

Cunninghame House,
Irvine.

8 June 2017

Planning Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 14 JUNE 2017** at **2.00 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2. North Coast and Cumbraes

Submit reports on the following applications:

2.1 17/00034/PPM: Hunterston Construction Yard, Fairlie (Page 5)

Variation of planning condition No. 1 of a Planning Permission (ref. 14/00164/PPM) to extend the operational time period of the National Offshore Wind Turbine Testing Facility until 14th October 2019 (copy enclosed).

2.2 17/00100/MS: Site To North West Of Chapelton Mains, Seamill (Page 31)

Application seeking approval of matters specified in conditions / provision of information in relation to conditions (conditions 1-9 of Planning Consent N/16/00561/PPM) and submission of detailed housing proposals for Phase 1 of development (copy enclosed).

3. **Isle of Arran**
Submit report on the following application:

17/00148/PP: Kilmichael Country House Hotel, Brodick (Page 51)
Change of use to residential, buildings to be changed include hotel, self catering apartments and removal of condition 7 to allow Cottages 1, 3 and 4 to be permanent dwellinghouses (copy enclosed).
4. **Garnock Valley**
Submit report on the following application:

17/00389/PPPM: Site to the east of 7-9 Beith Road, Glengarnock, Beith (Page 61)
Renewal of planning permission in principle N/13/00501/PPPM for erection of residential development (copy enclosed).
5. **Irvine**
Submit report on the following application:

17/00378/ALO: Site to south east of Pet Crematorium, Murdoch Place, Irvine (Page 75)
Discharge of section 75 obligation relating to unimplemented and expired planning permission 07/00072/PP (copy enclosed).
6. **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of 56 Boglemart Street, Stevenston (Page 81)**
Submit report by the Executive Director (Economy and Communities) seeking authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the land for storage and the removal of the storage container sited upon it at Site to South of 56 Boglemart Street, Stevenston (copy enclosed).
7. **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 148 Main Street, Largs KA30 8JN (Page 87)**
Submit report by the Executive Director (Economy and Communities) seeking authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN (copy enclosed).
8. **Proposed Section 11 Exemption Order under the Land Reform (Scotland) Act 2003 for the Aberdeen Asset Management Ladies Scottish Open (Page 93)**
Submit report by the Executive Director (Economy and Communities) seeking approval for the issue of a Section 11 Exemption Order for the Ladies Scottish Open (copy enclosed).
9. **Enforcement Charter: Town and Country Planning (Scotland) Act 1997, as Amended by the Planning Etc. (Scotland) Act 2006 (Page 101)**
Submit report by Executive Director (Economy and Communities) on the Council's Planning Enforcement Charter, which requires to be reviewed and republished by the Council every two years, under the terms of Section 158A of the Town and Country Planning (Scotland) Act 1997, as amended (copy enclosed).

Planning Committee

Sederunt: Tom Marshall (Chair)
Timothy Billings (Vice-Chair)
Robert Barr
Ian Clarkson
Robert Foster
Christina Larsen
Shaun Macaulay
Ellen McMaster
Ronnie McNicol
Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

NORTH AYRSHIRE COUNCIL

Agenda Item 2.1

Planning Committee

14 June 2017

Locality	North Coast and Cumbraes
Reference	17/00034/PPM
Application	17 January 2017
Registered	
Decision Due	17 March 2017
Ward	Dalry and West Kilbride

Recommendation	Grant with Conditions contained in Appendix 1
-----------------------	--

Location	Hunterston Construction Yard Fairlie Largs
-----------------	--

Applicant	SSE Generation Limited
------------------	------------------------

Proposal	Variation of planning condition No. 1 of a Planning Permission (ref. 14/00164/PPM) to extend the operational time period of the National Offshore Wind Turbine Testing Facility until 14th October 2019
-----------------	---

1. Introduction

Consideration of this application was continued at the meeting of the Planning Committee on 8 March 2017, following an offer by the applicant to remeasure background noise and re-evaluate noise limits as part of an upcoming operational noise survey for the Mitsubishi turbine.

