

**EAST AYRSHIRE COUNCIL**

**NORTHERN AREA LOCAL PLANNING COMMITTEE:  
28 OCTOBER 2005**

**05/0599/FL: CHANGE OF USE FO PART OF FARM TO VEHICLE HAULAGE  
BUSINESS AND ASSOCIATED ENGINEERING WORKS (IN RETROSPECT)  
AT HIGH TODHILL FARM, FENWICK  
BYELMHURST TRANSPORT SCOTLAND LTD**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 The application seeks retrospective permission for the formation of a stone chipped hardstanding covering an area of some 3,112 sq metres to accommodate a total of fifteen heavy goods vehicles (HGV's). The applicants have advised that the vehicle haulage business previously operated from 34-36 Henrietta Street, Galston.

**2. RECOMMENDATION**

**2.1 It is recommended that the application be refused for the reasons indicated on the attached sheet and that appropriate enforcement action is initiated against the applicant to secure the cessation of the unauthorised use and the reinstatement of the site.**

**3. CONCLUSIONS**

3.1 As indicated in the report the application is considered to be 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 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, on the basis that it does present a site specific locational need that can be

accommodated without detriment to the amenity of the area, then the application will not require to be referred to the Development Services Committee as there would be no 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 there are objections to the application and it is recommended for refusal.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The site is located some 2 kilometres west of Fenwick within the Rural Protection Area. The land at High Todhill Farm covers an area of some 62 acres with access taken from the B778.

2.2 **Proposed Development:** The application seeks retrospective permission for the formation of a stone chipped hardstanding covering an area of some 3,112 sq metres to accommodate a total of fifteen heavy goods vehicles (HGV's). The applicants have advised that the vehicle haulage business previously operated from 34-36 Henrietta Street, Galston.

**3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Roads and Transportation Division have no objection to the application.

***Noted.***

3.2 East Ayrshire Council Access Officer has not responded to the application.

***Noted.***

3.3 East Ayrshire Council Economic Development and Property Division comment that it is likely that the farm was sold as a result of depressed returns from dairy farming and the use of the property by a transport business is not inappropriate and has afforded the company the opportunity to remain in East Ayrshire, to have physical growth potential in its business accommodation and to continue to maintain the employment of its staff. The Division are supportive of the application.

***Noted.***

3.4 Scottish Power have raised no objections in principle to the application.

***Noted.***

3.5 Scotland Gas Networks have not responded to the application.

***Noted.***

3.6 Scottish Water have raised no objections subject to the developer contacting the Planning and Development Services Department to discuss whether the existing water supply may need upgrading.

***Should planning permission be granted a note can be attached to any grant of planning permission in respect of the water supply.***

3.7 Scottish Environment Protection Agency (SEPA) have made no objections in principle as it would appear to relate to the parking of vehicles and there are no additional buildings proposed, however the applicant should take note of the pollution prevention guidance provided in Pollution Prevention Guidance Notes 19 'Garages and Vehicle Service Centres' which is available on our website.

***Should planning permission be granted a note can be attached advising the applicant to consult Pollution Prevention Guidance Note 19.***

3.8 Stewarton and District Community Council have raised objections to the application on the following grounds:-

(i) There is no indication on the submitted plan that identifies where the engineering works are located or the office/ drivers space in relation to the lorry park and the remainder of the farm property.

(ii) No details have been provided advising of the type of engineering works nor whether the materials used/ completed require storage space, power equipment/ tools or gas cylinders in the process, where the application form shows nil floor space for this part of the proposal.

***The engineering works constitute the works carried out to form the hardstanding for the lorry park and the redline application site encompasses this land.***

(iii) The number of employees is stated as 12/13 persons, therefore with this number operating at or from the farm the existing drainage system and sanitary provision may need upgrading.

***Scottish Water and SEPA do not object to the application.***

(iv) The visual impact of fifteen large vehicles grouped together in the open countryside will be considerable and detrimental to the local environment.

***The concerns regarding the visual impact are noted and the assessment against the development plan in section 5 addresses the matter of visual impact.***

(v) The noise and activity generated by the HGV's coming and going every day will create disturbance to all within hearing distance.

***High Todhill Farm is fairly isolated and positioned at the top of a lengthy access road, where it is considered that there are no neighbouring properties located within a proximity that will be subject to a noise nuisance.***

(vi) With so many vehicles to be accommodated questions are raised whether there is a need for emergency fuel storage provision.

