

EAST AYRSHIRE COUNCIL

COMMUNITY SERVICES COMMITTEE – 14 NOVEMBER 2001

**LAND ENCROACHMENT – SCOTT ELLIS PLAYING FIELDS,
NEW MILL ROAD, KILMARNOCK**

Report by Director of Community Services

1. PURPOSE OF REPORT

- 1.1 To request that Committee declare surplus to requirements two areas of ground extending in total to four hundred and thirty four square metres or thereby (identified on the attached plan) and forming part of Scott Ellis Playing Fields, Kilmarnock for disposal to Mr James Cuthbertson Proprietor of the adjacent premises known as the Mill, New Mill Road, Kilmarnock.

2. BACKGROUND

- 2.1 Scott Ellis Playing Fields were transferred to the former Burgh of Kilmarnock in 1937 by the Baron Howard de Walden and Collective Securities Company Ltd (now Kilmarnock Estates). It is a condition of title that the ground is to be laid out in all time coming for the use, recreation and enjoyment of the inhabitants of Kilmarnock and District.
- 2.2 The adjacent property known as the Mill presently comprises a residential house/office and various industrial buildings. This property is currently owned by a Mr James Cuthbertson who is in the process of selling the property to Bernard Lindberg and partners who operate a business called Spearhead Care and Hygiene and are suppliers to the health care profession of nursing/medical equipment products and supplies.
- 2.2 A title discrepancy has been identified in connection with the proposed sale of the Mill as the Keeper of the Land Register has identified that the two areas of land shown on the attached plan which are currently occupied by Mr Cuthbertson are within the ownership of the Council and form part of the title to Scott Ellis Playing Fields.
- 2.3 Research indicates that the original boundaries between the Mill and Scott Ellis Playing Fields were altered and the two areas of ground incorporated into the property occupied by the proprietors of the Mill sometime in the 1960's when mutual fencing separating the Mill from Scott Ellis Playing Fields was re-erected at the joint expense of both owners. The proprietors of the Mill have occupied the two areas of ground without challenge by the Council or its predecessors since that time.

3. CURRENT POSITION

- 3.1 Mr Cuthbertson requires to regularise the title position by acquiring the two areas of ground which he currently occupies to enable him to complete the sale to Bernard Lindberg and Partners. Bernard Lindberg and partners currently employ sixteen people and wish to acquire the Mill to enhance their business interests and allow for expansion. Should the title position not be regularised the sale is unlikely to proceed with the potential loss of future job opportunities to the local economy.

4. FINANCIAL IMPLICATIONS

- 4.1 The disposal of the two areas of ground to Mr Cuthbertson should generate a capital receipt which would be credited to the General Services Account..
- 4.2 It will be a condition of disposal that the Council's legal fees and outlays associated with this transaction be paid by Mr. Cuthbertson..

5. LEGAL IMPLICATIONS

- 5.1 The Council's Title to the land at Scott Ellis Playing Fields stipulates that the ground is to be laid out in all time coming for the use, recreation and enjoyment of the inhabitants of Kilmarnock and District. It will be a condition of disposal that Mr. Cuthbertson takes title to the two areas of ground subject to the terms and conditions of the Council's title. It will thereafter be the responsibility of Mr Cuthbertson to obtain any Waiver as may be required from the Superiors to enable him to complete the sale to Bernard Lindberg and Partners..
- 5.2 As detailed in 2.4 hereof the proprietors of the Mill have occupied the two areas of ground without challenge by the Council or its predecessors since the 1960's. In these circumstances and those detailed in paragraph 3.1 hereof relative to the sale of the Mill the regularisation of the title position by means of a disposal would seem to be the most reasonable course of action.

6. POLICY IMPLICATIONS

- 6.1 It is normal council policy to advertise surplus land for sale on the open market unless there are special reasons to do otherwise. It is considered that given the continued occupation by the proprietors of the Mill since the 1960's and the requirement to regularise the title position to allow for the sale of that property justifies a departure from normal policy.

7. RECOMMENDATION

- 7.1 It is recommended that ;-

- i) the two areas of land at Scott Ellis Playing Fields, Kilmarnock extending to four hundred and thirty four square metres or thereby shown on the attached plan be declared surplus to requirements and disposed of to Mr James Cuthbertson of the Mill, New Mill Road, Kilmarnock ;.and
- ii) the Director of Development Services be authorised to negotiate the terms and conditions of disposal in accordance with his delegated powers.

William Stafford
Director of Community Services

WS/SMcV/SAM
23 October 2001

LIST OF BACKGROUND PAPERS

NIL

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AGENDA