The applicant has not been able to carry out the re-measurement of background noise, due to the original noise consultant not being available to conduct the work and a request by Fairlie Community Council to agree the location of measurement apparatus and procedures for monitoring. The applicant has now procured the services of a different consultant.

Since the last meeting of the Planning Committee, Fairlie Community Council has retained a specialist on noise issues, who is assisting the Community Council in the assessment of the submission of any new noise data. The applicant, the Council and Fairlie Community Council have agreed the locations and measurement procedures for the new survey, which is due to begin in June 2017. It is expected that the measurements and assessment of data would take up to 3 months, depending on obtaining the correct date of varying wind speeds and directions.

In light of the above and to permit further consideration of the application by Committee, it is considered that an appropriately worded planning condition to reflect the changed circumstances in terms of background noise, would permit the continued use of the site, whilst a re-measurement of background noise is carried out (see Condition No. 21). It is also proposed to amend Condition No. 8 to address concerns of measurement of daytime hours, which has been raised by Fairlie Community Council and their retained specialist on noise issues.

It should be noted that Condition No. 6 in its current form offers protection to residents in that the noise from turbines is to be measured following receipt of a valid complaint. Environmental Health could consider taking action if the noise from the turbines at any point in time was causing a statutory nuisance. Condition 6 though does not specifically state that further background monitoring requires to be undertaken, therefore the new planning condition (No. 21) would address this matter and has been agreed by the applicant.

Following the meeting of the Planning Committee in March, Environmental Health has received complaints from residents of Fairlie and one resident of Largs regarding the operation of the turbines.

Concern has been expressed in relation to:

1. Adverse health effects from infrasound (sound outwith the audible spectrum, below 20 Hertz) being emitted by the Mitsubishi turbine; and
2. Low frequency noise from the operation of the turbines.

Response: With respect to infrasound, those persons who have expressed concern to North Ayrshire Council (3 residents in close proximity to one another in Fairlie), in relation to adverse health, have been directed to their GP and to NHS Ayrshire & Arran as the authoritative organisation to investigate such health concerns. NHS Ayrshire & Arran has undertaken an independent investigation into the allegations of adverse health as a result of the operation of the Mitsubishi turbine. The results of the investigation were notified to Fairlie Community Council in correspondence dated 19 October 2016 which confirms that scientific evidence does not support a causal link between wind turbines and ill health. However NHS Ayrshire and Arran analysed general practice data from 2009 to 2016 to ascertain whether there was an increase in reporting of dizziness since the wind turbines began operating. The data, both for Fairlie and for other areas close to the turbines, does not show any increase in the number of people reporting symptoms of dizziness to their GP, following the installation of the

first wind turbine at Hunterston. The numbers have been relatively consistent year-on-year. The investigation concludes that there is no convincing evidence that the reported symptoms of dizziness and/or nausea in the Fairlie Community are caused by the Hunterston turbines.

With regard to low frequency noise the applicant engaged the services of a Noise Consultant to undertake low frequency noise monitoring at one of the complainant's property for 36 days between 20 October- 28 November 2016. Environmental Health was consulted and agreed the methodology to be adopted. This monitoring was to assess for low frequency noise in the range 12.5 to 160 Hertz, which would take into account audible and inaudible frequencies. The results did not provide evidence to support the allegation of excessive low frequency noise being emitted from the Mitsubishi turbine. The results were scrutinised and accepted by Environmental Health.

In addition, Environmental Health has undertaken independent monitoring in relation to noise from the turbines and concludes as follows:

- 1. There is no evidence of the existence of a statutory nuisance during numerous visits to varying receptors;*
- 2. The results obtained by Environmental Health are similar to those documented in the Spectrum Acoustic Consultant's report "NOWTTF-Low frequency sound measurements, dated 22 December 2016" and are compliant with relevant guidance.*

Environmental Health state that there remains safeguards in place for local residents as the noise from the turbines would require to meet noise levels detailed in the previous planning consent. Environmental Health would respond to complaints to ensure the noise does not create a statutory nuisance.

