

EAST AYRSHIRE COUNCIL

COUNCIL – 26TH JUNE, 2008

**EAST AYRSHIRE COUNCIL (RESTRICTION OF ACCESS RIGHTS AT A71
UNDERPASS BETWEEN CARRON AVENUE AND QUEENS DRIVE, KILMARNOCK)
BYELAWS 2008**

**Report by Depute Chief Executive/Head of Legal, Procurement & Regulatory
Services**

1. PURPOSE OF REPORT

- 1.1 To seek approval for 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 At the Cabinet meeting held on 7th November, 2007 promotion of proposed byelaws to restrict access to the A71 underpass was approved and the Solicitor to the Council authorised to consult on the terms of the proposed Byelaws and thereafter seek confirmation from the Scottish Ministers.
- 2.2 The original draft Byelaws proposed to restrict access to the A71 underpass between the hours of 10pm and 7am to preserve public order and safety and prevent damage, nuisance or danger by the installation of gates at either end of the underpass which would be locked between the hours of 10pm and 7am daily. It would be a criminal offence to take unauthorised access to the underpass during the hours of closure.
- 2.3 The draft Byelaws were advertised in the Kilmarnock Standard edition dated 1st February, 2008 and a twelve week consultation period specified ending on 25th April, 2008. Within the consultation period any comments or objections were to be given by written notice to the Head of Legal, Procurement and Regulatory Services.
- 2.4 In addition, over thirty letters were issued at this time to consultees including statutory undertakers, emergency services, local members, community councils, residents associations, local organisations, businesses and residents seeking comments. The Head of Legal, Procurement and Regulatory Services also

attended an open meeting of Kirkstyle Tenants and Residents Association on 18th March, 2008 to better inform and engage with the local community on this issue.

3. CONSULTATION RESPONSES

- 3.1 Letters of support for the proposed byelaws have been received from Strathclyde Police, Shortlees Tenants and Residents Association and Kirkstyle Tenants and Residents Association. The District Procurator Fiscal had no observations to make in respect of the proposed byelaws.
- 3.2 Letters of objection have been received from a local resident and the manager of the Asda store at Queens Drive, Kilmarnock. Both letters of objection identify the proposed opening time of 7.00am as being too late to accommodate people travelling to work. The letter from the manager of Asda also raises concern about ensuring availability of access for staff and customers on public holidays and suggests an alternative proposal of installation of CCTV security cameras at the location.
- 3.3 At the open meeting detailed in paragraph 2.4 above concern was raised that anti-social behaviour problems are occurring earlier in the evening before the proposed closure time for the gates of 10pm. Discussion took place regarding an earlier closing time to reflect seasonal change. Given however that there was no evidence of general support to change the closing time in the formal responses received it is proposed to proceed on the closure time of 10pm which reflects the terms of the consultation process. It is considered that fundamental amendment to the closure time may require further consultation. Further, consistent opening and closing times throughout the year will clarify the byelaws and make their enforcement easier.

4. OPERATIONAL ISSUES

- 4.1 The daily opening and closing of the underpass gates at agreed times will require to be resourced. While the Council's Community Warden Service may be able to attend to the closing of the gates, the opening in the morning is still to be clarified. The timing of the opening of the gates has raised concerns and it is proposed to amend the opening time to 6.00am to address these. Discussion has also taken place with the General Manager of Asda to establish whether their staff could assist with opening the gates in the mornings. The initial informal response was positive although a formal response is still awaited at the time of writing.
- 4.2 It has been suggested that automatic gates be erected and CCTV security cameras installed. This suggestion would cost substantially more than the arrangements presently proposed and on a resource basis is not recommended although the position can be reviewed in the future.

- 4.3 It has also been suggested that the location of the gates as originally proposed may attract other forms of anti-social behaviour such as playing football against the gates. Accordingly it is proposed that the Byelaws cover the full length of the path leading to the underpass from Carron Avenue and on the other side of the underpass leading to Queen's Drive to prevent people accessing this area at the restricted times.

