

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 30 JUNE 2004

**04/0432/FL: PROPOSED REMOVAL OF CONDITION 2 OF PLANNING
CONSENT 99/0857/FL RESTRICTING HOURS OF OPERATION OF
UNDERSOIL HEATING EQUIPMENT
AT RUGBY PARK, RUGBY ROAD, KILMARNOCK
BY KILMARNOCK FOOTBALL CLUB**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The applicant seeks to remove Condition No. 2 of planning consent 99/0857/FL for the undersoil heating system that was granted by the Central Local Planning on 14 January 2000. Condition No. 2 of this consent sought to restrict the operation of the undersoil heating equipment to outwith the hours of 10:00 pm to 08:00 am on the basis of 7 days of the week in the interests of amenity of neighbouring properties. This consent was relaxed at the Central Local Planning Committee meeting of 27 June 2003 for a period of 1 year from the date of consent to allow testing of the equipment in order to determine whether the condition could be removed permanently. This application now seeks the permanent removal of the condition.

1.2 In support of the application, Kilmarnock Football Club state that Scottish Football Association Regulations for membership of the Premier League require Clubs to have a playing surface capable of hosting games in all weather, all year round. From season 2004/5, all systems must be of an underground or under pitch heated type. Under the regulations such systems must be fully utilised by the home Club before any league match where there is a reasonable possibility of its pitch otherwise being frozen or covered in snow or ice to ensure the football matches can take place as planned. If any matches are cancelled due to non-compliance, the Club faces substantial fines and possible expulsion if ongoing non-compliance is proved.

1.3 In order to meet this requirement and address Members' previous concerns they have attempted to fulfil the terms of the previous approval and ensure that residential amenity is maintained. They advise that since the consent granted last summer, the Club has been subject to a change in personnel and steps have been taken to address the noise problems associated with the system. Analysis of the matter showed it was clear that baffles previously identified as being necessary to reduce noise levels had not been fitted. This work was then carried out in October 2003 and as previously agreed

under the temporary consent, three noise tests were undertaken with the Club's professional consultants and the Council's Environmental Health Division. These results have shown that when working at 95% capacity, the system operates within planning noise regulation levels. The Club further advise that they have spent considerable time and money to ensure their neighbours' 'sleep' is undisturbed. They intend to operate the system overnight on a sensible and responsible basis, only when temperatures fall below freezing which is generally on a minor number of occasions per year. The Club have undertaken repairs to the tarmac surface and within the next month repairs by a specialist contractor will be undertaken on the underground pipework, specifically replacing neoprene seals. This work has been delayed due to the contractor's obligations elsewhere.

1.4 The Club advise they have further contacted local residents who objected to the previous application to establish the "liaison group" required by the temporary consent. Following discussion with residents, two elected representatives were communicated with and these representatives are regularly kept up-to-date with the testing process and results. The Club advise that residents expressed a wish at their inaugural meeting for the liaison group to operate on this basis. It was initially intended to hold a "mop up" meeting following the last test result although through discussion with representatives, written correspondence was considered sufficient. The Club advise that they will continue to co-operate with the various associated parties to ensure "harmony" with their neighbours and they do not believe the system to now constitute a noise nuisance.

2. RECOMMENDATION

2.1 The application should be approved subject to the conditions indicated on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report, the proposal is considered to be policy compliant and therefore should be approved unless material considerations indicate otherwise.

3.2 As indicated in Section 6 of this report, there are material considerations relevant to the proposal and the advice of Environmental Health is material in the determination of this application. It is considered, taking into account this advice based on the modifications undertaken and test results achieved, that the condition could be removed on a permanent basis. It is the advice of Neighbourhood Services based on test results that the system can operate during the night without causing a noise nuisance to neighbouring properties.

Environmental Health have also advised that if this situation should change in the future and the system becomes a proven nuisance, there is recourse to serving a Notice under the Environmental Protection Act.

3.3 In order to allow the Club to maintain a good relationship with its neighbours and to facilitate communication to allow monitoring of the operation of the equipment, it is recommended that the Committee impose a condition that would retain a liaison group with neighbours.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as there would be no significant breach of Council policy.

Alan Neish
Head of Planning, Development and Building Standards

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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BY KILMARNOCK FOOTBALL CLUB**

Report by Head of Planning, Development and Building Standards

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 as it is an application of area significance and is subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** This application relates to Kilmarnock Football Club at Rugby Park to the south east of Kilmarnock town centre within an established residential area near Dundonald Road Conservation Area. The site comprises the area of the football stadium to the northern boundary at Rugby Road where the undersoil heating system is located behind the Chadwick Stand.

2.2 **Proposed Development:** The applicant seeks to remove Condition No. 2 of planning consent 99/0857/FL for the undersoil heating system that was granted by the Central Local Planning on 14 January 2000. Condition No. 2 of this consent sought to restrict the operation of the undersoil heating equipment to outwith the hours of 10:00 pm to 08:00 am on the basis of 7 days of the week in the interests of amenity of neighbouring properties. This consent was relaxed at the Central Local Planning Committee meeting of 27 June 2003 for a period of 1 year from the date of consent to allow testing of the equipment in order to determine whether the condition could be removed permanently. This application now seeks the permanent removal of the condition.

