

Planning Committee  
22 March 2023

At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m. involving a combination of participation by remote electronic means and physical attendance within the Council Chambers, Irvine.

**Present (Physical Participation)**

Robert Foster, Stewart Ferguson, Cameron Inglis and Davina McTiernan.

**Present (Remote Participation)**

Timothy Billings, Scott Davidson, Amanda Kerr, Jim Montgomerie, Ian Murdoch and Chloé Robertson.

**In Attendance**

Y. Baulk, Head of Service (Housing & Public Protection) and J. Miller, Chief Planning Officer (Place); and R. Lynch, Senior Manager (Legal Services), J. Niven, Solicitor (Legal Services) and C. Stewart and S. Wilson, Committee Services Officers (Democratic Services) (Chief Executive's Service).

**Chair**

Councillor Foster in the Chair.

**1. Declarations of Interest**

In respect of Agenda Item 3 (23/00070/PP: Site to Former Coal Terminal, Hunterston, West Kilbride), Councillor Murdoch made a transparency statement advising that he was as a member of Hunterston Park Liaison Committee. Having applied the objective test, he assessed that it was not an interest in terms of the Councillors' Code of Conduct which would prevent him from taking part in the decision. Accordingly, Councillor Murdoch did not require to leave the meeting for this item of business.

**2. Minutes**

The Minutes of the Meeting held on 22 February 2023 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. 23/00070/PP: Site to Former Coal Terminal, Hunterston, West Kilbride**

XLCC have applied for a Variation of conditions 9 and 18 of planning permission N/22/00133/PPPM relating to the construction of a high voltage sub-sea cable manufacturing facility at the site to Former Coal Terminal, Hunterston, West Kilbride.

The Chief Planning Officer advised that following preparation of the report, comments had been received from Fairlie Community Council and from a firm of Solicitors instructed by the Community Council. The Chief Planning Officer informed the Committee of the nature of comments received and the officer response.

Members asked questions and were provided with information in relation to:

- the risk of flooding with particular reference to finished floor levels;
- the rationale for the application coming forward at this time and whether there was an overall timeline for the full application; and
- the nature of a previous decision by the Planning Committee, in respect of a complete 'as one' application coming to the Committee for determination.

Councillor Inglis, seconded by Councillor Ferguson, moved that the application be granted, subject to conditions. There being no amendment, the motion was declared carried.

The Committee agreed to grant the application, subject to the following conditions:

1. That the permission was for a high voltage cable manufacturing facility with associated factories, research and testing laboratories, offices with associated stores, transport, access, parking and landscaping with on-site generation and electrical infrastructure and cable delivery system only and planning permission would be required for any other use within Class 5 of the Town and Country Planning (General Permitted Development) (Scotland) Order, as amended.
2. That the approval of North Ayrshire Council, as Planning Authority, with regard to the siting, design and external appearance of all building and external plant or machinery, including landscaping, means of access, internal roads, external lighting, sustainable travel plan and low and zero carbon technology, shall be obtained before the development permitted in principle is commenced.
3. That further application(s) for approval under the terms of Condition 1 shall be accompanied by an assessment of on-site heat recovery and re-use, or a heat network infrastructure plan, or demonstrable evidence that such schemes have been explored but are not feasible for technical or economic reasons.
4. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a Construction Management Plan and Code of Practice, including details for monitoring and action against non-compliance. For the avoidance of doubt this shall include an assessment of use of the rail and port connections as a first principle and the prohibition of the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads by construction vehicles and details of management of impact on the core path and cycle route network.
5. That further application(s) for approval under the terms of Condition 1 shall be accompanied by details of an appointed Ecological Clerk of Works (ECoW). The details shall include contact details, the scope and responsibilities of the ECoW as well as confirmation of their power to halt or otherwise stop works which are not in accordance with the mitigation measures identified in the EIA or others, as may be approved.

