

EAST AYRSHIRE COUNCIL

**NORTHERN AREA LOCAL PLANNING COMMITTEE:
21 APRIL 2006**

**06/0165/FL: ERECTION OF ROOF OVER EXISTING MIDDEN
AT TOWERHILL FARM, CROSSHOUSE ROAD, KILMAURS, KA3 2SE
BY MR J MCFADZEAN**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for the erection of a roof over the existing midden. The proposed roof structure is 5.49 metres to eaves height and 7.46 metres to the apex of the roof. The building is 15.14 metres wide by 15.1 metres long and covers an area of some 228.6 sq metres. The sides of the structure will be clad in PVC cladding on the east gable elevation and a 9 metre section of the south side elevation where a width of some 6m will remain open on both this elevation and the north side elevation to allow vehicular access through the building. The structure is positioned adjoining an existing slatted shed immediately to the west and the silage clamp to the north. The gable of the proposed shed is located 1 metre off the common boundary line with the property to the east at 71 Towerhill Avenue and within 8.3 metres of the nearest part of the dwellinghouse.

1.2 The applicant submits that the proposed roof over the midden is a proactive approach to reducing the risk of polluting the local area and would reduce the risk of pollution by means of separating clean and dirty water to comply with the Scottish Executive's Guidelines as contained in their 'Four Point Plan'.

2. RECOMMENDATION

2.1 It is recommended that the application be refused for the reasons indicated on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in the report, the application is considered contrary with the terms of the Development Plan. Therefore it should be refused unless material considerations indicate otherwise.

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 approval of the application.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved 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 that would not be considered a significant departure from 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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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, due to the fact that objections have been submitted in respect of the application.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is a farm unit located on the southern edge of Kilmaurs. The buildings at Towerhill Farm are located within the settlement boundary of Kilmaurs, however the associated agricultural land to the east and south of the application site lies outwith the settlement boundary of Kilmaurs. The application site is approximately 0.02 hectares in area. The application site is surrounded by agricultural land to the southeast and south and residential properties to the north, northeast, east and southwest.

2.2 **Proposed Development:** Planning permission is sought for the erection of a roof over the existing midden. The proposed roof structure is 5.49 metres to eaves height and 7.46 metres to the apex of the roof. The building is 15.14 metres wide by 15.1 metres long and covers an area of some 228.6 sq metres. The sides of the structure will be clad in PVC cladding on the east gable elevation and a 9 metre section of the south side elevation where a width of some 6m will remain open on both this elevation and the north side elevation to allow vehicular access through the building. The structure is positioned adjoining an existing slatted shed immediately to the west and the silage clamp to the north. The gable of the proposed shed is located 1 metre off the common boundary line with the property to the east at 71 Towerhill Avenue and within 8.3 metres of the nearest part of the dwellinghouse.

2.3 The applicant submits that the proposed roof over the midden is a proactive approach to reducing the risk of polluting the local area and would reduce the risk of pollution by means of separating clean and dirty water to

comply with the Scottish Executive's Guidelines as contained in their 'Four Point Plan'.

2.4 The applicant has submitted written confirmation from the Scottish Executive confirming that a grant for financial assistance from the Farm Business Development Scheme (FBDS) has been awarded for the proposal.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Environmental Health Division comment that whilst the department have received numerous complaints relating to noise and smell nuisance from the neighbouring parties no action could be taken due to exemptions within the Legislation. Furthermore the farmer has confirmed that the location of the midden has not changed since 1976. The division considers that the midden area is properly constructed with adequate drainage and has not given rise to any complaints until the occupation of the new dwellinghouses at Towerhill Avenue within the last four years.

3.2 Given that the location of the midden has not changed for a period greater than 20 years no action can be taken enforcing any change under The Prescription and Limitations Act 1973. It is considered that smells emanating from farm buildings are an inherent expectation.

3.3 The proposed provision of a roof over the midden area will improve the current situation as it will reduce to some extent the percolation of rainwater through the waste thus reducing the quantity of effluent produced and it is therefore recommended that the proposal be granted.

The support of this division is noted however on balance it is considered that the benefits to the agricultural unit are not of such a scale to outweigh the detrimental impact in terms of overshadowing to the property at 71 Towerhill Avenue. Furthermore it is noted that the provision of the proposed roof over the existing midden is not an essential component for the running of this existing agricultural business.

