

**EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 27 JUNE 2003**

**03/0039/FL: PROPOSED REMOVAL OF CONDITION 2 OF PLANNING  
CONSENT 99/0857/FL – RESTRICTING HOURS OF OPERATION OF  
UNDERSOIL HEATING EQUIPMENT AT RUGBY PARK,  
RUGBY ROAD, KILMARNOCK  
BY KILMARNOCK FOOTBALL CLUB**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Full planning is sought to remove condition No. 2 of planning consent 99/0857/FL restricting the hours of operation of the under-soil heating system for the main football pitch at Rugby Park. Condition 2 states:

“The proposed development and associated equipment shall not be operated between the hours of 10.00pm and 8.00am on any day of the week”. The condition was imposed in the interests of the amenity of neighbouring properties.

The applicant has advised that extensive discussion has taken place about the plant involved and measures to reduce the noise of the equipment. The Football Club’s acoustic consultant has been in discussion with the Council’s Environmental Health Service regarding the improvements which have been made to the plant which should enable the restriction on operating hours to be lifted. These modifications have comprised the fitting of silencers to the burner flues and acoustic cowls. The applicant’s agent advises that agreement has been reached about a joint monitoring exercise of the modified plant. This monitoring exercise will also be undertaken in the new context of the Park Hotel being in operation.

The applicant’s agent advises that the Football Club believe that the steps which they have undertaken should ensure that the specified noise level restriction can be satisfied at all times. If Committee agree to remove Condition 2, the proposed joint monitoring exercise will provide a basis for confirming adherence to the specified noise maxima.

**2. RECOMMENDATION**

**2.1 The application should be approved subject to the conditions indicated on the attached sheet.**

**3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, there are no applicable policies in the Development Plan and therefore greater weight should be attached to other material considerations.

3.2 As indicated in Section 6 of this report, there are material considerations relevant to the proposal. The advice of Environmental Health is material in the determination of this application. The temporary removal of the condition would allow a clear picture of the noise levels experienced at the site especially after 1.00am without traffic and pedestrian noise. Environmental Health have also advised that if during this period, there is a proven nuisance they have the option of serving a Notice under the Environmental Protection Act.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the Head of Planning and Building Control, the application will not require to be referred to the Development Services Committee as there would be no significant breach of Council Policy.

**Alan Neish**  
**Head of Planning and Building Control**

**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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BY KILMARNOCK FOOTBALL CLUB**

**Report by Head of Planning and Building Control**

**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 because it is the subject of objections.

**2. APPLICATION DETAILS**

2.1 **Site Description:** This planning application relates to ground within Rugby Park which is home to Kilmarnock Football Club. The site for the proposed development is at the northern site boundary at Rugby Road. The site is bounded by Rugby Road to the north, the vehicle access into Rugby Road to the west beyond which are residential properties and to the south and east by the internal site concourse and the Chadwick Stand.

2.2 **Proposed Development:** Full planning is sought to remove condition No. 2 of planning consent 99/0857/FL restricting the hours of operation of the under-soil heating system for the main football pitch at Rugby Park. Condition 2 states:

“The proposed development and associated equipment shall not be operated between the hours of 10.00pm and 8.00am on any day of the week”. The condition was imposed in the interests of the amenity of neighbouring properties.

The applicant has advised that extensive discussion has taken place about the plant involved and measures to reduce the noise of the equipment. The Football Club’s acoustic consultant has been in discussion with the Council’s Environmental Health Service regarding the improvements which have been made to the plant which should enable the restriction on operating hours to be lifted. These modifications have comprised the fitting of silencers to the burner flues and acoustic cowls. The applicant’s agent advises that agreement has been reached about a joint monitoring exercise of the modified plant. This monitoring exercise will also be undertaken in the new context of the Park Hotel being in operation.

The applicant's agent advises that the Football Club believe that the steps which they have undertaken should ensure that the specified noise level restriction can be satisfied at all times. If Committee agree to remove Condition 2, the proposed joint monitoring exercise will provide a basis for confirming adherence to the specified noise maxima.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 The Grange Howard Community Council have objected to the removal of the condition and can see no indication of any alteration to the heating equipment since its installation circa 1999. They have therefore assumed that the noise levels from the equipment when in operation are as they were when the original consent (and condition 2) were imposed. Nearby residents confirm this assumption that the noise nuisance is unchanged as the equipment has already been operating during the restricted hours leading to a deterioration in residential amenity.

