

**BRIGHOUSE: LETTER TO CITY COUNCIL IN RESPECT OF APPLICATION 20/02916 TO EXTEND  
TIMESCALE FOR PLANNING CONDITION REQUIRING PROVISION OF SPORTS FACILITIES**

**Letter sent by e-mail to Paul Laurence, Exec. Director of Place, City of Edinburgh Council and  
copied to Head of Planning, Convenor and Vice-Convenor of Development Management  
Committee. 14<sup>th</sup> February, 2021**

Good morning Mr Lawrence

**Application for Planning Permission 20/02916/FUL at Land Adjacent To Former 34, Cramond Road  
North, Edinburgh.**

**Section 42 application to vary condition 1 of planning permission reference 13/01843/FUL (which  
modified consent 05/02947/FUL, which previously modified consent 01/01881/FUL), to extend the  
proposed timescale for laying out and operating the approved sports pavilion and sports pitches  
for a further five year period.**

I write on behalf of the Cramond & Barnton Community Council (CBCC) who are a statutory  
consultee and would wish this submission and annex o be circulated to members of the Sub-  
Committee in advance of the meeting and displayed on the Planning Portal as it raises key issues as  
to the competence of recommendations. We express our very deep concern in regard to the above  
which is being considered by the Development Management Sub-Committee on Wednesday 17th  
February and request a continuation and hearing.

There appears to be some fundamental misunderstanding of the factual position in respect of the  
ground involved.

On 17 February 2014, AMA wrote to Andrew Trigger at the Council with a specification for the  
proposed greening works. As well as giving a specification for the proposed grass mixture (which  
AMA appears to have ignored) AMA said "The existing ground will be graded to gradients that will be  
suitable for grass-cutting machinery. The top level of soil will be de-stoned before seeding to ensure  
that there is no damage to grass cutting blades during future maintenance". It is clear from even a  
 cursory walk over the site that it has not been de-stoned or levelled and this undertaking is merely  
one of a number of assurances that AMA has given in order to get planning consents and then failed  
to deliver. CBCC can provide photographs of the site taken in August 2020 to provide  
this. Moreover, when AMA started to maintain the site their grass cutting machinery was quickly  
damaged and they stopped as a result.

The ground has not been greened as is mentioned in the report. It is overgrown, subject to flooding  
and has a number of storage containers dumped on it which were I believe subject to a recent  
inspection by the Department of Environmental Health and the HSE.

There is history about greening of the site. There was a notification of a breach of planning control in  
2017 regarding greening of the site. The subsequent report by the enforcement officer Brett Taylor  
said that the site had been greened. When asked how he had arrived at this decision, which was  
clearly wrong and many witnesses overlooking the site could confirm this, he said that he could  
answer this by saying **that since development of this site would soon take place no greening was  
required . Does the council regard three years so far, but with no agreed future for the former  
playing fields area, as compliant with this assertion?**

However for some reason no mention is made of this in the report to the sub committee despite the  
fact that this matter is pertinent to a proper decision being reached by those considering it.

Further there are no detailed comments in the report on CBCC submissions which were the subject of lengthy debate and consideration by CBCC in fulfilment of their statutory obligations. Nor much about the significant volume of local objections.

At the very least each of the points in that submission made should have been given a proper response even if disagreed with.

The CBCC recognises the importance of this site to the locality and would again ask for a site visit by the Committee and a hearing on the matter when lockdown permits before any decision is made. Were a site visit to be practical, members would see the full extent to which the site has been neglected, the sports pitches destroyed, the lack of any evidence of grassing, and the unsightly and unlawful stockade of shipping containers.

Given that AMA achieved planning consent in January 2003, some 18 years ago and yet have failed resolve the issue of the area for which they are now seeking a further extension a short delay now - and AMA's so-called "road map" implies a delay of at least two years and possibly five or more before anything happens on the site, if ever - to ascertain the correct facts is not only justifiable but a failure to allow same would appear to fly in the face of natural justice.

The CBCC's request for a site visit to verify the actual position and then a hearing are both patently reasonable and fair requests.

**On the more technical aspects the annex be considered to ensure that those dealing within the matter do not put themselves into a difficult position.**

#### **CBCC Conclusion**

The only logical and reasonable conclusion in the interests of fairness and justice can be that the recommended planning condition does not satisfy the 'tests' required by the Scottish Government and the City Council. The officer's report states that condition one of planning permission 13/01843/FUL is unlikely to meet the tests of Circular 4/1998. There is very little difference between the wording of that condition and the currently recommended condition. Hence the Development Management Sub Committee is being asked to approve a planning condition which is not only incompetent but based on some inaccurate facts.

