

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 20 JUNE 2003

**03/0078/FL: PROPOSED ALTERATION TO CONDITION 2(C) OF OUTLINE
PLANNING CONSENT 02/0293/OL (RESIDENTIAL DEVELOPMENT) TO
ALLOW ADDITIONAL ACCESS FROM GLENMUIR ROAD
AT FORMER GARAGE SITE / RAILWAY CUTTING,
OFF LOGANGATE TERRACE, LOGAN**

APPLICATION BY MR J TRACEY

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning permission is sought to alter condition 2(c) of outline planning permission 02/0293/OL to allow additional access from the site to Glenmuir Road. Outline planning permission 02/0293/OL required access to the site to be taken from Logangate Terrace.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report, the application is considered not to accord with the terms of the Development 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 material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of this application but these material considerations are not considered to be of sufficient weight to justify approval of this application.

3.2 The requirement under the terms of condition 2(c) of outline planning permission 02/0293/OL for proposed residential development within the site to access onto Logangate Terrace does not prevent the site from being developed nor give rise to any road safety issues. The proposal to remove condition 2(c) of outline planning permission 02/0293/OL seeks to facilitate access from the site onto Glenmuir Road. In this instance, a risk assessment of the consequences of

the provision of this new access has to be balanced against the alternative location for the access off Logangate Terrace which is currently available.

3.3 It is considered that as an alternative means of access to the site, an opening onto Glenmuir Road could create a precedent encouraging a proliferation of further accesses at a point where traffic speeds and the consequences of accidents are likely to be greater than at Logangate Terrace. Further, an access onto Glenmuir Road from the site may encourage service vehicles and visitors to stop at this location increasing the risk to through traffic. Visibility splays measuring 2.5 metres by 90 metres cannot be achieved from the proposed access onto Glenmuir Road without encroaching on land outwith the developer's control. This would require to be resolved by means of a Section 75 Agreement with adjacent owners of 1a and 2a Logangate Terrace.

3.4 It is considered that condition 2(c) of outline planning permission 02/0293/OL is reasonable, necessary in the interests of public road safety, relevant to the development, relevant to planning, clearly worded and enforceable in accordance with good practice advice contained within Circular 41998 and Planning Advice Note 40: Development Control, issued by the Scottish Executive.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Building Control, the application will require to be referred to the Development Services Committee because approval of the application would require notification of the application to the Scottish Ministers as indicated in Section 7.1 of the report.

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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APPLICATION BY MR J TRACEY

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 application is subject to an objection and is also recommended for refusal.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located on the southern edge of Logan, north of the Glenmuir Road. The site extends to 0.243 of an acre and comprises a former Council garage site that consists of a rough hardstanding and a former railway line that is currently in an overgrown condition. The site is bounded by Logangate Terrace and dwellinghouses to the north, dwellinghouses to the west, agricultural land to the east and Glenmuir Road to the south. The area of the former garage centre site is presently in the ownership of the Council.

2.2 **Proposed Development:** Full planning permission is sought to alter condition 2(c) of outline planning permission 02/0293/OL to allow additional access from the site to Glenmuir Road. Outline planning permission 02/0293/OL required access to the site to be taken from Logangate Terrace.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Lugar and Logan Community Council has not responded to the consultation letter at the time of writing this report.

Noted.

3.2 Scottish Power and Transco have no adverse comments to make on the proposal.

Noted.

3.3 Scottish Water has no objection to the proposal provide its operational requirements are met and the relevant consents are secured.

Should the application be approved, an appropriate note in respect of the above can be included on the planning permission.