6. Prior to development commencing the applicant shall implement the measures detailed under Mitigation Measures Adopted as Part of the Project in Chapter 9 Hydrogeology, Geology and Ground Conditions of the submitted EIA report dated February 2022. All documentation be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council, as Planning Authority.
7. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a Dust Management Plan. This shall include the measures detailed under Mitigation Measures Adopted as Part of the Project in Chapter 13 Air Quality of the submitted EIA report dated February 2022. All documentation be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council as Planning Authority.
8. That further application(s) for approval under the terms of Condition 1 shall be accompanied by an assessment of the details in terms of the rated noise level, as defined in 'BS4142:2014+A1:2019, from the operation of the facility. The assessment must demonstrate that the noise from the operation of the facility will not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application and include details of a monitoring scheme for the first 12 months of operation of the facility.
9. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a scheme to treat surface water arising from the or otherwise affecting the site, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded.
10. That further application(s) for approval under the terms of Condition 1 shall be accompanied by a habitat survey dated not more than 1 year prior to the date of the submission of the application.
11. Prior to commencement of the development of the tower, details of a financial bond to be secured with the landowner for the removal of the tower in the event of redundancy shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Any such bond shall be retained through the life of the development with confirmation to be provided to North Ayrshire Council, as Planning Authority, on a yearly basis following completion of the tower.

12. Should the tower become redundant, it shall be removed within 6 months of redundancy. For the avoidance of doubt, redundancy means the factory not becoming operational within 3 years of construction of the tower or the factory ceasing to operate for a period of more than 1 year after first becoming operational.
13. The prior to commencement of the development of the tower, details of the external finish shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. The development will thereafter be undertaken in accordance with any details as may be approved and the tower maintained with those details unless otherwise agreed in writing with the Planning Authority.
14. The prior to the commencement of the development of the tower, a Dust Management Plan for the control of dust from the construction of the tower shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Thereafter the development shall be undertaken in accordance with any Plan as may be approved.
15. That prior to the commencement of the development of the tower, a Construction Management Plan and Code of Practice, including details for monitoring and action against non-compliance shall be submitted to North Ayrshire Council, as Planning Authority, for approval. Thereafter the construction shall be carried out only as approved by the Plan and Code of Practice. For the avoidance of doubt this shall include an assessment of use of the rail and port connections as a first principle and the prohibition of the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads by construction vehicles and details of management of impact on the core path and cycle rout network.
16. That prior to the commencement of the development of the tower, details of an appointed Ecological Clerk of Works (ECoW) shall be submitted to North Ayrshire Council, as Planning Authority, for approval. The details shall include contact details, the scope and responsibilities of the ECoW as well as confirmation of their power to halt or otherwise stop works which are not in accordance with the mitigation measures identified in the EIA or others, as may be approved. The development will thereafter be undertaken only with the oversight of the appointed ECoW.
17. The rated noise level, as defined in `BS4142:2014+A1:2019, from the operation of the tower must not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application.
18. The prior to the commencement of the development of the tower, that a scheme to treat surface water arising from the or otherwise affecting the site of the tower, prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C7453, published November 2015) and the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011, and certified by a suitably qualified person, shall be submitted to North Ayrshire Council, as Planning Authority, for

written approval. Thereafter, the certified scheme shall be implemented prior to the completion of the development of the tower and maintained thereafter to the satisfaction of North Ayrshire Council, as Planning Authority. Any scheme approved shall include details of proposed ground levels, finished floor levels, and pre & post development overland flows that shall demonstrate that people and property would not be put at flood risk during the designed storm event (1 in 200 return period plus an allowance for climate change and urban creep) when the capacity of the proposed infrastructure is exceeded.

19. Prior to the commencement of the tower, confirmation that the basement proposals are sufficiently flood resilient/resistant, including an accompanying certified flood management plan suitably addresses residual flood risk at the site from all sources of flooding, certified by a suitable qualified person, shall be submitted in writing for the written approval of North Ayrshire Council, as Planning Authority.
20. In the event that the works to commence the tower are not undertaken within 1 year of the date of this permission, an updated habitat survey dated not more than 1 year prior to the date of commencement shall be submitted to North Ayrshire Council, as Planning Authority, for written approval prior to the commencement.
21. Prior to the commencement of the development, details of omni-directional red aviation warning lights to be fitted to the tower shall be submitted to North Ayrshire Council, as Planning Authority, for approval in consultation with Prestwick Airport, Air Traffic Control and the Ministry of Defence. The lighting will thereafter be fitted and retained thereafter in accordance with any details as may be approved.

#### **4. 23/00058/PP: Site to Oldhall ERF 16 – 20 Murdoch Place, Oldhall West Industrial Estate, Irvine**

Submitted report by the Chief Planning Officer regarding Proposal to increase flue height at energy recovery facility by an additional 10m as alternative to permitted scheme under refs. 20/00819/PPM and 19/00539/PPM.

