

EAST AYRSHIRE COUNCIL

**DEVELOPMENT SERVICES COMMITTEE - SITTING AS A PLANNING
COMMITTEE**

**MINUTES OF MEETING HELD ON TUESDAY 28 AUGUST 2001 AT 1403 HOURS
IN THE MEETING ROOM, COUNCIL HEADQUARTERS, LONDON ROAD,
KILMARNOCK**

PRESENT: Councillors Eric Ross, Stephanie Young, Daniel Coffey, Douglas Reid, Lilian MacLean, Drew McIntyre, Harry Wilson, John Knapp, Finlay MacLean, Eric Jackson, George Smith, Jimmy Kelly, Tommy Farrell, Robert Taylor and Jimmy Carmichael.

ATTENDING: Stephen Chorley, Director of Development Services; David Mitchell, Head of Administrative and Legal Services/Solicitor to the Council; Alan Neish, Head of Planning and Building Control; Karen McLeod, Solicitor; Hugh Melvin, Senior Development Promotion Officer; and Robert Beaton and Alex Hewetson, Administrative Officers.

APOLOGIES: Councillors Iain Linton, Jim Raymond, Robert McDill, Julie Faulds and Provost Jimmy Boyd.

CHAIR: Councillor Eric Ross, Chair.

HEARING PROCEDURE

1. The Administrative Officer established that the Hearing Procedure was understood by all participants.

Councillor Eric Jackson declared an interest in Item 2 and left the meeting.

2. **APPLICATION NO 00/0793/FL: KIER CONSTRUCTION LIMITED (MINING DIVISION): GREENBURN, CUMNOCK**

There was submitted an executive summary sheet and report dated 16 August 2001 (both circulated) by the Director of Development Services for proposed production of opencast coal and associated works for Greenburn Project including construction and operation of a new rail link at Greenburn, New Cumnock.

The Head of Planning and Building Control reported that 3 letters of representation had been received, one of which was subsequently withdrawn, details of which were contained within the report; summarised the planning considerations in respect of the application and gave the recommendation of the Director of Development Services: (i) that the application be approved subject to the following conditions, viz:- (1) The development to which this permission relates must be begun within five years from the date of this permission; (2) The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 10 years of the commencement date of the operations at Greenburn, or within such other time as may be agreed with the Planning Authority; (3) The applicant shall give notice to the Planning Authority, in writing, of the commencement of operations on the Greenburn site, one month prior to their commencement; (4) Prior to the commencement of operations on the Greenburn site, the applicant shall submit details of the proposed layout of the proposed coal preparation area including the

details of any structures to be located within this area. Details of the means of illumination of this area shall also be submitted and this illumination shall be installed in a manner which minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved the submitted details; (5) The developer shall undertake recording of archaeological resources within the development site to the satisfaction of the Planning Authority. No development shall take place within the development site until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, this scheme to be submitted for approval by the Planning Authority following consultation and agreement with the West of Scotland Archaeology Service; (6) The site access roads shall, prior to the commencement of operations on the Greenburn site, be constructed to the standards required in the Roads Development Guide 1995, for industrial use; the access road shall be bituminously surfaced from the edge of the respective public roads to the vehicle wheel wash facility located within the proposed development site; (7) The proposed diversion of the U719 public road shall be designed and implemented in accordance with the Design Manual for Roads and Bridges and East Ayrshire Council's Development Guide prior to coaling commencing on site, with the details to be submitted to, and approved by, the Roads Authority; (8) The proposed road crossing point on the U720 public road shall be strengthened prior to coaling commencing on site, with the details to be submitted to, and approved by the Roads Authority. A vehicle activated traffic control system with advance warning signs shall be provided to serve this crossing point; (9) Visibility splay areas of 4.5 metres by 160 metres shall be provided at Access A off the U719 public road with strengthening, kerbing, widening and drainage being implemented prior to site establishment; (10) No drainage connection shall be made to the public road drainage system without the prior approval of the Roads Authority. No surface water shall be allowed to discharge from the development site on to the adjacent public roads; (11) Appropriate measures, to prevent mud, dirt, dust, slurry, coal or stones being carried onto the highway, shall be taken and such steps shall include the provision and use of hard standing areas and a full wheel and body vehicle wash facility for the cleaning of all lorries, dump trucks, other heavy vehicles and plant leaving the site, all in accordance with the mitigation measures promoted within the Environmental Statement which accompanied the planning application; (12) The access roads and public roads adjacent to the site shall be kept clear of mud or other deposited materials at all times by means of mechanical brushing; (13) Prior to any road vehicle loaded with coal or other minerals leaving the site, the load shall be suitably covered/happed to ensure there is no escape of materials. A hard standing area shall be provided within the coal preparation area to facilitate the happing of haulage vehicles. Vehicles returning to the site shall also be happed to minimise traffic noise associated with empty vehicles; (14) Prior to excavation works commencing on site statutory undertakers' apparatus shall be protected and diverted as required, to the satisfaction of the respective and statutory undertakers and at the expense of the developer; (15) The developer shall make stock-proof and maintain, until the restoration of the site is completed, all the existing perimeter hedges and fences and shall protect these from damage during operational works. Where the site boundary does not coincide with an existing hedge or fence, then the developer shall provide and maintain stock-proof fencing with gates or cattle grids at every opening. Where the developer has the right to do so, undisturbed hedgerows, within or bounding the site, shall be maintained, the hedgerows to be cut and trimmed at the proper season