3.4 East Ayrshire Roads and Transportation Division objects to the planning application and states that:-

- i. The Roads Division has a statutory duty under Section 1 of the Roads (Scotland) Act 1984 to ensure that safe means of access are provided to premises to the public road in the interests of both the travelling public and users of the proposed access.
- ii. Each case is considered on its own merits taking account of guidance contained within the 1996 Roads Development Guide, as adopted by East Ayrshire Council, and the Design Manual for Roads and Bridges as published by HMSO.
- iii. In this instance, a risk assessment of the consequences of the provision of this new access has to be balanced against the alternative location for the access off Logangate Terrace which is currently available.
- iv. While I understand there may be good planning reasons for this alternative access, these should not be allowed to over-ride traffic safety concerns against the provision of a new access.
- v. Access off Logangate Terrace is not ideal but it did serve the garage site for many years without incident, does have acceptable visibilities for the class of road from which access would be taken, and can be serviced off an internal residential road within a 20mph zone within which lower speeds are likely to be maintained than on a traffic distributor road such as Glenmuir Road. The proposed access to the site onto Glenmuir Road would be just within the 30mph speed limit for Logan and hence traffic speeds and the consequences of an accident are likely to be greater.
- vi. Visibility splays measuring 2.5 metres by 90 metres cannot be achieved from the proposed access onto Glenmuir Road without encroaching on land outwith the developer's control. This would require to be resolved by means of a Section 75 Agreement with adjacent owners of 1a and 2a Logangate Terrace.

- vii. The proposed access onto Glenmuir Road is on the inside of a bend and while accepting that for one vehicle access, street lighting and the provision of a footway along Glenmuir Road could be waived, Roads would be concerned that this new access may encourage service vehicles and visitors to stop at this location increasing the risk to through traffic.
- viii. Roads do not consider that sufficient justification has been made to allow a new access off the Glenmuir Road and would recommend that condition 2(c) of planning application 02/0293/OL be upheld.

Noted. Condition 2c was applied previously in the interests of road safety.

4. REPRESENTATIONS

4.1 One letter of representation has been received objecting to the proposed development. The points of objection are summarised as follows:

4.2 The proposed site is used by pedestrians to and from Netherthird via Logangate Bridge, and also the east side of Glenmuir Road. Unless there is provision for a path on the east side of the site then fences to the north and east of the site will be damaged by pedestrians using the area through the wood.

Condition 4 of outline planning permission 02/0293/OL safeguards an area of land along the south-eastern boundary of the site to be kept free from development to allow for a possible future footpath to maintain and secure improved access to the countryside. The applicant does not seek to alter or amend this condition.

5. ASSESSMENT AGAINST THE 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 East Ayrshire Local Plan (2003).

East Ayrshire Local Plan (2003)

5.2 Policy RES 4 is of relevance and states that the Council will positively encourage the sympathetic residential development of gap, infill or other redevelopment sites, including those sites created through the large scale demolition of existing housing, not specifically safeguarded or identified for particular development purposes on the Local Plan maps. Development

proposals within such sites require to be assessed against their transportation and infrastructure implications.

East Ayrshire Council Roads and Transportation Division objects to the application due to traffic safety implications (set out in Section 3.4 of this Report). The application is therefore considered to be contrary to the provisions of the development plan.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the letter of objection, the letter of support from the applicant and the planning history of the site.

Consultations

6.2 The consultation response from the Council's Roads and Transportation Division indicates that the application should be refused in the interests of road safety.

Representations

6.3 In terms of the letter of objection, it is considered that condition 4 of outline planning permission 02/0293/OL effectively safeguards an area of land to allow for a possible future footpath.

Planning History

6.4 Outline planning permission was granted on 9 August 2002 for the development of land for residential purposes (Ref. No. 02/093/OL). Condition 2 of this outline planning permission requires access to the site to be taken from Logangate Terrace.

6.5 The site formed part of a larger site for which planning permission was refused on 26 April 1990 for the formation of vehicular access to the public road and the use of land for the disposal of non-toxic waste (Ref. No. CD/89/404).