***The applicants have advised that the only fuel tank stored on the farm is the one for tractor fuel.***

(vii) The B778 road between Stewarton and Fenwick already carries many HGV's from the M77 and this road has several bends which can cause traffic problems when two HGV's meet, where the proposal will contribute to these problems.

***The Council's Roads and Transportation Division have not objected to the application as detailed in section 3.1.***

(viii) To encourage the application would only encourage future industrialisation of the countryside.

***It is considered that the approval of such a use in the countryside could set a precedent for further industrial business uses within the rural area.***

#### **4. REPRESENTATIONS**

Two additional letters of objection have been received from three objectors in relation to the proposal. The grounds of objection are summarised as follows:

4.1 The application represents part of a pattern of increasing light industrialisation of the countryside.

***It is accepted that the application represents an industrial use within the rural area.***

4.2 The facility of 'Bowies', formerly at East Pokelly on the minor road between Stewarton and Fenwick to the north, has recently moved to a more appropriate brown field site after local concern therefore the current application is contrary to that decision process.

***The re-location of 'Bowies' is not relevant to the assessment of the current application.***

4.3 The application should be advertised as a potential Development Plan Departure or as a potential bad neighbour development.

***The application was advertised as development constituting a 'departure or potential departure from The Development Plan'. It is considered that under Article 9 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and given the location and circumstances of the site, the proposal does not require to be advertised as a bad neighbour development.***

4.4 The application to the Traffic Commissioners last July/ August was for 15 HGV's and 15 trailers at the site and this level of activity has not been detailed for this application.

***The applicants submit that it is normal practice to have an operator's licence showing a different number of vehicles from that actually used where this permits vehicle numbers to vary as the business develops.***

4.5 The application contravenes policy IND6 of the Local Plan for the following reasons:

- The application cannot be justified in terms of criterion “a”, locational need.

***As detailed in section 5.2 below the applicants have failed to satisfactorily demonstrate a site specific locational need.***

- There are alternative premises/ land available on industrially zoned land.

***As detailed in section 5.4 there is considered to be ample surplus business/ industrial land within the Kilmarnock area.***

- The only economic benefit is to the operator. There is a clear economic disadvantage to the Council in terms of additional road/ verge maintenance where large and long vehicles use the B class rural road.

***As detailed in section 3.1 the Council’s Roads and Transportation Division have no objection to the application.***

- Such a transport/ distribution use in a rural area has considerable environmental/ visual impact where the parking area is visible for miles.

***As detailed in section 5.4 it is considered that this industrial use is detrimental to the character and amenity of the rural area as well as having an adverse impact on the surrounding environment and land uses.***

- An increase in HGV’s on the minor road will be a hazard for users and the B778 road between Fenwick and Stewarton already has a lorry park and storage at the old piggery and a motor related business at Low Gainford.

***As detailed in section 3.1 the Council’s Roads and Transportation Division have no objection to the application.***

- Loss of agricultural land due to increased hard standing construction may be an issue and these engineering operations continued after the application was lodged.

***The hard standing is located adjacent to the existing agricultural field, thus it is considered that the proposal does not result in the loss of a significant area of agricultural land.***

4.6 The development may also contravene policies IND7, IND8, IND10 and IND11.

***The application is assessed against the provisions of policies IND8 and IND10 below. It is considered that policies IND7 and IND11 are not relevant to the assessment of this application given that policy IND7 relates to extensions to both industrial and business premises and policy IND10 relates to the operation of small businesses in residential properties or associated outbuildings.***

4.7 There is no mains drainage or facilities for proper treatment and containment of accidental fuel spills.

***The applicants have advised that the only fuel tank stored on the farm is the one for tractor fuel.***

4.8 Trucks from Europe are parked on the access road over night with drivers sleeping or resting. There are no appropriate sanitation facilities for the drivers and this parking represents a security risk as well as amenity issues.

***The applicants submit that deliveries are arranged for 8am to 5pm and that lorries arriving during the evening is an infrequent occurrence. Any matter in respect of breaches of security is a matter for the police and the visual impact of the lorries is assessed against the provisions of the development plan in section 5 of this report.***

4.9 The objectors at Oldhall consider that the truck movements are significantly underestimated in the application. The farm buildings have been modified and are used for storage, loading, transshipment etc in spaces well in excess of the modest area mentioned for offices in the application. In addition they advise that contrary to the information stated on the application forms, there was no hard standing in this field prior to the present ownership. The truck parking area has been extensively excavated in two phases and considerable amounts of hardcore from demolition sites used to level the area.

