
NORTH AYRSHIRE COUNCIL

2nd October 2019

Planning Committee

Locality	Irvine
Reference	19/00600/PP
Application Registered	12th August 2019
Decision Due	12th October 2019
Ward	Irvine South

Recommendation	Approved subject to Conditions
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Location	Glaxosmithkline Shewalton Road Riverside Business Park Irvine Ayrshire KA11 5AP
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Applicant	GlaxoSmithKline Plc
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Proposal	Section 42 planning application to vary condition 1 (Mitigation Strategy) of planning permission 19/00164/PP
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1. Description

This application seeks planning permission to vary a condition under Section 42 of the Town and Country Planning (Scotland) Act 1997. It is proposed to vary the wording of condition 1 of planning permission ref. 19/00164/PP and add an additional condition. The planning permission relates to the erection of two wind turbines, each measuring 149m in height to blade tip, at the GlaxoSmithKline plant to the southeast of Irvine, approved by the Council's Planning Committee during June 2019. Condition 1 of the planning permission relates to radar mitigation and is worded as follows:

"No turbine blade shall be fixed to either turbine until:

- (i) The developer has agreed radar mitigation schemes with Glasgow Prestwick Airport and the National Air Traffic Services, and those schemes have been approved in writing by North Ayrshire Council as Planning Authority; and
- (ii) The approved mitigation measures have been implemented to the satisfaction of North Ayrshire Council as Planning Authority.

Thereafter, the development shall operate fully in accordance with the approved schemes and shall not operate should the radar mitigation measures not be achieved because the developer or the operator does not comply with the Scheme."

The applicant is proposing that the wording of the condition be amended to:

"(i) No blade shall be fitted to any turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with the Testing Protocol, unless and until such time as North Ayrshire Council receives confirmation from the Airport Operator that all measures required by the Radar Mitigation Scheme prior to operation of any turbine have been implemented.

(ii) No turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme."

The applicant has requested that definitions be provided for the following terms in the Decision Notice:

"Airport Operator" means Glasgow Prestwick Airport Limited or any successor as certified or licensed by the Civil Aviation Authority to operate Glasgow Prestwick Airport.

"Radar Mitigation Scheme" means such equipment, procedural or technological measures, as the Airport Operator identifies as necessary and sufficient to prevent the operation of the development or of any turbines forming part of the development impacting adversely on radar performance at Glasgow Prestwick Airport or on maintaining safe and efficient air traffic control services or procedures or airspace and which the Airport Operator is willing and able to implement and maintain for the lifetime of the development or for such shorter period as may be agreed in consultation with the Airport Operator as necessary to mitigate any such adverse impact.

"Testing Protocol" means the protocol to control the operation of any turbine or turbines forming part of the development for the purposes of testing of the Radar Mitigation Scheme.

The applicant has also requested that an additional condition be attached to the Planning Permission worded as follows:

"No turbine blade shall be fixed to either turbine until:

(i) The developer has agreed a radar mitigation scheme with the National Air Traffic Services and this scheme has been approved in writing by North Ayrshire Council as Planning Authority; and

(ii) The approved mitigation measures have been implemented to the satisfaction of North Ayrshire Council as Planning Authority.

Thereafter, the development shall operate fully in accordance with the approved scheme and shall not operate should the radar mitigation measures not be achieved because the developer or the operator does not comply with the Scheme."

The site covers both an open countryside and industry allocation in the adopted Local Development Plan. The following LDP policies are relevant to the determination of the

application: PI 9 (Renewable Energy); ENV 1 (New Development in the Countryside), IND 3 (Industrial Estates) and the General Policy.

The emerging North Ayrshire Proposed Local Development Plan is a material consideration, and the proposal has been assessed against the terms of the Proposed LDP. In this instance, assessing the proposal against the terms of the Proposed LDP would not alter the conclusion of the assessment of the proposal against the adopted LDP, because the policies in the Proposed LDP are substantially similar to those in the adopted LDP, and it does not raise any new issues that would alter the assessment of the proposal.

Relevant Development Plan Policies

POLICY PI 9

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.

