

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 2 NOVEMBER 2007

**07/0539/FL: THE VARIATION OF CONDITIONS 4 & 6 OF PLANNING
CONSENT 06/0678/FL FOR BUILDERS AND HAULAGE CONTRACTORS
YARD AT MINNIVEY, DALMELLINGTON**

APPLICATION BY ROBERT JOHNSTONE AND SONS LTD

Report by Head of Planning and Economic Development

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

Full planning permission was approved by the Southern Local Planning Committee (6th October 2007) for the utilisation of the site as a builders and haulage contractor's yard with the associated erection of a metal storage shed. A number of conditions were attached to the consent and the applicant has lodged this application in an attempt to vary two of these; namely conditions 4 and 6.

1.1 Condition 4 refers to the operation hours of the site and states:

"The use hereby approved shall not be carried out before 07:00 hours and after 19:00 hours on Mondays to Fridays or before 09:00 hours and after 17:00 hours on Saturdays. With the exception of vehicles leaving or entering the site between the hours of 09:00 and 17:00 hours, no activities shall take place within the development site on Sundays."

The applicant proposes this condition is varied to allow for essential vehicle maintenance on Sundays between the hours of 09:00 and 17:00. The reason is noted as allowing vehicles which are usually used six days per week to be inspected and to be made ready for the start of the normal working week at primarily mineral extraction sites.

1.2 Condition 6 refers to the southern boundary screening of the site and states:

"Notwithstanding the submitted plans the southern boundary of the site shall be defined by a 2m high wooden fence, details of which shall require to be submitted to and agreed by the Planning Authority within 2 months of any development work commencing on site."

The applicant has requested a variation in this condition in order to substitute the fence with a 2m high landscaped bund along the southern boundary of the site.

1.3 It should be noted that originally this planning application proposed, in addition to the variation of the above two conditions, the removal of Condition 2 from the consent. This referred to no laden vehicles being allowed to use the C91 road to the Minnevey site in conjunction with the haulage business. In order to assess the merits of this request a full bridge survey is required on all the bridges on the C91. As this has not recently been undertaken, the Council's Roads and Bridges section have agreed to carry out the assessment in the near future. Therefore, until such time, the applicant has asked to withdraw this element of the application.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.

3. SUMMARY OF ANALYSIS

3.1 As indicated in Section 5 of the report, there are no aspects of the development plan of particular relevance to this proposal and consequently it is the material considerations on which greatest weight should be placed in determining this application.

3.2 Full planning consent has been granted for the change of use of an existing Brownfield industrial site to form a builders and contractors haulage yard with the erection of a separate workshop unit and the reuse of the existing brick built buildings. Conditions were attached to the operation of this consent to reduce the impacts of the proposal on adjacent residential amenity. However, whilst objections have been made by local residents living nearby; these are primarily related to the condition of the public road and to pedestrian safety issues. The application under consideration is referring to the variation of the operation hours (condition 4) to allow essential vehicle maintenance on Sundays and the replacement of the timber boundary fence with an earth bund (condition 6). These two requests to vary the conditions attached to consent 06/0678/FL would not require as much weight to be given to the letters of objection which are predominantly based on road safety impacts that might arise from removal of condition 2. However, the application no longer seeks to remove condition 2 following clarification of the intention from the Council's Roads Division to undertake a detailed bridge survey of the structures which have not been examined on the C91.

3.3 Justification in support of the variation to condition 4 of approved consent 06/0678/FL to allow essential work on Sundays is considered to be acceptable on the basis presented that the applicant's haulage business has contracts in conjunction with local mineral extraction sites, which require vehicles to be in operation Monday – Saturday, leaving Sunday as the only day available to carry out essential vehicle maintenance.

3.4 In a similar sense, the justification contained within the statement supporting the variation of condition 6 is considered persuasive. The variation to form a bund would function in the same way a timber fence would to reduce any visual impacts of the site along that boundary and should prove to be a more appropriate form of boundary treatment. A condition can be attached to ensure the bund is contoured and planted/landscaped.