In addition, the carrying out of a new background survey would ensure that permitted noise levels from the operation of the turbines are appropriate taking into account prevailing noise levels in the Fairlie area. Environmental Health do not object to the revision of condition 8 and the provision of a new condition requiring the applicant to undertake a new background noise survey.

Finally it is noted that on 10th May 2017 the Scottish Government announced £43 million in grants to 13 low carbon infrastructure projects via the Low Carbon Infrastructure Transition Programme (LCITP), a programme aimed at targeting proven technologies, with a focus on low carbon and/or renewable electricity and heat generation solutions for Scotland, that will contribute to the wider ambitions of the Government to tackle Climate Change. The Hunterston Energy Storage Project which proposes the deployment of a wind-integrated Li-ion battery energy storage system (BESS), at the Hunterston National Offshore Wind Turbine Test Facility, was awarded £1.2m from the fund.

2. Description

On 14 February 2012, the Planning Committee granted conditional planning permission (ref.11/00679/PPM) for a test facility for up to three off-shore wind turbines with a maximum blade tip height of 198.5 metres at the Marine Construction Yard, Hunterston. On 23 April 2014, the Planning Committee agreed to a variation of this planning permission to i) revise the wording of condition 7 to enable assessment of compliance with noise limits and condition 9 to revise the timescale for dealing with complaints about noise nuisance; and ii) to revise condition 10 to identify measures to reduce turbine noise where agreed levels have been exceeded (ref. 14/00164/PPM).

To date one Siemens and one Mitsubishi wind turbine have been erected. Condition 1 was imposed in order to restrict the overall timescale in which the development could remain on site on the basis of the temporary consent for the test turbines. The applicants original application proposed a 5 year time limit from the date of commissioning of the first turbine. Condition 1 states:

'That the site shall be used as a facility for the testing of a maximum of 3 off-shore wind turbines at any given time for a period of 5 years from the date of operation of the first turbine, prior notification of which commencement date of operation of the first turbine shall be submitted in writing to North Ayrshire Council as Planning Authority; at the expiry of the 5 year period or 14th October, 2017 whichever is the earlier, the wind turbines and associated infrastructure shall be removed and the land restored to its former condition within 6 months, in accordance with a Decommissioning Method Statement to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of the development. If planning permission for the proposed multi-fuel power station at Hunterston is granted, the wind turbine test facility shall not be operational at the same time as the testing or operational phases of the multi-fuel power station.'

The first generation from a turbine was made on 1st March 2014. The applicant proposes to vary Condition 1 to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019 to allow continued testing of the Siemens wind turbine and testing of the Mitsubishi turbine.

Whilst the original application proposed no change to existing conditions it is now proposed that Condition 8 be amended to state:

'That during daytime hours, defined in ETSU-R-97 as 0700 to 2300 on all days the wind turbine noise immission level at any property lawfully existing or with planning permission at the time of this consent shall not exceed the ETSU-R-97 derived daytime noise limit of 35db LA90, 10min or the measured existing LA90, 10min noise level (as detailed in table "11.4: Quiet Daytime Prevailing Background Noise Levels" of the "Hunterston National Offshore Wind Turbine Test Facility Volume 1: Environmental Statement") plus 5dB (A), whichever is the greater. In the case of locations not included in table 11.4 of the Hunterston National Offshore Wind Turbine Test Facility Volume 1:Environmental Statement", the limit for the nearest

location listed shall apply, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.'

A new planning condition is also now proposed and would state:

"That the operator shall employ a suitably qualified acoustic consultant or other competent person to conduct and submit a Background Noise Survey within 6 months of approval, and no later than 15th December 2017. The measurement and calculation of background noise levels shall be undertaken in accordance with ETSU-R-97 "The Assessment and Rating of Noise from Wind Farms" and IOA "A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise" including the type, classification and calibration of the measuring equipment, the location of the microphones, the relevant weather conditions and the analysis and presentation of the measured noise data or such other method agreed in writing by the Environmental Health Service of North Ayrshire Council. In the event that the Background Noise Level is found to be different to the Background Noise Survey referenced in "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement"), the most recent levels shall be recorded as the background noise level referred to in Condition 7 and 8."

