

## **EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE: 22 NOVEMBER 2002**

**02/0765/FL: PROPOSED REMOVAL OF PLAY AREA REQUIRED BY  
CONDITION 2(iii) OF KL/W/FL/76/310L  
AT FENWICK CLOSE, KILMARNOCK  
BY MR D ROSS**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 It is proposed to remove the equipment from the area and landscape the area to a standard to match the surrounding area.

1.2 In support of the application the applicant has submitted a petition signed by 61 local residents. The petition cites the following issues as a justification for the proposal.

- The area has become a meeting place for youths giving rise to unsociable behaviour causing disturbance to residents.
- The equipment is becoming damaged and defaced as is the attached landscaping.
- The majority of residents favour the removal of the play area.
- The Police are aware of the nuisance.

#### **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 there are no applicable policies in the Adopted Stewarton Local Plan and therefore greater weight should be attached to other material considerations.

3.2 There are material considerations relevant to the determination of the application. The applicant has submitted a petition seeking the removal of the play area. This can be weighed against objection from local residents whose children do 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 planning application which is to be considered by the Local Planning Committee under the scheme of delegation as the proposal has been subject to objections and is recommended for refusal.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises an equipped toddlers play area within a housing development at Southcraigs, Kilmarnock. The play area was provided by the house builders and is situated at the south end of a larger area of landscaped open space with houses directly adjacent to or aspecting onto it.

The play equipment has been installed for approximately 5 years as required by Condition 2 attached to KL/W/FL/76/310L as follows:

“2. Details of the treatment of the landscaped area and areas of public open space shall be submitted to and approved by the District Planning Authority prior to the occupation of any of the dwellings hereby approved.

The details submitted shall include under item (iii):

(iii) The treatment and equipping with play equipment of the area hatched in green on plan no. 270-36 hereby approved”.

Other matters required by the condition have been implemented.

2.2 **Proposed Development:** It is proposed to remove the equipment from the area and landscape the area to a standard to match the surrounding area.

2.3 In support of the application the applicant has submitted a petition signed by 61 local residents. The petition cites the following issues as a justification for the proposal.

- The area has become a meeting place for youths giving rise to unsociable behaviour causing disturbance to residents.
- The equipment is becoming damaged and defaced as is the attached landscaping.
- The majority of residents favour the removal of the play area.
- The Police are aware of the nuisance.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Community Services have confirmed that in their view the play area should remain as there is very little play equipment for primary school age children in the area. It is in good condition and offers a valuable play resource in the area and its removal would be against Council Policy.

***Noted. The Council's policy position in respect of play area provision is expressed below (see para 6.2) and the proposal is contrary to that policy. Community Services consider the area to be in good condition.***

3.2 Strathclyde Police comment that the inclusion of play areas is desirable; the idea is commendable. They have however advised of a number of general issues which they consider add to the problems of play area provision. These issues range from the perception that the cost of maintenance and repair of the equipment is footed by the residents who are making the complaints, to the fact that residents dissuade their children from using the equipment.

The Community Safety Officer continues that the location of play areas can make them difficult to police effectively. Police have responded to complaints from the residents but despite warnings the youths return.

***Noted. The play area is supervised by a number of properties in Dalgarnen Mews. The concept of mutual supervision of property forms part of Planning Advice Note 46, "Planning for Crime Prevention". There is no guarantee that the problems experienced would re-locate elsewhere as a result of removing the play area. Such a re-location if it were to occur might also lead to the nuisance being experienced in another location. The logic underpinning this***

***application appears to be that there should simply not be any play areas in locations close to residential property; which makes such facilities unavailable to younger children.***

#### **4. REPRESENTATIONS**

4.1 As stated in para 2.3 above the application is supported by a petition signed by 61 local residents.

4.2 Two individual letters of objection have been submitted and a counter petition has also been received objecting to the proposal to remove the play equipment. This petition has been signed by 24 residents. The reasons for objecting are listed as follows:-

- All residents in part own and pay for the maintenance of the play area.

***This is a reference to the factoring arrangement in place for such matters and is not a valid planning consideration.***

The play area is one of a few areas where children can play in the area.

***Noted. It is considered that this aspect has a significant bearing in this instance and the Council's policy position is that local provision of play areas should be pursued (see para 6.1 below).***

- The fact that youths would gather should have been anticipated by residents near or adjacent to the play area.

***Noted. The submission from the applicants demonstrates that the disturbance is not resulting from the intended age groups of children that the area was designed for. It would however be them who would suffer from the withdrawal of the facility.***

- The disturbances are not constant – poor weather will deter the nuisances.

