

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 16 MARCH 2007 06/0850/FL: APPLICATION FOR REMOVAL OF CONDITION 3 TO PLANNING CONSENT 04/0546/FL AT MEIKLE MOSSIDE FARM, FENWICK FOR LORD AND LADY ROWALLAN

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The proposed application aims to remove condition 3 from planning consent 04/0546/FL. Planning consent 04/0546/FL relates to the *“redevelopment and extension of existing facility to include new arena, gymnasium and pool, lecture area, bar, restaurant, café, lounge, function suite, retail area, hostel, manager’s house, external activity areas, carparking, fishing ponds, stabling, horse box parking, outdoor arenas, lodge and judges box “*

Condition 3 of said consent states that :

“Notwithstanding the plans hereby approved details/samples of all external finishing materials to be used in the construction of the arena and facilities buildings shall be submitted to and approved by the Planning Authority. These details shall provide for the formation of a tonal, non reflective finish to the cladding of the upper levels and roof of the arena.”

1.2 The applicant is willing to accept an amended condition relating to the finishing materials which does not contain the sentence *“These details shall provide for the formation of a tonal, non reflective finish to the cladding of the upper levels and roof of the arena”*.

2. RECOMMENDATION

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

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report the application is considered not to be in accordance with the Development Plan. Therefore given the terms of

Sections 25 and 37 (2) of the Town & Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. The applicant's suggested amended variation of the condition is unacceptable, as it would not achieve the necessary level of control over the roofing material and upper levels. It is considered that the condition does meet all the appropriate tests.

3.2 As indicated in Section 6 of the report there are material considerations relevant to this application. These considerations are not supportive of the application. Indeed it is highly significant and material that the specific addition to the planning condition was imposed by Historic Scotland following the decision by Committee. It is also significant that the addition to the condition was imposed after the roof material had already been placed on the roof.

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 require to be notified to the Scottish Ministers under the town and Country Planning (Notification of Applications) (Scotland) Direction 1997.

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 required to be considered by the Local Planning Committee due to it being subject to objections.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site extends to some 54 hectares and is situated less than a mile to the north of Kilmarnock. Currently the site operates as an Activity Centre specialising heavily in equestrian uses. The centre is run by the applicants who reside in the former farmhouse at Meikle Mosside.

2.2 Proposed Development:

The proposed application aims to remove condition 3 from planning consent 04/0546/FL. Planning consent 04/0546/FL relates to the *“redevelopment and extension of existing facility to include new arena, gymnasium and pool, lecture area, bar, restaurant, café, lounge, function suite, retail area, hostel, manager’s house, external activity areas, carparking, fishing ponds, stabling, horse box parking, outdoor arenas, lodge and judges box “*

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2.3 The applicant is willing to accept an amended condition relating to the finishing materials which does not contain the sentence *“These details shall provide for the formation of a tonal, non reflective finish to the cladding of the upper levels and roof of the arena”*.

3. CONSULTATIONS AND ISSUES RAISED

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

Noted.

3.2 Scottish Natural Heritage, a Statutory consultee in this instance, have no comment to make on this matter.

Noted.

3.3 Historic Scotland have advised that they object to the application on the grounds that the development is in the vicinity of Rowallan Castle which is a scheduled Ancient Monument and a property in the care of Scottish Ministers. It sits within a designed landscape which is included in the inventory of Gardens and Designed Landscapes, part of a wider conceptual landscape which includes Rowallan (new) Castle, a category "A" listed building.

Historic Scotland objected to the retrospective application for this development in July 2004, on the grounds that it would have a detrimental impact on the views from the principal elements of the Rowallan estate. In particular we were, and remain, concerned about the scale of the barn and the highly reflective materials used in the roof.

We have considered this proposal and believe that the roof continues to have a negative impact upon the setting of various heritage assets.

It should be noted that the formal objection to the application from Historic Scotland will require, if the Committee are minded to approve the application, that the development be referred to the Scottish Ministers for their consideration.

3.4 The Architectural Heritage Society of Scotland have no objections to the proposal, however consider that if it does not relate sympathetically to the landscape, it will not relate to anything.

Noted.

