

EAST AYRSHIRE COUNCIL

**IRVINE VALLEY LOCAL COMMITTEE:
14 SEPTEMBER 2005**

HOUSING DEVELOPMENT SITE AT DARVEL ROAD, NEWMILNS

Report by Head of Planning, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to provide the Local Committee with information as requested in respect of the unfinished roads at the housing development site at Darvel Road, Newmilns.

2. PLANNING HISTORY

2.1 Planning Consent 02/0728/FL was granted to Casero Homes Limited on 25 October 2002 for "proposed residential development", comprising 10 semi-detached two storey houses. The layout incorporated the provision of a layby along the front of the site with Darvel Road, with the houses accessed off an extended hammerhead.

2.2 It is normally the case that developers when advancing the building process will seek a Roads Construction Consent (RCC) from the Roads and Transportation Division in respect of roads and footpaths. That Division will require the developer to build these items in accordance with appropriate, approved plans and will secure a Road Bond to cover the cost of completing these works should the developer not do so.

2.3 Casero Homes failed to secure a Construction Consent but nevertheless commenced work on the site. They were repeatedly informed by the Roads Division to cease work on the road until consent was granted, but failed to comply. Under the provisions of the Roads Scotland Act it was not subsequently possible for Casero Homes to apply in retrospect for a RCC. In that there is no RCC, it was not possible for the Roads and Transportation Division to secure a Road Bond. It should be noted that independently a "bond" was offered by the developers. However, in as much as it did not relate to an agreed RCC, it could not be valued against authorised works, had no legal status and the offer of the bond had to be declined.

2.4 Although there was no RCC in place, Roads Division continued to work with Casero Homes in order to achieve a satisfactory entrance. Detailed amendments to the design were agreed, and they were advised that, providing the outstanding work was completed satisfactorily, the roads would be adopted if application was made.

3 CURRENT ROADS SITUATION

3.1 In recent months the Roads Division has been in discussion with representatives of the residents of Mill Court. The residents have two options; a) they can complete the road to adoptable standard or b) complete the roads to a non-adoptable standard. Completion to adoptable standard is likely to be a particularly expensive route, (given a requirement to replace an existing culvert at the entrance to the site.) Consequently residents are considering the lesser solution to bring the road up to a serviceable, but not adoptable, condition.

3.2 In this respect, and in accordance with the Roads Scotland Act, the Roads Division have been aiding the residents with cost estimates in order to advance a solution. The road works would be put out to tender by the Roads Division, supervised by that Division but undertaken by a private contractor.

4 CURRENT PLANNING SITUATION

4.1 Planning consent 02/0728/FL was issued subject to a number of conditions. Condition 3 requires that the houses "not be occupied until all roads and footpaths are completed to base course level and any road drainage system is installed." The road and footpath wearing surface was to be completed "immediately all the houses on the site are occupied". Condition 4 required that the lay-by to Darvel Road was to be completed to the satisfaction of the Roads Division prior to the occupation of any of the houses.

4.2 The Planning Division were advised by a third party that works had commenced on site without discharge of a number of conditions and subsequently commenced correspondence with the developers to have those conditions discharged. Discussions with the developers were protracted with information being submitted for approval over a lengthy period but still requiring the service of a Breach of Conditions Notice in May 2005, (which was not collected), and again in June 2005. On the basis of legal advice these notices were served on Casero Homes (Scotland) Limited; Casero Homes Limited apparently having gone into liquidation in August 2004 and there being a possibility that assets and liabilities would have been transferred to the new company.

4.3 Solicitors for the new company then however advised that it has no responsibility in respect of the former company's liabilities. In order to explore another option, a further Breach of Conditions Notice was then served on Casero Homes Limited in liquidation. The liquidators indicate that the owners of the houses or the Council would require to undertake the road works then lodge a claim in the liquidation as they do not have the facility to complete the works. However, any claim against the assets of the former company may be unlikely to recoup full costs incurred in completing the road works.

5. FINANCIAL AND LEGAL IMPLICATIONS

5.1 There are no legal implications for the Council in noting the circumstances on site.

5.2 The Roads Division is obliged to complete the construction of the layby at the entrance to the site as this area forms part of the existing adopted highway.

6. CONCLUSIONS

6.1 The placing in liquidation of the original applicant / developer has greatly limited the ability of the Planning function to enforce the outstanding conditions relative to road works. It would not be appropriate to pursue the option of taking enforcement action against residents on site. Consequently, the actions of the Roads and Transportation Division in working with residents to design and cost works to be undertaken by / on behalf of the residents, offer the most realistic solution to the matter of unfinished roads at this site.

7. RECOMMENDATION

7.1 It is recommended that the Committee note the contents of the report, in particular the efforts through the Roads Division to advance a finished surface to roads at Mill Court.

**Alan Neish
Head of Planning, Development and Building Standards**

30 August 2005

(DVM/IMB)

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Planning application 02/0728/FL
3. Enforcement Notices

Anyone wishing to inspect the above papers please contact Dave Morris, Development Promotion Manager, on 01563 576753.