In support of the application the applicant has provided the following reports:

Environmental Statement Update and appendix

An update of the original Environmental Statement (dated 2011), where i) there has been or likely to be an increase in the magnitude of impact as a result of the time extension of the development; ii) the baseline conditions are greater than the original assessment; and/or, iii) elements of the proposal could introduce new impacts.

The applicants Non-Technical Summary summarises the key points from the ES update and confirms that any changes to the original Environmental Statements baseline conditions would be minor with no changes to the assessment. Both documents also provide a summary on particular topics such as Planning Policy, Landscape and Visual effects, Ecology, Ornithology, Ground Conditions, Heritage, Transport, Noise, Social Economics and other issues.

Economic Appraisal

The Economic Appraisal summarises the economic benefit derived from the NOWTTF, through the development and construction phase and ongoing operations, maintenance and training phases. The report highlights that the test turbines have become a key economic asset for the Scottish offshore wind energy sector. It states that the turbine manufacturers have also benefitted from an increased operational understanding of the maintenance requirements and performance issues of the turbines, which should lead to longer term cost reductions for the production of offshore wind energy.

The report indicates that the NOWTTF has contributed to the local and national economies through its development and operation. The impact in the construction and professional services sector from the initial £21.0 million investment in development and construction supported 19 job years and £2.6 million Gross Value Added (GVA) in North Ayrshire, and 75 job years and £9.2 million GVA in Scotland. The site has secured the employment of 55 employees of the core partners in Scotland whose jobs are dependent on the NOWTTF.

The report also states that the NOWTTF also has an impact on the companies in the local area that are able to supply goods and services to ensure the operation of the site as part of its £1.7 million annual operational spend. A map of those operational suppliers is provided within the body of the report.

Planning Statement

The Statement assesses the key planning considerations arising from the application, its need and benefits, and compliance with the Development Plan and relevant material considerations. The statement focuses on the economic benefits of the proposal to date and potential benefits for the future as provided within the above noted Economic Appraisal.

The statement indicates that the NOWTTF retains a strong need to continue to operate from the site. The continuation of the testing of offshore wind turbines is vital to support and enable the offshore wind industry to develop. The current Siemens turbine on the site is on test for usage on the 588 MW Beatrice Offshore Farm in the Moray Firth, which is due to commence construction in 2017, and has influenced DONG Energy to purchase this turbine for the 1.2 GW Hornsea offshore wind farm in the North Sea. It states that there is an imperative need for this testing to continue to ensure that the offshore wind energy industry continues to develop.

The continued testing of the Mitsubishi turbine and further investment on the site will also enable further understanding of offshore wind turbines, to enable turbine designs to be refined and developed, and for the training opportunities. The statement indicates that the importance of the NOWTTF nationally is likely to last well beyond the proposed extension of the operational time period for a further two years. The extension of the operational period would allow the applicant to develop further options for the site, which may also include energy storage and new forms of technologies that will further support the Scottish energy industry, and the local and national economies. The NOWTTF is of national importance, which should weigh heavily in favour of the development.

The statement concludes with an assessment of the development against the Local Development Plan, Scottish Planning Policy, NPF3 and other energy policies.

Statement of Community Consultation

The statement provides a summary of consultation meetings that the applicant has undertaken prior to the submission of the application. Whilst not a statutory requirement the applicant is aware of the benefits of ongoing consultation with communities to draw out and address potential issues. The statement indicates that the following meetings were undertaken:

- Hunterston Liaison Group - 8th November 2016;
- Fairlie Community Council - 5th December 2016;
- West Kilbride Community Council - 9th December 2016
- Cumbrae Community Council - 12th December 2016; and
- Largs Community Council - 15th December 2016.

The statement summarises the issues raised through each consultation meeting and how these have been addressed. Following the neighbour notification process the applicant provided a statement responding to particular points raised by representees. The purpose of the document was to provide clarity on any concerns raised.

Within the North Ayrshire Local Development Plan the site is located within an industrial area where Policies IND1 (Strategic Business Locations) and IND2 (Hunterston: Development in the National Interest) specifically apply. Policies ENV 8 (Coastal Zone), ENV 9 (Nature Conservation), PI 9 (Renewable Energy), HE2 (Listed Buildings). All development proposals require to be assessed against the relevant criteria of the General Policy of the LDP.

