

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE : 23 JULY 2003

APPLICATION NO 02/0947/FL: PROPOSED CHANGE OF USE TO WEST STABLE WING AND OUTBUILDINGS AND ALTERATIONS TO FORM DOG REARING AND SALES BUSINESS AND

APPLICATION NO 02/0370/LB: LISTED BUILDING APPLICATION FOR CHANGE OF USE FROM STORE AND ALTERATIONS TO FORM DOG BREEDING AT WATERSIDE FARM, GLASGOW ROAD, GALSTON BY MR S HAMILTON

Report by Director of Development Services

1 PURPOSE OF REPORT

- 1.1** The above applications are the subject of appeals to Scottish Ministers on the basis of deemed refusal since the Council has not determined the applications within the timescale laid down in the relevant regulations. The report sets out a basis for a statement by the Council for submission to the Scottish Executive Reporter appointed to determine the appeal.

2 BACKGROUND

- 2.1** The planning application for change of use was originally submitted on 14 May 2002. The planning application was subsequently withdrawn and re-submitted with modifications. The re-submitted planning application was registered as valid on 3 December 2002. The final response from statutory consultees was received on 26 May 2003. This response was received too late for preparation of a report for consideration by the Northern Area Local Planning Committee at its June meeting. The application was accordingly scheduled for presentation to the Committee at its next meeting on 8 August 2003.
- 2.2** In the meantime the applicant exercised his right of appeal to Scottish Ministers on the basis of a 'deemed refusal' in the absence of a determination of the applications by the Council. This right can be exercised once two months has elapsed since an application has been registered as valid (unless the applicant has requested or agreed to an extension).
- 2.3** The application for listed building consent was submitted on 14 May 2002. This was not withdrawn and re-submitted at the same time as the application for change of use, and remains to be determined. It is also subject to appeal on the basis of non-determination. The appeal is to be considered together with the application for change of use.

- 2.4 Although the ability to determine the applications has been transferred to the Scottish Executive the Council has, in accordance with normal practice, the opportunity to submit a statement to the Reporter setting out their view on the applications. The Reporter has been notified of the date scheduled for consideration of a statement by the Northern Area Local Planning Committee.

3 APPLICATION DETAILS

- 3.1 **Site Description:** The site is located around 100m to the west of the A719 and 150m north of the A71 near to the roundabout at the junction of the two roads north of the town of Galston. Waterside Farm is a traditional farm house and outbuilding built round three sides of a yard. The house is in the central wing to the south. The complex is Grade 'B' listed. The site is generally flat. The complex is screened from the main A71 by a strip of substantial conifers. There is a large artificial fishing pond to the south west, which is currently out of use. This is operated as an independent commercial venture, although it shares an access with the farm. The nearest residential property is the northern edge of the town of Galston, around 300m away.
- 3.2 **Proposed Development:** Planning permission is sought for a change of use to convert the west wing and outbuildings to form a dog rearing and sales business. Listed building consent is sought for the physical adaptation works required. Internally the physical adaptations will involve construction of blockwork kennels within former stables and outbuildings contained within the west wing of the farm complex. 19 individual kennels will be installed of which 7 are already in place. There will be an isolation area containing two kennels and a storage area for food and bedding. There will be an internal dog run area, linked through existing doors to an external area. The external area will be formed from 3m high wire fencing, with an area of 5.6m by 12m. The fencing will be self-supported without any fixings direct to the farm buildings. There will be no alterations to the external walls or openings of the farm buildings. Ancillary work will be required on sewerage, drainage and site access.

4 CONSULTATIONS AND ISSUES RAISED

- 4.1 East Ayrshire Council's Roads and Transportation Division have commented that the proposed commercial facility would share an access onto the A719 with the existing commercial fishery and therefore would require to be served by a road suitable for commercial vehicles rather than the existing private access. This will require:
- The sightlines at the junction with the A719 to be improved to x=4.5m and y=90m
 - An access road 5.5m wide with a 2.0m footway on both sides or at least on one side and a service strip on the other

- The access road should terminate within the site with a turning area suitable for both vehicles at the point where private accesses are taken off to the two separate business premises
- The road must be constructed to adoptable standards which should include streetlighting and drainage

No commercial activity should be permitted to commence at this site without the road having been constructed.