throughout the period of working and restoration of the site. Where dry stone dykes are to be removed, the stone shall be stored and later re-used in the restoration of these dykes; (16) Topsoil and sub-soil shall only be stripped when the soils are sufficiently dry so that when moved no damage will be done to the structure of the soils. Apart from the works required to enclose the site, no operations shall be carried out until the topsoil is full stripped and stored in the designated areas within the site, in accordance with the phased programme of extraction as described in the Project Description which forms part of the planning application; (17) Topsoil shall be stripped to full available depth from all areas within the site except those designated in the approved plans as topsoil dumps. Following topsoil stripping operations from any areas of land, sub-soil shall be stripped as a separate operation to a depth, where possible, to achieve topsoil and sub-soil not less than 0.9 metre at restoration; (18) The developer shall give at least two working days notice to the Planning Authority before work commences on the stripping of topsoil and/or sub-soil. The Planning Authority reserves the right to suspend operations during adverse conditions; (19) Bind-free soil forming material found during the course of the operations shall be reserved where practicable and stored for later use in the final restoration of the land. This material shall be used to replace shortages of sub-soil or topsoil, or otherwise used to cap overburden mounds; (20) Topsoil, sub-soil and overburden shall be carefully stored in separate dumps and prevented from mixing. Topsoil dumps shall not exceed 5 metres in height. Topsoil dumps and sub-soil dumps shall be evenly graded and tops shaped to prevent water ponding. Sub-soil dumps shall not exceed 15 metres in height and overburden dumps shall not exceed 30 metres in height; (21) In the first available seeding season following their formation, all mounds of topsoil, sub-soil and soil making materials shall be seeded in grass and shall be so maintained until the soils are required for use in the restoration of the site except as may be otherwise agreed with the Planning Authority. The overburden mound shall be hydro-seeded in accordance with the Project Description to the satisfaction of the Planning Authority; (22) All weeds on the site, particularly those on the topsoil and sub-soil storage mounds, shall be treated with weed killer or cut to prevent spreading within the site or onto adjoining agricultural land; (23) The location of baffle embankments shall generally be as indicated on the approved plans. Their specific location shall be chosen to assist in the visual screening of the site and their form should be such as to present a natural looking feature; (24) The sub-soil and overburden storage mounds shall be so formed as to have minimal visual intrusion on the surrounding landscape; (25) Where the soils are to be used in the restoration of land to forestry, then the stripping and storage of soils shall be to the general requirements and specifications of the Forestry Commission; (26) All water treatment areas and settlement lagoons shall be enclosed by a one metre high stock-proof fence and shall be implemented prior to any significant soil stripping; (27) Throughout the period of site working, agricultural restoration and after-care, the developer shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as not to impair the flow nor render less effective drainage onto and from adjacent lands. If there are any watercourses that contain fish the culverts shall be constructed to allow the passage of fish through them. Any culverts installed shall be removed following reinstatement of the site; (28) Appropriate provision shall be made at all times to ensure that under drainage is maintained for land outwith the working areas. Standing water must not be allowed to gather in any area where the topsoil and sub-soil has not been stripped; (29) Alternative arrangements shall be made for any interruption of adjacent drainage

