

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 1 AUGUST 2000

**99/0483/AL: CERTIFICATE OF APPROPRIATE ALTERNATIVE DEVELOPMENT –
CUMNOCK BYPASS
APPLICATION BY DUMFRIES ESTATES**

Report by Director of Development Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for a Certificate of Appropriate Alternative Development.

2. CERTIFICATE OF APPROPRIATE ALTERNATIVE DEVELOPMENT (CAAD)

2.1 When a Public Authority is acquiring land compulsorily the owner of the land may apply to the Planning Authority for a Certificate of Appropriate Alternative Development. The purpose of the Certificate is for the owner to obtain a view on the types of uses the land could have been put to if it were not to be compulsorily acquired. CAADs are in effect hypothetical planning permissions and are used for valuation purposes only.

An applicant for CAAD must specify what classes of development are considered appropriate.

In considering any application the Planning Authority must take the following matters into account.

1. It cannot make its decision solely on the basis that the alternative use(s) applied for would be contrary to the relevant development plan; the policies of the development plan are material and not conclusive.
2. The purpose for which the land is being purchased must be ignored.
3. The fact that the land is being compulsorily acquired must be ignored.

Planning Authorities may issue a Certificate for uses other than those applied for and can conclude that there is no development for which permission would have been given.

In establishing the relevant date for determining what, if any, alternative development would have been appropriate a distinction must be made between the relevant date for applying planning policies and the relevant date for considering physical factors in the

present case. The relevant date for applying planning policies is the date of vesting of the Compulsory Purchase Order. The relevant date for considering physical factors is the date of publication of the notice of the making of the Compulsory Purchase Order.

Applicants have a right of appeal against non-determination by the Planning Authority. There is also a right of appeal by the applicant *or* the acquiring Authority once the CAAD is issued.

3. APPLICATION DETAILS

3.1 Site Description: The application for a CAAD relates to two areas of land. The first area of land is between Ayr Road and Shankston Wood, Cumnock, (referred to in this report as area A). The second area of land is to the west of Glenramskill Avenue, Cumnock, (referred to in this report as area B). Both areas of land were acquired compulsorily by the Scottish Office for construction of the Cumnock Bypass. A map identifying both areas of land with an approximately line of the bypass marked is appended to this report for clarify.

Uses Applied For: The applicants submit that if the land had not been compulsorily acquired to allow construction of the Cumnock Bypass the land would have been appropriate for the following uses.

Area A – Business/industrial/warehousing development within Classes 4,5 and 11 of the Town and Country Planning (Use Classes)(Scotland) Order 1989.

Residential development including uses within Class 14 of the Town and Country Planning (Use Classes) Order 1989.

A hospital or other residential institution (including a nursing home) within Class 13 of the Town and Country Planning (Use Classes) Order 1989.

Area B – Residential development including uses within Class 14 of the Town and Country Planning (Use Classes) Order 1989.

4. RELEVANT DATE FOR CONSIDERATION OF CAAD

The date of vesting of the Compulsory Purchase Order (CPO) was 01 November 1989. The date of publication of the Notice of the making of the CPO was 02 June 1989. In other words this Committee is required to determine what would have been granted planning permission on 01 November 1989 (if the road construction scheme is discounted) within the context of the development plan policies that existed in 1989. Account must be taken of the physical factors in place at the time of the publication of the notice of making the CPO.

5. RELEVANT DEVELOPMENT PLANS

5.1 Structure Plan – The relevant structure plan was the Strathclyde Structure Plan as approved by the then Secretary of State in 1988 (Structure Plan 1981), First Review 1983, Second Review 1985, and 1986 Update approved 16 March 1988).

For ease of reference the initial Structure Plan in 1981 and First and Second Reviews were consolidated into the Structure Plan 'Handbook' in 1986.

A material consideration is the 1988 Update and proposed modifications prepared by the Secretary of State, dated 11 August 1989. Given that the conclusions are provisional little weight should be attached to it.

5.2 Local Plan – The relevant Local Plan is the County Development Plan Town Map No 3 for Auchinleck, Cumnock and Lugar 1963, approved by Ayr Council Council on 31 March 1964.

A material consideration is the Cumnock-Auchinleck Draft Local Plan published in December 1988.

5.3 Other considerations – National Planning Guidelines and circulars in force in 1989 are also relevant considerations where applicable.

Circular 24/85 Development in the Countryside and Green Belts is material.

6. APPLICANTS REASONED JUSTIFICATION

The following provides a summarised account of the applicants reasoned justification for permitting the uses listed above on the two sites.

General Considerations – At 01 November 1989, taking account of the development plan and other material considerations but disregarding the policies relating to the Cumnock Bypass in the development plan and draft development plan, it is considered that both sites would be within the settlement boundary of Cumnock. In landscape terms inclusion of the sites within the town boundary, with limited structural planting, would provide a more sympathetic boundary between town and country.

