
NORTH AYRSHIRE COUNCIL

Planning Committee

Locality	North Coast and Cumbraes
Reference	22/00717/LUE
Application Registered	12th October 2022
Decision Due	12th December 2022
Ward	North Coast

Recommendation	Certificate Issued
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Location	Hunterston Construction Yard Fairlie Largs Ayrshire
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Applicant	Clydeport Operations Ltd
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Proposal	Certificate of Lawfulness for existing general industrial use (Class 5)
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1. Description

This Certificate application seeks to confirm that the use of the site for general industrial (Class 5) uses is lawful. The site is some 51ha in area, including access road. The access road connects to the west side of the Hunterston Roundabout on the A78. The access road is currently closed to traffic but provides access to the site and secondary access to the Former Hunterston Coal Terminal and to the Hunterston Power Station. The main site itself projects to the north from the mainland and is an irregular hexagonal shape. The main site is some 46.5ha in area.

A Class 5 (General Industrial) use is defined by the Town and Country Planning (Use Classes) (Scotland) Order 1997 ("the GPDO") as any industrial process not falling within Class 4 (Business). Class 4 allows any industrial process "which can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."

The application site is identified as part of the Hunterston Strategic Development Area and as a site suitable for Business and Industry in the Local Development Plan.

2. Consultations and Representations

Neither any neighbour notification nor publicity measures are required for a Certificate of Lawfulness applications and no consultations were undertaken on this application.

3. Analysis

Section 150 of the Town and Country Planning (Scotland) Act 1997, allows an application to be made for a Certificate of Lawful Use or Development (CLUD) to ascertain whether any operations, use of land or building or a breach of a planning condition is or would be lawful. It is not equivalent in law to a grant of planning permission but the purpose of a CLUD for an existing use is usually to secure immunity from enforcement action by the Planning Authority or to provide certainty for future planning applications.

In this case of a Class 5 (General industry) use, if the use has been in existence for ten years or more, it is immune from planning enforcement action and a CLUD has to be issued. The legislation makes it clear that the onus of proof rests with the applicant. In order to justify the issuing of a CLUD for such an existing use, the applicant must be able to demonstrate that the use has existed for at least ten years prior to the date of the application. The relevant test of such applications is on 'the balance of probability' rather than 'beyond reasonable doubt.'

The planning history for the site dates back to the mid-1970s. In July 1975, the Secretary of State for Scotland granted consent for the construction of the yard. In January 1988 planning permission was granted for the continued use of the site, enlargement of the platform and associated land reclamation. This permission was subject to a condition which limited the duration of the use. This permission was extended in December 2005 and May 2011.

On the 31st of August 2016, planning permission was granted for the removal of the condition which limited the duration of the use, which meant that the planning permission would not lapse for the use of the land as a construction yard. This permission allowed the use of the site for construction and repair. A subsequent application to vary the types of structures which could be constructed, repaired, or decommissioned was granted 25th of April 2018 and remains extant. Other planning permissions granted for the site since 2002 include permissions allowing the erection of up to three wind turbines for the purposes of testing.

The applicant has submitted evidence of how the site has been used during the above period. Following creation of the yard until 1985, the site was leased by various engineering companies undertaking infrastructure projects including construction of oil rig platforms. Copies of the leases and information of the projects undertaken is provided. For the period 1988 until 1996 the applicant has submitted evidence of further leases by engineering firms. The construction yard was extended during this period and work carried out included the construction of the floating Trident Dry Dock. Local newspaper extracts reporting on this work are also provided. A marketing brochure from the mid-1990s, describing the dry dock as recent and stating the site is suitable for a range of "marine construction projects," is also submitted. The brochure includes photographs of a gravity base tank for an oilfield and a steel platform. A provided newspaper extract places the steel platform work to sometime after 1993.

For the period from 1998 onwards, further details of short leases taken of the site by fabrication and engineering companies are provided. From 2014 evidence of the permitted wind turbines, erected for the purposes of testing, being constructed on site is submitted. The applicant has provided evidence of the use of the site for a period of more than 10 years, as far back as 1975. Whilst this evidence is not consecutive, it provides a picture of a site where various industrial projects have been undertaken.

The Council has no evidence to the contrary of these supporting documents. Indeed, the information the Council, as Planning Authority, retains supports the applicant's narrative as to the use of the site. This evidence includes the planning records for the site and various photographs. The Council has photographs of the site from 1995, 2003, 2011 and 2016 which show either industrial processes being undertaken, or the site being occupied by buildings and structures required for carrying out industrial processes.

Whilst the above evidence shows a site where various industrial projects have been undertaken, it is acknowledged that the evidence is not consecutive and there have been periods where no works on site appear to have occurred. Periods of non-use do not necessarily affect the lawful use of a site. In planning terms non-use will only affect the lawful use of a site if it has led to the site being 'abandoned.' Abandonment is considered in several terms including (i) the period of non-use; (ii) the physical condition of the site; (iii) whether there has been an intervening use; and (iv) evidence regarding the owner's intentions. Whilst the evidence of use, particularly for the last 10 years, is intermittent, the site has been in use for industrial processes. There is no long period of sustained non-use in the history of the site. The site has been kept throughout in a condition that would allow for its use for industry. There has been no intervening use of the site that would not fall within Class 5 of the GPDO.

The landowner's intentions have been for industrial use as evidenced by the planning history and the marketing material. The current Local Development Plan (LDP) identifies the site as being suitable for industrial development. This LDP was adopted in 2019. The previous LDP was adopted in 2014 and also identified the site as being an industrial area. The identification of the site for industry was a continuation from the North Ayrshire Local Plan (excluding Isle of Arran) adopted 2005, the Ayrshire Structure Plan adopted 1999 and likely prior. Although planning policies have no bearing on the determination of a CLUD, the policy history shows the long-term identification of the site with industrial uses.

It is therefore considered that any use of the site for general industrial purposes has not been abandoned.

Given all of the above it is considered, on the balance of probability, that the lawful use of the site is Class 5 (General industry). It is noted that this conclusion would not prejudice any future planning applications. The principle of the use of the site for industrial purposes has in effect already been established by the LDP allocation. Planning permission would be required for development of new buildings and any use which did not fall within general industry including mixed or 'sui generis' uses, such as scrap yards and waste disposal.

4. Full Recommendation

Certificate Issued

James Miller
Chief Planning Officer

For further information please contact Mr Iain Davies on 01294 324320.

Appendix 1 – Location Plan

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