3. Consultations and Representations

The application has been subject to the standard neighbour notification procedures and was advertised in the local press on the 25 January 2017. Nine letters of objection, two comments and six letters of support were received. The following concerns can be summarised as follows.

1. The original 2004 Public Inquiry in Fairlie clearly states that the Hunterston Peninsula is not a suitable location for wind turbines. The 2012 Planning Consent was granted on a temporary 5 year basis. The developer proposes a more permanent test turbine facility on the site.

Response: Planning application 03/00076/PP for 13 wind turbines at the marine construction yard and adjoining land was refused on appeal. The turbines were 111m in height. On 14 February 2012, the Planning Committee agreed to grant conditional planning permission (ref.11/00679/PPM) for a test facility for up to three off-shore wind turbines with a maximum blade tip height of 198.5 metres at the Marine Construction Yard, Hunterston. This application proposes a time extension of 2 years to complete the testing of the existing turbines on site. Whilst the applicant does make reference to potential future development at the site, these matters are not material to this application.

2. The development is contrary to the North Ayrshire Supplementary Landscape Wind Capacity Study of June 2013. The site is very visible from all aspects of the Clyde. As such there is a significant loss of visual amenity affecting the mainland from Skelmorlie to Fairlie; To the Isle of Cumbrae; and to anyone enjoying offshore leisure activity in the area. The application is not in keeping with the local plan.

Response: The original and updated Environmental Statements (ES) assess that significant effects would be experienced in four of the 26 landscape character areas and one of the seascape areas. The turbines would be visible from some distance from the site - the ES assesses a significant impact to occur within 9km. Given however the ongoing temporary nature and extended duration of the development by 2 years, it is not considered that the development would have a significant adverse impact on tourism.

3. The current stand alone planning application is submitted without an accompanying Environmental Impact Assessment (EIA) and Environmental Statement (ES). Since the original test facility was consented there has been a great deal of new scientific and medical evidence and understanding of the dangers to human health that large wind turbines present. It is not possible for North Ayrshire Council's Planning Committee to properly consider this application without a fully up to date EIA/ES. The site is close to an outstanding wildlife area of SSSI and has the potential to impact on resident porpoises and dolphins. Any proposed change to number or height of turbines or diameter of blades will require a new environmental assessment because of variety of wildlife close to the site.

Response: There is not any change to the turbines and the conditions of the original consent can be applied in order to continue the protection of wildlife and the local environment. As an extension of time to the existing development a full EIA or ES was not required.

4. The Mitsubishi Sea Angel turbine has led to numerous complaints of dizziness and nausea from the villagers of Fairlie. The tests make absolutely no attempt to measure the 'amplitude modulation' associated with the infrasound generated by the test turbines. The Noise Survey provided is incorrect. The noise levels of existing turbines have been of concern to many in the local community. The existence of powerful vortices downwind of such huge windmills is documented and could reconcentrate the low level radioactive emissions from the neighbouring nuclear reactor and nuclear waste fuel rod storage area. Any change in height or diameter should require a new sound and environmental assessment.

Response: Noted. The applicant stated that there is not any substantive evidence that turbines have long term health or medical impacts. Environmental Health has not objected to the findings of the submitted noise survey. The conditions of the previous consent can be applied.

5. Statements from the developer that the NOWTTF site would lead to local employment opportunity are unfounded. Any employment spin-off occurs elsewhere. A proposal for a training site is a red herring.

Response: The applicant has provided an independent economic appraisal which states the extend of social economic benefits both locally and nationally. This appraisal refers to benefits for companies within North Ayrshire. A training centre is not being considered as part of this application.

6. Consent was originally granted for 5 years. The Council should stand by their original condition and refuse this application.

Response: Noted. Refer to Analysis regarding justification for further time extension.

7. The developer has stated that the Hunterston wind turbines are approximately 2.5 Kilometres from the village of Fairlie. This is not correct and is highly misleading.