These requirements could be met by the application of conditions.

- 4.2 Scottish Water have commented that there are no known sewers to which a connection may be made from the proposed development. Drainage will require to be treated by septic tank or other suitable treatment system to the satisfaction of SEPA. There is an existing public water main located in the street adjacent to the site which may be suitable to provide a supply to the proposed development. However details of the highest water fitting related to Ordnance Datum and the proposed demands must be forwarded to Scottish Water in order that hydraulic testing can be carried out.

See below under comments by SEPA on sewerage and drainage. Scottish Water's requirements could otherwise be met by conditions and a note on any consent.

- 4.3 Scottish Environment Protection Agency (SEPA) have advised that they are generally satisfied with the proposed use of a septic tank, reedbed and soakaway arrangement (subject to details of the ground conditions in the area used for the soakaway) for collecting treating and disposing of the foul drainage etc arising from the site. SEPA will also require that any midden area constructed at the site shall be collected and treated by the drainage system serving the site. The use of disinfectants will also require to be managed in accordance with the procedures proposed in the applicant's proposed operational practices.

The applicant has provided an initial appraisal by the Scottish Agricultural College (SAC) of sewerage and drainage treatment requirements. It is proposed to treat sewerage and provide for drainage through a system incorporating a septic tank, reedbed and soakaway. The SAC have advised on a mucking out and disinfecting regime and provided estimates of volumes required for the components of the recommended treatment system. SEPA's requirements could be met by the use of conditions attached to a consent.

- 4.4 Historic Scotland have offered informal comment that provided the external dog run is not attached directly to the walls of the outbuildings there should be no issues arising from the proposals which would affect the fabric of the listed

buildings. They indicate that the location of the external dog run appears to be acceptable.

The only proposed feature which will affect the external appearance of the building is the dog run. ***This will be visible at a distance from vehicles passing along the A71, although the view is partially blocked by vegetation. It will not, however, be a prominent feature significantly detracting from the overall form and appearance of the building. No alterations are proposed to the external fabric of the buildings including openings. The proposed external dog run is freestanding and does not, therefore, have any fixings to the listed building. It is noted that Historic Scotland have not indicated any concerns about the internal alterations proposed.***

4.5 East Ayrshire Council's Environmental Health Section has commented that:

- All drainage should be completed to the satisfaction of SEPA
- Disposal of waste from the premises should be to the satisfaction of the Waste Management authority
- Internal lighting, ventilation and finishes should be to the same standard as previously displayed in the existing kennels

See para 4.3 for comments by SEPA. The second and third points are not material planning considerations.

4.6 Galston Community Council has objected to the proposal in similar terms to other objections (see section 5 below).

5 REPRESENTATIONS BY OBJECTORS

5.1 43 objections to the application for change of use have been received from objectors including the objection lodged on behalf of the community council. 12 are from addresses in Galston, 7 from elsewhere in the Irvine Valley 10 from elsewhere in East Ayrshire, and 14 from further afield. 29 of the objections are based on two proforma letters. Although one letter of objection indicates that it will be accompanied by a petition of 3545 signatures as well as a worldwide petition of 401 signatories neither petition has been submitted. Signatures collected through the internet would not form valid objections. 19 objections have been received to the Listed Building application, 7 of which are petitions. All the petitions are in a standard format. The petitions contain 541 signatures. A substantial proportion show addresses beyond East Ayrshire. The objections to the listed building application also cover operational and other points which are included in the objections to the application for change of use. The grounds of objection are summarised in the following paragraphs.

- 5.2 The property is a listed building and changes have been made to the structure that affect the character of the property for which no planning permission has been granted. In particular a number of walls have been built to the roof, and changes have been made to doorways and windows along with the construction of internal kennels. The changes made would appear to be in contravention of Section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. They would change the character and original purpose of the building.