3.4 Scottish Water have raised no objections subject to the imposition of conditions on any planning consent pertaining to connections to the wastewater system and/ or water network, obstruction of access to an existing public sewer and/ or water main, consent to discharge to the public sewer and the possible requirement that the surface water is treated by a SUDS system.

A note can be attached to any grant of planning consent addressing all of the matters outlined above with the exception of the SUDS system which can be addressed by means of a condition.

3.5 Scottish Environment Protection Agency (SEPA) have no objection in principle to this proposal for the following reasons. The roofing of the midden will reduce the volume of dirty water produced on the farm, in accordance with the Prevention of Environmental Pollution from Agricultural Activity (PEPFAA) code and the Four Point Plan. By roofing middens and contaminated yard areas the likelihood of polluting farm drainage causing environmental problems is greatly reduced.

3.6 The Scottish Executive are promoting the roofing of cattle middens on farms, particularly those located within bathing water catchments and are currently evaluating the effectiveness of these actions in the Ayrshire Bathing Water Pilot Study.

3.7 The existing midden and slurry storage facilities at the farm are exempt structures in terms of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oils) (Scotland) Regulations 2003 as they were built and brought into use prior to September 1991.

3.8 Roof drainage from the new structure should be connected directly into the existing surface water drainage system serving the farm provided that the existing drainage is free running and capacity allows.

SEPA has no data on whether roofing middens reduces odours but after consultation within the organisation, the consensus is that odours are most likely to arise when filling or emptying the midden and whether it is roofed or unroofed would be little consequence. The roofing may speed the formation of a crust to contain any odour and should aid the breakdown of dung by excluding surface water.

Whilst the support of SEPA to the proposed roofing over the midden is noted, it is considered that the structure as proposed will impose a significant detrimental impact in terms of overshadowing to the rear private garden ground of 71 Towerhill Avenue.

3.9 Kilmaurs Community Council have not responded to the proposal.

Noted.

4. REPRESENTATIONS

Six letters of objection have been received from seven objectors, including photographs/ images submitted accompanying three of those letters in relation to the proposal (please note the photographs/ images can be viewed during office hours at the office in Croft Street, Kilmarnock). The grounds of objection are summarised below:

4.1 The development will have a serious impact on the houses in Towerhill Avenue particularly no. 71 and the distance between the midden and 71 Towerhill Avenue contravenes the “Good Neighbours Area Act 1974”.

It is considered that the proposal will result in an unacceptable impact in terms of overshadowing of the property at 71 Towerhill Avenue. The Council Legal Services have been unable to trace the Good Neighbours Area Act 1974 referred to.

4.2 The area of the midden and effluent collection from the adjoining calf shed already causes a nuisance and is detrimental to the residential amenity of the neighbouring residential properties at Towerhill Avenue. Whilst in theory the covering over of the unsightly and unhealthy area should reduce some of the nuisance, however the height of the shed and openings required will result in more activity, more noise and will overshadow the garden of 71 Towerhill Avenue given that the proposed structure will be less than 10m from the conservatory extension at the rear of this property and the height of the proposed structure is higher than the roof height of the surrounding houses with its highest point of 7.463 metres the shed will impose a visual impact.

The midden is in existence at present and as detailed in section 3.1 is exempt from enforcement action given the length of time it has remained at the location. It is considered that the roofing over the midden will not result in increased noise or more activity given that the same working practices will take place in this area and the proposal merely intends to roof over this area to try to reduce the amount of dirty water produced on the farm in accordance with the PEPFAA Code and the Four Point Plan. The approved plans for the dwellinghouses at Towerhill Avenue show the roof ridge height of the houses at 6.9m therefore it is conceded that the proposed roof structure will be 0.563m higher. As detailed, it is considered that the proposal will overshadow the rear garden area of the property at 71 Towerhill Avenue and is likely to overshadow the conservatory.

4.3 The existing shed at Towerhill Farm diminishes the daylight to the rear of the property at 73 Towerhill Farm and the proposed shed will further affect the daylight provision to this property and is therefore considered contrary to policy ENV13 of the East Ayrshire Local Plan.

The concerns regarding overshadowing from the existing shed are not material to the assessment of the current application and it is considered that given the distance between the proposed structure and the boundary of 73 Towerhill Avenue it is not considered that a significant overshadowing impact will be imposed to this property.