ENV1

POLICY ENV 1: NEW DEVELOPMENT IN THE COUNTRYSIDE (EXCLUDING

HOUSING)

Proposals for new development within the countryside (excluding housing) shall not accord with the LDP unless the following criteria can be satisfied:

(a) the development is necessary non-residential development associated with agriculture, forestry operations or other established rural businesses and is of a scale proportionate to the operational need of the rural business it is associated with; OR

(b) the development is a small-scale business falling within Class 4 that has a specific locational need to be located on site;

OR

(c) the development is essential public infrastructure that has a specific operational need to be located on site or where a range of alternative sites have been examined within settlements and no suitable site can be made reasonably available;

OR

(d) the development is within an existing village on mainland North Ayrshire, Arran or the Isle of Cumbrae, and would not constitute ribbon, backland or sporadic development;

OR

(e) the development is a tourism proposal acceptable under Policy TOU 1;

OR

(f) the development is outdoor sport and recreation with a specific operational need to be located within the countryside.

Development proposals should take account of the Council's approved Rural Design Guidance and include landscaping proposals.

IND3

POLICY IND 3: INDUSTRIAL ESTATES

Proposals for business; industrial; and storage and distribution uses within Use Classes 4, 5 and 6, including small groups of workshop units of 150m²

or less, on the sites listed in

Table 3, and identified on the LDP Maps, shall accord with the LDP.

General Policy

GENERAL POLICY

(a) Siting, Design and External Appearance:

- Siting of development should have regard to the relationship of the development to existing buildings and the visual effects of the development on the surrounding area and landscape.

- Design should have regard to existing townscape and consideration should be given

to size, scale, form, massing, height, and density.

- External appearance should have regard to the locality in terms of style, fenestration, materials and colours.
- Development will require to incorporate the principles of 'Designing Streets' and 'Designing Places'.
- The particularly unique setting of North Ayrshire's rural, coastal, neighbourhood and town centre areas, and those with similar characteristics, necessitates that all development proposals reflect specific design principles unique to these areas. Coastal, Rural, Neighbourhood and Town Centre Design Guidance (four separate documents) are Supplementary Guidance to the Plan and contain further details.
- Consideration should be given to proper planning of the area and the avoidance of piecemeal and backland development.
- Design should have regard to the need to reduce carbon emissions within new buildings.

(b) Amenity:

Development should have regard to the character of the area in which it is located.

Regard should be given to the impact on amenity of:

- Lighting;
- Levels and effects of noise and vibration;
- Smell or fumes;
- Levels and effects of emissions including smoke, soot, ash, dust and grit or any other environmental pollution;
- Disturbance by reason of vehicular or pedestrian traffic.

Development should avoid significant adverse impact on biodiversity and upon natural heritage resources, including those outwith designated sites and within the wider countryside. Development proposals should further have regard to the preservation and planting of trees and hedgerows, and should also have regard to their potential to contribute to national and local green network objectives.

In relation to neighbouring properties regard should be taken of privacy, sunlight and daylight.

(c) Landscape Character:

In the case of development on edge of settlement sites, substantial structure planting will generally be required to ensure an appropriate boundary between town and country is provided. Such proposals should include native tree planting, retain natural features where possible and make provision for future maintenance.

Development should seek to protect the landscape character from insensitive development and the Ayrshire Landscape Character Assessment shall be used to assist assessment of significant proposals.

(d) Access, Road Layout, Parking Provision:

Access on foot, by cycle, by public transport and other forms of transport should be an integral part of any significant development proposal. Development should have regard to North Ayrshire Council's Roads Development Guidelines and meet access, internal road layout and parking requirements.

(e) Safeguarding Zones:

Pipelines, airports and certain other sites have designated safeguarding areas associated with them where specific consultation is required in assessing planning applications. The objective is to ensure that no development takes place which is incompatible from a safety viewpoint. The need for consultation within Safeguarding Zones is identified when an application is submitted. Supporting Information Paper No. 7 provides further information on Safeguarding Zones.

(f) The Precautionary Principle

The precautionary principle may be adopted where there are good scientific, engineering, health or other grounds for judging that a development could cause significant irreversible damage to the environment, existing development or any proposed development, including the application itself.

g) Infrastructure and Developer Contributions

For development proposals which create a need for new or improved public services, facilities or infrastructure, and where it is proposed that planning permission be granted, the Council will seek from the developer a fair and reasonable contribution in cash or kind towards these additional costs or requirements. Developer contributions, where required, will be sought through planning conditions or, where this is not feasible, planning or other legal agreements where the tests in Circular 3/2012 are met. Other potential adverse impacts of any development proposal will normally be addressed by planning condition(s) but may also require a contribution secured by agreement.

This will emerge from assessment of the impact of development proposals upon:

- Education;
- Healthcare facilities;
- Transportation and Access;
- Infrastructure;
- Strategic landscaping; and,
- Play facilities.

