
NORTH AYRSHIRE COUNCIL

22nd March 2023

Planning Committee

Title: Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997: 17 Auldlea Road, Beith

Purpose: To seek authority to serve a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with Condition 1 of planning permission (ref. 22/00536/PP)

Recommendation: That the Committee grants authority for the service of a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with Condition 1 of planning permission ref. 22/00536/PP at 17 Auldlea Road, Beith

1. Executive Summary

- 1.1 To seek authority to serve a Breach of Condition Notice requiring compliance with condition 1 of planning permission 22/00536/PP which requires details of obscure glazing to be fitted to the north elevation of a consented conservatory to the rear of a house at No. 17 Auldlea Road, Beith, and retained thereafter.
- 1.2 The condition was required to safeguard the privacy and amenity of neighbouring housing.

2. Background

- 2.1 On 5th June 2022 it was brought to the Council's attention that a conservatory extension had been erected to the rear of an end-terraced dwellinghouse at 17 Auldlea Road, Beith. Public concerns had been raised regarding the scale and height of the conservatory. Initial checking of the approved building warrant drawings showed that the conservatory was to be built within the limits of Householder Permitted Development Rights (HPDR), meaning that a planning application did not require to be submitted. However, for the avoidance of doubt, the conservatory was measured on site and was found to exceed the height limits set out in Class 1A of the HPDR. Consequently, an application for planning permission was requested from the householder at 17 Auldlea Road, Beith.

2.2 A retrospective planning application was duly received in July 2022 and validated on 1st August 2022. Through assessment of the planning application concerns were raised about the impact of the conservatory on the privacy of the attached neighbouring dwelling. Mitigation measures were discussed with the applicant's agent. It was concluded that obscure glazing should be installed on the north elevation of the conservatory to lessen the impact of potential overlooking and loss of privacy to the attached neighbouring property. It was agreed with the agent that the matter could be addressed by a condition. The planning application was duly granted, subject to conditions, on 27th September 2022.

2.3 Condition 1 of the planning permission reads as follows:

“That within four weeks of the date of this decision, details of the obscure glazing to be fitted to the north elevation of the conservatory hereby approved shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the method of obscure glazing as may be approved shall be installed within 8 weeks of the date of this decision, and permanently retained thereafter, all to the satisfaction of North Ayrshire Council as Planning Authority”.

The reason for the condition was *“to safeguard the privacy and amenity of neighbouring housing”.*

2.4. As noted above, condition 1 states that details of the obscure glazing required to be submitted within four weeks of the date of the decision (27th September 2022). However, the required details were not received within four weeks of the decision notice. Several reminders were sent. To date, the required details have still not been received. The second part of the condition stated that the method of obscure glazing as approved required to be installed within 8 weeks of the decision. To date, the obscure glazing has not been installed to the north elevation of the conservatory.

2.5 Correspondence with the agent and applicant has taken place. However, there was disagreement from the applicant on the need for the condition. The applicant was advised that they could request a local review of the condition within 3 months of 27th September 2022. An appeal to the Local Review Body was not submitted within the required time. The applicant was also advised that there is a statutory right to apply to the planning authority for the amendment/removal of the condition under Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act).

2.6 Over five months have elapsed since the date of the decision. It is considered that the applicant has had sufficient time to comply with, or to challenge, the condition.

2.7 To remedy the breach, it is recommended that authority for the service of a Notice under Section 145 of the Act (a “Breach of Condition Notice”) be approved. A Breach of Condition Notice would require the applicant to adhere to the requirements of condition 1 of the above planning permission and install obscure glazing to the north elevation of the conservatory. The Notice would take effect not less than 35 days from the date on which it is served. There is no right of appeal against such a Notice. The service of a Notice would remedy the breach and address the requirements of the condition. The Council could report those responsible for not complying with a Breach of Condition Notice to the Procurator Fiscal, should its requirements not be met.

3. Proposals

3.1 In the interest of the amenity of the area and to safeguard the privacy and amenity of neighbouring housing, it is recommended that the Committee approve the service of a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 (as amended) to require compliance with condition 1 as follows:

- (i) That details of the obscure glazing to be fitted to the north elevation of the conservatory at 17 Auldlea Road shall be submitted for the written approval of North Ayrshire Council as Planning Authority within two weeks of the notice coming into effect. Thereafter, the method of obscure glazing as may be approved shall be installed within 8 weeks of the effective date of this Notice, and permanently retained thereafter, all to the satisfaction of North Ayrshire Council as Planning Authority.

