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## NORTH AYRSHIRE COUNCIL

1<sup>st</sup> December 2021

### Planning Committee

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**Title:** Notice under Section 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 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with Condition 7 of planning permission 19/00506/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 7 planning permission (ref. 19/00506/PP) at a site to the East of Castlepark Gardens, Fairlie.

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### 1. Executive Summary

- 1.1 To seek authority to serve Breach of Condition Notice requiring compliance with Condition 7 of planning permission (ref.19/00506/PP) at a site to the East of Castlepark Gardens, Fairlie, on the installation of play facilities.
- 1.2 Condition 7 was imposed to ensure the development of 97 houses had adequate play provision. The condition requires that the play facilities be installed prior to the occupation of Plot 25 or Plot 26 of the development. Both plots have been occupied for approx. 9 months.
- 1.3 It is considered that the lack of play provision has an adverse impact on the amenity of the area.

### 2. Background

- 2.1 Planning permission was granted on 20th September 2017 (ref: 17/00584/PPM) for development of the site comprising of 95 dwelling houses. Condition 9 of that permission required details of play equipment to be agreed and installed prior to the occupation of certain plots. The permission was varied by subsequent applications.
- 2.2 Planning permission was granted 7th September 2018 (ref: 18/00659/PP) which allowed amendments to the previous permission including an additional 2 houses. Condition 7 of the permission required details of play equipment to be agreed and installed prior to the occupation of Plots 25 or 26. Details of the equipment were agreed

on 20<sup>th</sup> November 2018. The play area was to be sited to the east of Nos. 56 and 58 Castlepark Drive.

- 2.3 The 2018 permission was subsequently varied on 4<sup>th</sup> September 2019 (ref: 19/00506/PP) to allow an alternative temporary footpath. Condition 7 of the permission required details of play equipment to be agreed and installed prior to the occupation of Plots 25 or 26. To date, the details of equipment have not been submitted, in respect of the 2019 permission. Condition 7 is as follows:

*“That within one month of the date of the approval, details of the proposed equipped play area, which shall include the provision of at least 5 different types of play equipment, seating and unequipped play areas shall be submitted for the written approval of North Ayrshire Council, as Planning Authority. The details shall include the proposed location of the play area, site levels, programme of installation, any means of enclosure, including gated points of access/exit, surface finish, litter bin provision, maintenance and management arrangements. Unless otherwise agreed in writing, the approved play area facilities should be installed and operational no later than, or prior to, the occupation of plots 25 or 26 as outlines in approved plan AL (0)114. The approved play area should be completed to the satisfaction of North Ayrshire Council, as Planning Authority, and maintained in perpetuity.”*

The reason for the condition is as follows: *“In order to ensure the development includes appropriate play facilities.”*

- 2.4 In the summer of 2021 it was brought to the Council’s attention that the play park had not been installed and Plots 25 and 26 were both occupied. Building Standards issued completion certificates for Plot 25 on the 9<sup>th</sup> of March 2021 and for Plot 26 on the 18<sup>th</sup> of September 2020, respectively. It is understood both properties were occupied soon after the completion certificates were issued.
- 2.5. Dawn Homes, the developer of the site, stated in August 2021 that they hoped to start installing the play facilities in November 2021. They said that long lead in times to receive the play equipment had led to the delay.
- 2.6. By November 2021, it was clear the installation of the play facilities had not commenced. Dawn Homes were again contacted regarding the breach of condition. They stated that the land was required for their compound, to allow them to complete other parts of the development. They hoped to complete the play area by the Spring of 2022. Dawn Homes were advised that the Council would have to consider issuing a Breach of Condition Notice requiring compliance with the condition.
- 2.7 As details of the play equipment has not been submitted in connection with Condition 7 of the 2019 permission (ref: 19/00506/PP), that condition has technically been in breach since 4<sup>th</sup> October 2019. Details were agreed in connection with Condition 7 of the 2018 permission (ref: 18/00659/PP) and those details would again have been acceptable. However, to date, details have not been submitted in respect of the 2019 permission. Notwithstanding, had the 2018 details been installed prior to the occupation of Plot 25 or Plot 26, then it would be considered that the requirements of the condition were met. As stated above those plots are occupied and have been for at least 9 months. The developer has not installed the play facilities.

- 2.8 Given the above, it is recommended that authority for the service of a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997, as amended, (a "Breach of Condition Notice") be approved. A Breach of Condition Notice would require the installation of the play facilities, as approved under the 2018 permission (ref: 18/00659/PP). 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 ensure the requirement of the condition would not lapse due to time passed. 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 ensure appropriate play facilities, it is recommended that the Committee approve the service of a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 to require the following:
- (i) Installation of the play facilities as shown on the attached drawing 003D8D, prepared by Kompan and dated 13<sup>th</sup> November 2017, in the location marked 'play area' in the attached drawing AL (0)119, prepared by Hypostyle and dated 21<sup>st</sup> June 2019.

