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## NORTH AYRSHIRE COUNCIL

26<sup>th</sup> January 2022

### Planning Committee

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**Title:** Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: No. 9 Sharlee Wynd, West Kilbride.

**Purpose:** To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the cessation of the use of a rear garden extension, removal of structures that have been sited therein, and the restoration of the site to its previous condition at No. 9 Sharlee Wynd, West Kilbride.

**Recommendation:** Agree that authority is given to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 in the interests of both the visual quality of the countryside around the village of West Kilbride and flood risk management in the area.

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### 1. Executive Summary

- 1.1 A rear garden area has been extended over an adjacent wetland within a field that backs on to the property at No. 9 Sharlee Wynd, West Kilbride. The original rear fence had been partially removed and various structures have been erected within the extended site. Complaints have been received, forwarded by the Local Member, raising concerns about these matters.
- 1.2 From a site visit by the case officer, it was noted that a patio, hot-tub, timber outbuilding and other structures had been erected within the extended site.
- 1.3 As the unauthorised extension of the curtilage of No. 9 Sharlee Wynd is considered to be harming the visual quality of the countryside around the village of West Kilbride and because of the flood risk implications of the alterations to the small watercourse, it is considered necessary to serve a notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 on the owner of the land to remove all structures and to return the site to its previous condition.

## **2. Background**

- 2.1 Planning permission for the residential development at Sharlee Wynd was approved with conditions on the 17th of December 2004 (ref. 04/00240/PP). The northern and eastern boundaries of the residential development mark the edge of the village of West Kilbride. The extended garden ground is located in an area of countryside, as defined in the adopted North Ayrshire Local Development Plan. The wetland within the field is part of the surface water system which was installed to serve the residential development at Sharlee Wynd. The surface water system introduced two culverts to a small watercourse that runs along the back of Nos. 9 – 23 Sharlee Wynd.
- 2.2 It appears to the case officer that the patio, hot-tub and outbuilding have been positioned on top of one of the culverts and over a section of the watercourse, which has either been culverted or filled in. This action is considered to have implications for surface water management that could affect the performance of the surface water drainage system, putting people and property at increased flood risk.
- 2.3 A report from an Elected Member regarding the unauthorised extension of the garden ground at No. 9 Sharlee Wynd was received by Planning Services on the 31<sup>st</sup> of August 2021. The main focus of the complaint was about how the use of the enlarged garden is affecting the amenity of surrounding residential properties. While the use of the enlarged garden is likely to be similar in scale and character to the uses that already occur within the Sharlee Wynd residential development, the enlarged garden is considered to harm the visual quality of the countryside around the village of West Kilbride.
- 2.4 In addition, the works to form the enlarged garden have altered an existing small watercourse that is part of the surface water drainage system for the Sharlee Wynd residential development. The nature of the alterations is not known but it is considered likely that the performance of the surface water drainage system has been affected, potentially putting people and property at increased flood risk.
- 2.5 A site visit by the case officer established that the rear garden of No. 9 Sharlee Wynd had been extended over an area of wetland within an adjacent field. The field is designated as countryside in the adopted North Ayrshire Local Development Plan while the wetland functions as part of the surface water system for the Sharlee Wynd residential development. The enlargement of the garden constitutes a material change of use which is required to be authorised by planning permission. As planning permission has not been sought, the unauthorised use and the associated garden development in the countryside are a breach of planning control.
- 2.6 As planning permission would be unlikely to be granted for the enlarged garden because of the reasons stated above, a letter was sent to the owner of No. 9 Sharlee Wynd on the 15<sup>th</sup> of September 2021. The letter advised the owner of No. 9 to remove all unauthorised development and to return the site to its previous condition within a 6-week timescale. Despite both the owner of No. 9 confirming that he was responsible for the unauthorised development and an agreement to a slightly extended timescale, to date no action appears to have been taken to remedy the matter.

- 2.7 Given the effect of the enlarged garden on the visual quality of the countryside around the village of West Kilbride and the likely flood risk implications of the unauthorised development, it is considered necessary to serve a notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 on the owner of the land to require the cessation of the use of the unauthorised rear garden extension, the removal of structures that have been sited therein, and the restoration of the site to the rear of No. 9 Sharlee Wynd, West Kilbride, to its previous condition.

### **3. Proposals**

- 3.1 It is recommended that a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 (as amended) is served on the landowner to require:
1. the cessation of the use of the unauthorised rear garden extension, the removal of structures that have been sited therein, and the restoration of the site to the rear of No. 9 Sharlee Wynd, West Kilbride, to its previous condition.
- 3.2 The timescale should be no greater than 6 weeks from the date of the notice.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 Should any requirement of the Notice not be complied with following expiry of the compliance period, the Council as planning authority may enter the land and carry out such steps to achieve compliance. The Council may then seek to recover from the person(s) who was the then owner (or lessee) any expenses reasonably incurred during the carrying out of these works.