3.5 The Garden History Society consider that it is unlikely the choice and reflective qualities of the cladding chosen for the development at Meikle Mosside will have any major detrimental impact on the outward views from Rowallan House and its core designed landscape, nor are the settings of Rowallan House or Castle or the Designed Landscape likely to suffer any major detrimental impact.

Noted.

3.6 Scottish Civic Trust do not wish to become involved at this stage and have made no comment.

Noted.

4. REPRESENTATIONS

4.1 The application was advertised in the Kilmarnock Standard as affecting the setting of a Listed Building. In addition to the objection from Historic Scotland an objection has been submitted from the owner of Rowallan Estate. The objector indicates that:-

4.2 This was a retrospective consent granted after consultation with the Scottish Executive who confirmed that they would not call in the application after in turn consulting with Historic Scotland, provided always that a non reflective finish was given to the roof.

4.3 The roof remains highly reflective as witnessed and recorded by the Councils enforcement officer on 08 June 2006 and has a severe and enduring detrimental impact to the existing scheduled monument and "A" listed buildings and landscape. The reflection experienced also has created an unacceptable safety hazard to the newly built golf course.

4.4 The mirrored reflection is also a road safety hazard heading east on the B751 and together with the built form, now urbanizes the rural outlook and listed avenue of trees leading from the listed gatehouse.

4.5 The Council's Principal Planning Officer very recently wrote to the applicant on the 27 July 2006 confirming that the material presently on the roof was still considered reflective and did not meet the terms of the condition and was rejected giving fourteen days to submit revised proposals. These new proposals were not submitted and on the 12 August 2006 the Council's Enforcement Officer confirmed that enforcement procedure could be actioned.

4.6 Enforcement action has been put on hold as this present application is processed and determined. As there has been no change whatsoever in appearance or rectification, we ask that the Council reject this application and enforce remedial works.

It should be noted that this application is not an assessment of the actual materials which are currently on the roof or walls of the buildings, it is to determine the parameters by which the suitability of the roofing and cladding materials on the building should be assessed. The suitability of the materials used on the building would

be a delegated matter to be assessed by the Head of Planning, Development and Building Standards. Said assessment would be made within the criteria set by the terms of the condition. ie whether the cladding/roofing materials should be of tonal non reflective finish or not.

Letter of Support

4.7 The applicant has submitted a five page letter of support for the proposal which in summary indicates the following issues:

There have been several applications for development on the site.

4.8 The first consent was 02/0058/FL for a similar to the present but smaller building. The two applications of concern here are the first application for the whole development with larger arena 03/0596/FL and the second application for the whole development with a larger arena 04/0546/FL. Referred to as the second and thirds consents. The Planning consent 03/0596/FL had a condition number 3 requiring the submission of materials. Planning consent 04/0546/FL had an addition to condition 3 that required *'the formation of a tonal, non-refelctive finish to the cladding of the upper levels and roof of the arena'*.

We are seeking only removal of this second sentence of condition 3 from consent 04/0546/FL.

4.9 The second consent issued for the larger arena was granted after construction – the Authority acknowledge in their reports that the application was retrospective. The Authority visited the site and must have seen the roof covering and the materials generally. They would also have been well aware of the Historic Buildings. Therefore they had all the information necessary to make an informed decision and to impose a condition if they had thought that the arena affected the historic buildings. All this is laid out in the Report to Committee on the second application. Clearly they did not consider that a specific condition aimed at protecting the setting of the historic buildings was necessary, as they did not attach one.

4.10 Since the consent had been granted for a partly complete building the applicant was justified and acting lawfully in finishing the construction. Since the completion was lawful under the second consent then any works necessary to change the building to adhere to Condition 3 in the third consent must be the subject of compensation. It would also seem, just in a common law way, that the changes were the responsibility of failings in the Authority and therefore the costs of those changes should fall to them. In my opinion this second consent with condition 3 only referring to materials submission is still extant since it has not been revoked. Since the materials have been seen on site and have been supplied to the Authority this condition is discharged.

It should be noted that this consent was reduced following judicial review of the application. Therefore the building was clad without the benefit of planning permission.

4.11 Despite the reservations, even a potential objection, of Historic Scotland during consultations on the third application, condition 3 in the planning officer's report to committee on the third application does not include any change to condition 3 compared to the second consent. Therefore the Council considered the consultation by HS, still found the development acceptable and did not incorporate the suggestions of HS. The imposition and the detail of the condition is therefore wholly the preserve of HS and does not have the direct support of the Authority.

