

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 20 DECEMBER 2005

05/0417/FL: PROPOSED STRIPPING AND BUNDING ON SITE OF TOPSOIL, ERECTION OF POST AND WIRE PERIMETER FENCE AND THE LAYING OF BELOW GROUND DRAINAGE AT CROFTHEAD ROAD, KILMAURS BY HOPE HOMES, SCOTLAND

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 This planning application relates to the stripping and bunding of topsoil scraped from the site. The scraped topsoil would temporarily be bunded in appropriate locations within the application site, to subsequently be utilised for garden topsoil for the new houses within the proposed housing development. Said housing development, planning application 05/0027/FL, was approved by the Development Services Committee on the 13 December 2005 subject to referral to the Scottish Executive.

1.2 The application also includes reference to the erection of a post and wire perimeter fence around the site (for the duration of the development phase), and the laying of below ground drainage within the site. The fencing, however, only requires consent where it exceeds 1 metre in height within 20 metres of a road; in effect the portion of fencing along the south boundary of the site. The drainage is remedial work to field drainage and to modify drainage if found necessary to complement the location of the soil mounds.

1.3 Elements of the application are in part retrospective, these elements being the soil stripping works and the fencing already having commenced. The applicant however was prevented from completing said works as enforcement action, Stop Notice and then interdict proceedings were taken by the Council to stop the said works which had commenced without the benefit of planning permission.

1.4 This planning application was submitted by Hope Homes in response to the enforcement action taken by the Council. It should be noted that if Planning Application 05/0027/FL for the housing development is cleared by the Scottish Executive following their assessment of that application the operations subject of this application (05/0417/FL) would in fact become permitted development within the context of an authorised housing development.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As indicated in the report the development of the site for housing purposes would be consistent with the terms of the Development Plan. However with regard to the bunding, fencing and drainage, it is to the material considerations that greater weight should be attached.

3.2 As per Section 6 of the report there are material considerations relevant to the application however it is not considered that these are of sufficient weight to merit the refusal of the application given the attachment of appropriate conditions relating to the earth works, reinstatement in the event of housing development not proceeding and the re-seeding of the land within a specified timescale.

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.

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 20 DECEMBER 2005

05/0417/FL: PROPOSED STRIPPING AND BUNDING ON SITE OF TOPSOIL, ERECTION OF POST AND WIRE PERIMETER FENCE AND THE LAYING OF BELOW GROUND DRAINAGE AT CROFTHHEAD ROAD, KILMAURS BY HOPE HOMES, SCOTLAND

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 Development Services Committee under the scheme of delegation.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is located at the end of Crofthead Road, Kilmaurs. The site is agricultural land approximately 2.59 hectares in area and lies within the settlement boundary of Kilmaurs as extended by the East Ayrshire Local Plan (Adopted April 2003). The site is bounded by housing on its northern and eastern boundaries and by agricultural land on its southern and western boundaries.

2.2 As part of the works applied for have been implemented by the applicant, prior to the enforcement action commencing, a large mound of topsoil is presently located centrally within the site.

2.3 **Proposed Development:** This planning application relates to the stripping and bunding of topsoil scraped from the site. The scraped topsoil would temporarily be banded in appropriate locations within the application site, to subsequently be utilised for garden topsoil for the new houses within the proposed housing development. Said housing development, planning application 05/0027/FL, was approved by the Development Services Committee on the 13 December 2005 subject to referral to the Scottish Executive.

2.4 The application also includes reference to the erection of a post and wire perimeter fence around the site (for the duration of the development phase), and the laying of below ground drainage within the site. The fencing, however, only requires consent where it exceeds 1 metre in height within 20 metres of a road; in effect the portion of fencing along the south boundary of the site. The

drainage is remedial work to field drainage and to modify drainage if found necessary to complement the location of the soil mounds.

2.5 Elements of the application are in part retrospective, these elements being the soil stripping works and the fencing already having commenced. The applicant however was prevented from completing said works as enforcement action, Stop Notice and then interdict proceedings were taken by the Council to stop the said works which had commenced without the benefit of planning permission.

2.6 This planning application was submitted by Hope Homes in response to the enforcement action taken by the Council. It should be noted that if Planning Application 05/0027/FL for the housing development is cleared by the Scottish Executive following their assessment of that application the operations subject of this application (05/0417/FL) would in fact become permitted development within the context of an authorised housing development.