4.4 The is an existing problem with drainage from a previous development on the farm which has not been rectified and the current application does not illustrate any new proposed drainage system to address this. The drainage for the existing shed is unsatisfactory and results in contaminated water polluting the gardens which then runs into the drains and in turn pollutes the river. Policy E19 of the Ayrshire Joint Structure Plan relates to treatment and disposal of waste and by products. East Ayrshire should be ensuring that previous planning conditions are met before considering any new applications on the same site. Furthermore the previous condition imposed on the roofing over the silage shed providing for landscaping along the mutual boundaries will be ineffective due to the proximity of foundations/ drainage for the proposed structure.

The comments/concerns regarding drainage of the existing buildings are noted however these buildings are not the subject of the current application. This matter is a separate enforcement matter and the Council cannot refuse to accept an application under legislation because the applicant is facing enforcement action or has not satisfied conditions imposed on a previous planning consent.

Policy E19 is not considered applicable to the assessment of the current application given that it is a strategic policy addressing the issue of waste management in the wider context.

The concerns regarding proximity to the screening along the mutual boundary are noted.

4.5 Given that planning permission has already been refused for a cow shed speculation has arisen as to the future intended use for the proposed structure.

The applicant has applied for the formation of a roof over the existing midden and therefore any intended use is purely speculation which is not relevant to the assessment of the current application.

4.6 At present the midden is approximately 1m in cubic volume and is not static therefore it does not always present a problem.

Noted.

4.7 The siting of the manure pile so close to the houses at Towerhil Avenue is unacceptable given the vermin and flies it attracts and the odour produced. Manure produces noxious gases which can be lethal. The proposal is contrary to the 2005 Scottish Executive Code of Practice (PEPFAA) given that the ventilation of gases from this structure will still pose a nuisance affecting the properties in Towerhill Avenue particularly where the structure will be virtually contiguous with their mutual boundaries and the document advises that farmers should avoid siting new buildings within 400m of residential accommodation and at least 10m

from field drains/ watercourses. It is requested that the manure heap is moved to another location away from the houses given that the applicant owns adequate land to relocate the midden and if it has to be near the source of effluent then he should perhaps rethink the layout of the existing buildings.

It is considered that there is no legislative basis to require the applicant to relocate the existing midden that has been sited in the present location for more than 20 years and SEPA confirm that the slurry storage facilities and midden are exempt structures in terms of the Control of Pollution Regulations 2003. As detailed in section three of this report both SEPA and the Council's Environmental Health division are supportive of the proposal and confirm that it meets the requirements of the PEPFAA Code and Four Point Plan.

4.8 The current siting of the midden adjacent to residential properties is unsatisfactory and is sited only less than 15m from the dwellinghouse at 71 Towerhill Avenue. Draft building regulations published in 2003 proposed that dungsteeds or farm effluent tanks should be sited at least 15m from dwellings which is considered inadequate. However a previous Public Health Act required a distance of at least 50m which is considered more acceptable. Under the 1990 Environmental Protection Act the midden/ effluent area is considered both a nuisance and health risk and should be relocated and simply covering it over will not remove this nuisance.

The above comments are noted, however SEPA and the Council's Environmental Health Division advise that the midden is exempt from the Control of Pollution Regulations 2003 given that it was brought into use prior to September 1991.

4.9 The recent Planning Appeal for another farm building at Towerhill Farm is a material planning consideration in the assessment of this application. The building which is the subject of the current planning application is smaller than that refused but is sited just 1m from the boundary with 71 Towerhill Avenue and at 7.46m in height this would overwhelm and dominate this property. The cubicle shed refused at appeal was 9.3m in height but was further away from the southern boundary therefore in terms of overshadowing the effect would be equally detrimental in both cases.

It is considered that the recent planning appeal decision is a material planning consideration as detailed in section six of this report and it is considered that the current proposal will overshadow the property at 71 Towerhill Avenue.

4.10 The silage sheds have resulted in a loss of value to the property at 73 Towerhill Avenue and should the proposed roof over the midden be granted this will further reduce the value.

Loss in value of residential properties is not a material planning consideration.

