

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE – 10 AUGUST 2001**

**01/0315/FL: PROPOSED CHANGE OF USE OF VACANT GROUND TO  
EXTEND EXISTING GARDEN GROUND AND ERECTION OF 2.3 METRE  
HIGH FENCE AT LAND TO REAR OF 6 WEST PARK DRIVE,  
NEW CUMNOCK**

**APPLICATION BY MR MCGINN**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Retrospective planning permission is sought for the change of use of an area of open space to garden ground. Permission is also sought for the erection of a 2.3 metre high fence within the site. An extension of the existing rear garden of 6 West Park Drive by 23 square metres is proposed. The site has been paved to form a patio which has been enclosed by a small fence (the 2.3 metre high fence which is proposed has not yet been erected). A garden bench and plants are sited within the patio area. The proposed fence would be a timber lattice type fence.

**2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.**

**3. SUMMARY OF ANALYSIS**

3.1 As indicated at paragraph 5.1 in the report, there are no policies contained within the Adopted New Cumnock Local Plan relevant to the determination of this application and as such, greater weight should be given to other material considerations. As is indicated at Section 6 in the report, there are material considerations relevant to this application, however, it is considered that these are supportive of the application.

3.1 In terms of the letter of objection, it is considered that concerns regarding privacy are addressed through the proposed erection of a screen fence. Whilst the fence is reasonably high, it is not considered that it will have a significant adverse affect on the amenity of the area or neighbouring properties.

**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 proposed development is subject to an objection.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The site lies to the south side of West Park Drive, New Cumnock, approximately 35 metres eastwards of its junction with Connel View. The site extends to approximately 23 square metres and comprises a small corner of an area of informal open space which is owned and maintained by the Council. The site is bound by dwellinghouses to the north and west and to the south and east by an area of open space. The site is located directly to the rear of the existing garden ground of No.6 West Park Drive. No. 6 West Park Drive comprises a two storey, end terraced dwellinghouse and its curtilage at its location

2.2 **Proposed Development:** Retrospective planning permission is sought for the change of use of an area of open space to garden ground. Permission is also sought for the erection of a 2.3 metre high fence within the site. An extension of the existing rear garden of 6 West Park Drive by 23 square metres is proposed. The site has been paved to form a patio which has been enclosed by a small fence (the 2.3 metre high fence which is proposed has not yet been erected). A garden bench and plants are sited within the patio area. The proposed fence would be a timber lattice type fence.

**3. CONSULTATIONS AND ISSUES RAISED**

3.1 New Cumnock Community Council has no objection to the proposed development.

***Noted.***

3.2 East Ayrshire Council Department of Homes and Technical Services has no objections to the proposed development.

**Noted.**

#### **4. REPRESENTATIONS**

4.1 One letter of representation has been received with regard to the proposed development. The applicant has submitted correspondence in support of the application.

4.2 The proposal is a gross abuse of privacy, by nature of where the garden area is situated. As this property is 3 feet higher than their garden, which slopes down to their house, any person whether standing or sitting can look straight down into their living room and kitchen. This is unacceptable.

***Given that the site is located at a higher level than the objectors rear garden (by approximately one metre), the site directly overlooks the objectors house and rear garden. As a result, this has reduced the level of private enjoyment of their property. The proposed development does however also include the erection of a 2.3 metre high fence adjacent to the northern boundary of the site. This fence would essentially screen the new garden area from the objectors house thus maintaining their current standards of privacy.***

4.3 The 2.3 metre high fence constitutes a 3.2 metre high fence from the inside of their property. To put this into perspective, the fence would be at the level or above of their upstairs bedroom window.

***The proposed fence will not be installed at the highest level of the garden ground, but shall be erected on metal posts which shall be installed within the sloping ground between the patio and rear boundary fence of 130 West Park Drive. Given the existing physical characteristics of the site i.e the objectors rear garden slopes upwards towards the site, and the site is located higher still, the fence, when viewed from the objectors house will be particularly high. Whilst this will have some effect on the established amenity of neighbouring properties, this is not considered to be significant enough to warrant refusal.***

4.4 Since purchasing their property they have had unlimited access to maintain the rear of their fencing. If this application goes ahead, it would be impossible to maintain the rear of their fence. They therefore object very strongly to this application.