2.3 In support of the application, Kilmarnock Football Club state that Scottish Football Association Regulations for membership of the Premier League require Clubs to have a playing surface capable of hosting games in all weather, all year round. From season 2004/5, all systems must be of an underground or under pitch heated type. Under the regulations such systems must be fully utilised by the home Club before any league match where there is a reasonable possibility

of its pitch otherwise being frozen or covered in snow or ice to ensure the football matches can take place as planned. If any matches are cancelled due to non-compliance, the Club faces substantial fines and possible expulsion if ongoing non-compliance is proved.

2.4 In order to meet this requirement and address Members' previous concerns they have attempted to fulfil the terms of the previous approval and ensure that residential amenity is maintained. They advise that since the consent granted last summer, the Club has been subject to a change in personnel and steps have been taken to address the noise problems associated with the system. Analysis of the matter showed it was clear that baffles previously identified as being necessary to reduce noise levels had not been fitted. This work was then carried out in October 2003 and as previously agreed under the temporary consent, three noise tests were undertaken with the Club's professional consultants and the Council's Environmental Health Division. These results have shown that when working at 95% capacity, the system operates within planning noise regulation levels. The Club further advise that they have spent considerable time and money to ensure their neighbours' 'sleep' is undisturbed. They intend to operate the system overnight on a sensible and responsible basis, only when temperatures fall below freezing which is generally on a minor number of occasions per year. The Club have undertaken repairs to the tarmac surface and within the next month repairs by a specialist contractor will be undertaken on the underground pipework, specifically replacing neoprene seals. This work has been delayed due to the contractor's obligations elsewhere.

2.5 The Club advise they have further contacted local residents who objected to the previous application to establish the "liaison group" required by the temporary consent. Following discussion with residents, two elected representatives were communicated with and these representatives are regularly kept up-to-date with the testing process and results. The Club advise that residents expressed a wish at their inaugural meeting for the liaison group to operate on this basis. It was initially intended to hold a "mop up" meeting following the last test result although through discussion with representatives, written correspondence was considered sufficient. The Club advise that they will continue to co-operate with the various associated parties to ensure "harmony" with their neighbours and they do not believe the system to now constitute a noise nuisance.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Grange Howard Community Council have not responded to their consultation at the time of writing this report.

Noted.

3.2 East Ayrshire Council's Department of Neighbourhood Services have no objections to the removal of Condition No. 2. They advise that the noise monitoring exercise has been completed in accordance with the agreed protocol. The three exercises were undertaken on 22 January 2004, 27 April 2004 and 29 April 2004 at the required times (including after 1 am). The undersoil heating system was operated up to 95% capacity and all measures undertaken satisfied the British Standard 4142:1997 "Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas". Environmental Health have advised that prior to the April measurements, minor repair works were carried out to the road surface within the confines of Rugby Park to seal the tarmac surface although it is not considered that these repairs would withstand regular exposure to the operation of the system.

The Environmental Health Service are satisfied that at present, the noise emitted from the undersoil heating system at Rugby Park does not give rise to concern. The monitoring results show that Noise Rating Circular NR25 can now be adhered to which is the level accepted as being that required to be achieved in order for sleep patterns to be undisturbed.

3.3 There are therefore no objections to planning permission being granted although if any complaints are subsequently received in relation to noise from the system, officials from the Environmental Health Service would be required to investigate under the Nuisance provisions of the Environmental Protection Act 1990. It is however hoped that the Club will endeavour to ensure that any risk of nuisance or annoyance to residents of nearby dwellings will be kept to an absolute minimum and these outstanding repairs are completed as a matter of urgency and certainly before the system is required in the coming season.

The technical advice of Environmental Health is noted and is a primary consideration in the determination of this application. The recommendation from Environmental Health is that the system does not create a noise nuisance. This recommendation is as a result of detailed testing undertaken by both Kilmarnock Football Club and the Council with both sets of results assessed to ensure consistency.

In response to the inadequate repairs to the tarmac, the Club advise that they have now carried out more permanent repairs via a specialist contractor to address this issue on a long term basis.

4. REPRESENTATIONS

One petition signed by 7 signatories has been received. The grounds of objection are as follows:-

4.1 The residents of property in close proximity to the undersoil heating equipment object in principle to the removal of Condition 2. Whilst they appreciate that Kilmarnock Football Club has carried out modifications to the system and it has been subjected to testing, it is understood that these tests have recorded a lower noise emission from the system when it is operated at its lowest level. If it is decided to remove the restriction on the hours of operation, this condition should be replaced with one that states, if the system is required on an overnight basis, it shall only operate at its lowest noise emissions level. Such action would let residents have an undisturbed night's sleep.