I do trust that you will take our concerns and wish for a site visit and a hearing seriously and have this matter continued to verify some of the stated facts in the report which we believe are inaccurate.

There is a need ensure the Sub-Committee is accurately, properly and fully briefed on the way in which AMA have repeatedly failed to comply with both conditions imposed by the Council and undertakings it has given to it before it takes a decision.

regards  
John Loudon  
Chair elect CBCC

## ANNEX

### REVIEW OF THE RECOMMENDED PLANNING CONDITION AGAINST 'CIRCULAR 4/1998: THE USE OF CONDITIONS IN PLANNING APPLICATIONS'

(Scottish Government, 1998)

The following notes assess the planning officer's recommended Conditions and Reasons (below) against the guidance within the Circular and, in particular, the key 'tests' as set out in para. 2 of the Circular (Annex A).

#### **Conditions:-**

1. *The 3.357-hectare area highlighted on drawing number CS-PL-(MP1)100 shall be maintained as a grassed area for a period of up to 4 years from the date of this approval. Thereafter, the approved sports pavilion and sports pitches shall be laid out and fully operational within 1 year of this end date.*

#### **Reasons:-**

1. *In the interest of visual amenity and to ensure the timely delivery of sporting facilities on the site.*

#### **Para 2. General Policy**

***'Planning conditions should only be imposed where they are: necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, reasonable in all other respects.'*** *'The Secretary of State attaches great importance to these criteria being met.'*

#### **Para.13. Need**

***'... a condition should not be retained unless there are sound and clear-cut reasons for doing so.'***

It is assumed that the condition was first applied with the intention of retaining the high quality of amenity and recreational/sports opportunities provided by the former highly maintained sports fields on the Cramond Campus. The community believes that the formal sports element of the condition is no longer required as –

- a. The former sports pitches have been effectively destroyed by the developer's lack of maintenance of underlying drainage systems and grass surfaces, earth movements and the depositing of construction spoil over the area.
- b. The community's current needs are for informal play and recreational greenspace, not privately operated commercial or club sports facilities
- c. The applicants have been unable to find a sports company or club prepared to redevelop and manage the site for sports pitches over the past 17+ years. Given current and post-Covid market and financial conditions the applicants are unlikely to find an operator in the next 2 to 5 years, as required by the condition. Additionally, most sports bodies are no longer interested in grass pitches, which cannot sustain use over much of the year.

#### **Para. 25. Ability to Enforce**

***'A condition should not be imposed if it cannot be enforced.'***

There is no incentive for the applicant to comply with the condition and no penalty available for non-compliance. In extremis, the planning authority has the powers to develop the sports facilities and require the applicant to pay for all costs incurred; however, it is not realistic to expect the City Council to take such action.

The planning officer's report states that '... the Council's powers in terms of enforcement action are limited and unlikely to result in the delivery of sports facilities.'. Also, 'In terms of taking enforcement action the planning authority is required to consider whether it is expedient to do so. As the ground has been seeded in compliance with the first part of the condition it would be difficult to argue harm is being caused in terms of visual amenity by not delivering the sports facilities.'

### **Para 30. Precision**

***'A condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it is ultra vires and must not be imposed.'*** Similarly, the Community Council would argue that a condition which is not sufficiently precise to enable the planning authority to secure compliance should not be imposed.

In stating that *'The 3.357 hectare area .... shall be maintained as a grassed area for a period of up to 4 years.'* the condition is insufficiently precise. For example, it does not specify whether the construction debris should be removed, the ground should be drained and levelled, what type of grass should be used, or to what standards it should be maintained. Hence, there are no criteria for assessing whether the condition has been fulfilled.

### **Para. 9 Reasons for the Condition**

***This paragraph states that the reasons justifying any condition should be clear and refers to the example of the phrase "to protect amenity" being obscure and often requiring amplification.'***

The planning officer's recommended reason *'In the interest of visual amenity ...'* is equally insufficient, as, at least in the Community Council's opinion, the effective tidying, preparation and grassing of the 3.357 ha area is required to improve the visual amenity and to sustain informal recreational use and enjoyment of the greenspace.

### **Community Council's Conclusion**

**The only conclusion can be that the recommended planning condition does not satisfy the 'tests' required by the Scottish Government and the City Council. The officer's report states that condition one of planning permission 13/01843/FUL is unlikely to meet the tests of Circular 4/1998. There is very little difference between the wording of that condition and the currently recommended condition. Hence the Development Management Committee is being asked to approve a planning condition which is not competent.**