***The applicants submit that one additional contract has been obtained by Elmhurst Transport and advise that there are some additional movements. The applicant maintains that there was an area of hardstanding in existence when the farm was purchased and Mr Spiers the previous landowner is prepared to attest this.***

## **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 policy G5 is applicable and states that development proposals in the Rural Protection Area shall normally be limited to the use of land within settlements. Outside settlements, development proposals shall conform to the Structure Plan only where the development:

A has a demonstrated site specific locational need;

***The applicants submit that the site has close links to the motorway which is essential to Elmhurst's business. It has easy access to their customer base and gives easy access to the work force. The M77 can be viewed as advantageous, however its presence needs to be carefully assessed in terms of any adverse visual or other impacts arising from development attracted to its proximity. When discussions were ongoing in 2004 East Ayrshire Council's Economic Development and Property Division could not offer any other suitable locations with a timescale that suited Elmhurst Transport.***

***It is considered that such a use is more appropriately located within an established business/ industrial area and therefore the applicants have failed to satisfactorily demonstrate an overriding site specific locational need.***

B can be justified in terms of social and economic benefit to the community;

***The applicants submit that if Elmhurst Transport had been forced to move out of East Ayrshire then all economic benefit to the area would have been lost. In addition the applicants submit that Elmhurst support a variety of local suppliers. It is considered that there would be little economic benefit to the community from the development.***

C contributes to rural land diversification; or

***The applicants submit that High Todhill Farm is a 62 acre working farm but the income from the farm is insufficient as a farming only business, where it is necessary to diversify. PAN 73 'Rural Diversification' states "In its simplest terms rural diversification means the establishment of new enterprises in rural locations. This can mean existing businesses entering into new areas of activity or the creation of entirely new enterprises". Whilst in principle it may be considered that the proposal constitutes rural land diversification, any development within the rural area still requires to be sensitive to its surroundings, rural character and amenity. The business/ industrial nature of the proposed development is not considered to***

***be sensitive to its rural location and would be more appropriately located within an established business/ industrial area as directed in the policies within the Local Plan. There has been no documentary evidence submitted by the applicants to justify the diversion from farming operation.***

D provides for the operational needs of agriculture and forestry.

***The proposal does not provide for the operational needs of agriculture and forestry.***

Thus it is considered that the proposal is contrary to the provisions of the Structure Plan given that the applicants have failed to demonstrate a site specific locational need.

### East Ayrshire Local Plan

5.3 Policy SD3 states that, within the Rural Protection Area, development proposals relating to land located outwith settlement boundaries will be acceptable to the Council only where the development:

(i) comprises an acceptable form of residential use as detailed in Policy RES13 of the Local Plan; or

***The application is not for residential use.***

(ii) can be fully justified in terms of site specific locational need; or

***As detailed in section 5.2 the applicants have failed to satisfactorily demonstrate a site specific locational need for the proposal at the proposed site.***

(iii) can be fully justified in terms of social and economic benefit to the community; or

***As detailed in section 5.2 that the information submitted by the applicant does not demonstrate that the proposal would provide economic benefit to the community.***

(iv) contributes to rural land diversification; or

***As detailed in section 5.2 in principal it is considered that the proposal constitutes an unacceptable form of rural land diversification.***

(v) provides for the operational needs of agriculture or forestry.

***The proposal does not provide for the operational needs of agriculture or forestry.***

5.4 Policy IND6 requires all proposals for new industrial or business development on land not specifically identified for such purposes on the Local Plan maps and change of use of existing premises to industrial or business use to be justified against a set of eight separate criteria, as follows:-

(i) locational need;

***As detailed in section 5.2 the applicants have failed to satisfactorily demonstrate a site specific locational need for the proposal at the proposed site.***

(ii) availability of alternative land/ premises in established industrial areas or on land identified as part of the marketable industrial land supply;

***There is considered to be ample surplus business/ industrial land within the Kilmarnock area.***

(iii) economic benefit;

***As detailed in section 5.2 the information submitted by the applicant does not demonstrate that the proposal would provide economic benefit to the community.***

(iv) impact on surrounding environment and adjacent uses;