The applicant has installed 7 kennels in an outbuilding adjacent to the house, but not extending into the west wing of the farm complex. No alterations have been carried out to the external fabric of the building or any new openings formed by the current owner. The roof height partition wall between the proposed kennels and internal dog run areas predates this development proposal. It is considered that the internal alterations have not damaged any feature of the buildings which justified their listing. Listing of buildings does not relate to the use made of them but to their physical characteristics. See also para 4.4 for comments by Historic Scotland.

- 5.3 The proposed development is an unsuitable use of a listed building. As a listed building it could not be converted to form a kennels complying with the relevant regulations.

See para 4.4 for comments by Historic Scotland. Consideration of the listed building application should be based on the development as proposed. Whether all the adaptations which might be required to comply with relevant regulations for operating kennels, and which are not included in the current proposals would be acceptable is a matter of speculation and could not be taken into account in considering the application.

- 5.4 The plans describe existing kennels in two areas for which no planning permission has been granted.

The owner has installed 7 kennels prior to seeking planning permission. These are contained in one outbuilding – they do not extend to two areas. These were subject to an enforcement visit following which a planning application was submitted.

- 5.5 There is no description of the construction, dimensions, materials to be used, provision for bedding, drainage, water supply, electrical circuits, air change, the slope of the flooring, gully design, provision of heat and light given that there will be limited natural light, disposal of waste, the disposal of dog faeces, disposal of dead puppies or staff facilities. There is no minimum distance between the two isolation pens or any description of the construction, dimensions, materials used, provision for bedding or drainage. There is no area for disinfecting people entering and exiting the isolation area. The proposed food store is adjacent to the

isolation area, creating a risk of contamination reaching the area, and other aspects of the food storage and preparation area are unsatisfactory.

See para 4.3 under comments by SEPA for assessment of the drainage proposals. See also para 4.5 for comments by the Environmental Health Section. Detailed design issues, fitness for the purpose and arrangements relating to the operation of the proposed kennels will be controlled through other legislation and are not material planning considerations. Some objectors are also concerned that there is no isolation area proposed to prevent the spread of diseases. This appears to reflect a misunderstanding of the proposals which include an isolation area.

- 5.6 East Ayrshire Council have reported that a problem with the sewerage system in the area already exists and the property could not be connected to the main system. Given that the application proposes to have 20 kennels and two isolation kennels, as well as the effluent from the house, the output is going to be higher than average for a rural property and a soakaway system would therefore not appear to be adequate.

See para 4.3 above for comments on sewerage and drainage. The problems reported by the Council relate to the capacity of the public sewerage system in the area. The development will have its own system and will not be connected to the public system. It may also be noted that the proposal relates to the former stables block of a farm complex, and no change of use would be required for the re-introduction of farm animals or horses into the outbuildings.

- 5.7 The drainage from the kennels and isolation unit use a common output and use gullies to access it. This will effectively mean that the effluent from the isolation area will then pass through the kennels, the internal pen and out through the outside pen. In effect the isolation unit will not be isolated and there is a real danger of the spread of disease internally. There would also be a communal drain in a public walkway area. From the plans there appears to be no provisions for drainage from an area containing seven kennels.

See para 4.3 for comments on drainage, and para 4.5 for comments by Environmental Health. The operation of the kennels and the internal layout of the drainage are matters for control under other legislation, and are not material planning considerations.

- 5.8 By using a soakaway the risks to public health and local canine population is extensive, especially given that the property is directly opposite a large comprehensive school and adjacent to a Residential Retirement Home. The property is also bounded by a public right of way where residents frequently exercise their dogs. This walkway is in direct line of the proposed soakaway and would lead to a significant risk of the spread of disease.

See para 4.3 on drainage. The proposed system includes a septic tank and reedbed as well as a soakaway. As noted above farm animals could be re-introduced into the buildings without the requirement for a change of use application. The school is over 0.5km away, and is not directly opposite the farm. The Residential Home is over 300m away from the site. There is no public right of way through the site although access to the public may be currently permitted. Public access to the area of the soakaway could be prevented through a condition.