Area A

Business/Industrial/Warehousing Uses – The structure plan and draft local plan requires that an adequate supply of industrial land be identified. It is considered, given the existing bus garage and factory within the immediate vicinity, that business/industrial/warehousing development would have been appropriate.

The 1963 Town Map zones land to the south of Ayr Road and west of the bus garage as industry.

Residential Development – The Structure Plan requires that an adequate supply of land is identified and the draft Local Plan proposed a number of residential sites to meet housing demand. Identification of sites in the Local Plan was constrained by the bypass line. The site is in a predominantly residential area and would be able to provide a residential development that complies with the overall development strategy in terms of proximity to facilities and landscape setting in comparison to the sites identified in the draft Local Plan. For these reasons the site would be an acceptable departure from the 1963 Town Map.

Hospital/Residential Institution – The Structure Plan requires community facilities to be located within main settlements. The draft Local Plan is supportive of such a use. A hospital/residential institution can be justified in relation to the 1963 Town Map.

Area B

Residential Development – The development of this area for housing will go toward meeting the required demand in an acceptable location. The western limit of the existing residential development at Glenramskill Avenue has been predetermined by the bypass alignment and must be disregarded. Were it not for the bypass the residential development would have extended westwards to Shankston Wood.

7. CONSULTATIONS

7.1 East Ayrshire Council Roads and Transportation Division has commented as follows:

Area A – The ground along the line of the bypass consisted of silt deposits in the low lying areas and was excavated to a depth of 2.5 metres than back filled with rock. The site could have been used for development.

Area B – The ground slopes steeply towards Glenramskill Avenue and also towards the north west along the line of the bypass. It is a very wet site with water emanating at various points along the wooded hillside and abandoned railway. During soil investigation works for the bypass artesian water cascaded from some of the boreholes.

To enable the construction of the bypass up to 2.5 metres of peat and silt were removed from this area and the excavations back filled with large rock. Extensive cut off drainage was also installed.

Noted.

7.2 West of Scotland Water Authority and The Coal Authority have no adverse comments to offer.

Noted.

7.3 The Scottish Environment Protection Agency would have no objection to the proposed alternative development for the areas of land concerned provided that the drainage arrangements are to their satisfaction. They recommend that West of Scotland Water should be consulted.

Noted.

7.4 Cumnock Community Council has not responded to the consultation letter.

Noted.

8. REPRESENTATIONS

8.1 The Scottish Executive has indicated that it will not be submitting any representations.

9. DEVELOPMENT PLAN STATUS

9.1 The relevant development plans are identified in Section 5 above.

The policies within each plan that are applicable to the uses applied for are briefly outlined below.

9.2 Strathclyde Structure Plan STRAT1 – the development strategy shall be to increase the attraction of the Region for investment and to reduce the flow of employment and population ... from the remoter rural areas by ... sustaining existing communities ...

RRA1 encourages development proposals serving a wide community of interest to location within existing main settlements.

CAT1 – isolated development in the countryside shall not generally accord with the strategy.

RES1 – each District Council should bring forward and maintain a range of private house building opportunities (Cumnock and Doon Valley District was the basic unit for calculating housing demand and supply).

RES2A – new greenfield sites require to be justified against evidence of demand and supply in terms of quantity, quality, and location within a district, infrastructure implications and impact on the countryside around towns.

The comparison of owner occupied housing land supply against demand indicated that there was a surplus of effective housing land within Cumnock and Doon Valley. Proposals to make provision for local housing needs under RES6 within the remoter rural areas were subject to infrastructure implications.

The Structure Plan recommended that 36Ha of residentially zoned land should be reviewed on the basis that some of the land would not be needed to meet housing demand and compatibility with approved Structure Plan policy.

IND1 – local plans should identify serviceable, available and marketable industrial land. Marketable land should be limited in amount to avoid blighting other uses. Industrial land may be developed for leisure, tourist or service industries where local conditions allow.

No shortage of industrial land was identified in the Structure Plan.

9.3 The 1963 Town Map The route of the A76 bypass is marked on the Town Map from Skerrington in the south east to Darnlaw in the north west.

Various housing sites are identified principally to the north and east of Cumnock. The Report of Survey states that with the exception of the Cairn Estate (which includes Glenramskill Avenue) there is ample room for expansion in the extra-Burghal area of Cumnock.

A site of 2.64 acres on the south side of Ayr Road, Cumnock, is identified for industrial use. General and light industrial uses are acceptable on industrial sites. Warehousing developments may be acceptable on industrial sites.

Medical services are described in the Report of Survey but there is no indication of any need for new hospital or institutional facilities within the Town Map written statement.

9.4 Cumnock – Auchinleck Draft Local Plan Preference is given to the development of brownfield land over greenfield land although greenfield sites would be considered if a shortage of housing development opportunities could be proved.

Two housing sites were identified at Holmhead and Barshare, Cumnock.