***It is considered that in the circumstances of this site, the Class 5 and 6 uses are detrimental to the character and amenity of the rural area as well as having an adverse impact on the surrounding environment and land uses.***

(v) transportation and infrastructure implications;

***The responses of the Council's Roads and Transportation Division and other service providers are detailed in section 3.***

(vi) loss of public amenity open space;

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

(vii) loss of prime quality and good quality locally important agricultural land falling within categories 1, 2, 3 and 3.2 of the Macauley Land Use Research Institute; and

***The hard standing is located adjacent to the existing agricultural field, thus it is considered that the proposal does not result in the loss of a significant area of agricultural land.***

(viii) 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.***

5.5 Policy IND8 states that other than those sites specifically safeguarded for industrial use under Policy IND5, proposals for alternative uses of land or premises currently or formerly used for industrial purposes shall be considered acceptable subject to the following criteria:

(i) the proposed use not being detrimental to surrounding established uses;

***It is considered that the proposal shall not be detrimental to the existing use of the site for farming operations.***

(ii) the proposal meeting with the requirement of all other relevant Local Plan policies; and

***As detailed, the application is considered contrary to policies SD3, IND6 and IND10 of the Local Plan.***

(iii) the existence of alternative industrial or business land or premises with potential for future employment use within the settlement concerned.

***It is considered that there is a surplus of business/ industrial land within the Kilmarnock area.***

The Council will be particularly supportive of any proposals for such sites which incorporate or retain an element of industrial use as an integral part of their redevelopment.

5.6 Policy IND10 states that industrial and business development outwith settlement boundaries will be acceptable to the Council only where the proposal relates to one of five stated types of development, those being:-

(i) Category 1 and 2 business and industrial sites and those Miscellaneous Development Opportunity sites with potential for industrial or business development, as indicated on the Local Plan Rural Area Map;

- (ii) Sympathetic industrial and business developments associated with the traditional activities of agriculture and forestry;
- (iii) Sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments;
- (iv) Rail freight based industrial uses at existing coal disposal points; or
- (v) Sensitive industrial and business developments with a clearly demonstrated site specific locational need located within the Rural Diversification Area.

***The application does not meet any of the criteria of policy IND10.***

5.7 In conclusion it is considered that the proposal is 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 and the impact on the amenity of the area.

### Consultation Responses

6.2 Stewarton and District Community Council advise that the application should be refused, all other consultation responses do not raise any objections to the application.

### Representations

6.3 The representations received have been summarised in Section 4 of the report and are supportive of a recommendation that the application be refused.

### Impact on the amenity of the area

6.4 It is considered that to site fifteen HGV's and introduce an industrial use within the rural area would impose a significant impact to the detriment of the visual amenity of the area.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications resulting from this application. There may be legal implications arising from any enforcement action required against the applicant should the Committee agree to refuse the application.

## **8. CONCLUSIONS**

8.1 As indicated in the report the application is considered to be 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 however it is not considered that these are 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 and that appropriate enforcement action is initiated against the applicant to secure the cessation of the unauthorised use and the reinstatement of the site.**

## **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, on the basis that it does present a site specific locational need that can be accommodated without detriment to the amenity of the area, then the application will not require to be referred to the Development Services Committee as there would be no significant departure from Council policy.

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

GC/RH  
19 October 2005

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. Supporting information submitted by the applicant's agent.

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

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0599/FL

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Site of Proposal:	High Todhill Farm FENWICK, KA3 6AR
Nature of Proposal:	Change of Use of Part of Farm to Vehicle Haulage Business and Associated Engineering Works
Name & Address of Applicant:	Elmhurst Transport Scotland Ltd High Todhill Farm FENWICK, KA3 6AR
Name & Address of Agent:	Munro Architects 23 Portland Road KILMARNOCK, KA1 2BT

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DPOs Reference: GC/RH

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

1. The application is contrary to the provisions of policy G5 of the Ayrshire Joint Structure Plan as there is no site specific location need or economic benefit demonstrated for the development which will result in an unwarranted visual intrusion in the Rural Protection Area by reason of its siting and use.
2. The application is contrary to policies SD3, IND6, IND8 and IND10 of the East Ayrshire Local Plan as there is no site specific locational need or economic benefit demonstrated for the development, which will result in an unwarranted visual intrusion in the Rural Protection Area by reason of its siting and use.
3. The proposed development would set an undesirable precedent for inappropriate industrial business uses within the Rural Protection Area.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 576790.**