5. FINANCIAL/POLICY IMPLICATIONS

- 5.1 There will be financial implications for the Council in supplying the access gates to be erected either side of the underpass and thereafter ensuring that the gates are opened and closed at the appropriate times.

6. LEGAL IMPLICATIONS

- 6.1 The Byelaws, if approved by the Council, require to be executed and sent to the Scottish Ministers for confirmation together with the consultation responses. The Scottish Ministers may in terms of Section 202(10) of the Local Government (Scotland) Act 1973 confirm, modify or refuse to confirm the byelaws.

7. COMMUNITY PLAN IMPLICATIONS

- 7.1 The Byelaws complement the Council's Anti-Social Behaviour Strategy (2005 – 2008) and Community Plan (2003 – 2015) theme of promoting community safety.

8. RECOMMENDATIONS

- 8.1 It is recommended that Members:-

- (i) approve the proposed East Ayrshire Council (Restriction of Access Rights at A71 Underpass between Carron Avenue and Queens Drive, Kilmarnock) Byelaws 2008 as amended which are appended to this report; and
- (ii) authorise the Solicitor to the Council to seek confirmation of the Byelaws
- (iii) otherwise note the contents of this report

David Mitchell
Head of Legal, Procurement and regulatory Services

DM/JK/sm
1st May, 2008

LIST OF BACKGROUND PAPERS

1. Cabinet Report – 7th November, 2007.

For further information on the content of this report contact:- Joan Kendall, Solicitor,
Conveyancing/Contracts – 01563 576169

Implementation officer - Joan Kendall, Legal Services

**EAST AYRSHIRE COUNCIL (RESTRICTION OF
ACCESS RIGHTS AT A71 UNDERPASS BETWEEN
CARRON AVENUE AND QUEENS DRIVE, KILMARNOCK)
BYELAWS 2008**

East Ayrshire Council established under the Local Government etc (Scotland) Act 1994 and having their headquarters at London Road, Kilmarnock (hereinafter referred to as "the Council") in exercise of the powers conferred upon it by Section 12 of the Land Reform (Scotland) Act 2003 (hereinafter referred to as "the 2003 Act"), and of all other powers enabling it in that behalf, hereby makes the following byelaws:-

Interpretation and Application

1. (1) In these byelaws, unless the context otherwise requires:-

"designated place" means the A71 underpass and adjacent areas located between Carron Avenue and Queen's Drive, Kilmarnock to which the public have access and which is under the Council's management control as shown outlined in black and hatched on the plan annexed and signed as relative hereto.

"Notice" shall mean a duly authorised Notice posted at or near the designated place.

Restriction of Access

2. The Council shall in exercise of its power under section 12 (2) of the 2003 Act restrict the exercise of access rights to the designated place between the hours of 10pm and 6am to preserve public order and safety and prevent damage, nuisance or danger by installation of gates at either end of the underpass which shall be locked between the hours of 10pm and 6am daily. Free access shall be allowed through the designated place at all other times.

Offence

3. Any person who takes unauthorised access to the designated place during the hours of closure detailed above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Public Notice of Effect

4. (1) The Council shall erect one or more Notices at or reasonably adjacent to the designated place for the purpose of giving notice of the effect of these byelaws.
- (2) It shall be no defence in proceedings against a person for an offence under these byelaws that the Council failed to comply with paragraph 4 (1) of this byelaw.

THE COMMON SEAL OF EAST AYRSHIRE COUNCIL
Was affixed to these byelaws on the
In the presence of

David Mitchell
Head of Legal, Procurement and Regulatory Services
East Ayrshire Council
Council Headquarters
London Road
Kilmarnock