4.11 Part 3 of the 1990 Environmental Protection Act gives local authorities power to act on complaints arising from agricultural activities and despite complaints to the Council's Environmental Health Division over the last few years an Abatement Notice has yet to be served. In this regard East Ayrshire Council's Environmental Health division issued a letter requesting that the manure be removed entirely from this location however the applicant has failed to comply with this.

The Council's Environmental Health Division have advised that, given the midden has remained in the same location for more than 20 years no action may be taken enforcing any change. The Division further advise that the letter related to a large accumulation of manure following the turning out of the cattle from the sheds which the farmer quickly addressed through the spreading of this material, therefore the intimation was complied with.

4.12 It is clear that building a structure over the midden contravenes policy ENV13 of the Local Plan given that whilst the site may be just within the settlement boundary, Kilmaurs is within a rural area designated as a Rural Protection Area.

The application site is located within the settlement boundary of Kilmaurs. Policy ENV13 relates to development outwith the settlement boundary within the rural area therefore this policy is not relevant to the assessment of the current application.

4.13 The proposed structure may be necessary but its proposed layout, size and location mean that it would not respect the locality and would have a detrimental visual impact as it cannot be screened on three sides.

Whilst it is considered that the proposed structure would be visible from the surrounding area it is considered that the structure would not be any more intrusive, in terms of visual impact, than the adjacent/ adjoining existing farm buildings.

4.14 It is noted that SEPA are keen to have middens/ effluent areas covered over but according to the PEPFAA document the siting of such facilities should be discussed with SEPA and the farmer should prepare a Waste Management Plan which should be implemented to the satisfaction of SEPA and put before East Ayrshire Council's Environmental Health given the amount of complaints received.

SEPA have advised that the farmer neither requires to discuss the proposal nor prepare a Waste Management Plan.

4.15 The shed has two doors on its south and north elevations therefore tractors will operate closer to the boundaries with the residential dwellings than at present and a metal constructed shed will not reduce noise nuisance.

It is considered that the proposed roofing structure will not allow the farm machinery to operate any closer to the residential common boundaries than at present.

4.16 The Government Code of Good Farming Practice asks farmers to minimise visual impact, avoid causing odour nuisance and to ensure that pollution risk is minimised if slurry, effluent or harmful gases accidentally escape. Siting this shed so close to residential properties is a risk in addition to negating enjoyment of the residents open amenity spaces.

SEPA and the Council's Environmental Health Division are in favour of the roofing over the midden as it reduces the volume of dirty water produced on the farm in accordance with the PEPFAA Code and Four Point Plan.

4.17 Surprise and disappointment is expressed that the application has not been advertised as a 'Bad Neighbour' development when it will allow for more noise and activity virtually up to the mutual boundary between the farm and the rear garden ground of 71 Towerhill Avenue.

The Division reached the view that it is not necessary to advertise the application as 'bad neighbour' development given that the midden is already in existence.

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 (2003).

Ayrshire Joint Structure Plan

5.2 With regard to the Structure Plan there are no specific policies applicable to the assessment of the application.

East Ayrshire Local Plan

5.3 The application site is located within the settlement boundary of Kilmaurs therefore policy IND7 is applicable, which states that extensions to existing industrial premises and extensions to non-industrial buildings for industrial or business purposes will be supported subject to the proposal being justified against the following criteria:

- (i) impact on the surrounding environment and adjacent uses;

It is considered that the proposed shed will significantly overshadow the private rear garden area of the adjacent property at 71 Towerhill Avenue. The applicant was advised of the divisions concerns regarding overshadowing and was advised to delete the section of the building that permits access therefore bringing the gable of the building inline with the gable end of the existing silage clamp building. The applicant advised that this would result in a dirty area remaining and suggested that the gable end of the building be hipped back. Given the shallow roof pitch on the building the applicant was advised that proposing a hipped roof instead of a gabled roof would not significantly reduce the overshadowing imposed to the rear garden area of 71 Towerhill Avenue and thus the divisions concerns in this regard remain.

- (ii) transportation and infrastructure implications;

There are no transportation or infrastructure implications directly arising from the proposal.

- (iii) loss of public amenity open space;

The proposal does not result in the loss of public amenity open space.

- (iv) loss of prime agricultural land; and

The application seeks to aid agricultural operations and therefore does not result in the loss of prime agricultural land.

- (v) impact on natural and built heritage resources.

It is considered that the proposal shall not impose a significant impact on natural and built heritage resources.