***Noted. This is acknowledged by the applicants.***

Has significant evidence of disturbance been brought forward?

***Other than the signed petition the only corroboration is the reports of incidents to the Police and the acknowledgement of the Police of the incidents.***

- The real intention here is to seek a reduction in the annual factor fee which includes the maintenance of the play area.

***This is a reference to the factoring arrangement in place for such matters and is not a valid planning consideration.***

- There is no other play area so locally convenient. Other provisions are too far away or across a principal road.

***Noted. Again as expressed elsewhere in this report it is Council policy in particular respect of toddlers' play areas to seek an adequate provision in new residential areas which can serve the local residents.***

- The loss of the play area would lead to play activity becoming more uncontrolled and dispersed causing wider disharmony.

***Noted.***

- Children must be given the opportunity to meet and form associations with other children this opportunity would be lost if this application was altered.

***Noted. This opportunity is supported by Council policy.***

The objector also raises issues of the Council reconciling its requirements under the Children's Charter, and the relevant articles of the Human Rights Act.

***Noted. The Council's policy position in respect of this matter accords with the principles of the Charter. In determination of the planning merits of this application, the planning process affords public consideration of issues such as right to a fair and public hearing and the right to respect for a private and family life.***

***Any perceived breach of the Human Rights Act would require to be pursued separately by third party action. Such an action would have to establish before the courts that an article was breached. The provisions of the Human Rights Act have been considered by the Scottish Executive to be consistent with the proper operation of the Planning Act. Consequently, full compliance with the provisions of the Planning Acts and the Council's established procedures should ensure compliance with the overarching obligations placed on the Council by the Human Rights Act.***

## **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 Stewarton 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 would fall to be considered against this document and its associated policies. There are however no relevant policies and therefore greatest weight should be given to the other material considerations as identified in Section 6 of this report.

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

6.1 The principal material considerations relevant to the determination of the application are to the East Ayrshire Local Plan Finalised Version with Modifications (EALP), the consultation responses, letters of objection and National Guidance.

### East Ayrshire Local Plan (Finalised Version with Modifications)

6.2 The Adopted Stewarton Local Plan is considerably out of date and it is therefore appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the EALP should be considered as a prime material consideration. 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. Taywood Homes, as developers of the above 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.***

6.3 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.***

#### Consultations

6.4 The consultation responses have been highlighted in Section 3 of this report, and are varied in their attitude towards the proposal.

6.5 The Council's Community Services Division have advised directly based on current Council policy, and are consequently not supportive of the application.

6.6 Strathclyde Police are critical of the location of these play areas in general and confirm that this one has been a source of nuisance and disorder that has been reported to them. Their involvement to date would appear to be ineffectual on the issues raised in the supporting information.

## National Guidance

6.7 Planning Advice Note 46 relates to the planning issues involved in the prevention of crime and advises on how crime prevention and community safety can be taken into account in the development control process. It concentrates heavily on the environmental factors which bear on the potential for crime or public disorder, and includes advice on how the potential can be minimised or at least reduced.

6.8 The example in this case is one which ostensibly meets some of the requirements; the play area is designed for toddlers, it is exposed to public view, is not secluded. However the Police have raised issues with the location. The community feeling intended to be engendered has in this case failed to resolve the nuisance.

## **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 indicated in Section 5 of the report there are no applicable policies in the Adopted Stewarton Local Plan and therefore greater weight should be attached to other material considerations.

8.2 There are material considerations relevant to the determination of the application. The applicant has submitted a petition seeking the removal of the play area. This can be weighed against objection from local residents whose children do 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**

13 November 2002  
(IW/MMM)

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Forms and Plans.
2. Statutory Certificates/Notes.
3. Consultation Replies.
4. Letters of Objection.
5. Adopted Stewarton Local Plan.
6. EALP Finalised Version with modifications.
7. Approved Strathclyde Structure Plan.
8. Approved Ayrshire Joint Structure Plan.
9. Government Guidance.

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

***Implementation Officer: Dave Morris***

020765FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0765/FL

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Site of Proposal: Childrens' Play Area  
Fenwick Close  
KILMARNOCK

Nature of Proposal: Proposed removal of Play Area Required by  
Condition 2(iii) of KL/W/76/301L

Name & Address of Applicant: Mr Duncan Ross  
3 Fenwick Close  
KILMARNOCK  
KA3 6FF

Name & Address of Agent:

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DPOs Reference: IW/MMM

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

1. The removal of the play equipment and play area is contrary to the provisions of Policies RES 19 and RES 20 of the East Ayrshire Local Plan (Finalised Version with Modifications) 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.

**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**