
NORTH AYRSHIRE COUNCIL

26 September 2018

Planning Committee

Title: **Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997: Site To East Of Castlepark Gardens, Fairlie**

Purpose: To seek approval to serve a Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with a condition attached to planning permission (ref: 17/00584/PPM & 18/00659/PP)

Recommendation: That the Committee grants authority for the service of a Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with a condition attached to planning permission (ref: 17/00584/PPM & 18/00659/PP)

1. Executive Summary

- 1.1 Planning permission was granted on 20 September 2017 (ref: 17/00584/PPM) for the erection of 95 dwelling houses. The permission was granted subject to conditions. Condition 6 requires the formation of a shared use link for pedestrians and cyclists to Castlepark Gardens. The condition required the link to be installed no later than 12 months from the date of the planning consent.
- 1.2 Thereafter planning permission was granted on 7 September 2018 (ref: 18/00659/PP) to vary phase 2 of the original planning permission to amend house types and the addition of 2 extra houses. The permission was granted subject to conditions. Condition 4 requires the shared use link to be installed no later than 20 September 2018.
- 1.3 To date the applicant has failed to form the required link. Therefore it is proposed to serve a Breach of Condition Notice, which would require full compliance of the condition.

2. Background

- 2.1 The following conditions attached to the planning permissions dated 20 September 2017 (ref: 17/00584/PPM) and 7 September 2018 (ref: 18/00659/PP) have not been complied with and are therefore a breach.

Condition 6 of 17/00584/PPM - *That prior to the commencement of development details of the proposed programme for the installation of the proposed shared use link for pedestrians and cyclists to Castlepark Gardens and the emergency access, located in the south of the site, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The links should be completed in compliance with the approved programme to the satisfaction of North Ayrshire Council as Planning Authority, unless North Ayrshire Council as Planning Authority gives written consent to any variation. For the avoidance of doubt the proposed shared use path to Castlepark Gardens should be completed prior to the completion of plots 34, 35 and 36, as outlined within approved plan AL(0)100 Revision I, or no later than 12 months from the date of the planning consent, whichever is sooner. The proposed emergency access shall be completed prior to the completion of plots 68, 69, 70, as outlined within approved plan AL(0)100 Revision I.*

Condition 4 of 18/00659/PP - *That for the avoidance of doubt the proposed shared use path to Castlepark Gardens should be completed prior to the completion of plots 35, 36 and 37, as outlined within approved plan AL(0)114, or no later than 12 months from the date of the original planning consent, that date being 20th September 2018.*

The proposed programme for installation was submitted with the expectation that the link to Castlepark Gardens would be completed by 20 September 2018

- 2.2 The developers, through correspondence, confirmed on 12 September 2018 that due to constraints associated within existing utilities crossing the site, a high pressure gas main and high voltage electricity line, that they would be unable to install the full link by 20th September.
- 2.3 They state that the nature and significance of these services have limited construction of the roads and footpath to the initial 150m of Phase 2, at which point the site is traversed by a high pressure gas main which currently serves Fairlie Primary School. The diversion of this main relies upon the installation of a new main within the residential area of which Castlepark Gardens is a part of. Scottish Gas Networks has prohibited construction traffic crossing the gas main until the new installation is in place. Due to delays by Scottish Gas Networks anticipated completion of the gas main diversion is estimated to be October/November 2018.
- 2.4 In addition, once the gas main diversion is completed the developer is required to divert an existing overhead High Voltage electrical line to allow the link access to be formed. The developers state that legal servitudes are required prior to this work being programmed and the necessary road and service duct formation will not be complete until February 2019. This issue is likely to delay the removal of the overhead cables until spring 2019, thus delaying the implementation of the shared link path.
- 2.5 The developers have provided a potential temporary solution which would result in the implementation of a pedestrian link that would be located on the western boundary of the site and would be redirected into the grounds of Fairlie Primary School at the location of the gas main.
- 2.6 Whilst the temporary solution would create a path onto Castlepark Gardens, due to the constraints on the new route, the path would not be wide enough for cyclists. There is

likely to be significant delay of some 10 -11 months before the shared use link approved under both planning permissions is completed.

- 2.7 Notwithstanding the above, it has been reported that on Thursday, 13th September, the developer had constructed a temporary crossing of the gas main to allow heavy machines to access the southern part of the site. Heavy tracked machines were crossing the pipe route. In these circumstances it is considered that a Breach of Condition Notice is supported and would require full compliance of the condition, including completion of the multi user link. There is no right of appeal against a Breach of Condition Notice. Anyone responsible for not complying with a Breach of Condition Notice is guilty of an offence, which can be reported to the Procurator Fiscal.

3. Proposals

- 3.1 In the interests of ensuring permeability through the site and compliance with the approved plans it is proposed to issue a Breach of Condition Notice requiring the following action, in respect of Condition 6 of the planning permission dated 20 September 2017 (ref: 17/00584/PPM) and Condition 4 of the planning permission dated 7 September 2018 (ref: 18/00659/PP):
- (i) Complete the proposed shared use link for pedestrians and cyclists to Castlepark Gardens.
- 3.2 It is proposed that the compliance period be 8 weeks which will allow sufficient time for the works to be carried out.

4. Implications

Financial:	The service of the Notice has no financial implications out with normal budgetary provisions.
Human Resources:	N/A

Legal:	The proposed Breach of Condition Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Children and Young People:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Breach of Condition Notice supports the Council Plan priority – “Protecting and enhancing the environment for future generations.”
Community Benefits:	N/A

5. Consultation

5.1 No consultation is required in association with this report.



Karen Yeomans
Executive Director (Economy and Communities)

For further information please contact **Ross Middleton** on **01294 324379**.

Background Papers

N/A

Appendix 1 – Location Plan

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