

# Report

Report to:	<b>Planning Committee</b>
Date of Meeting:	<b>12 July 2005</b>
Report by:	<b>Executive Director (Enterprise Resources)</b>

Application No	CL/04/0895
Planning Proposal:	Change of Use of Open Space to Form Garden Ground

## 1 Summary Application Information

- Application Type : Detailed Planning Application
- Applicant : D & W Nimmo Limited
- Location : Area of ground to rear of 16 Clyde Court  
Carluke  
ML8

## 2 Recommendation(s)

### 2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant Detailed Planning Permission – (Subject to Conditions – Based on Conditions Listed Overleaf)

### 2.2 Other Actions/Notes

- (1) The Planning Committee has delegated powers to determine this application.  
 (2) The application is contrary to the development plan and objections have been received. In accordance with Council procedures, a hearing may be required prior to determining the application.

## 3 Other Information

- ◆ Applicant's Agent: Ness Gallagher & Co
- ◆ Council Area/Ward: 10 Carluke/Whitehill
- ◆ Policy Reference(s): Lower Clydesdale Local Plan (Adopted)  
- Policy LR1 Open Space/Community Facilities

- ◆ Representation(s):
  - ▶ 2 Objection Letters

- ◆ Consultation(s):
  - ▶ None required

## **Planning Application Report**

### **1 Application Site**

- 1.1 The application site, extending to approximately 37 sq metres, currently forms part of an area of garden ground of a recently constructed dwellinghouse, set within a modern development at Clyde Court in Carluke. The land is enclosed within this dwelling's curtilage by a solid timber boundary fence. The level site is a narrow area of ground some 1.5 metres wide and was formerly part of a grassed open space area that adjoins the recently completed development site.
- 1.2 The site is bounded by modern dwellinghouses to the north and west and by public open space with traditional dwellinghouses beyond to the south and east.

### **2 Proposal(s)**

- 2.1 The applicants seek detailed planning permission for the change of use of the strip of land from open space to form additional garden ground for a dwelling constructed on plot 1 of the development. The application is retrospective and has been submitted following discussion between the Council and the developer of the site.

### **3 Background**

#### **3.1 Local Plan Status**

The application site is identified in the adopted Lower Clydesdale Local Plan as being within an open space area within the settlement boundary for Carluke. Policy LR1: Open Space/Community Facilities applies.

#### **3.2 Relevant Government Advice / Policy**

None relevant.

#### **3.3 Planning History**

Detailed planning permission was originally granted for residential development on the former nursery site adjoining the open space on 15 February 2000 (planning ref: CL/99/0383). This approval gave consent for 6 dwellings, 8 flats and vehicular access to the site. An amendment application was submitted to amend the finished floor level of the dwellinghouses on plots 1 and 2 of the development (planning ref: CL/02/0010). This application received planning consent on the 13 March 2002. The area of ground subject of this report is now within Plot 1 of this site.

### **4 Consultations**

- 4.1 None requested.

### **5 Representation(s)**

- 5.1 The application was advertised as Development Potentially Contrary to the Development Plan. Following this publicity and statutory neighbour notification, 2 letters of representation have been received. The grounds of objection are summarised as follows:

- (a) **The breach of planning permission was identified to the Council at the time of construction, however was ignored as an official implied that the objectors were incorrect in identifying the theft of the land. To claim that the issue has only just come to light is a clear misrepresentation by both the Council and the applicant. The application should therefore be refused and the area restored to the community.**

**Response:** The Council has been aware of the inclusion of the area of open space within the dwelling's curtilage for some time now and has been seeking the submission of a retrospective planning application in order to remedy the position. In view of the above I disagree that the situation has been ignored by the Council. In respect of refusal for the above reasons, I consider the change of use that has taken place is for a small, narrow area of grass that will not result in any significant loss of public open space in the area. Public use of the open space has been noted as being minimal. In addition, guidance on retrospective applications is that they should be assessed in the same manner as normal applications.

- (b) **The developer of the site in which the current application is sited has failed to upgrade the park and plant replacement trees as required by the original permission. In addition, they have failed to make good damage caused to neighbouring property during construction, including continuing flooding.**

**Response:** The current application requires to be assessed on its own merits.

These letters have been copied and are available for inspection in the usual manner.

## **6 Assessment and Conclusions**

- 6.1 The determining issue that requires to be addressed when assessing this proposal is compliance with the policies of the adopted local plan.
- 6.2 The site is covered by Policy LR1: Open Space/Community Facilities of the adopted Lower Clydesdale Local Plan. This policy states that the Council recognises the importance of and will seek to protect and enhance both private and public open space/community facilities. The loss of such facilities for other uses will only be permitted where:
- (a) it can be demonstrated that participation levels and public enjoyment would be unaffected; or
  - (b) a replacement facility of comparable quality and accessibility is to be provided in the locality; or
  - (c) there is a clear long-term surplus in provision.
- 6.3 In this instance, retrospective planning permission is sought for the change of use of a strip of open space measuring 1.5 metres wide by some 27 metres long, 37 sq metres or thereby in total. The remaining open space area adjacent to the site is some 2475 sq metres or thereby. Therefore the amount of land subject of the change of use equates to 1.5 % of the total open space provision. The site has been visited on a number of occasions by Council officers. No usage of any part of the open space area for active leisure pursuits has been noted on these occasions. The topography of the open space and surrounding land indicates that water drains onto the site, further reducing its potential use for recreation activity. I consider that, in view of the above, the loss of the small area of open space subject of this application will have an insignificant effect on public enjoyment or participation levels.
- 6.4 I conclude, therefore, that a departure from local plan policy can be justified in this instance for the following reasons:
- The area of open space being lost amounts to only 1.5% of the total area; and

- the open space is not used for active leisure pursuits and the loss of this small area will have an insignificant impact on public enjoyment of it.