Further to analysis of infrastructure, indicative requirements for housing land allocations are set out within the Action Programme. Developer contributions will be further established by Supplementary Guidance (timing, costs etc.).

In addition to the above, Mixed Use Employment Areas are identified within the LDP. These sites are allocated for a mix of uses, subject to an element of employment space creation or improvement being provided. This will be informed by a business plan and masterplan. In these specific cases, contributions to the above (and affordable housing requirements as set out in Section 5) will also be required.

h) 'Natura 2000' Sites

Any development likely to have an adverse effect on the integrity of a 'Natura 2000' site will only be approved if it can be demonstrated, by means of an 'appropriate assessment', that the integrity of the 'Natura 2000' site will not be significantly adversely affected.

i) Waste Management

Applications for development which constitutes "national" or "major" development under the terms of the Planning Etc. (Scotland) Act 2006 will require the preparation of a Site Waste Management Plan (SWMP), which will be secured by a condition of the planning consent.

2. Consultations and Representations

The application has been advertised in a local newspaper. There were no neighbours to notify due to the ownership boundary of GSK being more than 20m away from the application site. No letters of representation have been received.

West of Scotland Archaeological Service - reiterate the requirement for an archaeological watching brief to be carried out.

Response - This requirement is addressed within Condition 5 of the original planning permission (ref. 19/00164/PP), which would not be altered by this Section 42 application. A similar condition could be attached to any further grant of consent.

Glasgow Prestwick Airport (GPA) - support the proposal to amend the condition.

National Air Traffic Service (NATS) - no concerns and it is noted that NATS has agreed a radar mitigation scheme with the developer.

Response – Noted.

3. Analysis

Section 42 of The Town and Country Planning (Scotland) Act 1997, as amended, relates to the determination of applications to develop land without compliance with conditions previously attached. Section 42 states that, on such an application, the planning authority shall consider only the question of the conditions subject to which planning permission be granted and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous planning permission was granted, they shall grant planning permission accordingly.

The proposed amended wording of condition 1 would not alter the purpose of the existing condition. The changes to the wording have been requested by Glasgow Prestwick Airport (GPA) as this is their standard preferred wording for radar mitigation conditions. GPA considers that the proposed wording would give them a greater degree of control, ensuring that the mitigation scheme is satisfied and implemented. The proposed wording keeps the intention of the original condition and would meet the tests for conditions as set out in Circular 4/1998. The proposed wording relies on a number of particular definitions, which could be included as an informative note to accompany the decision notice.

The proposed additional condition would be required in order to meet the requirements of NATS in terms of radar mitigation. The proposed wording is acceptable and would meet the test for conditions. As NATS have already agreed radar mitigation with the developer, the proposed condition could be part discharged immediately, and would only be required to ensure that the mitigation scheme is implemented.

In summary, while there is an outstanding objection from GPA regarding the effect of the development on their radar systems, these effects can be mitigated through the Terma SCANTER radar mitigation system, which is to be implemented prior to the turbines coming into operation, and consequently addressing the concerns of GPA. The previous decision to grant planning permission for the wind turbine development was taken against this background, with an outstanding objection from GPA. However, the mitigation of the impacts on radar systems would be addressed by the conditions attached to the planning permission. As such, it is therefore recommended that this Section 42 application is granted. Although this application relates only to two conditions, the other conditions attached to the original planning permission also require to be included in order to ensure their implementation as part of the development.

4. Full Recommendation

Approved subject to Conditions

Reasons for Decision

Condition

1. (i) No blade shall be fitted to any turbine or turbines forming part of the development and no such turbine shall operate, save as provided for and in accordance with the Testing Protocol, unless and until such time as North Ayrshire Council receives confirmation from the Airport Operator that all measures required by the Radar Mitigation Scheme prior to operation of any turbine have been implemented.

(ii) No turbine shall operate other than in accordance with the terms of the Radar Mitigation Scheme.

Reason

To meet the requirements of Glasgow Prestwick Airport.

Condition

2. At wind speeds not exceeding 12ms⁻¹, as measured or calculated at a height of 10m above ground level at the wind turbine, the noise immission level at any noise sensitive premises, including those dwellings listed in Table 5 of the applicant's Noise Report 'Proposed extension to wind energy development - GSK Irvine, Noise Impact Assessment, KSG Acoustics, Prepared for Stephenson Halliday, 27 February 2019', shall comply with the following:

(i) During night hours, defined in The Assessment and Rating of Noise from Wind Farms, 1996 ETSU-R-97 as 23:00 to 07:00 on all days, the cumulative noise immission level of the two wind turbines associated with this permission and the two existing wind turbines (built under permissions 09/00878/PP and 12/00629/PP) shall not exceed 43dB LA90,10min or the ETSU-R-97 derived night hours noise limit based on the measured LA90,10min noise level plus 5dB(A), whichever is the greater. The night hours noise limits shall be taken from Table 5 of the applicant's noise report.