systems, new interceptor leaders shall be laid, or ditches cut, where required, to ring the site and bleed in existing lateral drains from adjoining undisturbed land; (30) All contaminated drainage and run-off from the site roadways, intercepting ditches, overburden and other tips, coal handling and stocking areas, the working areas of the excavations and pump mine water shall receive adequate and appropriate treatment prior to being discharged to any watercourse, such treatment being to the satisfaction of the Planning Authority; (31) Prior to any coaling operations being undertaken, the applicant shall consult with the Scottish Environment Protection Agency with respect to the measures to be taken to address any potential migration of water from the River Nith into the void area. Such measures shall be undertaken to the satisfaction of SEPA and the Planning Authority; (32) Appropriate precautions shall be taken to prevent the discharge of oil from fuelling, oil storage, plant maintenance and vehicle wash areas within the site; (33) All fuel, oil or other chemical storage tanks on the site shall be sited on impervious bases and surrounded by tank bund walls. The bunded areas shall be capable of containing 110% of the tank's volume and shall enclose all fill and draw pipes. If the storage tanks are to be sited at a single compound, the bund wall shall be capable of containing 110% of the volume of the largest storage tank. All fill and draw points shall be padlocked when not in use. Waste oil from plant maintenance should be collected and disposed of safely. Any maintenance of vehicles required to be undertaken outwith the proposed workshops area shall be undertaken in a manner as to prevent any spillage of oils or fluids entering watercourses; (34) All foul drainage from sanitary facilities, canteens, etc shall be treated prior to discharge to a soakaway system. In the event that percolation tests indicate that the ground is not suitable for discharge to soakaway system then additional treatment will be undertaken prior to any discharge of sewage effluent to any watercourse; (35) The formation of overburden areas shall be carried out, as far as practicable, behind mounds in order to reduce noise nuisance to a minimum and, whenever possible, during the hours of darkness, warning lights shall be used instead of beepers as a warning device on plant and maintenance vehicles, or other appropriate warning devices the details of which shall be submitted to and approved by the Planning Authority; (36) The operational conduct of the site shall be generally as indicated in the Project Description that forms part of the application; (37) A dust-monitoring programme shall be agreed with the Planning Authority in consultation with the Environmental Health Authority and undertaken using appropriate equipment and recording devices. The results and records shall be made available to the Planning Authority on a monthly basis during the operational life of the site; (38) Except in the case of emergency, the hours of working on site will be between 0700 hours on a Monday through 1600 hours on a Saturday (24-hour working). In respect of coal preparation and rail loading, these operations shall be confined between 0700 hours and 1900 hours Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays. With the exception of essential site maintenance and the maintenance of plant and machinery, no work shall take place on Sundays or on recognised Public Holidays in East Ayrshire; (39) Except in cases of emergency, the dispatch of coal from the site via the proposed railhead facility shall be confined between 0700 hours and 1900 hours Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays. The dispatch of coal by road to local domestic markets shall be confined to between 0800 hours and 1800 hours Mondays to Fridays. There shall be no dispatch of coal on Sundays; (40) No haulage of coal from the extraction area to the coal preparation areas shall take place between 1800 and 0800 hours during the 24-hours working period; (41) The conduct of the site and method of operations shall