3. CONSULTATIONS AND ISSUES RAISED

3.1 West of Scotland Archaeology Service have advised that there are no historical recorded sites within the development area however they indicate that because the site is on previously undeveloped land the potential for unrecorded sub-surface archaeological deposits remains. They recommended that a site survey should be carried out prior to the determination of the application as recommended in Planning Advice Note 42.

It is considered that as significant engineering works have already commenced on the site the imposition of such a condition would not be appropriate. However it is recommended that a watching brief condition should be attached to any grant of planning consent.

3.2 Kilmaurs Community Council have not responded at the time of writing the Committee report.

Noted.

3.3 Scottish Environment Protection Agency have not responded at the time of writing the report.

Noted.

4. REPRESENTATIONS

Ten objectors have made representation in relation to this application and they raise the following concerns:

4.1 The granting of this consent would be presumptive, as no planning permission has been granted for housing at this location. The planning application for houses has not been granted yet, due to roads access issues and land ownership issues.

Planning application 05/0027/FL for a housing development and associated road improvements was approved by the Development Services Committee on 13 December 2005 subject to referral to the Scottish Executive. If planning application 05/0027/FL for the housing development is cleared by the Scottish Executive following their assessment of that application the operations subject of this application (05/0417/FL) would in fact become permitted development within the context of an authorised housing development. However if this planning application, for the earthworks, was approved it would allow the developer to carry out these works prior to the approval of the housing application by the Scottish Executive.

4.2 The use of low barbed wire is not appropriate at this location.

The use of barbed wire in this location is not detrimental to the residential amenity of the locality. It should be noted that planning consent is only required for fencing over 1metre high within 20 metres of a road and therefore not all the fencing around the site perimeter is the subject of this application.

4.3 The roads verges have been damaged by these works.

The road verges lie outwith this application site.

4.4 The current grading of the site results in water discharging onto the farm road which will lead to its long-term deterioration. Below ground drainage will affect my boundary trees and flood my garden.

The applicant has indicated that the current position of soils on the site were not the intended end position. The ground works were stopped prematurely due to the planning enforcement and interdict proceedings. Drainage issues could be dealt with by the imposition of an appropriate planning condition.

4.5 Hope Homes should not be granted any further planning consent because they have shown complete disregard for East Ayrshire Council Planning Regulations

The behaviour of the applicant in commencing the development without planning permission is not a material consideration. It is for the Courts to decide what punitive action is required.

4.6 The applicant has submitted the following information in support of the application:

The soil stripped at the site was in part for use on our other operational sites in East Ayrshire. Historically it has been normal practice for us to soil strip on advance sites and utilise some of the soils arising from this on our other construction sites as they near completion. The remainder of the soil was to be stored on site for future restoration work at this location.

It is considered that the practise of soil stripping excess materials to serve other development sites is an acceptable and sustainable building practice. Unfortunately, in this instance, these works were carried out in advance of the housing planning application being determined on this site.

4.7 Operations were ceased before the location of the mounds could be finalised. It was proposed to locate soil in bunds in locations on the site where they would be required at the end of the housing development. The finished soil tips would be 1.5 metres high.

It is noted that the current mound of soil is not the applicant's finalised location of the soils and that this occurred due to the legal proceedings preventing the applicant carrying out further works on the site.

4.8 At no time in the past have we been asked to apply for permission for such operations. I believe this to be consistent with other developers in the area

It is common practice that these types of engineering works are incorporated into a planning consent for a development and not required as a stand alone application. The proposed works are of an engineering nature and as the developer wished to carry out the works prior to the approval of the full planning permission for the residential development on the site, planning permission was required for the engineering works.

4.9 In the interim (prior to any full permission for housing being granted) we are prepared to grass seed the area stripped of soil in order to alleviate concerns that the Council has.

This matter could be required through the imposition of a planning condition.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that 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 (2003).

Ayrshire Joint Structure Plan

5.2 With regard to the Structure Plan it is considered that no policies specifically relate to the current application. Policy L1 of the Ayrshire Joint Structure Plan indicates that the three Ayrshire Councils shall work in conjunction with public and private agencies to ensure sufficient effective land is available for housing to 2005 and to set the context for annual roll forward to meet the forecast requirements to 2010. Councils shall aim, in conjunction with the house building industry and other public housing agencies, to maintain as a minimum a five year effective land supply.

The application site is an identified housing site within the East Ayrshire Local Plan.