(ii) During Daytime Hours, defined as 07:00 to 23:00 on all days, the cumulative noise immission level of the two wind turbines associated with this permission and the two existing wind turbines (built under permissions 09/00878/PP and 12/00629/PP) shall not exceed 35dB LA90,10min or the ETSU-R-97 derived quiet waking hours noise limit based on the

measured LA90,10min noise level plus 5dB(A), whichever is the greater. The quiet waking hours noise limits shall be taken from Table 5 of the applicant's noise report.

Reason

To meet the requirements of Environmental Health

Condition

3. When assessed at any noise sensitive premises the operation of the wind turbine shall not result in any audible tones as defined in The Assessment and Rating of Noise from Wind Farms, 1996 (ETSU-R-97).

Reason

To meet the requirements of Environmental Health

Condition

4. The presence of any significant unsuspected contamination which becomes evident during the development of the site shall be brought to the attention of the Environmental Health Service of North Ayrshire Council. Thereafter, a suitable investigation strategy, agreed with the Environmental Health Service of North Ayrshire Council, shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site.

Reason

To meet the requirements of Environmental Health

Condition

5. That the applicant shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to North Ayrshire Council as Planning Authority, during all ground disturbance. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record and recover items of interest and finds. A method statement for the watching brief will be submitted by the applicant, and agreed by the West of Scotland Archaeology Service, and approved in writing by North Ayrshire Council as Planning Authority prior to the commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to North Ayrshire Council as Planning Authority in writing not less than 14 days before the development commences.

Reason

To meet the requirements of the West of Scotland Archaeology Service

Condition

6. That the applicant shall construct and operate the development in accordance with the Protected Species Survey Report (ref. SHA05.19.1833) and, where necessary, shall implement recommended mitigation measures contained in the Protected Species Survey Report to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

To ensure that the development does not impact upon any protected species.

Condition

7. By the end of a period of 25 years from the completion of the development, all of the above ground elements of the development hereby approved shall be removed within 24 weeks. Thereafter, the site shall be restored in accordance with an appropriate scheme of restoration to be approved in writing by North Ayrshire Council as Planning Authority.

Reason

In recognition of the temporary nature of the development.

Condition

8. If any turbine ceases to be operational for a continuous period of 6 months all of its above ground elements shall be removed within 24 weeks and the ground reinstated to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

To ensure that any turbines which become redundant are removed; in the interest of the visual amenity of the area.

Condition

9. No development shall commence on the site until a Construction Method Statement, including details of all on-site construction works, detailed timescales for the various stages of site clearance, construction and commencement of operation and environmental mitigation measures has been submitted to, and agreed in writing by North Ayrshire Council as Planning Authority. The development shall then progress in accordance with the approved Construction Method Statement.

Reason

To ensure that the development is constructed in a satisfactory manner and to protect environmental features.

Condition

10. That prior to the commencement of the development hereby approved, the applicant shall complete all relevant Abnormal load movement application and notification forms and submit all relevant forms to North Ayrshire Structures Team. Unless otherwise agreed in writing by North Ayrshire Council as Planning Authority, all HGV traffic associated with the construction of the wind turbines shall enter and leave the site from the A78 trunk road via the Newhouse Interchange, the B7080 (moss Drive) and Oldhall Roundabout.

Reason

In the interest of road safety

Condition

11. No turbine blade shall be fixed to either turbine until:

(i) The developer has agreed a radar mitigation scheme with the National Air Traffic Services and this scheme has been approved in writing by North Ayrshire Council as Planning Authority; and

(ii) The approved mitigation measures have been implemented to the satisfaction of North Ayrshire Council as Planning Authority.

Thereafter, the development shall operate fully in accordance with the approved scheme and shall not operate should the radar mitigation easures not be achieved because the developer or the operator does not comply with the Scheme.

Reason

In order to mitigate the effects of the development on the National Air Traffic Services Lowther Hill radar.

Russell McCutcheon
Executive Director (Place)

For further information please contact Mr John Mack on 01294 324794.

Appendix 1 – Location Plan

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