Councillor Billings, seconded by Councillor McTiernan, moved that the application be granted, subject to conditions. There being no amendment, the motion was declared carried.

The Committee agreed to grant the application, subject to the following condition:

1. That the flue stack shall be fitted with an omni-directional red warning light which requires to be commissioned immediately upon erection of the stack. The warning light shall be operated continuously during hours of darkness and permanently retained in working condition thereafter unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.

**5. 23/00120/PP: Site to Oldhall ERF 16 – 20 Murdoch Place, Oldhall West Industrial Estate, Irvine**

Submitted report by the Chief Planning Officer regarding Proposal for Variation of Condition 1 of planning permissions 19/00539/PPM and 20/00819/PPM to facilitate temporary 24 hour working on the slip forming of the approved concrete bunker.

Members asked questions and were provided with information in relation to:

- noise and addition of traffic movement at night, particularly in relation to trucks and the frequency of truck movements;
- the routes that the trucks would use and whether they would go through any residential areas on their way to and from the site; and
- the potential issue of light pollution at night and whether this could have an adverse impact on the amenity of nearby residential properties (or commercial property that provided overnight accommodation).

The Chief Planning Officer advised Committee that only one condition was involved in this application. Whilst the report mentioned a 'Temporary Construction Hours of Variation of Condition' document, this was a typographical error and should have read 'Temporary working hours supporting statement' (which was available online). Accordingly, Recommended Condition 1 should therefore be amended to reflect this.

Councillor Billings, seconded by Councillor Kerr, moved that the application be granted, subject to conditions (as revised). There being no amendment, the motion was declared carried.

The Committee agreed to grant the application, subject to the following condition:-

1. That condition 1 of planning permissions 19/00539/PPM and 20/00819/PPM are hereby amended as follows:

"That the development hereby approved shall be implemented in accordance with the details and recommendations contained in the supporting accommodation submitted with the planning application unless otherwise indicated below, and in accordance with the details submitted in the 'Planning Statement - Temporary Construction Hours' document dated 15/02/2023, all to the satisfaction of North Ayrshire Council as Planning Authority."

For the avoidance of doubt, all other conditions attached to the above planning permissions are unaffected by this decision and shall continue to have effect.

**6. 23/00097/CON: Site at Benthead Farm, Kilwinning**

Submitted report by the Chief Planning Officer regarding proposal for installation of a solar farm with a generating capacity of up to 63MW and a battery storage system with a capacity of up to 31.1MW and associated infrastructure.

Members asked questions and were provided with information in relation to:

- consideration of any risk assessment particularly in relation to fire risk, the issue of battery storage and the size of storage area that would require to be put in place for this;
- the issue of fencing, in terms of protecting the site from any external interference/disturbance; and
- the intended height of the deer fencing in relation to site boundaries.

Councillor Davidson, seconded by Councillor McTiernan, moved that the Committee agree it had no objections to the application, subject to conditions. There being no amendment, the motion was declared carried.

The Committee indicated that it had no objections to the application, subject to the following conditions:

1. That the development shall be implemented in accordance with the submitted plans, drawings and recommendations contained in the application (inclusive of all associated supporting reports and documentation) unless otherwise indicated below, all to the satisfaction of North Ayrshire Council as Planning Authority.
2. That prior to the commencement of the development, the applicant shall submit a Construction Environmental Management Plan for the written approval of North Ayrshire Council as Planning Authority, which shall address site construction traffic routes and management, working hours, dust suppression measures, noise control measures and surface water run-off control measures. Thereafter, the development shall be implemented in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.
3. That, for all roads/tracks accessing the site, visibility splays of 2.5 metres by 120 metres, in both directions, shall be provided and maintained at the junction with the associated public road. No item with a height greater than 1.05 metre above adjacent carriageway level must be located within these sightline triangles.
4. That, prior to the commencement of the development, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a scheme of landscaping and tree planting. The scheme shall include:
  - the restoration of existing hedgerows, including the planting of hedgerow trees throughout the site;
  - the restoration of existing woodland areas, including the removal of diseased/dead trees and details of their replacement;
  - details of tree protection measures;
  - details of wild flower planting;The landscaping and tree planting scheme shall include details of species, planting densities, soil treatment and aftercare. Thereafter, the scheme as may be approved shall be implemented prior the development becoming operational and managed thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