Statement of Support by Applicant

6.6 The applicant has stated that he only owns the southern part of the site and that the remainder is currently owned by the Council and has been declared as surplus to requirements. If the applicant does not buy the northern part of the site from the Council, then it is doubtful whether the planning consent could be implemented. It is in the Council's and the community's interest to have the site developed as a whole because of the planning gain to be derived from the reservation of a 2 metre wide strip along the SE boundary for the formation of a possible footpath in the future. Ideally, the application site would be more

satisfactorily developed as a whole, so that the form of development could echo that on land immediately to the west.

Condition 4 of outline planning permission 02/0293/OL reserves an area of land along the south-eastern boundary which is 5 metres wide to be free from future development to allow for a possible future footpath. The issue of ownership of land is not a valid material consideration in determining an application for planning permission. The applicant's inference that the site cannot be developed holistically due to land ownership issues is therefore not relevant in this instance. The applicant may also wish to note that under the terms of Article 6 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an application to a planning authority for approval of reserved matters must identify the outline planning permission to which it relates and also be accompanied by such particulars and plans and drawings as the authority may require as necessary to enable them to deal with the application. Further, the defined site area should directly correspond to the relevant outline planning permission. If this is not possible due to issues regarding land ownership, then a fresh application will require to be lodged for full planning permission prior to any development commencing on site.

6.7 Even if the site is developed as a whole, we believe that access to House A would be better achieved from the south, so that each half of the site is self-contained.

Outline planning permission reference 02/0293/OL related to the proposed development of land for residential purposes. Whilst an upper limit of 2 dwellinghouses within the site is specified under the terms of condition 3 of outline planning permission reference 02/0293/OL, the layout shown on the approved plans was indicative only. It is entirely feasible for the site to be developed for 2 dwellinghouses in self-contained plots with vehicular access to each dwellinghouse taken from Logangate Terrace.

6.8 The currently approved access is near to a virtually right-angled bend on Logangate Terrace, whereas the proposed second access would be on to a straight, level section of public road within the 30 mph limit and with excellent sight-lines of 2.5 metres by 90 metres along Glenmuir Road without encroaching on any land other than the public verges. The unclassified Glenmuir Road cannot be considered to be a busy road and must have one of the lowest traffic volumes in that part of East Ayrshire. It would clearly be preferable to limit / reduce parking / reversing on to Logangate Terrace at a fairly vulnerable point.

East Ayrshire Roads and Transportation Division has commented that whilst the access off Logangate Terrace is not ideal, it did serve the garage site for many years without incident, acceptable

visibilities can be achieved for the class of road from which access would be taken, and the site can be serviced off an internal residential road on which lower speeds are likely to be maintained (it is within a 20mph zone). Glenmuir Road is a traffic distributor road. As any access to Glenmuir Road from the site would be just within the 30mph zone, traffic speeds and the consequences of accidents at this point are likely to be greater. Appropriate visibility splays measuring 2.5 metres by 90 metres cannot be achieved on site without encroaching on land outwith the developer's control. A Section 75 Agreement with adjacent owners of 1a and 2a Logangate Terrace would be required in the interests of road safety to achieve the required standards of visibility.

6.9 Two houses could sit more comfortably on the site if one had vehicular access to Logangate Terrace and one had access to Glenmuir Road. Being an almost triangular site, it is awkwardly shaped, and to allow reasonable privacy to the 2 houses to the immediate west, new development will have to be located towards the apex of the triangle.

Application 02/0293/OL was granted outline planning permission, in the absence of full details of the proposed layout, size, height, design, and external appearance of the proposed dwellinghouse(s) within the site. Consequently, in the absence of full details, an assessment of impact on neighbouring residential amenity as a consequence of the proposed development cannot be made at this stage. The shape of the site and the location of adjacent residential development does not mean that the site cannot be developed with access on to Logangate Terrace whilst maintaining appropriate standards of neighbouring residential amenity and private residential amenity within the application site. Any future applications relating to the specific reserved matters of outline planning permission 02/0293/OL require to be dealt with on their own merits.