- 5.9** The main highway outside the premises is currently a known accident blackspot and traffic-calming measures are in place to compensate for this. The proposed premises will cause a large increase in the volume of the traffic in this area and would therefore pose a significant risk to pedestrian traffic in the vicinity. These measures were put in place to prevent accidents involving local children attending the nearby Comprehensive School and the proposed development would reduce the effectiveness of these measures.

See para 4.1 above for observations by the Roads and Transportation Division. The traffic calming was put in place under the Council's programme of 'safer routes to school.' The measures included the re-location of the 30 mph zone to encompass the entrance to Waterside Farm. The traffic calming measures have been effective in reducing speeds, making the access to Waterside Farm significantly safer. The accident history on the road does not constitute an accident blackspot. The volume of traffic generated by the proposed development will be insignificant in relation to the flows on the main road.

- 5.10** There is a restricted sightline for cars exiting the premises, which has been subject to concerns during previous applications for Waterside, and is exacerbated by the fact the vehicular traffic is also entering into an area of traffic calming. Also a number of vehicles would no longer be residential traffic and would now be commercial in type.

See para 4.1 above for comments by the Roads and Transportation Division which cover these points. The relocation of the 30mph zone reduces the requirements for sightlines.

- 5.11** It is unclear to what the planning permission is being applied for. In the description of the proposed development it is for a 'dog rearing' business but in the plans it is for a 'dog breeding' system, which would require kennels to cope with large dogs.

The description of the planning application is clear. It is correct that the plans refer to 'dog breeding'. The application should be assessed on the basis that it is intended only to rear dogs as set out in the description.

- 5.12 The waste water from the proposed development will pose a risk of contamination of the burn flowing through the area of the development and to the nearby fish hatchery. There is a concern that detergents, disinfectants and other chemicals could be discharged into the burn and then the River Irvine. The Crown Estates should have been notified as the development could affect salmon fishing.

There is no statutory requirement to notify the Crown Estates. There is a requirement to notify the Salmon Fisheries Board but there is no such Board for the River Irvine and the consultation requirement relates only to proposals for dish farms.

- 5.13 The change of use would turn the premises into a retail outlet. The property could be sold in the future to a major retail outlet which would detract from the nature and amenity of the area

Any consent would be for a kennels and would require a further change of use to form a general retail outlet.

- 5.14 This is not the type of business we wish to see in Galston.

See comments on Structure Plan Policy ADS1 below, and Local Plan Policies SD3 and TLR1.

- 5.15 Incorrect information on retail activity proposed, traffic generation and trade effluent was submitted with the application.

This relates to information which is required if the application is for industrial, office, warehousing, storage or shopping purposes. The proposal does not fall into any of these categories. Sufficient information has been provided by the applicant to reach a determination of the application.

6 ASSESSMENT AGAINST THE DEVELOPMENT PLAN

- 6.1 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 purpose of these applications the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

- 6.2 The relevant policies of the Ayrshire Joint Structure Plan against which the proposal requires to be assessed are considered to be:

- **Policy ADS1** which states that the three Ayrshire Councils shall promote sympathetic industrial and business development throughout Ayrshire to:
 - A foster growth of the local economy
 - B improve the economic wellbeing of existing and future residents
 - C increase the prosperity of its business enterprises

A kennels business would help to foster growth in the local economy. It is noted that there are several existing kennels in the vicinity of Galston.

- **Policy ADS5** which states that the three Ayrshire Councils shall adhere to the guiding principle of protecting the countryside for its own sake.

The development does not relate to a new greenfield development, consequently it is not considered to contravene this policy.

- Policy W6 which states that the countryside will be sustained as a place of varied and productive social and economic activity whilst safeguarding and managing natural and built environmental resources.

The proposal is considered to be fully in accord with criterion B of the policy which states that the three Ayrshire Councils shall seek to promote businesses in rural areas.

- **Policy G1** which states that any proposed development outwith settlement boundaries shall not conform to the Structure Plan except:
 - A where it specifically accords with other policies in the Structure Plan;
 - B in locations identified in local plans for that specific development purpose; and
 - C where the proposed development meets appropriate development criteria as defined by the Structure Plan and Local Plan.