In conclusion it is considered that proposal contravenes criterion (i) of Policy IND7 and therefore the proposal is considered contrary to the provisions of the Development Plan.

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 representation received has been summarised in Section 4 of the Report and are consistent with the recommendation that the application be refused.

Impact on the amenity of the area

6.4 Whilst the Council is broadly supportive of encouraging agricultural activity within East Ayrshire and proposals that encourage good practice for environmental pollution, it is considered that the impact to the amenity of the residential property at 71 Towerhill Avenue in terms of overshadowing is of such a detrimental scale to warrant refusal of the application as proposed. Covering over the existing midden is not an essential component to the running of the agricultural unit. Thus the operational requirements of the agricultural unit are not considered sufficient to outweigh the impact to the amenity of 71 Towerhill Avenue.

Planning History

6.5 The land within Towerhill Farm has been the subject of previous applications/ notifications/ appeals as detailed below.

6.6 An Agricultural Prior Notification (02/0611/AN) was submitted for a steel portal framed agricultural building over the existing silage clamp which was allowed on 6th September 2002

6.7 Planning permission (02/0893/FL) was approved on the 16th May 2003 to roof over the existing silage clamp.

6.8 Planning application (04/0060/FL) for a new cubicle shed was withdrawn on 7th October 2004.

6.9 The applicant submitted an application for planning permission (04/1045/FL) which he appealed to the Scottish Executive against non determination. The appeal (P/PPA/190/127) was dismissed by the Scottish

Executive on 6th July 2005. The grounds for refusal of the appeal are summarised as follows:

- The proposal would not have a minimal visual impact in terms of design, size and scale.
- The shed is insensitively sited and incapable of effective landscaping or screening.
- The setting of the surrounding area would be adversely and irreversibly changed by the proposal and planning conditions and agreements could not overcome the fundamental problem of unacceptable proximity of the proposal to the adjacent housing development.
- Residential amenity in terms of outlook, visual amenity and noise and odour nuisance would be substantially eroded.
- The proposal is contrary to policy ENV13 of the development plan.
- The operational requirements of the farm do not justify a departure from the development plan.

6.10 An Agricultural Prior Notification (05/1226/AN) was submitted for the erection of an agricultural steel mono pitch building which was returned to the applicant on 28th February 2006.

6.11 Planning permission (00/0337/FL) was approved on the adjoining site to the east, which now comprises the dwellinghouses at 71- 81 Towerhill Avenue, on 24th November 2000.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 It is considered that there are no financial or legal implications for the Council arising from the determination of this application.

8. CONCLUSIONS

8.1 As indicated in the report, the application is considered contrary to the terms of the Development Plan. Therefore it should be refused unless material considerations indicate otherwise.

3.2 As per Section 6 of the report there are material considerations relevant to the application and some of those are consistent with the recommendation that the application be refused, otherwise it is considered that the remaining are not of sufficient weight to merit the approval of the application.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons indicated on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved 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 that would not be considered a significant departure from Council policy.

Alan Neish
Head of Planning, Development and Building Standards

6 April 2006 (GC/SA)
FV-KD

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. Planning
7. Prior Notification Application 02/0611/AN.
8. Planning application 02/0893/FL.
9. Planning application 04/0060/FL.
10. Planning application 04/1045/FL.
11. Planning appeal P/PPA/190/127.
12. Prior Notification Application 05/1226/AN.
13. Planning application 00/0337/FL.

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

Implementation Officer: Dave Morris

060165FLTowerhillFarmCrosshouseRoadKilmaursSA

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

06/0165/FL

Site of Proposal: Towerhill Farm
Crosshouse Road, Kilmaurs, KA3 2SE

Nature of Proposal: Erection of Roof Over Existing Midden

Name & Address of Applicant: Mr J McFadzean
Towerhill Farm
Crosshouse Road,
Kilmaurs, KA3 2SE

Name & Address of Agent: SAC Building Design Services,
Auchincruive, Ayr, KA6 5HW

DPOs Reference: GC/SA

The above FULL application should be refused for the following reasons:-

1. The application is contrary to Policy IND7 of the East Ayrshire Local Plan by reason of the detrimental impact on the surrounding environment and adjacent uses in particular it will impose a significant detrimental impact to the amenity of 71 Towerhill Avenue, Kilmaurs.

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