6.10 One additional private vehicular access on to Glenmuir Road will not cause traffic problems, nor is there much likelihood of a proliferation of new accesses given that no land has been identified as a development opportunity along this road.

The Council as planning authority consider that one additional private vehicular access on to Glenmuir Road will cause traffic problems compared with the viable alternative of access onto Logangate Terrace (as prescribed in condition 2c of outline planning permission 02/0293/OL) to serve the development. The current application requires to be determined on its merits. Likewise, any future applications relating to accesses on to Glenmuir Road would require to be determined on their own merits. Nevertheless, the current proposal (if approved) could create a

precedent encouraging a proliferation of accesses on to Glenmuir Road.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 Financial and legal implications will arise for the Council in the sale of part of the site in Council ownership to the applicant. Should the Committee agree that this application be approved contrary to the recommendation of the Head of Planning and Building Control, further legal implications will arise through the requirement for a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, with regard to the requirements set out in Section 3.4 vi of this report. Additionally the application itself would require to be notified to the Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 because of the intention to approve development in which the Council has an interest and which does not accord with the adopted Local Plan.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered not to accord with the terms of the Development 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 material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of this application but these material considerations are not considered to be of sufficient weight to justify approval of this application.

8.2 The requirement under the terms of condition 2(c) of outline planning permission 02/0293/OL for proposed residential development within the site to access onto Logangate Terrace does not prevent the site from being developed nor give rise to any road safety issues. The proposal to remove condition 2(c) of outline planning permission 02/0293/OL seeks to facilitate access from the site onto Glenmuir Road. In this instance, a risk assessment of the consequences of the provision of this new access has to be balanced against the alternative location for the access off Logangate Terrace which is currently available.

8.3 It is considered that as an alternative means of access to the site, an opening onto Glenmuir Road could create a precedent encouraging a proliferation of further accesses at a point where traffic speeds and the consequences of accidents are likely to be greater than at Logangate Terrace. Further, an access onto Glenmuir Road from the site may encourage service vehicles and visitors to stop at this location increasing the risk to through traffic. Visibility splays measuring 2.5 metres by 90 metres cannot be achieved from the proposed access onto Glenmuir Road without encroaching on land outwith the

developer's control. This would require to be resolved by means of a Section 75 Agreement with adjacent owners of 1a and 2a Logangate Terrace.

8.4 It is considered that condition 2(c) of outline planning permission 02/0293/OL is reasonable, necessary in the interests of public road safety, relevant to the development, relevant to planning, clearly worded and enforceable in accordance with good practice advice contained within Circular 41998 and Planning Advice Note 40: Development Control, issued by the Scottish Executive.

9. RECOMMENDATION

9.1 It is recommended that the application be 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, the application will require to be referred to the Development Services Committee because approval of the application would require notification of the application to the Scottish Ministers as indicated in Section 7.1 of the report.

Alan Neish
Head of Planning and Building Control
26 May 2003
RD/RD
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letter of Representation.
4. Consultation responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Outline planning permission reference 02/0293/OL.

8. Planning permission reference CD/89/404.

Any person wishing to inspect the background papers listed above should contact Mr Robert Duncan on 01563 555483.

Implementation Officer: Dave Morris

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 03/0078/FL

Location	Former Garage site / Railway cutting, off Logangate Terrace, Logan
Nature of Proposal:	Proposed alteration to condition 2(c) of outline planning consent 02/0293/OL (residential development) to allow additional access from Glenmuir Road
Name and Address of Applicant:	Mr J Tracey c/o 25 Wilson Avenue Kilmarnock KA3 7AP
Name and Address of Agent	Mrs Greta Roberts 8 Main Road Waterside Kilmarnock KA3 6JB

DPO's Ref: [Robert Duncan]
PPO's Ref; [Hugh Melvin]

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

1. The proposed development would be detrimental to road safety and could encourage a proliferation of future accesses along Glenmuir Road. The proposed development is therefore contrary to the provisions of the adopted East Ayrshire Local Plan Policy RES 4.

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