The application site could possibly be considered to accord specifically with other policies in the Structure Plan, in particular with Policy G5 (see below). However, the site is not identified in the East Ayrshire Local Plan for any particular purpose. The proposal does not, therefore, accord with criterion B. Since developments should comply with all three criteria the proposal would not be consistent with this policy. However, the primary purpose of Policy G1 is to give priority to providing for development within existing settlements and to support Policies ADS2 and ADS3. The purpose of these policies is to ensure that 'development in general is directed to All existing settlements. This encourages the re-use of land and maximizes both the existing physical and social infrastructure.' The proposal is located outwith the settlement boundary of Galston but it is within easy walking distance. The proposed use is better suited to a

location outwith a settlement, and involves re-use of vacant sections of a listed farm building. Taken with the proximity to the settlement of Galston it is considered that the proposal is consistent with the principle of Policy G1.

- **Policy G5** details the appropriate development criteria that require to be assessed in relation to criterion C of Policy G1 as detailed above and states that development proposals in the Rural Protection Area will normally be limited to the use of land within settlements. Outside settlements, development proposals shall conform to the Structure Plan only where the development:
 - A has a demonstrated site specific locational need;
 - B can be justified in terms of social and economic benefit to the community;
 - C contributes to rural land diversification; or
 - D provides for the operational needs of agriculture and forestry.

The development proposal could be considered as contributing to rural land diversification. It may also be considered that the use proposed is best suited to the countryside given the potential noise from the animals. To this extent it may be considered to have a specific need for a countryside location, although there is no requirement for it to be located at the proposed site.

- **Policy E20** which states that development proposals considered to have an adverse effect on the following heritage resources shall not conform to the structure plan:
 - A Listed buildings of architectural and historic interest.

See Historic Scotland's views at para 4.4 and comments on representations at paras 5.2 and 5.3.

East Ayrshire Local Plan

- 6.3** The relevant policies of the Adopted East Ayrshire Local Plan against which the proposal requires to be assessed are considered to be:
- **Policy SD2** which states that there is an overriding presumption that all new development should be located within East Ayrshire settlements unless the development is acceptable to the Council in terms of Policy SD3

The site is located outwith any settlement boundary.

- **Policy SD3** which states that development proposals relating to land outwith settlement boundaries will be acceptable to the Council only where the development meets certain criteria

The proposal could be considered to meet the provisions of criterion (iv) of the policy in that it contributes to rural land diversification. It could also be considered to meet a criterion (ii) as having a specific locational need for a countryside location, although not necessarily for the specific site proposed (see also comment above on Structure Plan Policy G5).

- **Policy IND10** which states that industrial and business development outwith settlement boundaries will be acceptable to the Council only where the proposal relates to certain categories of development.

One of these categories, which is considered pertinent to the application under consideration is category (iii) of the policy which pertains to sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments. The dog rearing and sales business proposed is considered to fall within this rural business category. In addition, the policy states that all proposals for business and industrial developments in the countryside will require to be justified and will be assessed against their impact on the surrounding environment and adjacent uses, transportation and infrastructure implications and impact on the natural and built heritage. The comments of consultees set out in Section 3 above do not indicate any such adverse issues.

- **Policy TLR1** which states that the Council will actively support and assist in the development of sustainable tourism in East Ayrshire in accordance with the Local Plan tourism, Leisure and Recreation Strategy. The Plan further proposes to promote the Irvine Valley as a tourism gateway within which tourism developments relating to the industrial heritage of the area will be encouraged.

The proposed business will not make a direct contribution to this strategy and could result in publicity which might create an adverse external image of the area. On the other hand, a dog rearing and sales business will itself attract visitors to the area.

- **Policies ENV13 and 14** which relate to development in the countryside

These policies require developments to meet the same criteria as IND10 – see comments above.