5. That, prior to the commencement of any peatland restoration, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a detailed scheme of such works, including their timing and future management arrangements. Thereafter, the scheme as may be approved shall be implemented and managed during the lifespan of the solar farm to the satisfaction of North Ayrshire Council as Planning Authority.
6. That, unless otherwise agreed in writing by North Ayrshire Council as Planning Authority, the rated noise level, as defined in BS 4142:2014+A1:2019, from the operation of fixed plant and machinery, including the battery storage facilities, sub-station, transformers, etc. shall not exceed the background noise level at the curtilage of any noise sensitive property existing or consented at the time of the application.
7. That the solar farm and battery storage facilities hereby permitted shall be removed and the land restored for agriculture and/or nature conservation purposes within 40 years of the date of the consent, all to the satisfaction of North Ayrshire Council as Planning Authority, unless otherwise agreed beforehand.

## **7. Grouping of Trees in the grounds surrounding Moorpark House, Kilbirnie**

Submitted report by the Chief Planning Officer regarding the process and merits of protecting a group of trees located on the grounds of Moorpark House, Kilbirnie via a Tree Preservation Order (TPO).

The report indicated that concerns had been raised by a member of the public in connection with a lack of protection afforded to the trees, some of which were currently subject to works, located within the grounds of Moorpark House. Council Officers conducted a site visit and desk top analysis to assess the suitability of a TPO and relevant legislation. Accordingly, it was considered that the trees were an important characteristic of the local area and were visible from various parts of Kilbirnie and its fringes. The western part of the proposed TPO area was directly adjacent to a Core Path, which led from the edge of the town centre to the more rural northwest fringes of the settlement. The site was also allocated as Open Space within the Local Development Plan, which green infrastructure such as trees played a significant role in contributing to amenity and setting. A subsequent site visit confirmed a mix of tree species including Scots Pine, Sycamore, Lime, Larch and Horse Chestnut. The trees were found to have met the criteria for a TPO and the report recommended that this be served in the interests of protection of public amenity.

Councillor Inglis, seconded by Councillor Robertson, moved to support the serving of a TPO in line with the report recommendation. There being no amendment, the motion was declared carried.

The Committee agreed to the serving of a Tree Preservation Order (TPO) under Section 160 of the Town and Country Planning (Scotland) Act 1997.



## **8. Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997: 17 Auldlea Road, Beith**

Submitted report by the Chief Planning Officer seeking authority to serve a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with Condition 1 of planning permission (ref. 22/00536/PP).

The report advised that on 5 June 2022, it was brought to the Council's attention that a conservatory extension had been erected to the rear of an end-terraced dwellinghouse at 17 Auldlea Road, Beith. Public concerns had been raised regarding the scale and height of the conservatory. The conservatory was measured on site and was found to have exceeded the height limits set out in Class 1A of the HPDR. Consequently, an application for planning permission was requested from the householder at 17 Auldlea Road, Beith.

A retrospective planning application was duly received in July 2022 and validated on 1 August 2022. Mitigation measures were discussed with the applicant's agent and it was agreed with the agent that the matter could be addressed by a condition. The planning application was duly granted, subject to conditions, on 27 September 2022.

Condition 1 of the permission stated that details of the obscure glazing required to be submitted within four weeks of the date of the decision (27 September 2022). However, the required details were not received within four weeks of the decision notice, nor since. Likewise, obscure glazing required as part of the second part of the condition had not been installed to the north elevation of the conservatory.

The Committee also noted that over five months had elapsed since the date of the decision. Accordingly, it was considered that the applicant has had sufficient time to comply with, or to challenge, the condition.

Accordingly, the Committee agreed to grant authority for the service of a Notice under Section 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with Condition 1 of planning permission ref. 22/00536/PP at 17 Auldlea Road, Beith.

## **8. Chair's Closing Remarks**

The Chair informed the Committee that this was the last meeting which Jim Miller, Chief Planning Officer, would attend as he was retiring from Council service.

On behalf of the Committee, Councillor Foster thanked Mr Miller for all his expert guidance, dedication and commitment over many years, which had contributed to making North Ayrshire Council the best performing Planning Authority in Scotland and wished him a long and happy retirement. The Members present warmly concurred.

The meeting ended at 2.50 p.m.