***The applicant has stated that an offer has been made to the objector with regard to gaining access through the site for maintenance purposes. Notwithstanding this, this is a legal***

***matter and is not a material consideration in the determination of this application.***

4.5 Contrary to what has been alleged, the site was not a tip prior to the change of use being implemented. There is a gully between the rear of their fence and the site which is about a foot wide. There was a bit of rubble and papers which collected there, but this did not constitute a tip

***Noted.***

4.6 The site has already been developed and made into a patio and fenced off without planning permission from your department and without the lease being completed.

***It is noted that this is a retrospective application. Whilst the applicant had approached the Council's Housing and Property Divisions with regard to the proposed development, no approach was made to the Planning Division. The application was submitted following a complaint to the Planning Enforcement Officer.***

4.7 In support of the development the applicant has stated that the site used to be a dump with tin cans, bottles, plastic sheets, papers and rubble. The area was also covered in weeds and the smell was difficult to bear.

***Given that the application is retrospective it is not possible to assess the state of the site prior to the change of use being implemented.***

4.8 With regards to the maintenance of the fence, an offer with regards to access through the site has been made.

***Noted.***

## **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 Adopted Ayrshire Joint Structure Plan and the Adopted New Cumnock Local Plan, (1993). The Adopted Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 There are no specific policies within the Adopted New Cumnock Local Plan relevant to the determination of this application and, as such, greater weight should be attached to the "other material considerations" referred to in Section 6 of this report.

## 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 (1999), the site characteristics and the letters of representation outlined in Section 4 of the Report.

6.2 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 East Ayrshire Local Plan, Finalised Version with Modifications (EALP) should be considered as a prime material consideration.

6.3 There are no specific policies within the EALP which are relevant to the determination of the application.

6.4 Site Characteristics: The site occupies an elevated position in relation to the dwellinghouse to the west. Due to the difference in levels, the existing boundary fence along the western boundary does not provide adequate screening of the site.

***Although the change of use to garden ground would be consistent with the existing pattern of land uses in the surrounding area, it would have a detrimental impact on the privacy currently enjoyed by the occupants of the dwellinghouse immediately to the west of the site. The application however also involves the erection of a screen fence. Given the differences in levels between the site and the objectors house, the fence will in reality appear higher than 2.3 metres when viewed from the west. However this is not considered to be significantly detrimental to the amenity of neighbouring properties.***

## 7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 As the application site is in the ownership of the Council, financial and legal implications will arise from the lease of the land to the applicant. A proposed lease has been agreed between the applicant and the Council's Property Unit but formal agreement of the lease is subject to the grant of planning permission for the development.

## 8. CONCLUSIONS

8.1 As indicated at paragraph 5.1 above, there are no policies contained within the Adopted New Cumnock Local Plan relevant to the determination of this application and as such, greater weight should be given to other material considerations. As is indicated at Section 6 above, there are material considerations relevant to this application, however, it is considered that these are supportive of the application.

8.2 In terms of the letter of objection, it is considered that concerns regarding privacy are addressed through the proposed erection of a screen fence. Whilst the fence is reasonably high, it is not considered that it will have a significant adverse affect on the amenity of the area or neighbouring properties.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.**

Alan Neish  
Head of Planning and Building Control  
25 July 2001  
VE  
FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of Representation
5. East Ayrshire Local Plan, Finalised Version.
6. New Cumnock Local Plan (1993)
7. Approved Ayrshire Joint Structure Plan.
8. Approved Strathclyde Structure Plan.

Any person wishing to inspect the background papers listed above should contact Miss Vivien Emery on 01563 555485.

**Implementation Officer: Dave Morris**

Application no: 01/0315/FL

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Location	6 West Park Drive, New Cumnock
Nature of Proposal:	Change of use of vacant ground to extend existing garden ground and erection of 2.3 metre high fence
Name and Address of Applicant:	Mr Harry McGinn 6 West Park Drive New Cumnock
Name and Address of Agent	N/A

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DPO's Ref: [VIVIEN EMERY ]  
PPO's Ref; [ ]

The above **FULL** application should be granted subject to the following conditions:

1. The fence hereby approved shall be erected within six weeks of the date of this consent and shall thereafter be maintained to the satisfaction of the Planning Authority.

REASON: In the interest of residential amenity.

2. Details of the location, design and materials of the proposed fence shall be submitted to and approved by the Planning Authority within one month of the date of this consent.

REASON: In the interests of visual amenity.

**AGENDA**