***Noted. Refer to the comments of Environmental Health in paragraph 3.2 of this report. There have been occasions when the equipment has been operating during the restricted period by the Football Club and as a result the matter has become an enforcement issue for the Planning Division.***

3.2 East Ayrshire Council's Environmental Health Service have advised that further monitoring of background noise levels and noise levels when the system is operating indicate that as a result of background noise levels increasing since the previous monitoring exercise, the difference between the background and operating noise levels is now within acceptable limits. There have, however, been few instances where monitoring of the system in operation has been possible and it is recommended that the condition be removed on a temporary basis until May 2004 to allow further opportunity for monitoring and a detailed report to be submitted.

Environmental Health have recommended in support of the temporary removal of the Condition because a clear picture of the noise levels experienced at the site can only be gained by monitoring the apparatus whilst it is in operation and comparing levels noted to measured background. There have been too few occasions during the present football season when the system was operating to allow Environmental Health to give a full report on the noise levels.

In respect of the monitoring times, Environmental Health accept that it would be beneficial to carry out monitoring after 1.00 am to obtain evidence of the noise level without extensive traffic and pedestrian noise, however this evidence can only be gathered if temporary consent is granted and monitoring carried out. Evidence gathered so far by Environmental Health indicated that the noise levels experienced may well satisfy Noise Rating 25 in that the level with the system running is less than 10dB(A) above background, although the background levels monitored will almost certainly drop after 1.00am. They have recommended that the condition be removed on a temporary basis under the following terms:-

(i) Temporary consent is granted until May 2004. Monitoring will be carried out by Officers from Environmental Health on occasions when the apparatus is working, including after 1.00 am;

(ii) Kilmarnock Football Club will be required to notify the Local Authority when it is their intention to operate the apparatus to allow monitoring to take place;

(iii) Where monitoring indicates that Nuisance conditions exist, Kilmarnock Football Club will be notified the next day and the apparatus will thereafter only be operated under the conditions currently approved. (It should be noted that Environmental Health have the option of serving Notice in the eventuality of a proven nuisance although it would be preferable to revert to the status quo should such a scenario develop).

***The technical advice of Environmental Health is noted. The Football Club have advised that they require the undersoil heating to be operational 24 hours a day during certain days of very cold weather in the winter months to allow the main football pitch to be in prime condition for matches. It is accepted that in order for Environmental Health to determine if there is a noise nuisance, this condition requires to be removed to allow a comprehensive monitoring scheme to take place between 10.00pm and 8.00am. Without the temporary removal of this condition, the Football Club would not be able to operate the equipment as they would be in breach of the planning condition and would be liable to enforcement action and therefore Environmental Health would not be able to determine any noise nuisance.***

#### **4. REPRESENTATIONS RECEIVED**

There are 10 letters of objection to the proposed development (including one from Grange Howard Community Council detailed in Section 3.1). Their grounds of objection are as follows:

4.1 Rugby Road is residential area and the existing restriction and the hours of operation is right and proper. To extend the hours of operation allowing the use of industrial machinery would cause unnecessary disruption to the local residents and this is based on past experience. It is understood that Kilmarnock Football Club have not postponed many matches within the last few years and it is considered therefore that the request is unnecessary. The heating is often used throughout the day but to extend this to throughout the night is not acceptable. Elderly residents live next to the equipment and find that the noise affects their sleep and the general health and wellbeing of all residents.

***The area surrounding Rugby Park is of a residential nature although the football club has been an established feature in the area for many years. The new Park Hotel constructed 2001-2002 has added to the facilities offered by the Club. The previous consent which granted the equipment, detailed that the Football Club required to have the***

***proposed system in operation to satisfy the requirements for Premier League clubs in Scotland to have pitches that can cope with both severe frost and heavy rain.***

***Members are also referred to paragraph 3.2 of this report and the recommendations of the Environmental Health Service.***

4.2 Kilmarnock Football Club have blatantly operated the equipment during the restricted period on several occasions without any action being taken to enforce the regulations. Some residents have stayed in the area for over 20 years and never have experienced problems with the club until the installation of this equipment. It clearly does not do the job it was intended to do. During the allowed hours of operation the noise is tolerable, but running 24 hours a day would be a breach of human rights.

***There have been instances when the equipment has been operated out of the approved hours and the issue has become an enforcement matter for this Division. It is a result of these instances that the present application has been submitted.***

4.3 Neither the Planning and Building Control Division, Environmental Health Service or the Football Club have ever had to experience the vibrations through residents homes, otherwise the original restrictions would be enforced.

***If the condition is removed on a temporary basis this would allow a comprehensive monitoring exercise to be undertaken to determine if a noise nuisance exists.***

## **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 planning application, the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (EALP).

