

## **EAST AYRSHIRE COUNCIL**

**CABINET – 7<sup>TH</sup> NOVEMBER 2007**

### **EAST AYRSHIRE COUNCIL (RESTRICTION OF ACCESS RIGHTS AT A71 UNDERPASS BETWEEN CARRON AVENUE AND QUEENS DRIVE, KILMARNOCK) BYELAWS 2007**

#### **Report by Depute Chief Executive /Executive Director of Corporate Support**

#### **1. PURPOSE OF REPORT**

- 1.1.** To seek approval to promote byelaws in terms of Section 12 (1) (c) of the Land Reform (Scotland) Act 2003 restricting the exercise of access rights at the A71 underpass between Carron Avenue and Queens Drive, Kilmarnock.

#### **2. BACKGROUND**

- 2.1.** The A71 underpass between Carron Avenue and Queens Drive, Kilmarnock is a public access way, the management of which is the responsibility of the Council as governed by the Land Reform (Scotland) Act 2003.
- 2.2.** The Council has been made increasingly aware of public concern regarding continuing and escalating anti-social behaviour occurring at the underpass particularly between the hours of 10pm and 7am.
- 2.3.** The Council has a general duty under Section 13 of the Land Reform (Scotland) Act 2003 to uphold the exercise of access rights. Section 12 of the Act recognises however that in certain circumstances, including the need to preserve public order and safety, it is appropriate for local authorities to promote Byelaws modifying or limiting the exercise of access rights. Any Byelaws promoted in terms of Section 12 of the Act must however be fair and reasonable and directly address a genuine and specific local problem.
- 2.4.** Given the continuing and escalating problems occurring at the A71 underpass it is considered appropriate to promote Byelaws providing for closure of the underpass between the hours of 10pm and 7am when the problem is identified as most likely to occur. Should the Council be successful in promoting the appropriate Byelaws it is proposed that gates be installed at either end of the underpass which would be locked between the hours of 10pm and 7am allowing for free access through the underpass at all other times.
- 2.6.** The proposals as promoted as supported by the local community, as evidenced by a recent survey and public meeting, the Elected Members for the area and Strathclyde Police.

### **3. FINANCIAL IMPLICATIONS**

- 3.1. There would be limited financial implications for the Council in supplying the access gates to be erected to either side of the underpass and thereafter ensuring that same are kept closed during the appropriate restricted time period.

### **4. LEGAL IMPLICATIONS**

- 4.1. The Council has authority in terms of Section 12 (1) (c ) of the Land Reform (Scotland) Act 2003 to promote Byelaws restricting the exercise of access rights in the circumstances specified within Section 2.2 of this Report.
- 4.2. The Council will require to comply with the consultation requirements for Byelaws as provided for in terms of Section 12(6), (7) and (8) of the Land Reform (Scotland) Act 2003 which will allow all interested parties to comment on the proposed Byelaws prior to referral to Scottish Ministers for confirmation in terms of Section 202(15) of the Local Government (Scotland) Act 1973.

### **5. POLICY / COMMUNITY PLAN IMPLICATION**

- 5.1. The promotion of the proposed Byelaws compliments the Council's Antisocial Behaviour Strategy (2005 - 2008) and Community Plan (2003 -2015) theme of promoting community safety.

### **6. RECOMMENDATION**

- 6.1. It is recommended that Cabinet :-

- i) Approve the proposed East Ayrshire Council (Restriction of Access rights at A71, underpass between Carron Avenue and Queens Drive, Kilmarnock Byelaws) 2007;
- ii) Authorise the Solicitor to the Council to consult on the terms of the proposed Byelaws and thereafter seek confirmation from the Scottish Ministers; and
- iii) Otherwise note the contents of this report.

**Elizabeth Morton,**  
**Depute Chief Executive /Executive Director of Corporate Support**  
29<sup>th</sup> October 2007

### **BACKGROUND PAPERS**

For further information on the content of this report contact Anna Gallagher, Team Leader, Conveyancing and Contracts – 01563 576170

**Implementation Officer: Anna Gallagher, Legal Services.**