East Ayrshire Local Plan

5.3 Policy RES1 of the East Ayrshire Local Plan indicates that the Council will encourage and support the residential development of those Development Opportunity Sites identified for housing purposes on the individual Local Plan maps. The sites identified will be reserved for residential and associated recreational and amenity open space development.

The application site is identified within the East Ayrshire Local Plan as development opportunities site 177H with a notional housing capacity of 50 houses.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, the planning history of the site and the impact on the amenity of the area.

Consultation Responses

6.2 The consultation responses do not indicate that the application should be refused.

Representations

6.3 The representations received have been summarised in Section 4 of the report and are not considered to be of such weight as to merit refusal of the application.

Impact on the Amenity of the Area

6.4 It is considered that the proposed works are a common feature of development sites. Noting that it is an allocated housing site in the East Ayrshire Local Plan, there was, however, at the time engineering works were commenced, no valid planning consent for the development of the site. It is not considered that the works will have a significant detrimental affect on the amenity of the surrounding area. However, in order to control the works, it is proposed to limit the timescale of the development should housing development not materialise on site.

Planning History

6.5 Planning Application No. 05/00272/FL for a residential development at the site was approved by the Development Services Committee on 13 December 2005 subject to referral to the Scottish Ministers.

6.6 Enforcement action was taken on 16 March 2005 by the Planning Authority against the developer in relation to the carrying out of engineering operations on the application site without the benefit of planning permission. Enforcement and stop notices were served preventing further engineering works on site, however these persisted resulting in the service of an Interim Interdict in April 2005.

6.7 Application for Advert consent 05/0513/AD for the erection of two signboards at the application site was submitted on 05 May 2005. This application is also before this Committee.

6.8 Planning Application No. 04/0782/FL for a residential development at the site was withdrawn on 11 January 2005.

6.9 Outline Planning Application No. 01/0312/OL for residential development at this site was withdrawn on 20 January 2004.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are legal proceedings in effect relative to this application site preventing works being carried out on the site without the appropriate planning permission. There are no financial implications for the Council arising from the determination of this application.

8. CONCLUSIONS

8.1 As indicated in the report the development of the site for housing purposes would be consistent with the terms of the Development Plan. However with regard to the bunding, fencing and drainage, it is to the material considerations that greater weight should be attached.

8.2 As per Section 6 of the report there are material considerations relevant to the application however it is not considered that these are of sufficient weight to merit the refusal of the application given the attachment of appropriate conditions relating to the earth works, reinstatement in the event of housing development not proceeding and the re-seeding of the land within a specified timescale.

9. RECOMMENDATION

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

Alan Neish
Head of Planning, Development and Building Standards

14 December 2005
(CSI/RH)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letters of Representation.
4. Consultation Responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Planning Application: 05/0513/AD.
8. Planning Application: 05/0027/FL.
9. Planning Application: 04/0782/FL.
10. Planning Application: 01/0312/OL.

Anyone wishing to inspect the above papers please contact Craig Iles, Senior Planning Officer on 01563 576769.

Implementation Officer: Alan Neish

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0417/FL

Site of Proposal: Carmel Meadows
Crofthead Road
KILMAURS
Kilmarnock KA3 2NU

Nature of Proposal: Proposed Stripping and Bunding on Site of Top
Soil Erection of Post and Wire Perimeter Fence
and the Laying of Below Ground Drainage

Name & Address of Applicant: Hope Homes Scotland
Watson Terrace
DRONGAN
Ayr
KA6 7AB

Name & Address of Agent:

DPOs Reference: CSI/RH

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

1. Within three months of the date of this consent the earth stripping and earth moving works as shown on the approved plan shall be completed to the satisfaction of the Planning Authority. The post and wire perimeter fence shall similarly be completed within this timeframe.

REASON In the interests of visual amenity.

2. Upon completion of the soil stripping and earth moving works the site shall be planted in grass seed during the next appropriate planting season. Written specification of said grass seed, density of planting and maintenance shall be submitted to and approved in writing by the planning Authority within two months of the date of this consent.

