
NORTH AYRSHIRE COUNCIL

20th March 2019

Planning Committee

Locality	3 Towns
Reference	19/00125/MDPO
Application Registered	20th February 2019
Decision Due	20th April 2019
Ward	Dalry And West Kilbride

Recommendation	Agree to (i) modify the S75 obligation and (ii) refer to Legal Services to conclude the legal process
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Location	Busbie Muir Ardrossan
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Applicant	Mr John Ross Weir
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Proposal	Discharge of Section 75 obligation attached to planning permission 05/01151/PP in relation to Part 2 of the development site only
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1. Description

This report relates to an application in terms of Section 75A of the Town and Country Planning (Scotland) Act 1997 to modify a legal obligation that was entered in to under Section 75 of the Town and Country Planning (Scotland) Act 1997.

An application for the development of the second phase of the Busbie Muir windfarm (ref: 05/01151/PP) was approved by the Council's Planning Sub-Committee on 14th August 2006, subject to a Section 75 legal obligation and conditions. The legal obligation was in relation to the restoration of the development site (i.e. phase two of the Busbie Muir windfarm) and the undertaking of any works required to remedy interference to television/radio reception arising because of the development.

The application has been submitted by the land owner, who advises that 1 wind turbine (T14) is situated on land within his ownership within the development site. This land is part of Blackshaw Farm. The applicant now wishes to sell land at Blackshaw Farm. He therefore seeks to discharge the S75 obligation in relation to the wider land holding, where no wind turbines (or other site infrastructure) are located. This would unburden the land that he intends to sell, with the exception of the restoration of the land where wind turbine T14 is

located. A red line boundary has been drawn up in relation to wind turbine T14, including the associated crane hardstanding area. This area would remain the subject of the original legal obligation.

The application site is located within the countryside as identified in the adopted Local Development Plan (LDP) and is unaffected by any site specific policies or proposals therein. The relevant policy is PI 9 (Renewable Energy) which states that proposals for the development of wind turbines shall accord with the LDP, subject to meeting a range of criteria. The policy includes a requirement to remove any redundant apparatus and the restoration of the land. The S75 obligation provides the mechanism to secure these requirements for the whole of phase 2 of the Busbie Muir windfarm. A separate legal obligation is in place for the restoration of phase 1.

Relevant Planning History

05/01151/PP for Erection of 3 wind turbines and associated infrastructure including access tracks, extension to on-site substation, connecting cabling, temporary construction compound and borrow pits Approved subject to Conditions on 26.11.2007.

Relevant Development Plan Policies

POLICY PI 9: RENEWABLE ENERGY

Proposals for the development of wind turbines, wind farms, biomass, solar powered, thermal, wave or run-of-river renewable energy development, or microrenewables, shall accord with the LDP subject to the proposal satisfying the following criteria:

- (a) the development is appropriate in design and scale to its surroundings; AND
- (b) it can be demonstrated that there is no unacceptable adverse impact on the intrinsic landscape qualities of the area (especially for areas with a specific landscape designation, and coastal areas); AND
- (c) in the case of individual wind turbine or wind farm development, that the proposed development is not in an area designated as "high sensitivity" in the "Landscape Capacity Study for Wind Farm Development in North Ayrshire"; AND
- (d) the proposal shall not result in unacceptable intrusion, or have an unacceptable adverse effect on the natural, built, cultural or historic heritage of the locality; AND
- (e) it can be demonstrated that there are no unacceptable adverse impacts on the operation of tourism or recreation interests; AND
- (f) it can be demonstrated that any unacceptable adverse effects on telecommunications, transmitting, receiving, or radar systems for civil, broadcasting, aviation or defence interests can be effectively overcome; AND
- (g) the proposal can be satisfactorily connected to the national grid without causing any unacceptable negative environmental impacts; AND

(h) when considered in association with existing sites, sites formally engaged in the Environmental Assessment process or sites with planning permission, including those in neighbouring authorities, there are no unacceptable impacts due to the cumulative impact of development proposals; AND

(i) in the case of individual wind turbine and wind farm development, that the proposal satisfies the contents of the Ayrshire Supplementary Guidance: Wind Farm Development (October 2009); AND

(j) where appropriate, applicants will be required to demonstrate consideration of colocation with significant electricity or heat users.

The Council will require that any redundant apparatus will be removed within 6 months of it becoming non-operational and that the site will be restored, unless it can be demonstrated that said apparatus will return to productive use within a reasonable timeframe.

2. Consultations and Representations

As the land surrounding the application site is owned by the applicant, there was no requirement for neighbour notification. No consultations were undertaken.

3. Analysis

The proposal requires to be considered in terms of the adopted Local Development Plan (Policy PI 9) as well as any other material planning considerations. Policy PI 9 provides a framework for assessing applications for renewable energy developments. The application seeks to modify/discharge the terms of the legal obligation to enable the conclusion of a land sale. The modification would continue to place an obligation (or burden) on the landowner in respect of the restoration of the land around turbine T14. The surrounding farmland, which has no wind turbine infrastructure, would be unburdened.

The terms of the application set out the legal framework for the discharge and modification of the legal obligation in respect of turbine T14, which is located within the Blackshaw Farm holding at the northwestern edge of the Busbie Muir windfarm.

The proposal would satisfy the LDP policy requirement in respect of site restoration, in that the burden in the title would continue to apply to the area around turbine T14. This means that, when the windfarm is decommissioned, the obligation to remove all of the turbines and associated infrastructure at Busbie Muir Phase 2 would continue to apply. There is no need to continue to burden those parts of the Blackshaw Farm land holding where there are no wind turbines or associated infrastructure. It would therefore be reasonable to remove this burden from the title for that land.

There are no other material planning considerations in relation to proposed LDP 2, which has a similar policy in respect of windfarm restoration.

In summary, it is recommended that the application is granted, and the associated Section 75 obligation be modified as proposed.

4. Full Recommendation

Agree to (i) modify the S75 obligation and (ii) refer to Legal Services to conclude the legal process

A handwritten signature in black ink, appearing to read 'Karen Yeomans', is positioned above the printed name.

Karen Yeomans
Executive Director
Economy & Communities

For further information please contact Mr A Hume Planning Officer on 01294 324318.

Appendix 1 – Location Plan

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