- **Policy ENV1** which states that the Council will seek to protect, preserve and enhance all heritage resources requiring conservation, including listed buildings
- **Policy ENV2** which states that the Council will actively encourage the retention, restoration and re-use of listed buildings throughout the areas and which presumes against the demolition or partial demolition of all such properties

The change of use proposed by the development will help protect and preserve the listed building in line with the provisions of policy ENV1 and the re-use of the property is in line with the provisions of Policy ENV2. No demolition or partial demolition of the property is proposed.

- **Policy ENV4** which seeks to ensure that all development within or affecting the setting of a listed building is sympathetic to the building concerned in terms of its layout, size, scale, design, siting, materials and colour of finish. Wherever possible, all proposals should seek to preserve, enhance or incorporate features which contribute positively to the character and appearance of the area and have due regard to the architectural and historic qualities of the area or building concerned.

As stated previously, no alterations to the external appearance of the building area is proposed and the proposed outdoor dog run is not considered to adversely affect the character, appearance or setting of the listed building itself.

- **Policies ENV7 and 13** (in relation to the application for listed building consent) which requires the developers to comply with the Council's approved design guidance and ensure that developments in the rural area are sympathetic to their surroundings.

The proposed development is considered to be in line with the Council's approved design guidance relating to listed buildings and buildings within conservation areas as regards policy ENV7 and is also considered to meet the provisions of policy ENV13.

7 ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

Planning History of the Site

- 7.1** Application 00/0387/FL: conversion and alterations to form 5 houses in existing farmhouse and outbuildings and improved access to houses and fishery was approved with conditions on 3 August 2001. application 00/0396/LB: application for listed building consent with the same description was approved on 6

September 2001. Any other consents for development on the site predate 1996 or relate to the adjacent fishery.

8 LEGAL AND FINANCIAL IMPLICATIONS

- 8.1** There are no legal or financial implications arising directly from the recommendations of this report.

9 CONCLUSIONS

- 9.1** By refusing to grant the applicant a licence for operating a Kennels the Council is on record as sharing some of the concerns of the objectors about the operational arrangements of the proposed facility. These issues cannot, however, be considered material planning considerations – as has been reflected in the Council's own actions operational arrangements can be controlled through other legislation.
- 9.2** The origins of the objections submitted have an unusually wide geographical spread. There are no objections from the properties located nearest to the proposed development.
- 9.3** The proposed use may be considered best located in a rural area, and it would contribute to the diversification of the rural economy. There are other kennels located in the vicinity of Galston. To this extent it is consistent with policy. On the other hand, the Irvine Valley has been designated a 'Gateway Valley' where tourism related developments are encouraged. The proposed business will not make a direct contribution to this strategy and could create an adverse external image of the area.
- 9.4** The development will require substantial infrastructure investment to meet sewerage, drainage and access requirements of statutory consultees.
- 9.5** The only feature of the proposals which will affect the appearance of the building will be the external dog area. But this will not be prominent, will be only visible to the general public from a distance and will not materially detract from the appearance of the building.
- 9.6** No alterations are proposed to the external fabric of the building, and the internal alterations will not significantly affect the features of the building which justified its listing.
- 9.8** The principle of intensified development of the buildings involving extensive alterations has previously been established through the approval of an earlier proposal for conversion to form 4 dwellings.

10 RECOMMENDATION

- 10.1** It is recommended that the Committee approve the report as the Council's statement on the proposed development of kennels at Waterside Farm, Galston for submission to the Scottish Executive Reporter appointed to hear the appeal against deemed refusal of the applications for change of use and listed building consent.

Stephen Chorley
Director of Development Services
16 July 2003
SC/JR

BACKGROUND PAPERS

- 1 Application form and plans
- 2 Statutory Notices/Certificates
- 3 Consultation Responses
- 4 Adopted East Ayrshire Local Plan
- 5 Approved Ayrshire Joint Structure Plan
- 6 Planning Application No: 02/0947/FL
- 7 Planning application No: 02/0370/LB

For further information on the content of the report, please contact Yvonne Nisbet, Senior Planning Officer, on 01563 576771

Implementation Officer: Dave Morris

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