The petition raised concerns regarding road safety issues and the use of the C91 road by haulage vehicles and trailers. However, following discussions with the Council's Roads Division the applicant has withdrawn the request for the removal of the condition referring to laden lorries using the C91; awaiting the findings of the bridge surveys

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application will not require to be referred to the Principal Planning Committee because it would not be a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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YARD AT MINNIVEY, DALMELLINGTON**

APPLICATION BY ROBERT JOHNSTONE AND SONS LTD

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation due to the number of objections received.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located to the north of the small settlement of Burnton on the north western outskirts of Dalmellington. The land immediately to the north of the site comprises of railway lines splitting into various branch lines. The site covers an extensive area and has a history of heavy industry, originally being used as a working coal colliery and subsequently as part of the Scottish Industrial Railway Centre. The land which the application site occupies is positioned on the side of a gradual slope with existing railway lines located to the rear section. The land to both the east and west is largely overgrown grass land with a narrow winding access road branching off to the western side of the site. Immediately to the south of the application site the ground drops to the nearby Craigmark Inn which is currently used as a small public house occupying a large area of ground creating a boundary with the southern section of the application site.

2.2 Access to the Minnevey site is via the C91 public road which leads to Burnton. This section of road is approximately 1 mile in length from Dalmellington to Burnton and has no public footpath and involves crossing three bridges.

2.3 The red line application site extends to an approximate area of 10,500 metres² comprising of rising ground leading to a large open, relatively level area of ground with a new shed structure and older buildings present. As the site was formally the home to heavy industry with remnants of infrastructure in place, the site can be viewed as "brownfield".

2.4 **Proposed Development:** Full planning permission was approved by the Southern Local Planning Committee (6th October 2007) for the utilisation of the site as a builders and haulage contractor's yard with the associated erection of a metal storage shed. A number of conditions were attached to the consent and the applicant has lodged this application in an attempt to vary two of these; namely conditions 4 and 6.

2.5 Condition 4 refers to the operation hours of the site and states:

"The use hereby approved shall not be carried out before 07:00 hours and after 19:00 hours on Mondays to Fridays or before 09:00 hours and after 17:00 hours on Saturdays. With the exception of vehicles leaving or entering the site between the hours of 09:00 and 17:00 hours, no activities shall take place within the development site on Sundays."

The applicant proposes this condition is varied to allow for essential vehicle maintenance on Sundays between the hours of 09:00 and 17:00. The reason is noted as allowing vehicles which are usually used six days per week to be inspected and to be made ready for the start of the normal working week at primarily mineral extraction sites.

2.6 Condition 6 refers to the southern boundary screening of the site and states:

"Notwithstanding the submitted plans the southern boundary of the site shall be defined by a 2m high wooden fence, details of which shall require to be submitted to and agreed by the Planning Authority within 2 months of any development work commencing on site."

The applicant has requested a variation in this condition in order to substitute the fence with a 2m high landscaped bund along the southern boundary of the site.

2.7 It should be noted that originally this planning application proposed, in addition to the variation of the above two conditions, the removal of Condition 2 from the consent. This referred to no laden vehicles being allowed to use the C91 road to the Minnevey site in conjunction with the haulage business. In order to assess the merits of this request a full bridge survey is required on all the bridges on the C91. As this has not recently been undertaken, the Council's Roads and Bridges section have agreed to carry out the assessment in the near future. Therefore, until such time, the applicant has asked to withdraw this element of the application.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Division has no objection or comments to make regarding the proposed variation to conditions 4 and 6 of consent 07/0539/FL.

Noted.

3.2 Dalmellington Community Council has not responded to the consultation letter at the time of writing this report.

Noted.

4. REPRESENTATIONS

4.1 This application has attracted 1 formal letter of representation. In addition, the letter refers to a petition with 66 signatories which opposes the amendment of conditions on the original consent. However as the applicant has now withdrawn the request for the removal of condition 2, a number of the issues raised relating to road safety are reduced. The main points of objection are summarised below:

4.2 Pedestrian safety – road has no pavements and therefore pedestrians need to walk on the grass verge which is being ripped up by lorries running at present.

This comment although expressing road safety concerns is not something which can be attributed as a direct responsibility of the operator of the application site as this section of road of the C91 is classed as public road. As this section of road is being used by pedestrian traffic these comments have been considered by the Roads Division who are examining the possibility of a public footpath.