5.2 There are no specific relevant policies in the Adopted Local Plan or the Structure Plan and therefore greater weight should be attached to the other material considerations.

## **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of this application are the consultation responses, objections received detailed in Sections 3 & 4 of the report and the planning history of the site.

## Consultation Responses and Representations Received

6.2 The concerns of the objectors are noted, however, in order to determine if a noise nuisance exists at the site it is recommended that the condition is removed on a temporary basis to allow monitoring of the apparatus whilst it is in operation and comparing levels noted to measured background. It is therefore considered that significant weight should be attached to the advice from Environmental Health.

### Planning History

6.3 99/0282/FL: This application for the warm air heat exchanger to support the undersoil heating system for the pitch at Rugby Park, was refused on 10 December 1999 owing to its effect on neighbouring properties and the noise nuisance caused by the equipment.

6.4 99/0857/FL: This resubmitted application was approved on 14 January 2000 following the submission of additional reports from the applicants acoustic consultants. There were 2 planning conditions that the noise produced by the plant should not exceed the background noise levels by more than 10dB(A) at the boundary of the nearest property and subject to the restricted hours of operation as detailed in paragraph 2.2 of this report.

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

7.1 There are no financial or legal implications for the Council in the determination of this application.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, there are no applicable policies in the Development Plan and therefore greater weight should be attached to other material considerations.

8.2 As indicated in Section 6 of this report, there are material considerations relevant to the proposal. The advice of Environmental Health is material in the determination of this application. The temporary removal of the condition would allow a clear picture of the noise levels experienced at the site especially after 1.00am without traffic and pedestrian noise. Environmental Health have also advised that if during this period, there is a proven nuisance they have the option of serving a Notice under the Environmental Protection Act.

## **9. RECOMMENDATION**

**9.1 The application should be approved subject to the conditions indicated on the attached sheet.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the Head of Planning and Building Control, the application will not require to be referred to the Development Services Committee as there would be no significant breach of Council Policy.

**Alan Neish**  
**Head of Planning and Building Control**

18 June 2003

(FMF/MS)

FV/DVM

### **List of Background Papers**

1. Application form and plans.
2. Statutory Notices and Certificates.
3. Public Advertisement.
4. Consultation Responses.
5. Letters of Objection.
6. Approved Ayrshire Joint Structure Plan.
7. Adopted East Ayrshire Local Plan.
8. Planning Permissions 99/0282/FL and 99/0857/FL.

Anyone wishing to inspect the above papers should contact Fiona Finlay on 01563 576768.

***Implementation Officer: Dave Morris***

Form TP24

TOWN & COUNTRY PLANNING (SCOTLAND) Act 1997

Application No: 03/0039/FL

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Location: Rugby Park  
Rugby Road  
KILMARNOCK

Nature of Proposal: Proposed removal of Condition 2 of planning consent 99/0857/FL restricting hours of operation of undersoil heating equipment.

Name & Address of Applicant: Kilmarnock Football Club  
Rugby Park  
Rugby Road  
KILMARNOCK  
KA1 2DP

Name & Address of Agent: Lawrence McPherson Associates  
Suite 1 Beresford Court  
6/8 Beresford Lane  
AYR  
KA7 2DW

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DPO's Ref: FMF/MS

The above FULL application should be granted subject to the following conditions:

1. Permission is hereby granted for the removal of Condition 2 of Planning Consent 99/0857/FL for a temporary period until 27 June 2004. Thereafter the terms of condition 2 (of the consent 99/0857/FL) shall be reinstated, unless a further separate planning consent is obtained to vary the operation of the condition.

**REASON** In order to allow further detailed monitoring to be undertaken by the applicant in conjunction with the Council's Environmental Health Service.

2. Within one month of the date of this permission, a comprehensive programme of monitoring shall be submitted by the applicant for the written approval of the Planning Authority which shall outline a method of monitoring the noise generated from the equipment. The programme of monitoring, which shall be implemented as approved, shall include provision for the following:-

(i) Monitoring will be carried out by Officers from Environmental Health on occasions when the apparatus is working including after 1.00am;

(ii) Kilmarnock Football Club will be required to notify the Local Authority as early as possible when it is their intention to operate the apparatus to allow the monitoring to take place;

(iii) where monitoring indicates that nuisance conditions exist, Kilmarnock Football Club will be notified by the Council and the apparatus will thereafter only be operated under the conditions currently approved.

REASON In order to monitor the noise generated from the under soil heating system and to determine the extent of noise generated over the period for which consent is granted.

**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.**