

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE – 29 JUNE 2004

CONSENTS REQUIRED TO CONSTRUCT A NEW ROAD

Report by Executive Director of Development and Property Services

1. PURPOSE OF REPORT

- 1.1 To advise the Committee of the consents required to construct a new road, the powers the Roads Authority has under the Roads (Scotland) Act 1984 with regard to this and to recommend to committee planning conditions to be applied to strengthen the control of the Council in ensuring a road is completed to a satisfactory standard prior to the occupation of houses.

2. BACKGROUND

- 2.1 Before undertaking any new road construction a developer must obtain both Planning Permission and Road Construction Consent. The granting of one does not necessarily imply the granting of the other. Planning Permission and Road Construction Consent are two separate processes under separate legislation. The legislation concerning Construction Consent is the Roads (Scotland) Act 1984

3. CONSTRUCTION CONSENT

- 3.1 Under the terms of Section 21 of the Roads (Scotland) Act 1984, any person other than the Roads Authority who wishes to construct a new road or an extension (including lateral widening) to an existing road must obtain Construction Consent from the Roads Authority, irrespective of whether or not such roads are to be adopted as public.
- 3.2 The granting of Construction Consent signifies the Roads Authority's approval of the proposed road layout, construction, etc., to the standards contained within the Roads Development Guide 1996 as adopted by East Ayrshire Council.
- 3.3 The Roads (Scotland) Act stipulates that Construction Consent should be issued to cover a period of not less than three years and the authority has the option to extend the period specified.
- 3.4 The Roads Authority may grant construction consent with or without conditions. East Ayrshire Council currently stipulate as a condition of the construction consent that construction of the topmost layer (wearing course) of the road and footway is not commenced until house building is completed. This is standard industry practice to avoid damage to the final surfaces during construction.

- 3.5 It is an offence under Section 22 of the Roads (Scotland) 1984 Act to commence any construction of a road prior to obtaining Construction Consent or to contravene a condition imposed by construction consent. Any person who commits such an offence shall be triable either summarily or by indictment.
- 3.6 Under Section 23 of the Roads (Scotland) 1984 Act the Roads Authority may stop up or temporarily close any new road which another person has constructed without construction consent or in contravention of a condition imposed.

4. ROAD BOND

- 4.1 In terms of Section 17 of the Roads (Scotland) Act 1984 and the Security for Private Roadworks (Scotland) Regulations 1985 as amended developers are required to make financial provision with the Roads Authority in order to safeguard the completion of housing development roads which are the subject of a Construction Consent. Such a provision takes the form of a road bond or deposit. The sum of the bond or deposit is calculated by the Roads Authority and advised to the developer at the time of granting construction consent
- 4.2 No house building works may commence until such securities have been lodged.
- 4.3 Under the terms of the Security of Private Road Works (Scotland) Regulations the Roads Authority are required to release appropriate portions of the security lodged at three stages defined by the act.
- 4.4 A duty is also placed on the Roads Authority to construct or complete the construction of a private road which has been granted construction consent should the developer default, whether or not security has been lodged.

5. ROAD CONSTRUCTION

- 5.1 It is considered desirable for residents that a road in a new housing development is brought up to an acceptable standard prior to the occupation of houses fronting that section of road.
- 5.2 In a conventional blacktop road such an acceptable standard would be deemed to be the completion of the basecourse layer of the road. The basecourse layer is the blacktop layer immediately below the topmost layer (wearing course).
- 5.3 It would be difficult to enforce such a condition through the construction consent legislation, as, if the road was not completed as conditioned, and houses were occupied, it would not be practical to stop it up. The other recourse is to report the breach to the Procurator Fiscal to raise criminal proceedings. The Council has no standing to raise such proceedings. It is therefore proposed that such a condition is included in the planning consent.

6. PLANNING CONDITIONS

- 6.1 Planning conditions can be applied to a consent where they meet six tests as laid out in Circular 4/1998, "The Use of Planning Conditions in Planning Permissions", and its subsequent addendum. Conditions require to be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. With such clear guidance in mind, the Planning, Development and Building Standards Division has to date addressed the question of providing initial satisfactory road surfaces by utilising, either verbatim or as amended on the advice of the Roads and Transportation Division, the following standard condition:-

"The access to the main road shall be constructed (in accordance with details to be agreed in writing by the Planning Authority)1; (in accordance with the agreed plans)2; before any other development commences on the site."

REASON: In the interests of residential amenity and road safety.

- 6.2 On occasion the above condition has been amended so as to require the completion to final wearing surface of the road surface within, for example, a residential development upon completion of the final dwelling within the estate. This rested upon the view that it would be unreasonable to require the roads within a development to be completed to the final wearing surface where heavy construction vehicles continued to access across them to areas still under development. This is the view shared by the Roads Division in paragraph 5.2 above.

- 6.3 It is recognised however that, particularly within larger developments, certain housing areas will be completed well in advance of the conclusion of works over the wider site. In these circumstances it would be reasonable, as well as necessary and enforceable, for such discrete areas where there will be no further likelihood of damage to the final surfacing by construction traffic in connection with the development, to be provided with a vehicular access completed to its final surface at the earliest possible time. It is considered that the following condition would be appropriate:-

"Immediately upon the occupation of the final house within the following housing clusters; plot numbers XX to XX and YY to YY; the roads within these clusters shall be completed to their final surface"

REASON: In the interests of residential amenity and road safety.

7. LEGAL IMPLICATIONS

- 7.1 The proposed condition is considered to meet the 6 tests for conditions as laid down in planning circular 4/1998 namely that it is necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. Like other conditions imposed upon planning permissions, if breached the Council may take enforcement action to secure compliance.

8. FINANCIAL IMPLICATIONS

8.1 There are no financial implications.

9. RECOMMENDATIONS

9.1 It is recommended that the Committee:

- i) notes the content of the report; and
- ii) agrees that a condition on the standard a new development road should be completed to prior to occupation of houses is included in the planning consent for all new housing developments.

James Lavery
Executive Director of Development and Property Services
4 June 2004

BACKGROUND PAPERS

NIL

For further information on the contents of this report, please contact John Bryson, Area Engineer (South Area), on 01563 555330

Implementation Officer: Alan Neish