4.3 The road already is in a poor state with numerous pot holes which affects both pedestrians and motorists. There is always a surplus of water lying on this road. Inadequate and unreliable street lighting which has for months not been working more often than working and again this affects the safety of pedestrians.

Similarly to the comments noted in 4.2, as this road is a publicly adopted road, its maintenance is the Council's responsibility and not that of the applicants. However, as noted above, these comments have been passed to the Roads Division.

4.4 Bridges and roads were not built for this type and weight of vehicles which obviously has an adverse affect on their condition. This road is the only access for inhabitants of Burnton.

Noted. The bridges on this section of the C91 are of an old design and construction; however the site at Minnevey once housed relatively heavy industry, some of which used the C91 as the access route. The Roads Division noted in the previous planning application that the concentrated use of heavy vehicles could have an impact on the bridges integrity and therefore would require to carry out a detailed bridges survey to ensure the structures are able to cope with the associated vehicle weights of larger, newer lorries. The applicant has accepted this and has chosen to withdraw the request

to remove condition 2 which restricted loaded HGV movements until a full bridge assessment has been carried out.

4.5 The applicant now wants to run vehicles on a Sunday; the original condition stated that no Sunday working would take place. As I was concerned with safety aspects over six days, these concerns have not decreased but increased with the amendment proposed.

Condition 4 of the approved planning consent (ref: 06/0678/FL) states that "...with the exception of vehicles leaving or entering the site between the hours of 09:00 and 17:00 hours, no activities shall take place within the development site on Sundays." This states that providing no working activities take place on site vehicles can move to and from the site on a Sunday. Following the submission of this application and the associated supporting information it is considered that as the principle for vehicle movements was allowed within condition 4 of consent 06/0678/FL, it would be acceptable to allow the site to operate on a Sunday only for essential vehicle maintenance.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (EALP).

Ayrshire Joint Structure Plan

5.2 There are no policies in the Structure Plan especially relevant to the proposed development.

Noted.

East Ayrshire Local Plan

5.3 The variation of the above mentioned conditions would not be assessed in terms of the policies contained in the East Ayrshire Local Plan; rather it is an issue where cognisance should be given to the material considerations.

Noted.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the objections, the supporting statement by the applicant and the relevant planning history of the site.

Consultation Responses

6.2 The consultation response has raised no issues which would indicate that the application should be refused.

Objections

6.3 The points of objection are assessed in section 4 above and are not considered to be such as to require refusal of this application.

Statement of Support

6.4 The applicant has submitted a statement in support of the variation to the two conditions on the planning consent 06/0678/FL; the main points of which are summarised below:

6.5 Condition 4 – Application to vary this condition in respect of Sunday activity. The applicants require to carry out weekly checks/reports on their vehicles. This activity will therefore be limited but will allow vehicles which are usually used 6 days per week to be inspected and to be made ready for the start of the normal working week at primarily mineral extraction sites, where HGV's are not required on Sundays, but are required to haul coal/aggregates/sand etc from Monday to Saturday.

6.6 Condition 6 – Little variation of this condition on boundary treatment is requested other than the substitution of a landscaped bund, 2m in height, for a 2m high timber fence along the southern boundary. There is already a landscaped slope on the south side of the site of the new shed which could be improved by further planting there and along the west side visible from the A713. Timber fences are liable to be vandalised and a softer visual barrier seems more appropriate particularly in front of the main original building above the Craigmark Inn. A bund there would also help to screen any HGV's parked outside. In addition it should help to contain any potential dust/noise and would look more natural. Ayrshire Conservation Volunteers carried out landscape improvements to this site some years ago when the railway centre was opened – planting of native trees etc. So the aim would be to improve on the current situation to help to blend the site into the wider landscape.

Planning History

6.7 The application site and associated buildings have been the subject of five planning applications. Details of these are provided below:

- 78/101: A full planning application for the change of use of coal mine to light industrial buildings was approved on 25th May 1978

- 78/243: A full planning application for the change of use of a disused pit head to be used as training centre for industrial development was approved on 21st November 1978.
- 79/287: A full planning application for the change of use from pit head to industrial unit was approved on 28th February 1980.
- 95/0161: A full planning application for the re-contouring of existing bing was approved on 4th August 1995.
- 06/0678/FL: A full planning application for a builder and haulage contractor's yard and the erection of a storage shed was approved with conditions by the Southern Local Planning Committee on 6th October 2006.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report, there are no aspects of the development plan of particular relevance to this proposal and consequently it is the material considerations on which greatest weight should be placed in determining this application.

