FL refers. A conditional requirement of that consent sought the provision of a play area within the site and the details brought forward involved the current application site. The details were assessed in light of policy at that time and found to be acceptable. It is only relatively recently that the installation of the play area commenced subsequent to action by the Division's enforcement service to expedite such works.

2.2 **Proposed Development:** It is proposed to delete the conditional requirement for the play area and consequently remove the area. The applicant has submitted a letter in support of the application detailing the justification for the application. This relates to issues of:-

- The inappropriate position of the area;
- Anticipated traffic safety considerations;
- The perceived likelihood of the area attracting undesirable elements;

- The existing play areas off Braehead Terrace is better located, well used and safer.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Council's Department of Community Services has confirmed their preferred view that the play area be retained as per the conditional requirement given the lack of suitable facilities of the type in the general area.

Noted.

3.2 Kilmaurs Community Council has not commented at the time of writing the report.

Noted.

4. REPRESENTATIONS

Four letters of objection to the proposal have been submitted in connection with this application, one of which had a petition of 7 signatories attached.

4.1 The grounds of objection relate to the following issues:-

The estate was planned with the provision of a play area in mind and this was known by prospective residents.

The loss of the facility in this designated area would be detrimental to the children's enjoyment of the area.

The above considerations add to the presumption against a favourable assessment of this application. The proposal is contrary to the Council's policy in these matters as detailed below in Section 5.

4.2 In addition to the applicant's letter in support of the application a further letter has been submitted in favour of the application. That letter raised similar issues to that from the applicant. Those issues raised were assessed during the consideration of the original application and the conditional requirement and the play area was found to be acceptable.

4.3 The precise use and status of the existing area at Braehead Terrace is questionable but has altered with the recent approval at Appeal of a housing development which takes its vehicular access through the area in question thus reducing its usefulness.

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 critical element of the development plan comprises the Adopted East Ayrshire Local Plan.

East Ayrshire Local Plan

5.2 Policy RES 19 of EALP requires all housing developers to provide areas of recreational and amenity open space as an integral part of their development proposals and to make provision for the future maintenance of these areas once formed to the satisfaction of the Council. Policy RES 20 states that in formulating their development proposals, developers should ensure that:-

- (i) *areas of open space are of a size and configuration that is easily maintainable. Larger areas of well located, consolidated open space should be provided in preference to a series of smaller, individual areas scattered throughout the proposed development site;*
- (ii) *proposed areas of open space link, wherever possible, with other areas of adjacent existing open space;*
- (iii) *the proposed areas of open space are safe and secure, overlooked if possible by adjacent properties;*
- (iv) *play areas, kick about areas and games pitches are provided as required by the Council's Head of Leisure Services;*
- (v) *play equipment and facilities for the disabled and those with special needs are provided as considered appropriate;*
- (vi) *areas of open space are attractively planted and, where appropriate, use plant species to encourage wildlife; and*
- (vii) *all open spaces are provided, as appropriate, with footpaths for both access and leisure walking, linking with adjacent open spaces wherever possible.*

The above policy sets out the approach adopted by the Council in relation to the provision of open space and play areas within new housing developments. The developers of the Towerhill residential development complied with the terms of the above policy by providing landscaped open space and installing a play area. It is the

Division's view that the area should be retained and its deletion would be contrary to this policy.

5.3 Policy RES 21 states that where a development is proposed which would necessitate the provision of open space and that development is located adjacent to or in close proximity to an area of existing open space in need of upgrading or improvement, the Council may, as an alternative to providing new open space areas, require the developer, through an appropriate Section 75 Agreement, to upgrade and improve the existing open space area and provide for the maintenance of that area for a specified period to be agreed.

It was considered appropriate at the time of the original application to locate a play area offering a local provision for toddlers within the new residential development in order to maximise the advantage of the facility and this is still considered to be the most appropriate solution.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses and letters of representation.

Consultations

6.2 The consultation responses have been highlighted in Section 3 of this report, and where received, are critical of the proposal. The Council's Community Services Division have advised directly based on current Council policy, and are consequently not supportive of the application.

Representations

6.3 The representations have been addressed in Section 4 of the report and for the most part raise valid points supportive of the refusal of this application. The play area required by Condition 8 will afford valuable amenity for the area and local children.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. In the event of the application being refused, the Planning and Building Control Division will require to pursue this issue further to ensure compliance with the condition.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report approval of the application would be contrary to the 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 refused unless the material considerations indicate otherwise.

8.2 There are material considerations relevant to the determination of the application. These include objections from local residents whose children could use the play area on a regular basis and the policies of the EALP. The proposal is considered to be contrary to Policies RES 19 and RES 20 of the EALP. Removal of the play equipment and play area would essentially leave a large residential development without any play area for local young children, either forcing children to travel a longer distance to a play area or resulting in them playing in the street or within their own gardens thus reducing the opportunity to play with other children. Concerns over anti-social behaviour are regrettable but are not considered to be of sufficient weight to override the benefits that arise from the application of Council policy which seeks, amongst other things, to provide equipped children's play areas.

9. RECOMMENDATION

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

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Building Control, it will not require to be referred to the Development Services Committee as there would be no significant breach of Council policy.

Alan Neish
Head of Planning and Building Control

12 February 2004
(IW/MM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Consultations.
4. Letters of Objection.
5. East Ayrshire Local Plan (2003).
6. Previous application No: 97/0205/FL.

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

Implementation Officer: Dave Morris

030350FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

03/0350/FL

Site of Proposal: Play Area Between Plots 2 & 3
(Nos. 45 & 47) Towerhill Avenue
KILMAURS

Nature of Proposal: Proposed Removal of Condition 8(ii) of
Application No: 97/0205/FL Requiring
Provision of Play Area

Name & Address of Applicant: Mr Martin Kirkland
47 Towerhill Avenue
KILMAURS
KA3 2TS

Name & Address of Agent:

DPOs Reference: IW/MMM

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

1. The removal of the play equipment and play area is contrary to the provisions of Policies RES 19 and RES 20 of the Adopted East Ayrshire Local Plan (2003) which require the provision of active recreational open space including appropriate equipped play areas, in relation to developments such as that under consideration. The removal of the play equipment and play area would leave a large residential development without such facilities to the detriment of residential amenity.

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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**