The additional phrase was added to Condition 3 of the consent following consideration of the application by the Scottish Executive. It's addition is therefore very material to the development on site.

4.12 The Planning Advice Note 4/1998 on planning conditions is the Scottish Executive's sole guide to policy on planning conditions. In Paragraph 12 of the note there is a general statement of policy and several specific tests of the validity of individual condition.

In the general statement of intent and policy it is clearly laid down that conditions must be reasonable and must not place an unjustifiable burden on the applicant. Since the development had commenced and a site visit by the Authority had seen the almost complete building the retrospective increase in the severity of the condition is in irrefutable conflict with Scottish Executive Policy and cannot therefore be supported. Such a change in condition requiring effectively reconstruction of the building cannot be reasonable.

It is considered by the Planning Authority that the condition is reasonable given the building was erected without the benefit of planning permission. Importantly, the condition was proposed by the Scottish Executive following referral to them.

4.13 Furthermore the second sentence of condition 3 on the third consent fails at least two specific tests – is it necessary and is it precise?

Necessity. The main arena building is so far from the historic buildings that it cannot affect them or their setting. The separation distance of at least 1000m reduces the visual impact to an insignificant amount. I have been unable to gain access to the castle grounds for an exact view of the arena vis a vis the castle. Viewing the arena from other points in that direction I would describe it as visible but having no significant impact.

It is considered that due to the size and scale of the building the roof and wall cladding are significant issues and therefore it is necessary for the Planning Authority to have control over their colour and appearance.

4.14 In addition the landscaping proposed will completely shield the arena from any views from the direction of the historic buildings. Therefore a condition is not necessary for this reason.

It is considered that while the landscaping for the proposed development is important in providing an appropriate setting for the building it would not provide any screening to the upper walls or roof. Therefore it is necessary for the Planning Authority to have control over their colour and appearance.

4.15 Precision. Conditions must be precise enough for compliance and / or enforcement to be possible. Two key phrases in the condition are: “tonal” and “non-reflective”

4.16 Tonal is an adjective and has to relate to something. Normally it would be “x will be tonal with y”. In this condition there is no guidance at all to what the roof covering and cladding should be tonal with. Therefore it is imprecise. At present it can be argued without fear of contradiction that the cladding and roof covering are tonal. They are bound to be tonal with something and since the something is not specified then they are tonal.

4.17 The second element of non-precision is “non-reflective”. Non-reflective is not precise since all materials have a refractive quality depending on the amount and direction of light. A non-reflective material does not therefore exist. A level of refractive index for the materials would have to be stated in order to make this condition precise. Note that in the letter of 30/08/06 from the Authority there is no mention of the Committee wishing a non-reflective material.

It is considered that, given that the condition requires samples to be submitted and sets the parameters of said materials being non reflective and tonal, it is precise in its nature. The condition allows for a range of submissions in respect of finish to be submitted. It quite properly places upon the Planning Authority the ability to determine which of the submitted samples would be acceptable within the general parameter of “tonal and non-reflective”. Again the condition was proposed following discussions with the Scottish Executive.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37 (2) of the Town & 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).

Adopted East Ayrshire Local Plan

5.2 The relevant policies in the East Ayrshire Local Plan against which the proposal requires to be assessed are as follows:

Policy ENV1

The Council will seek to protect, preserve and enhance all heritage resources requiring conservation including Listed Buildings and Conservation Areas, together with their respective settings, Scheduled Ancient Monuments and Archaeological and Industrial Archaeological sites and landscapes.

It is considered that given the scale of the building the material used for the roof covering is a significant factor in the overall appearance and its impact on the surrounding area including the adjacent listed buildings. Therefore the retention of condition 3 is important to ensure that the Planning Authority can appropriately control the impact of the building on the surrounding area.

Policy ENV5

5.3 The Council will seek to protect, preserve and enhance Historic Gardens and Designed Landscapes. In instances where a proposed development affects an Historic Garden or Designed Landscape which is included in the 'Inventory of Historic Gardens and Designed Landscapes in Scotland' a landscape management plan will require to be submitted as an integral part of any application submitted to the Council for consideration.

