

Appendix 15 – Decision of Inquiry Reporter, 9 September 1996

A full copy of the Inquiry Reporter, AG Bell's decision reading the Planning Committee's refusal to provide Planning Permission to build on the Meadow site.



THE SCOTTISH OFFICE

Inquiry Reporters

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Your Ref, GH/MET

Our Ref: P/PPA/260/5

9 September 1996

Dear Sirs

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972: SECTION 33
AND SCHEDULE 7.
APPEAL: CLOUSTON STREET, GLASGOW
MILLER HOMES LTD.

1. I refer to your client's appeal, which I have been appointed to determine, against the refusal of planning permission by the City of Glasgow District Council for the erection of 132 flats on a disused playing field at Clouston Street, Glasgow. I made an accompanied inspection of the site and surroundings on 13 August 1996. The final written submission was received on 29 August.

FACTUAL BACKGROUND

2. The appeal site is located on the north side of Clouston Street and extends to 1.667 hectares. It is bounded on the north by Kelbourne Street, to the east by Sanda Street and to the west by the rear of sandstone flatted housing on Garrioch Road. The site is mainly level and rectangular in shape apart from the 4-storey block of B listed tenements in the corner of Clouston Street and Sanda Street. There are 17 mature lime trees on the Clouston Street frontage which are the subject of a Tree Preservation Order. To the north of the site in Kelbourne Street is Shakespeare Primary School and the North Kelvin Community Hall. The fire station on the east side of Sanda Street is now closed awaiting refurbishment as housing.

3. The former garage site in Garrioch Road now contains a newly built 5-storey brick built block of 24 flats. It backs onto the NW corner of the site and a new brick wall appears to have excluded from the appeal site a strip, measuring roughly 40m x 6m, shown on the application plan for garden ground and 5 parking spaces.

4. The site plan shows 3 blocks of 4-storeys, one fronting Clouston Street and 2 on Kelbourne Street, one of which returns into Sanda Street. 100 parking spaces are provided within the site and 14 behind the pavement on Kelbourne Street. 30 visitor parking spaces

are indicated on the three streets bounding the site. The landscape plan shows an equipped children's playground (25m x 40m) and a grassed amenity area (25m x 50m). The only vehicular access to the site is from Kelbourne Street.

5. The site is level, with a blaes surface, and shows signs of neglect. It was owned by Strathclyde Regional Council (SRC), as education authority, who declared it surplus to requirements in 1993. It was offered to the District Council for purchase at residential value but the Parks and Recreation Department considered that it could not justify such an investment in acquisition, upgrading and maintenance of the playing field, taking account of the existing supply in the district.

6. The site was then put on the market; SRC observed in the particulars of sale that it believed there to be no presumption against housing development on the playing field. The appellant was successful in the bidding and acquired the site on conditional missives.

7. The site is included in the broad residential land use policy of the Kelvin Local Plan (adopted 1978) which contains no specific policy to protect public open space from development. There is, however, a recently adopted council strategy for sport and recreation which contains a presumption against the grant of planning permission for development which would involve the loss of good quality playing pitches. Scottish Office issued a draft NPPG on Sport, Physical Recreation and Open Space for consultation in August 1995. The finalised version was issued as NPPG 11 in June 1996.

8. The Planning Officer's recommendation to the Committee was that, "on balance" planning permission should be granted. However, the Committee decided to refuse consent for the following reason:

"By virtue of its location the housing development would result in the loss of a local sports/recreation facility/open space in a high density urban area where alternative facilities are not available in the immediate locality, to the detriment of residential amenity."

SUMMARY OF CASES

9. On your client's behalf, you underline the importance of the development plan. The site is covered by a residential policy and is not zoned as open space. The Structure Plan policy on urban regeneration is supported by policy RES 2 which states that residential development on redevelopment sites within urban areas, excluding zoned open space but

including land held by public bodies, which they have no realistic expectations of developing within 5 years, will take preference over peripheral, greenfield sites. It is submitted that this development is in accordance with both Structure and Local Plan policies. It is held by a public body with no realistic expectations of development within 5 years. Development will assist the process of urban regeneration.

10. Initially, a development of 160 flats was intended but after lengthy dialogue with the planning officials the proposal was reduced to 132. The buildings occupy 17% of the site, giving a development density of 79 units per hectare whereas the density of the surrounding tenements is around 100/hectare. Parking provision is accepted as adequate; there is suitable provision of a children's play area; the Director of Parks does not have the resources to upgrade and maintain the pitches; there was little demand for these pitches and facilities are available at Kirklee, N. Kelvinside School and the Firhill Community complex. In these circumstances the council's decision to refuse planning permission is quite unreasonable.

11. On behalf of the council it was pointed out that the planning officer's recommendation for approval was "on balance", which indicates that it was a finely balanced decision. It is, of course, the responsibility of elected members to make their decision, having considered professional advice. The terms of their decision show that it was based on sound planning principles and took account of concern at the loss of amenity.

12. The council has a strategy which seeks to protect good quality sporting facilities but the criteria used to implement policy are subjective. The Director of Parks was obliged to make a decision, based on financial considerations, which might be regarded as harsh. The local amenity value of this resource has been demonstrated in the comments from local residents. They use the facility and are best able to speak to its value. Development means that this site will be lost for good whereas current financial restrictions may change. Other avenues of funding have not been explored. The draft NPPG advises that development proposals affecting open space must be considered carefully and refused if they would be likely to adversely affect the community benefits of open space. That consideration must take into account current demand and the needs of future generations.