This objection was forwarded to officials in Environmental Health who have referred to their consultation response detailed above in Sections 3.2 and 3.2 of this report. Environmental Health have reiterated their opinion that the noise generated by the undersoil heating system is now unlikely to generate noise at such a level as would be likely to cause nuisance as defined in Section 79(1) of the Environmental Protection Act 1990. Environmental Health have further advised that the measurements taken indicate that NR curve 25 can be complied with and it should be noted that compliance with the World Health Organisation guideline of NR 35 is taken as a level at which sleep is not normally disturbed. Whilst there is little doubt that residents will still be able to hear the system in operation, it is not anticipated that this will be at an actionable level. Environmental Health have also further advised that noise other than background noise can be distinguished at levels of 20 dB below background level.

As the system requires to operate at different outputs depending on climatic conditions, Environmental Health are of the opinion it would not be reasonable for a condition specifying maximum operating capacity to be imposed as this may render the plant incapable of performing successfully. This is an opinion shared by the Planning, Development and Building Standards Division as it is considered that modifications to the system have shown that it can be operated without being a nuisance to neighbours.

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 planning application, the development plan comprises the Approved Ayrshire Joint Structure Plan (AJSP) and the Adopted East Ayrshire Local Plan (EALP).

5.2 Policy ENV20 of the EALP seeks to ensure that any new development has a minimum adverse effect on the physical environment and the amenity of an area as a result of air pollution, light pollution or noise pollution.

The proposal to remove Condition 2 has been thoroughly assessed by officers and it is considered that any adverse effects would be minimal and the application would be policy compliant.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the consultation responses, objections received and the planning history of the site.

Consultation Responses and Representations Received

6.2 The concerns of the objectors are noted as is the consultation response from Environmental Health. It is considered that the consultation response is of significant weight in the consideration of this planning application.

Planning History

6.3 99/0282/FL – This application for the warm air heat exchanger to support the undersoil heating system for the pitch at Rugby Park was refused on 10 December 1999 by the Central Local Planning Committee owing to its effect on neighbouring properties and the noise nuisance caused by the equipment.

6.4 99/0857/FL – This re-submitted application was approved by the Central Local Planning Committee on 14 January 2000 following the submission of additional reports from the applicant's acoustic consultants. The consent was subject to two planning conditions that the noise produced by the plant should not exceed the background noise levels by more than 10dB(A) at the boundary of the nearest property and subject to the restricted hours of operation as detailed in Section 2.2 of this report.

6.5 03/0039/FL – This application sought the removal of Condition No. 2 to enable no restrictions on the hours of operation of the undersoil heating system. This application was approved by the Central Local Planning Committee on 27 June 2003 for a temporary period of one year and subject to the agreement of a comprehensive monitoring programme clarifying the testing method, times of testing and the establishment of a liaison group between the Club and local residents including Council representatives.

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, the proposal is considered to be policy compliant and therefore should be approved unless material considerations indicate otherwise.

8.2 As indicated in Section 6 of this report, there are material considerations relevant to the proposal and the advice of Environmental Health is material in the determination of this application. It is considered, taking into account this advice based on the modifications undertaken and test results achieved, that the condition could be removed on a permanent basis. It is the advice of Neighbourhood Services based on test results that the system can operate during the night without causing a noise nuisance to neighbouring properties. Environmental Health have also advised that if this situation should change in the future and the system becomes a proven nuisance, there is recourse to serving a Notice under the Environmental Protection Act.

8.3 In order to allow the Club to maintain a good relationship with its neighbours and to facilitate communication to allow monitoring of the operation of the equipment, it is recommended that the Committee impose a condition that would retain a liaison group with neighbours.

9. RECOMMENDATION

9.1 The application should be approved subject to the conditions indicated 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, Development and Building Standards, the application will not require to be referred to the Development Services Committee as there would be no significant breach of Council policy.

Alan Neish
Head of Planning, Development and Building Standards

22 June 2004
(FMF/MMM)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Public Advertisement.
4. Consultation Responses.
5. Letters of Objection.
6. Approved Ayrshire Joint Structure Plan.
7. Adopted East Ayrshire Local Plan.
8. Planning Permissions 99/0282/FL, 99/0857/FL and 03/0039/FL.

Anyone wishing to inspect the above papers please contact Fiona Finlay on 01563 576768.

Implementation Officer: Dave Morris

040432FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

04/0432/FL

Site of Proposal: Rugby Park
Rugby Road
KILMARNOCK KA1 2DP

Nature of Proposal: Proposed Removal of Condition 2 of Planning Consent 99/0857/FL Restricting Hours of Operation of Undersoil Heating Equipment

Name & Address of Applicant: Kilmarnock Football Club
Rugby Park
Rugby Road
KILMARNOCK KA1 2DP

Name & Address of Agent:

DPOs Reference: FMF/MMM

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

1. Within one month of the date of this permission the applicant shall submit for the written approval of the Planning Authority details for the establishment and operation of a 'liaison group' with local residents that shall include:-

- Details of the membership of the liaison group;
- Proposed numbers and occasions of meetings per year;
- The range of issues to be addressed by the group; and clarification that the liaison group shall operate in accordance with the agreed details unless otherwise agreed in advance with the Planning Authority.

REASON In the interests of residential amenity.

2. The repairs to the neoprene seals, being part of the underground pipework, shall be completed to the satisfaction of the Planning Authority prior to the commencement of the football season 2004-05.

REASON In the interests of residential amenity.

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