8.2 Full planning consent has been granted for the change of use of an existing Brownfield industrial site to form a builders and contractors haulage yard with the erection of a separate workshop unit and the reuse of the existing brick built buildings. Conditions were attached to the operation of this consent to reduce the impacts of the proposal on adjacent residential amenity. However, whilst objections have been made by local residents living nearby; these are primarily related to the condition of the public road and to pedestrian safety issues. The application under consideration is referring to the variation of the operation hours (condition 4) to allow essential vehicle maintenance on Sundays and the replacement of the timber boundary fence with an earth bund (condition 6). These two requests to vary the conditions attached to consent 06/0678/FL would not require as much weight to be given to the letters of objection which are predominantly based on road safety impacts that might arise from removal of condition 2. However, the application no longer seeks to remove condition 2 following clarification of the intention from the Council's Roads Division to undertake a detailed bridge survey of the structures which have not been examined on the C91.

8.3 Justification in support of the variation to condition 4 of approved consent 06/0678/FL to allow essential work on Sundays is considered to be acceptable

on the basis presented that the applicant's haulage business has contracts in conjunction with local mineral extraction sites, which require vehicles to be in operation Monday – Saturday, leaving Sunday as the only day available to carry out essential vehicle maintenance.

8.4 In a similar sense, the justification contained within the statement supporting the variation of condition 6 is considered persuasive. The variation to form a bund would function in the same way a timber fence would to reduce any visual impacts of the site along that boundary and should prove to be a more appropriate form of boundary treatment. A condition can be attached to ensure the bund is contoured and planted/landscaped.

8.5 The petition raised concerns regarding road safety issues and the use of the C91 road by haulage vehicles and trailers. However, following discussions with the Council's Roads Division the applicant has withdrawn the request for the removal of the condition referring to laden lorries using the C91; awaiting the findings of the bridge surveys.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, the application will not require to be referred to the Principal Planning Committee because it would not be a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development
RG

20th October 2007

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Adopted East Ayrshire Local Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).
6. Previous planning applications
7. Applicants supporting statement.
8. Letters of representation/petition.

Anyone wishing to inspect the above background papers should contact Mr. Robin Ghosh on 01563 555483.

Implementation Officer: Dave Morris

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 07/0539/FL

Location	MINNEVEY, BURNTON ROAD, DALMELLINGTON
Nature of Proposal:	VARIATION OF CONDITION 4 AND 6 OF PLANNING CONSENT 06/0678/FL FOR BUILDERS AND HAULAGE CONTRACTORS YARD
Name and Address of Applicant:	ROBERT JOHNSTONE AND SONS MINNEVEY BURNTON ROAD, DALMELLINGTON
Name and Address of Agent	ARTEC DESIGNS 23 DALLAS PLACE, TROON.

DPO's Ref: Robin Ghosh
PPO's Ref: Hugh Melvin

The above FULL application should be approved subject to the following conditions:-

1. Condition 4 of planning consent 06/0678/FL is hereby varied such that the use granted by that consent shall not be carried out before 07:00 hours and after 19:00 hours on Mondays to Fridays or before 09:00 hours and after 17:00 on Saturdays and Sundays. Any activities on site during the hours of 09:00 and 17:00 hours on Sundays shall be limited to essential vehicle maintenance.

REASON: To prevent noise and disturbance extending into the hours during which other sources of noise have subsided, in the interests of residential amenity and public amenity.

2. Condition 6 of planning consent 06/0678/FL is hereby varied such that the southern boundary of the site (as shown in yellow on the docquetted approved plan under planning consent 06/0678/FL) shall be defined by a 2m high earth bund incorporating a mix of landscaping to soften the boundary and reduce any visual impacts. Details of the bund and landscaping shall be submitted to and agreed by the Planning Division within 2 months from the date of this consent.

REASON: In the interests of improving and protecting the visual and residential amenity of the area.

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