CABINET REPORT PLAN



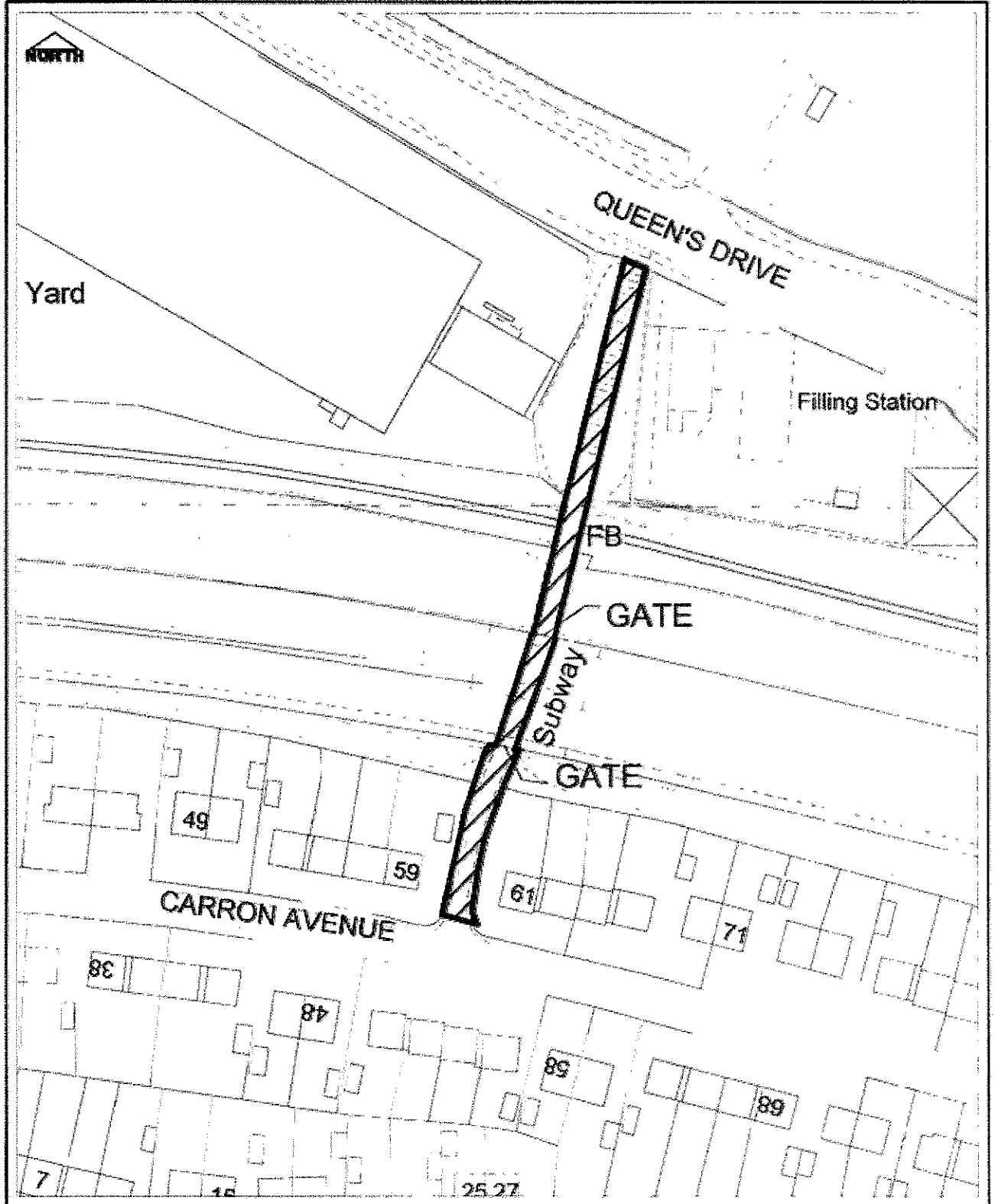
East Ayrshire
COUNCIL

Title: RESTRICTION TO ACCESS OF PEDESTRIAN UNDERPASS OF A71
BETWEEN CARRON AVENUE AND QUEENS DRIVE, KILMARNOCK
UNDERPASS AND RESTRICTED AREA SHOWN HATCHED BLACK
PROPOSED GATE POSITIONS ARE INDICATED

DATE: 11/06/2008

MAP REFERENCE: NS4336NE

SCALE: 1:1000



EAST AYRSHIRE COUNCIL - DEVELOPMENT AND PROPERTY SERVICES