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

#### **Financial**

- 4.1 None.

#### **Human Resources**

- 4.2 None

#### **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

#### **Environmental and Sustainability**

- 4.5 None

#### **Key Priorities**

4.6 The proposed Enforcement Notice supports the Council Plan priority – “Vibrant, welcoming and attractive places.”

### **Community Wealth Building**

4.7 None.

## **5. Consultation**

5.1 None

RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Iain Davies, Senior Development Management Officer**, on **01294 324 320**.

### **Background Papers**

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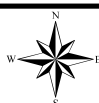
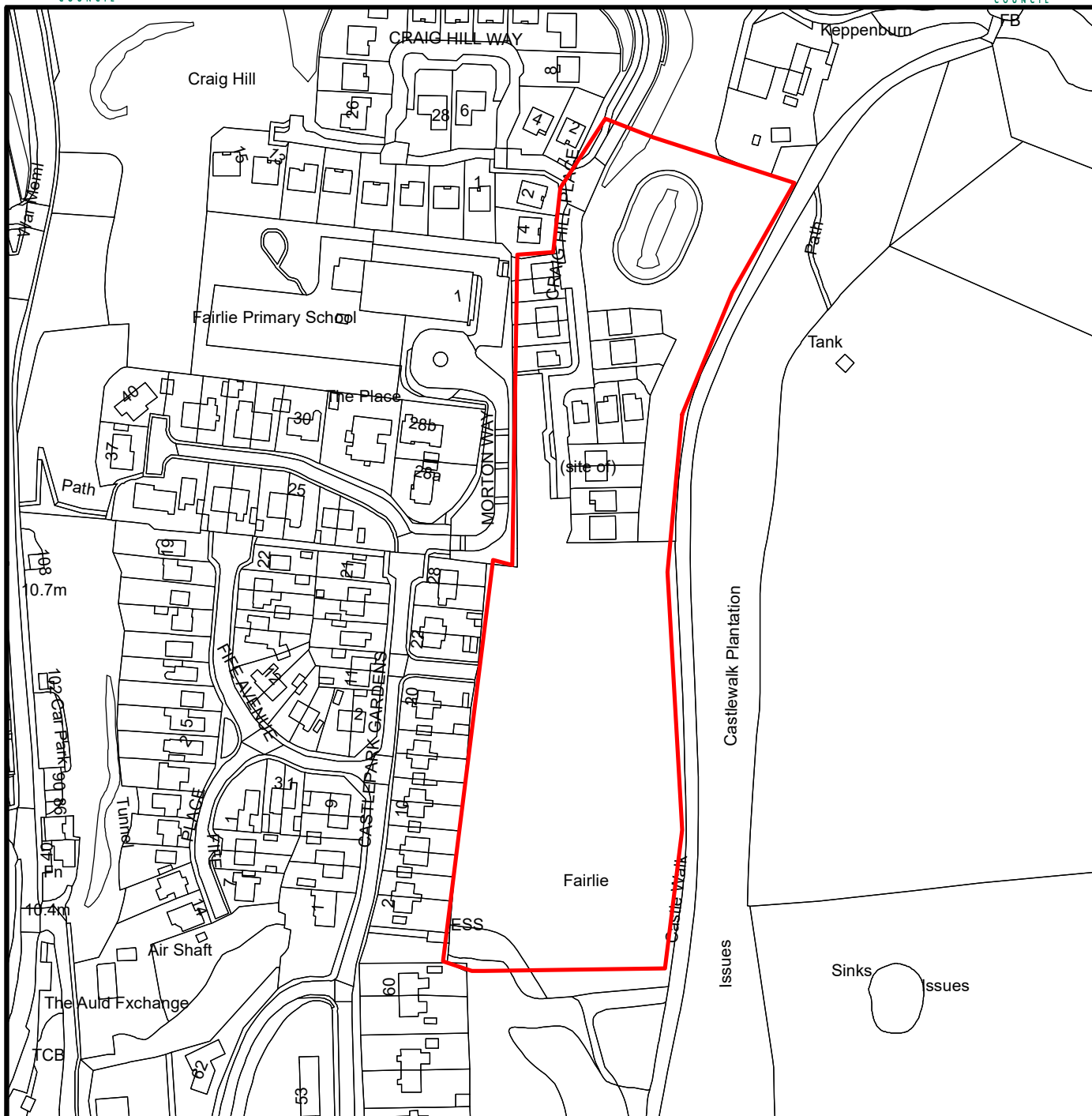


NORTH AYRSHIRE  
COUNCIL

Notice under Section 145 of the Town and Country Planning  
(Scotland) Act as Amended:  
Site to East of Castlepark Gardens, Fairlie



NORTH AYRSHIRE  
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1:2,500

0 30 60 120 Metres

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