#### **Human Resources**

- 4.2 None.

#### **Legal**

- 4.3 The proposed Enforcement Notice would be served in accordance with statutory procedures.

#### **Equality/Socio-economic**

- 4.4 None.

#### **Environmental and Sustainability**

- 4.5 The proposed Enforcement Notice would protect the amenity of surrounding residential properties.

## **Key Priorities**

- 4.6 The proposed Enforcement Notice would support the Council Plan priority: “Vibrant, welcoming and attractive places”

## **Community Wealth Building**

- 4.7 Any direct action taken under the Planning Acts can support progressive procurement.

## **5. Consultation**

- 5.1 Finance has been advised of the report in terms of its budgetary provision.

James Miller  
Chief Planning Officer

For further information please contact **Mr M. Miller, Assistant Planning Officer**, on **01294 317285**.

## **Background Papers**

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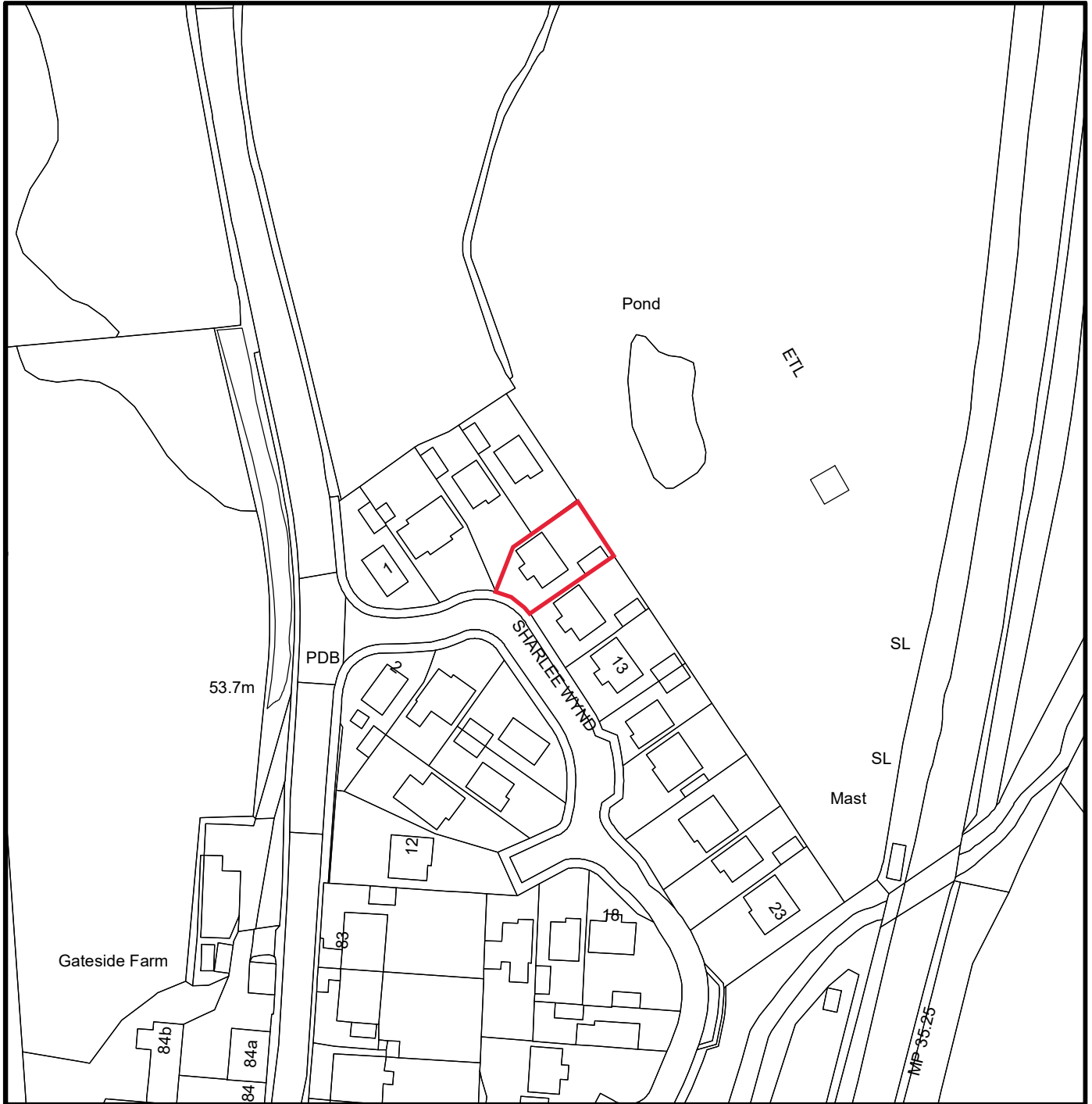


NORTH AYRSHIRE  
COUNCIL

# Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: No. 9 Sharlee Wynd, West Kilbride.



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