comply with British Standards 5228 and Part 3 of the 1984 Code of Practice for Noise Control Application to Surface Coal Extraction by Opencast methods. Except during the formation a removal of baffle mounds and the stripping and replacement of soils, the noise limit during daytime (0700 to 1900 hours) shall not exceed 45DB Laeq; 1h and 40dB Laeq, 1h during night time (1900 to 0700 hours) at noise sensitive properties. During the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit shall not exceed 70DB Laeq; 1h at noise sensitive properties with such works only taking place during daylight hours; (42) An appropriate noise-monitoring programme shall be undertaken during the operational life of the site, the details of which shall be agreed by the Planning Authority prior to the commencement of development using appropriate equipment and recording devices, the results of which shall be made available to the Planning Authority on a monthly basis; (43) Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 1000 to 1600 hours Mondays to Fridays and between 1000 to 1200 hours on Saturdays. No blasting operations shall be undertaken within 500 metres of any occupied properties outwith the control of the applicant; (44) An appropriate blast-monitoring scheme shall be undertaken during the operational life of the site, the details of which shall be agreed with the Planning Authority in consultation with the Environmental Health Authority, using the appropriate equipment and recording devices, the results of which shall be made available to the Planning Authority on a monthly basis; (45) All opencast machinery not in use shall be parked, as far as practicable, in an inconspicuous position and shall not be astride soil or overburden mounds; (46) Any rubbish and scrap materials generated on the site shall, as far as is practicable, be kept in a screened position until disposed of in an approved manner to the satisfaction of the Planning Authority; (47) The site shall be progressively restored generally in accordance with the scheme submitted with the planning application as may be amended in consultation with the Technical Support Group to be established for the site. The details shall include provision for the coal preparation area to be restored to a suitable condition, the restoration of the remaining area of the site for agricultural or forestry or nature conservancy or natural and man-made heritage interpretation or other appropriate uses as approved by the Planning Authority. The scheme shall also include the reinstatement of any access roads/rights of way at present in existence in accordance with the Restoration Strategy. The procedures for replacement of overburden, sub-soil and topsoil shall generally accord with those indicated in the Project Description and to the satisfaction of the Planning Authority; (48) No materials for filling shall be introduced to the site from sources external to it without the formal approval of the Planning Authority; (49) The restored site shall be progressively landscaped generally in accordance with the Restoration Strategy submitted with the planning application and shall include details of field patterns, forestry planting, shelter belt creation, hedgerows, nature habitat creation including additional wetland areas and, if appropriate, broadleaf species in the design of shelterbelts and the creation of imaginative walkways and nature trails; (50) The restored site shall be subsequently managed in accordance with an aftercare scheme submitted to and approved by the Planning Authority within 6 months of coaling operations commencing on site. The aftercare scheme shall be the subject of prior consultation with Scottish Natural Heritage, the Royal Society for the Protection of Birds and the Planning Authority; (51) There shall be an annual formal review to consider all the operations which have taken place on the site during the year, and to consider the programme for the ensuing year. The parties involved in

the review shall include the applicant, the Mineral Operator, the owners of the land and the Planning Authority; (52) Two weeks prior to the annual formal review an updated plan will be forwarded to the Planning Authority indicating the year's work on the site and showing the anticipated work programme for the ensuing year; (53) Prior to the felling of any trees at Fardenreoch Farm steading, the applicant shall undertake further detailed survey work in respect of potential bat interest in this area. The results of this further survey work shall be submitted to the Planning Authority. Should the survey work indicate the roosting of bats, no trees shall be felled until appropriate authorisations have been granted to exclude the bats; (54) Prior to the demolition of Fardenreoch Farm steading, the buildings shall be re-surveyed to ascertain the presence of nesting birds. The results of the survey shall be submitted to the Planning Authority, Scottish Natural Heritage and the Royal Society for the Protection of Birds in order that appropriate guidance can be given. No demolition work shall take place during the bird breeding season; and (55) No coal shall be dispatched from the Greenburn site until the proposed dedicated railhead is constructed and is operational; Condition (1) being imposed to comply with Section 58 of the Town and Country Planning (Scotland) Act 1997; Condition (2) to ensure that the development, which is temporary in nature, is commenced and completed within an acceptable timescale. The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis; Condition (3) to ensure that appropriate monitoring systems are in place prior to the commencement of operations on site; Condition (4) in the interests of amenity; Condition (5) to ensure that appropriate archaeological work is undertaken before the development commences; Conditions (6), (7), (8), (9), (11) and (12) in the interests of road safety; Condition (10) in the interests of public road safety; Condition (13) in the interests of road safety and minimising noise impact; Conditions (14) and (26) in the interests of public safety; Conditions (15), (21), (23), (24), (45), (46) and (50) in the interests of visual amenity; Condition (16) to ensure that the topsoil and sub-soil will be suitable for the restoration of the site following storage; Condition (17) in the interests of achieving maximum restoration potential; Condition (18) to prevent damage to soils and to ensure that the topsoil and sub-soil to be stored will be suitable for use during restoration of the site; Condition (19) to ensure that sufficient soils are available during restoration of the site; Condition (20) to prevent damage occurring to soils and in the interests of visual amenity; Condition (22) to prevent weed contamination of soils in the interests of proper site restoration; Condition (25) in the interests of site restoration; Condition (27) to prevent a detrimental effect upon adjacent agricultural and other operations; Conditions (28) and (29) to prevent damage to adjacent land and soils; Conditions (30) and (32) to prevent contamination of watercourses; Condition (31) to safeguard the watercourse and in the interests of public safety; Condition (33) in the interests of public safety and to prevent any pollution of watercourses; Condition (34) to prevent any pollution of watercourses; Condition (35) in the interests of minimising noise impact; Condition (36) to ensure that the development is undertaken in accordance with the details approved; Conditions (37), (42), (44) to ensure that appropriate environmental standards are maintained throughout the life of the site; Conditions (38), (39) and (40) in the interests of the amenity of the area; Condition (41) in the interests of residential amenity; Condition (43) in the interests of amenity and public safety; Condition (47) to ensure appropriate restoration of the site; Condition (48) to enable the Planning Authority to retain control over development of the site; Condition (49) to secure appropriate restoration features and habitat enhancement; Condition (51) to enable

