

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 16 MARCH 2007

**06/1113/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 mono pitched roof over the existing midden. The proposed roof structure is 3.91 metres to eaves height and 5.6 metres to the apex of the roof. The building is 15.5 metres wide by 15.6 metres long and covers an area of some 241.8 sq metres. The east gable of the proposed midden would be finished in platisol coated metal cladding from eaves level to ground level whilst the north and south elevations of the building will remain open 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. The location of the building is the same as that of a roofed midden refused on appeal by the Scottish Executive, details of this are presented in Paragraph 6.11 of the report.

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 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.

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 south, residential properties to the east and adjacent farm buildings to the north and west.

2.2 **Proposed Development:** Planning permission is sought for the erection of a mono pitched roof over the existing midden. The proposed roof structure is 3.91 metres to eaves height and 5.6 metres to the apex of the roof. The building is 15.5 metres wide by 15.6 metres long and covers an area of some 241.8 sq metres. The east gable of the proposed midden would be finished in platisol coated metal cladding from eaves level to ground level whilst the north and south elevations of the building will remain open 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. The location of the building is the same as that of a roofed midden refused on appeal by the Scottish Executive, details of this are presented in Paragraph 6.11 of the report.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council Environmental Health Division has not raised any objection to the proposal.

3.2 Scottish Water have raised no objections to the proposal. However, Scottish Water have confirmed that an existing public sewer is located close to the proposed development site, nonetheless it is considered that this sewer will not adversely affect the proposed development.

A note could be attached to any grant of planning consent addressing the matter outlined above.

3.3 Scottish Environment Protection Agency (SEPA) have no objection in principle to this proposal and offer the following comments in support of the application. 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.

3.4 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.

3.5 Roof drainage from the new structure should be connected directly into the existing surface water drainage system serving the farm.

Whilst the support of SEPA for 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. This is the same location as a building previously refused on appeal, and although that structure featured a higher, gable end; the concerns about residential amenity remain.

3.6 Kilmaurs Community Council have not responded to the proposal.

Noted.

4. REPRESENTATIONS

Five letters of objection have been received from eight objectors, the grounds of objection are summarised below:

4.1 This proposed new build albeit different from the previous application in design would still be inconsistent with EAC policy IND 7 in the local plan as this midden roof would impact on our amenity on a daily basis. It is worthy of note that this application is described as a midden roof however it is a shed, with enclosed sides.

Whilst it is acknowledged that the applicant does not propose to enclose both sides of the proposed building, it is considered that the proposal will result in an unacceptable impact in terms of overshadowing of the property at 71 Towerhill Avenue.

4.2 The existing shed at Towerhill Farm casts shadows for six months of the year into the rear of the property at 73 Towerhill Farm and the proposed shed will further obscure our already limited daylight.

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 no significant overshadowing impact will be imposed to this property.

4.3 There 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 situation is a separate enforcement matter and the Council cannot refuse to accept an application for fresh development because earlier works are under investigation.

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.

4.4 We have grave concerns regarding the manure pile that is situated at the back of the shed close to the houses. This is unacceptable as our main living areas are to the rear. We cannot leave our back door or windows open especially in the summer months as the house is swarmed with flies and also the vermin that this manure pile attracts. The smell is particularly bad and because of this we are unable to enjoy the simple pleasure of sitting in our garden. Manure produces noxious gases which can be lethal to health. The siting of the manure pile so close to our home has been reported to environmental health. A SEPA directive states that slurry/manure should not be stored within 400 metres of residential property and at least 10 metres from field drains watercourses

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. As detailed in section three of this report SEPA is supportive of the proposal and confirm that it meets the requirements of the PEPFAA Code and Four Point Plan. Furthermore, the Council's Environmental Health Section has not raised any objection to the proposal.

4.5 Compromise is a word barely used but surely as indicated in the Reporter's decision the building should be sited further away from our homes and the east boundary fenceline.

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.

4.6 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.

4.7 The application shows our garden hedge on the drawings, describing such as the boundary hedge/fenceline. The boundary is a 2.0 metre high vertical sparred timber fence and not the hedge and the hedge is not 3.6 metres high as in the drawings. As has been stated in previous objections this garden hedge is a temporary measure until we can be certain of what will be constructed or stored nearby. If the proposed midden roof is allowed then that is a permanent structure and will for evermore reduce our daylight and amenity.

Notwithstanding that a 3.6 metres high hedge is indicated on the submitted plans it is considered that the proposal will overshadow the property at 71 Towerhill Avenue thereby adversely affecting the residential amenity of this property.

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 Division's concerns regarding overshadowing and at a meeting on site it was suggested that the applicant move the position of the midden to the south facing elevation of the existing slatted cattle shed thereby minimising the impact of the structure on nearby residential properties. In response it was stated that this proposal did not suit the working arrangements of the farm.

The relocation suggestion has also been echoed by the Scottish Executive Reporter who determined an appeal in respect of a previous roofing over of the midden; see paragraph 6.11 of the report.

- (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 would not impose a significant impact on natural and built heritage resources.

5.4 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 representations 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 supportive of encouraging agricultural activity within East Ayrshire and proposals that encourage good practice for environmental pollution, it is considered that the impact on the amenity of the residential property at 71 Towerhill Avenue in terms of overshadowing is to such a degree

as 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 06 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 07 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 28 February 2006.

6.11 The applicant submitted an application for planning permission (06/0165/FL) for the erection of a roof over existing midden. In this case the applicant submitted information stating that the proposed roof over the existing midden was 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. Planning consent was refused on 21 April 2004 and the applicant subsequently appealed to the Scottish Executive. The appeal, ref (P\PPA\190\143) was dismissed by the Scottish Executive on 28th September 2006. The grounds for refusal of the appeal are summarised as follows:

- In general, the site is correctly described as a midden, although not each and every part has waste stored upon it. Nevertheless, even when relatively free of waste its proximity to housing remains highly unfortunate.
- There is much to be said for roofing over the site somehow. However, the extra overshadowing and the additional degrading of already degraded outlooks, would be most unreasonable.
- If the midden and its loading bay were to be accessed directly by a ramp to the south, and perhaps extended to the south the benefits could well be achieved at a greater range from the closest houses.
- I conclude that the proposal is inconsistent with Policy IND 7 in the East Ayrshire Local Plan.

6.12 An Agricultural Prior Notification (06/0436/AN) was approved for the erection of an agricultural bedded court shed to house cattle on 27 June 2006.

6.13 A planning application was received on 19 February 2007 for the erection of an agricultural bedded court shed to house cattle.

6.14 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 24 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.

8.2 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

(JL/RH)
08 March 2007
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. Prior Notification Application 02/0611/AN.
7. Planning application 02/0893/FL.
8. Planning application 04/0060/FL.
9. Planning application 04/1045/FL.
10. Planning appeal P/PPA/190/127.
11. Prior Notification Application 05/1226/AN.
12. Prior Notification Application 06/0436/AN
13. Planning application 06/0165/FL
14. Planning appeal PPA/190/143
15. Planning application received 19 February 2007 (currently invalid)
16. Planning application 00/0337/FL.

Anyone wishing to inspect the above papers please contact Jane Little, Planning Officer on 01563 576768.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

06/1113/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: JL/RH

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 upon the amenity of 71 Towerhill Avenue, Kilmaurs.

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