4. Implications/Socio-economic Duty

Financial

4.1 The service of the Notice can be addressed with existing budgetary provision.

Human Resources

4.2 The service of the Notice can be addressed with existing staff resources.

Legal

4.3 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/Socio-economic

4.4 None.

Climate Change and Carbon Environmental and Sustainability

4.5 None

Key Priorities

4.6 The proposed Breach of Condition Notice would safeguard the privacy and amenity of neighbouring housing.

Community Wealth Building

4.7 None

5. Consultation

5.1 None.

James Miller
Chief Planning Officer

For further information please contact **Charlotte Conway, Assistant Planning Officer**, on **01294 324153**.

Background Papers

0

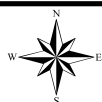
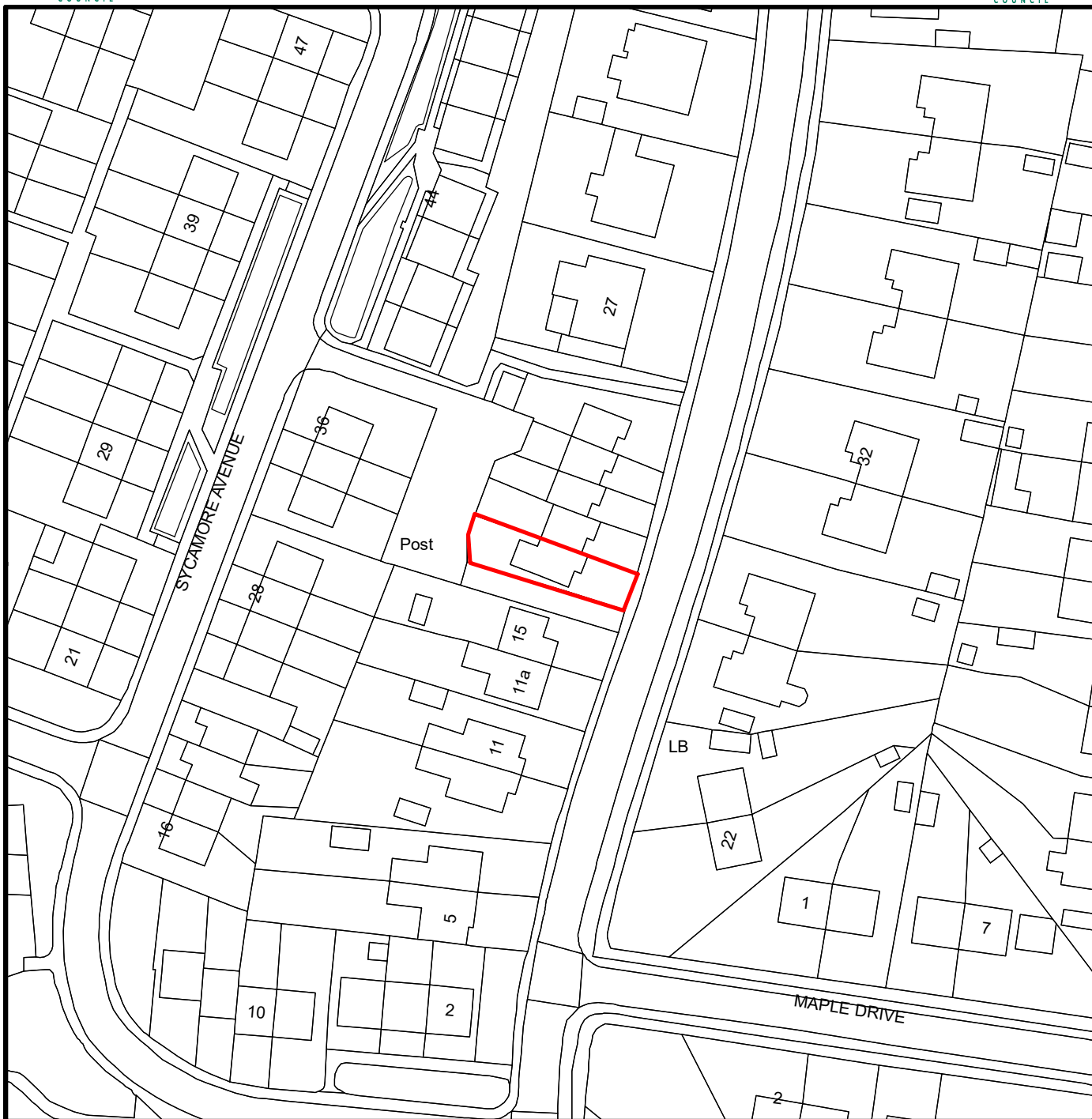


NORTH AYRSHIRE
COUNCIL

Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997: 17 Auldlea Road, Beith



NORTH AYRSHIRE
COUNCIL



1:1,000

0 12.5 25 50 Metres

"This map is reproduced from the OS map by North Ayrshire Council with the permission of the Controller of Her Majesty's Stationery Office, © Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence Number: 100023393."