It is considered that given the scale of the building the material used for the roof covering is a significant factor in the overall appearance and its impact on the adjacent designed landscape. Therefore the retention of condition 3 is vital to ensure that the Planning Authority can appropriately control the impact of the building on the surrounding area.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The material considerations relevant to the assessment of this application are consultation responses, representations received, the letter of support and impact on the amenity of the area.

Consultation Responses

6.2 As indicated above the consultees are generally supportive of the application however Historic Scotland object to the proposal.

The response from Historic Scotland will if the Committee are minded to approve the application, require a referral to the Scottish Ministers.

Representation Received

6.3 The objection has been assessed and is considered to raise issues which are of sufficient weight to justify the refusal of the application.

Letter of Support

6.4 The applicant has submitted a five page letter of support for the proposal. This is assessed in detail in Section 4 of the report.

Impact on the Area

6.5 It is considered that the removal or alteration of Condition 3 from Planning Consent 04/0546/FL would result in the Planning Authority losing the ability to control the types of materials used on the external surfaces of this very large building. This in turn could result in the building being clad or roofed in a material which is unsuitable and detrimental to the setting of the listed buildings and Historic Landscapes.

Planning History

6.6 Planning permission 04/0546/FL was approved, following being called in by the Scottish Executive, on 14/12/04 for a large equestrian centre with ancillary facilities

6.7 Planning Permission 03/0596/FL was approved on 3/10/03 for a large equestrian building with ancillary facilities however following judicial review this consent was reduced in March 2004.

6.8 Planning permission 02/0058/FL was approved in May 2002 for a large equestrian building with ancillary facilities.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in determining this application.

7.2 Should the application be refused, legal implications may arise for the Council as a result of any enforcement action initiated relative to the unauthorised materials currently used to roof the building.

8. CONCLUSION

8.1 As is indicated in Section 5 of the report the application is considered not to be in accordance with the Development Plan. Therefore given the terms of Sections 25 and 37 (2) of the Town & Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. The applicant's suggested amended variation of the condition is unacceptable, as it would not achieve the necessary level of control over the roofing material and upper levels. It is considered that the condition does meet all the appropriate tests.

8.2 As indicated in Section 6 of the report there are material considerations relevant to this application. These considerations are not supportive of the application. Indeed it is highly significant and material that the specific addition to the planning condition was imposed by Historic Scotland following the decision by Committee. It is also significant that the addition to the condition was imposed after the roof material had already been placed on the roof.

9. RECOMMENDATION

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

CONTRARY DECISION

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 require to be notified to the Scottish Ministers under the town and Country Planning (Notification of Applications) (Scotland) Direction 1997.

Alan Neish
Head of Planning, Development and Building Standards

Implementation Officer: Dave Morris

08 March 2007
(CSI/RH)
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Notices and Certificates.
3. Letter of Objection.
4. Consultation Replies.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan.
7. East Ayrshire Council Design Guidance.
8. Letter of Support.
9. Planning Application 04/0546/FL
10. Planning Application 04/0596/FL
11. Planning Application 02/0058/FL

Any person wishing to inspect the background papers listed above should contact William Stewart, Principal Planning Officer on 01563 578165.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 06/0850/FL

Site of Proposal: MEIKLE MOSSIDE
FENWICK
KILMARNOCK
KA3 6AY

Nature of Proposal: APPLICATION FOR REMOVAL OF
CONDITION 3 TO PLANNING CONSENT
REFERENCE 04/0546/FL

Name & Address of Applicant: LORD AND LADY ROWALLAN
MEIKLE MOSSIDE
FENWICK
KILMARNOCK
KA3 6AY

Name & Address of Agent: JAMES HARPER ARCHITECT
THE LANGSLIE
LANGSTILLY ROAD
LOCHWINNOCH
PA12 4DR

DPOs Reference: CSI/RH

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

1. The proposal fails to accord with Policy ENV1 of the Adopted East Ayrshire Local Plan as the removal of part of the condition may result in the use of inappropriate materials on the building which would have a detrimental impact on the adjacent listed buildings and Ancient Scheduled monument.
2. The proposal fails to accord with Policy ENV5 of the East Ayrshire Local Plan as the removal of part of the condition would result in the use of inappropriate materials on the building which would have a detrimental impact on the adjacent Designed Landscape.

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