
NORTH AYRSHIRE COUNCIL

14th February 2018

Planning Committee

Locality	Three Towns
Reference	17/01038/LUP
Application Registered	17th November 2017
Decision Due	17th January 2018
Ward	Saltcoats And Stevenston

Recommendation	Certificate to be Issued
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Location	Shore Compound Ardeer Stevenston Ayrshire KA20 3LN
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Applicant	Irvine Bay Developments/Clowes Developments Ltd
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Proposal	Use of former storage compound as a multi-purpose events area
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1. Description

This is an application for a Certificate of Lawfulness in respect of the proposed establishment of a Multi-Purpose Events Area on a site known as the Shore Compound, within the former ICI Factory site at Ardeer, Stevenston. The site extends to some 9.1Ha in size and contains a large area of hard surfacing, some 1.5Ha, which was formerly used for chemical storage. The remainder of the site comprises sand dunes, rough grassland, ponds, and an area of foreshore.

The site is bounded to south by the foreshore; the west by the large BPI factory and Scottish Water treatment plant; and to the north and east by undeveloped land. The site has been occasionally used as an events area in recent years.

The applicant submits that the Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 grants planning permission for the proposed use and seeks the issue of a formal certification from the Council to that effect. In the adopted Local Development Plan the application site is within an area allocated for Industrial purposes where policy IND3 (Industrial Estates) applies. The LDP allocation however is not a material consideration in the determination of an application of this type.

2. Consultations and Representations

There is not a requirement for a statutory neighbour notification or consultation to be carried out. A total of five objections and a representation were received on the application, the grounds of which can be summarised as follows:

1. Seeks clarification exactly what would be involved in the proposed change of use. Would it primarily be a reuse of the hardstanding area on which to hold events or would it also require groundworks that could remove elements of the system of earthworks associated with the manufacture of explosives?

Response - The application seeks confirmation that the proposed use of the area, within the red line site boundary, as a multi-purpose events area, would not require to be the subject of a planning application. Therefore there is no requirement for the applicant to provide any further details of the proposal.

2. Concerned that any ground disturbance carried out without a proper programme to investigate and record archaeological remains.

Response - Not relevant to this application.

3. Object to the potential of the proposed development to negatively affect an important wildlife site. The Council must consider whether these proposals would further the conservation of invertebrate species listed on the Scottish Biodiversity List which are present in the area. SDO should not remove the requirement for planning permission for a use unrelated to the original use and as such the Application for Certificate of Lawfulness should be refused.

Response - If approved then a Planning application would not be required for the use.

4. The use of the 1953 SDO to permit the proposed development without proper scrutiny would appear to conflict with current national and local planning policy and practice.

Response - The Council has obtained legal advice on the interpretation of the SDO. (see analysis).

5. Article 7 of the SDO reserves the local planning authority to right to insist that a planning application be submitted in respect of any development covered by the Order.

Response - It would require a formal Direction procedure to be promoted and approved by Scottish Ministers. The Council has obtained legal advice on the interpretation of the SDO. (see analysis).

6. The Explanatory Note attached to the SDO states that the Order is relevant only to industrial developments required for the normal purposes of running a factory. The "large industrial concern" referred to disappeared many years ago and the change of use of Shore Compound to a multi-purpose events area is clearly not a form of development of any relevance to the spirit of the Order.

Response - The Council has obtained legal advice on the interpretation of the SDO. (see analysis), which advises that the Explanatory Note is not part of the SDO.

3. Analysis

This application requests the issue of a Certificate of Lawfulness in respect of the proposed use of an area of land for a Multi-Purpose Events Area. The purpose of a Certificate of Lawfulness is to confirm that an existing or proposed use or development is, or would be, lawful for planning purposes and therefore that the proposal does not require planning permission. It should be noted that it is not necessary to submit an application for a Certificate of Lawfulness. In this particular case the applicant considers that the existence of the Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 (SDO) grants planning permission for the proposed use. The SDO extends to an area of some 590Ha, which, at the date of the Order, was the extent of the former ICI factory and it is accepted that the application site lies within the boundary of the SDO.

Article 3 of the SDO permits, subject to the terms of the Order, the carrying out of "any development" on the relevant land without the permission of the local planning authority or the Secretary of State, but subject to restrictions set out in Article 5, specifically the erection of a chimney stack or buildings exceeding 120 feet in height, and certain Use Classes.

The legal advice obtained by the Council advises that the SDO has not been repealed or varied since its introduction, and concludes that the SDO is therefore still valid and, in terms of Article 3 of the SDO, that no additional consent(s) is required from the planning authority before developers can proceed with development within the SDO area.

Subsequent European Legislation, particularly the Environmental Impact Assessment Directive (EIA) was also covered in the legal advice obtained by the Council. However the proposed Events Area use is not a development type covered by the EIA Regulations.

Finally consideration has to be given as to whether the proposed Events Area use is one of the types of development or classes of use that are specifically excluded by the SDO. Article 3 of the SDO permits the carrying out of "any development", subject to the express restrictions set out in Article 5 (i.e. the erection of a chimney stack or buildings exceeding 120 feet in height, and certain use classes).

The use classes relate to the Town and Country Planning (Use Classes) (Scotland) Order 1950 which has been the subject of amendments, to the effect that there is now little correlation between the classes and provisions of the 1950 and the current 1997 Order. The legal advice obtained by the Council advised that the degree of changes introduced since the 1950 Order would be difficult to interpret and that a more restrictive application could arguably engage the Human Rights Act.

However the following caveats apply:

- The road access to the site is almost entirely outwith the boundaries of the Order. Accordingly approval of the certificate in no way certifies the access is suitable for the proposed use;
- The site is adjacent to the Health & Safety Executive (HSE) explosives safeguarding zone from the neighbouring Chemring site but within a Hazardous Substance consultation zone for both Chemring and the Shore Compound. In the absence of a

full planning consideration of the suitability of the site for events, or the use of the current road access which passes through the safeguarding zones, risks have not been evaluated by the Authority. HSE was not consulted as part of the process of this application and it would be advisable that the applicant should address this matter, prior to the use of the site as a multi-purpose events area;

- Any contamination issues on the site have not been considered as part of the process of this application; and
- The Order does not permit shops so any retail sales at events may not be permitted.

The Explanatory Note accompanying the SDO explains that it "grants planning permission for any development on that site required for the normal purposes of the factory". The legal advice, as noted above, is that the Explanatory Note is not part of the SDO.

Accordingly, the proposed use is not a use specifically excluded by the terms of the SDO. In view of the above the proposed use of the application site as an Events Area would be a use permitted under Town and Country Planning (County of Ayr No.1 Special Development) Order 1953 and accordingly a Certificate of Lawfulness can be issued.

4. Full Recommendation

Certificate Issued



Karen Yeomans
Executive Director
Economy & Communities

For further information please contact Mr Gordon Craig Planning Officer on 01294 324380.

Appendix 1 – Location Plan

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