**Iain Urquhart**  
**Executive Director (Enterprise Resources)**

**29 June 2005**

**Previous References**

- ◆ None

**List of Background Papers**

- ▶ Application Form
- ▶ Application Plans
- ▶ Consultations                      none required
- ▶ Representations
  - Representation from :      Mr Stuart and Ms Mary Logan, 28 Avon Avenue  
   Carlisle ML8 5DD, DATED 04/01/2005
  - Representation from :      Annyse and James Ewing, 26 Avon Avenue  
   Carlisle ML8 5DD, DATED 04/01/2005

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

Stuart Ramsay, Technical Officer, South Vennel, Lanark  
Ext. 3187 (Tel :01555 673187 )  
E-mail: Enterprise.lanark@southlanarkshire.gov.uk

## Detailed Planning Application

PAPER APART – APPLICATION NUMBER : CL/04/0895

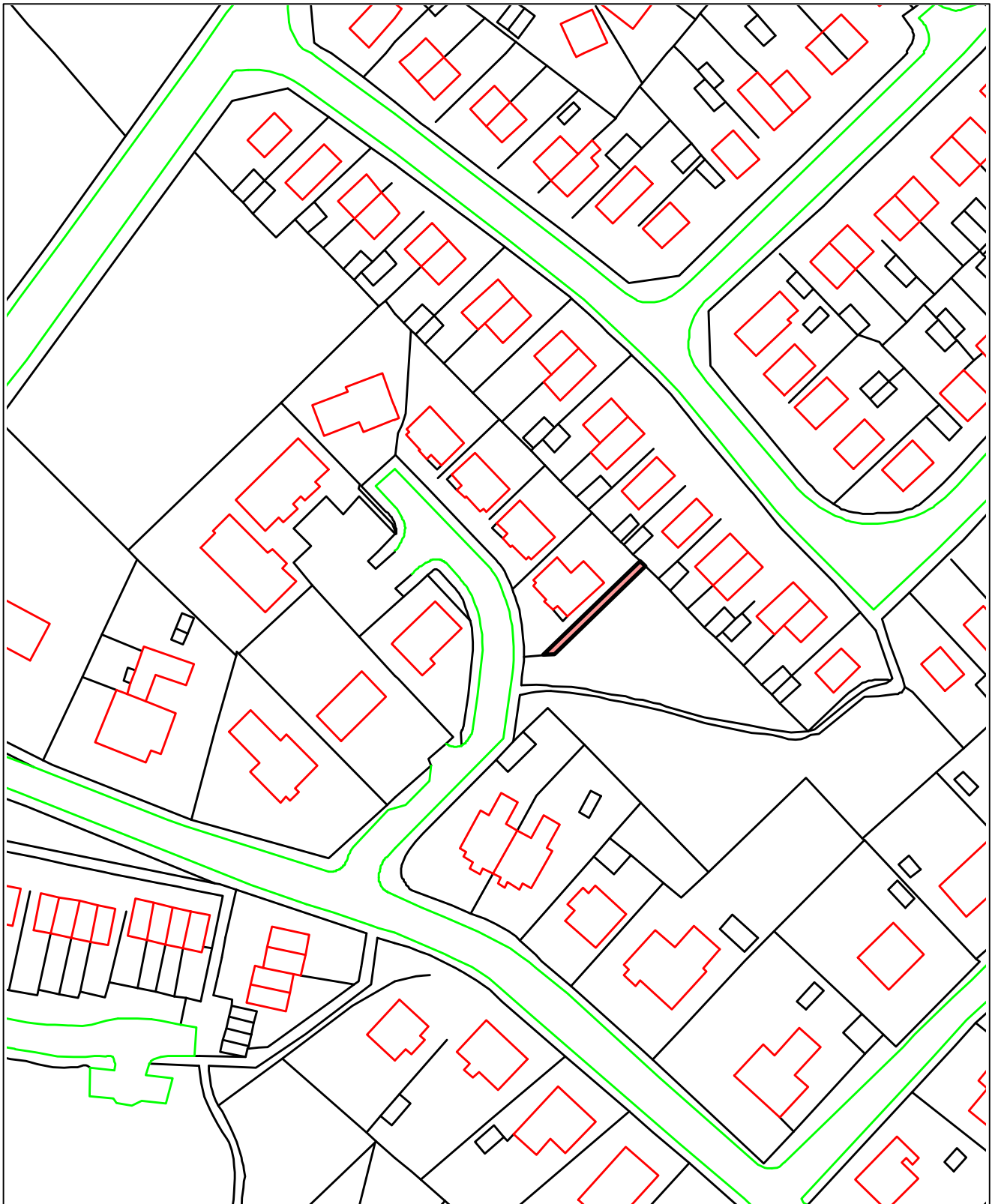
### **CONDITIONS**

- 1        That the development hereby permitted shall be started within five years of the date of this permission.
- 2        That the development shall be carried out strictly in accordance with the plans hereby approved and no change to the design or external finishes shall take place without the prior written approval of the Council as Planning Authority.

### **REASONS**

- 1        To accord with the provisions of the Town and Country Planning (Scotland) Act 1997.
- 2        In the interests of amenity and in order to retain effective planning control.

For information only



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