the Planning Authority to update the operation of the site in the light of any difficulties encountered and to monitor progress of site operations; Condition (52) to assess the operational status of the site; Conditions (53) and (54) in the interests of protecting fauna; and Condition (55) the proposed railhead is integral to the mitigation of impacts associated with the transportation of coal; and (ii) that the issue of the Decision Notice be withheld until (a) the application has been formally notified to and has been cleared by the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998; and (b) the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant in respect of the matters described in Paragraph 8.9 of the report.

2.1 PLANNING HEARING FOR APPLICATION NO 00/0793/FL

The Chair advised the order in which objectors would be heard in supplement to their written objections.

The Committee then heard Ms Gordon, on behalf of MEGA and Mrs Littlejohn, assisted by Mrs Muir, in support of their objections and Mr Watkinson, representative of the applicant, in support of the application. Members asked questions of the applicant's representative. The representative of the applicant responded to issues raised by the objectors, all in accordance with the Hearing procedure.

The Chair closed the Hearing.

2.2 DETERMINATION OF APPLICATION NO 00/0793/FL

The Head of Planning and Building Control reported on the planning issues which had been raised during the Hearing.

Councillor Jimmy Kelly, seconded by Councillor Tommy Farrell moved:-

- (i) to grant the application subject to the conditions and for the reasons detailed above; and
- (ii) that the issue of the Decision Notice be withheld until:-
 - (a) the application had been formally notified to and cleared by the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998; and
 - (b) the Solicitor to the Council had satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Paragraph 8.9 of the report.

The Chair reported and it was noted that a request by Councillor Kelly, that a vote be taken by roll call, which request had at that stage secured the support of one third of the Members of the Committee in accordance with the Standing Orders, was premature at this point as there was no alternative proposal.

Councillor Douglas Reid, seconded by Councillor Harry Wilson, moved as an amendment to refuse the application on the grounds it would have a significant detrimental impact cumulatively and individually in terms of the visual impact on the landscape of the area.

There being an alternative proposal the vote was taken by calling the roll as follows, viz:-

For the Motion - Councillors Eric Ross, Drew McIntyre, John Knapp, George Smith, Jimmy Kelly, Tommy Farrell, Robert Taylor and Jimmy Carmichael.

For the Amendment - Councillors Stephanie Young, Daniel Coffey, Lilian MacLean, Douglas Reid, Harry Wilson and Finlay MacLean.

The motion was therefore carried by 8 votes to 6.

**APPLICATION NO KL/E/OL/95/251A: TEXACO AND APPLICATION NO
KL/E/OL/89/143B: MR ASHLEY BELL (Item 13.5, Page 1553, 96/99)**

3. There was submitted a report dated 20 August 2001 (circulated) by the Director of Development Services on changed circumstances since determining planning application nos KL/E/OL/95/251A and KL/E/OL/89/143B in respect of the development of motorway service areas at Kingswell Junction, Fenwick.

The application submitted by Texaco, having been withdrawn, it became necessary to make a recommendation on the one application still to be determined: KL/E/OL/89/143B.

It was agreed that the Decision Notice for application no KL/E/OL/89/143B be issued in accordance with the previous decision of this Committee on 6 March 1997.

The meeting terminated at 1515 hours.

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