13. The council's decision was supported by a large number of local residents, headed by Kelvin North Community Council. Among the points made is the extent of new housing which has recently been completed or approved in this neighbourhood. These include Kirklee railway station, Kirklee allotments, 24 flats at Garrioch Road and at Sanda Street, the Fire Station, the church and garage site and the old bakery. No new open space has been provided with developments. With an increasing population, the current proposal will

remove a valuable community resource. Despite the official view, this site was used regularly by local groups and teams, formally and informally until it was vandalised by council vehicles knocking down the goal posts and the appellant's drilling rigs ruining sufficient areas of the pitches to make them unusable. There was no drainage problem; the pitches were regarded as free draining.

14. Although it is suggested that the proposed children's play facilities would be available for use by neighbourhood children, that cannot be guaranteed. If the new residents require to maintain the amenity areas, they could resent use by "outsiders" and difficulties could arise. The council's own survey shows a deficiency in playing pitch provisions yet no improvement in supply is proposed. In relation to the alternative facilities, the position is as follows:

N. Kelvinside School Firhill Community Complex	Fully booked on a permanent basis Full size pitch costs £50 per game. Users must be members to have regular use.
Kirkdee Playing Field	2 hockey pitches, managed but not owned by the council, who have promoted a CPO which is approved by the owners.
Lauderdale Gardens	One blaes pitch in Hyndland is not a reasonable alternative.

15. In addition to general fears on increased traffic, residents are concerned at the unneighbourly aspect of the Clouston Street block being located only 5m from the gable of the existing corner block which has 25 windows looking into what has been regarded as secure amenity. The diversion of a footpath to accommodate visitor parking and consequent risk to the root system of the protected limes is also a cause for concern. The proximity of the new block to the limes could lead to demand for extensive lopping or even the felling of these trees.

16. Scottish Sports Council commented on this proposal by letter of 16 December 1995 which appears not to have reached the planning officer before he wrote his report for the council decision in January. It quotes liberally from the draft NPPG and focuses on the district council's survey which found an overall shortage of football pitches in Glasgow, with the shortage being acute in the West End. In the Sports Council's opinion, the fact that

pitches have been allowed to deteriorate is not a fact that should be taken into consideration, the important question is whether there is a need for the pitch sport space.

17. The council objects to this development but would be prepared to withdraw its objection if it could be shown that there is sufficient, well located playing pitch provision for N. Kelvinside School, N. Kelvin Community Centre and the primary school and, further, that the proceeds from sale are to be invested in local pitch sports facilities, to improve the quantity and quality of local provision.

CONCLUSIONS

18. Having considered the written submissions in this case, I believe the determining issue to be whether this proposed development is in accordance with the development plan and, if so, whether there are other material considerations which justify refusal. The 1978 Kelvin Local Plan includes the site within a general residential zoning, reflecting the council's broad brush approach to such zoning for housing and compatible uses. The nearby schools and fire station are including in the same zoning.

19. At the time the sales particulars were prepared, SRC understood there to be no presumption against a housing development on these playing pitches. That position has changed with the emergence of NPPG 11 which is a new material factor. Paragraph 47 explicitly states that "There should be a presumption against redevelopment of playing fields or sports pitches, public or private". It contains 3 exceptions which could overcome this presumption. These occur where:

"the retention or enhancement of the facilities can best be achieved by the redevelopment of part of the site which would not affect its sporting potential and its amenity value; or

there would be no loss of amenity and alternative provision of equal community benefit and accessibility would be made available; and

there is a clear long term excess of pitches, playing fields and public open space in the wider area, taking into account long term strategy, recreational and amenity value and any shortfall in adjoining local plan areas."

20. As partial development is not proposed and there is no long term excess of pitches, only the second exception is relevant to a decision on this appeal. In relation to loss of

amenity, one must consider the contribution which this site made when maintained in a reasonable state, ignoring the neglect of recent years which is far from being irreversible. We have the unequivocal evidence of local residents that it was a valued resource used by local residents as well as school teams. I find it significant that no resident referred to disturbance from evening games on the floodlit pitch. In an area of high residential density, this open area is an amenity feature providing recreation of a quite different type from that which can be enjoyed in the nearby Botanic Gardens.

21. In relation to alternative provision, the provision referred to in the Parks and Recreation Department letter of 19 October 1995 (Production 10) observes that the closure of Clouston Street pitches should result in:

Kirklee Playing Fields being upgraded to 2 hockey pitches and 1 full sized, all-weather, multi purpose football pitch with provision for tennis, 5 and 7-a-side, with floodlights. Changing accommodation will also be erected

Lauderdale Gardens playing field being upgraded to an all-weather football pitch, with floodlights.

22. As Kirklee is currently the subject of an opposed C.P.O. it is not yet certain that these improvements can be achieved. No additional land is being acquired for this area. Lauderdale Gardens is not equally accessible to residents north of the Kelvin. Residents have already described the drawbacks in using the Firhill community complex. I am unable to find from the evidence that there will be no loss of amenity or that alternative provision of equal community benefit will result. As the area has an acknowledged shortage of pitches I find that the presumption against redevelopment of this site has not been rebutted by evidence satisfying one of the exceptions in the national policy guidance.

23. I have had regard to all the other matters raised but none outweighs the considerations leading to my decision. As the decision is based on the principle of development on this site, I have not required to address points of detail.

24. In the exercise of the authority delegated to me, I hereby dismiss your client's appeal and refuse to grant planning permission.

25. The foregoing decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks from the date hereof, as conferred by sections 231 and 233 of the Town and Country Planning (Scotland) Act 1972; on any such application the

Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

26. A copy of this decision has been sent to the City of Glasgow Council, Maria Fyffe MP and to the leading parties who lodged objections.

Yours faithfully



A G Bell
Reporter