Encouragement is given to retaining existing industrial areas and the development of new, small scale, industrial estates.

The plan recommends that Ayrshire and Arran Health Board should replace the Clinic at Millbank. No reference is made to the need for a new hospital.

All of Area A on its eastern side is adjacent to an area specifically identified in the Local Plan as an area of restraint.

Part of Area B is specifically identified as an area of nature conservation where there is a presumption against development having an adverse effect on the resource.

The line of the proposed Auchinleck-Cumnock Bypass is clearly identified on the Local Plan Map.

10. CONSIDERATION OF PROPOSED USES

10.1 Section 4 highlighted that the Committee is required to determine what would have been granted planning permission in November 1989 whilst taking on board physical factors in place at the time of publication of the Notice of making the CPO.

10.2 **Area A – Although Area A is located adjacent to an area of restraint in the draft Cumnock-Auchinleck Local Plan no specific reasons for this designation are provided. The area of restraint is itself adjacent to an established industrial estate. Consultations received indicate that although the site has constraints to development it is nevertheless developable.**

The Local Plan encourages limited industrial development although no shortage of industrial land is identified in the Structure Plan. The Structure Plan similarly encourages development where these are likely to stem out migration and encourage employment. The land adjacent to Area A is identified on the 1963 Town Map for industrial purposes.

Area A is not within an established residential area. There is no requirement in the Structure Plan to identify new housing sites to meet a shortfall in the housing land supply. The draft Local Plan identifies two sites. Both sites are well related to existing retail and community facilities and have higher levels of amenity in comparison to Area A. Area A even if combined with the adjacent land to the east would not have satisfied the requirements of RES2A. In particular its location close to an existing industrial area containing uses detrimental to residential amenity mitigates against planning permission being granted.

There are no specific policies in the draft Local Plan to guide the location of community facilities. The 1963 Town Map also provides no guidance. The Structure Plan under RRA1 advocates that development proposals serving a wide community of interest should be located in the main settlements. However similar tests of amenity to that for housing would likely have been applied for a hospital or institutional use.

For the above reasons it is recommended that for Area A (if combined with the land to the east) industrial, business and warehousing uses within Classes 4, 5 and 11 of the Town and Country Planning (Use Classes)(Scotland) Order 1989 would most likely have received planning permission in November 1989.

10.3 **Area B – Area B is located in an area set aside for nature conservation in the Local Plan. There is a presumption in favour of single, small scale or high amenity residential development in the countryside but this is set aside within**

specific areas including listed wildlife sites. Shankston Wood and the area surrounding is included in the Plan as a listed wildlife site.

The Structure Plan identifies a surplus of housing land. The consultation response from the Roads Division indicates that access is technically feasible from Glenramskill Avenue but that it is very wet and may require infilling and compacting due to the poor ground conditions. RES2A of the structure plan is difficult to satisfy particularly on the basis of quality (in comparison to the other sites identified in the draft Local Plan), quantity and location.

For the above reasons it is recommended that for Area B residential use is rejected.

11. LEGAL AND FINANCIAL IMPLICATIONS

11.1 Legal Implications: Sections 22-30 of the Land Compensation (Scotland) Act 1963, as amended, sets down the procedure to be followed in applying for a CAAD and in determining an application. This type of application differs from an ordinary application in that it is a hypothetical exercise and the classes of development approved will not be implemented. The sole purpose of an application is to provide a basis for determining development value of land.

The terms of the Certificate can be appealed. The Planning Authority must act reasonably in its determination of the application just as it is required to do in respect of ordinary applications for planning permission.

Any increase in the compensation payable which may arise for the CPO will require to be met by the Scottish Executive, not the Council.

12. RECOMMENDATION

It is recommended that the application be approved only in respect of the following classes of development as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1989 and as indicated on the attached sheet.

**Stephen Chorley
Director of Development Services**

18 July 2000
(KW/MMM)

LIST OF BACKGROUND PAPERS

1. Application details and plans.
2. Consultation responses.
3. 1963 Town Map.
4. Consultative Draft Cumnock-Auchinleck Local Plan.
5. Strathclyde Structure Plan as reviewed and updated.

Anyone wishing to inspect the above papers please contact Karl Doroszenko on 01563 576751.

Implementation Officer: Pamela Clifford

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EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

00/0483/AL

Site of Proposal: Cumnock By-pass, CUMNOCK

Natural of Proposal: Proposed Certificate of Appropriate Alternative Development

Name & Address of Applicant: Dumfries Estates
c/o Bryce Associates
5 Newton Terrace
GLASGOW G3 7PJ

Name & Address of Agent: As above.

DPOs Reference: KD/MMM

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

1. By-pass land between A70 Ayr Road and Shankston Wood and area hatched A on attached plan:-

Business/industrial/warehousing development within Classes 4,5 and 11 of the Town and Country Planning (Use Classes)(Scotland) Order 1989.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 555320.**

AGENDA