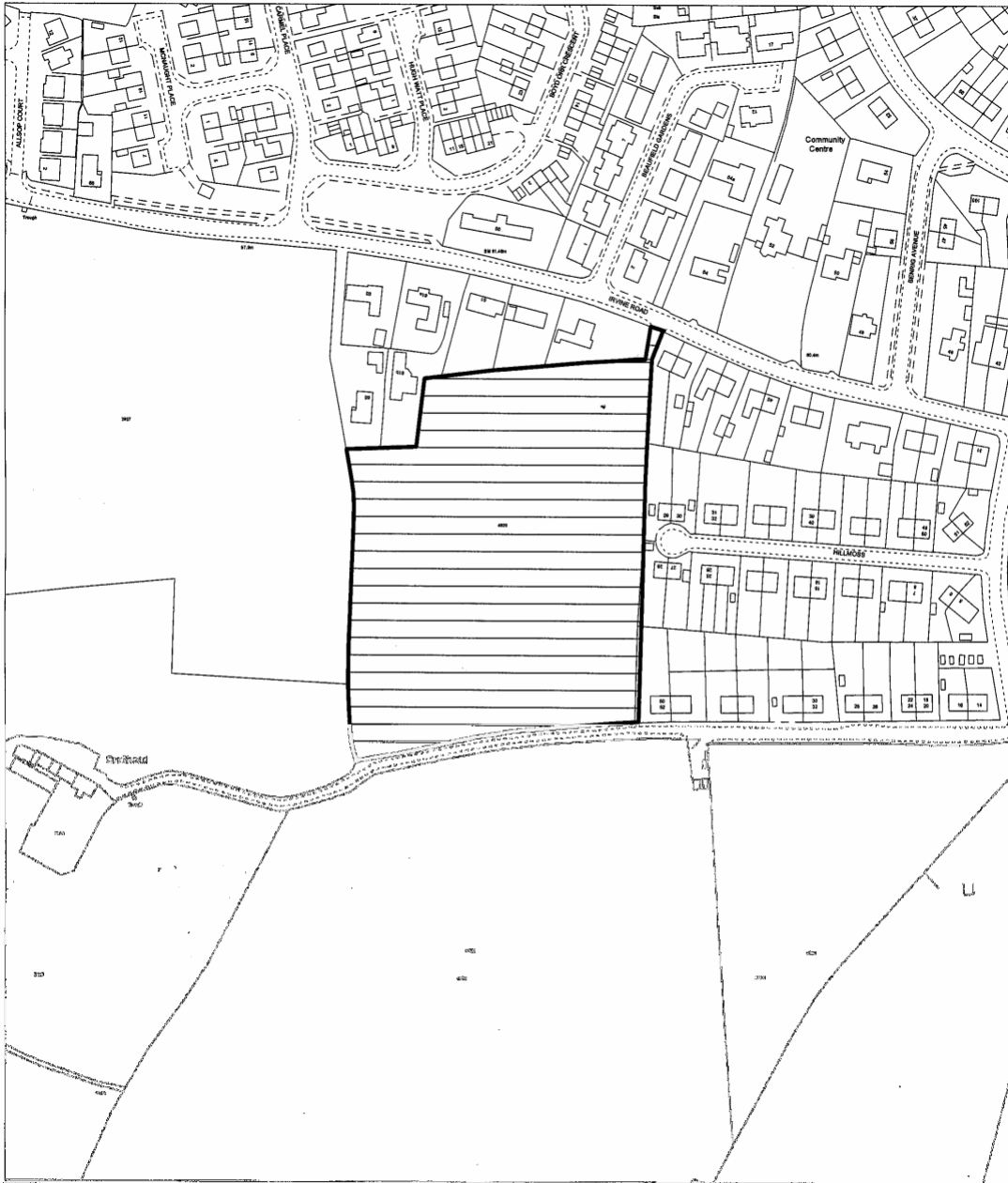
REASON In the interests of visual amenity.

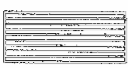
3. In the event that there is no commencement of development in respect of the construction of houses on the site within 12 months of the date of this consent, the site shall be returned to its previous condition and levels, and the temporary fencing removed.

REASON The works are of a temporary nature and would be visually unacceptable for any period in excess of 12 months without association with an ongoing residential development.

4. No further development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has received the prior approval of the Planning Authority and which is fully compliant with the Terms of Reference which will be issued by the West of Scotland Archaeology Service on behalf of the Planning Authority.

REASON To ensure that appropriate archaeological work is undertaken before the development commences.



<p>Title/Location Croft Road Kilmaurs Application No. 06/0417/FL</p>	<p>East Ayrshire Council Planning, Development & Building Standards Division, 8 Croft Street Edinnoch, KA1 1JE Tel: (01563) 578700 Fax: (01563) 578774 E-Mail: Planning@east-ayrshire.gov.uk</p>
<p>Key</p>  <p>Application Site</p>	<p>Costal Date 20/12/05 1/8y <i>CS</i></p>

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