Response: Noted. The applicant's location plan highlights the location of the existing turbines and neighbouring settlements.

Those comments in support of the proposal can be summarised as follows:

1. Renewable energy developments are extremely valuable in order to help the UK meet its climate change targets.

Response: Noted.

2. A company, based in Irvine, relies on windfarm development which has brought employment and local supply chain benefits. This development supports local jobs and the local economy. Keeping the site open at Hunterston sends a clear message that North Ayrshire is open for business. The site at Hunterston Construction Yard offers a location that is among the best in Scotland for lidar testing activities. The exposure of the site suggests a suitable wind climate. It is sufficiently close to equipment depots and company offices in Glasgow. The continued use of Hunterston Construction Yard brings direct economic benefits to the wind industry sector and promotion of job creation for wind energy services, and research and development activities within Scotland.

Response: Noted. The applicant has provided an Economic Appraisal which summarises the economic benefit derived from the NOWTTF to date through the development and construction phase and through ongoing operations, maintenance and training phases. The report highlights that the test turbines have become a key economic asset for the Scottish offshore wind energy sector.

3. The proposal is in line with Clydeport's overall aim for the continued use of the site. The development complies with the Local Development Plan policy outlined in Policy IND 2. The site is identified in the N-RIP programme at National Level as a site of importance. It is also to be noted employment levels at Hunterston have been affected by the reduction in the supply of coal to power stations in Scotland, a loss of 90 jobs, which further necessitates the need to maximise the options at Hunterston's Construction Yard for new sources of use and employment.

Response: Noted.

4. Ayrshire College advises that there has been initial discussion around partnership working on the site and the potential benefits within Ayrshire. The discussions involve the College's current City and Guilds Wind Turbine Technician course and students would benefit from regular access to a working turbine site providing valuable skills and experience not available elsewhere, which would benefit potentially 530 students currently studying across the 3 main campuses.

Response: Noted. The applicant has provided an Economic Appraisal which summarises the economic benefit derived from the NOWTTF to date through the development and construction phase and through ongoing operations, maintenance and training phases.

Environmental Health - No objections.

Response: Noted

Fairlie Community Council - Fairlie Community Council formally objects on the following grounds:

1. Public Inquiry Outcome 2004. The Reporter presiding over the original 2004 Fairlie Public Inquiry clearly concluded that the Hunterston peninsula is not a suitable location for wind turbines on environmental grounds.
2. Clear five year temporary planning permission granted in 2012. The 2012 Planning Consent for the Hunterston NOWTTF site recognises that the development breaches numerous planning regulations on the environmental front, but justified it on the basis that it would be a strictly temporary facility that would only be in place for a five year period. The current planning application seeks to extend that five years by a further two years but, by the developer's own admission, these two years would also be used to justify a planning application to convert this into a permanent facility.
3. Unsuitability of location in regard to visual impacts and impacts on tourism. the proposal is contrary to the North Ayrshire Supplementary Landscape Wind Capacity Study of June 2013.
4. The current stand alone planning application is submitted without an accompanying Environmental Impact Assessment (EIA) and Environmental Statement (ES). We believe that for North Ayrshire Council's Planning Committee to properly consider this application, SSE should commission a fully up to date EIA and ES.
5. The reliability of recent 'audible noise' test results. FCC question the validity of these test results, especially as justification for the turbines remaining in place. FCC believe that the emissions of the Mitsubishi Sea Angel turbine have led to complaints of dizziness and nausea from the villagers of Fairlie, which cannot be ignored. Similarly, the tests have not measured the 'amplitude modulation' (AM), associated with the infra-sound generated by these test turbines.
6. Growing evidence that wind turbines can adversely affect peoples' health. These wind turbines are not designed for on land operation, and the risks to local residents' health, no matter how poorly researched, have to be taken seriously.
7. Misrepresentation of proximity of Fairlie to the wind turbines. The developer has stated that the Hunterston wind turbines are approximately 2.5 Kilometres from the village of Fairlie. This is not correct and is highly misleading. The nearest human habitation in Fairlie to the nearest turbine is barely 1 Kilometre as the crow flies, as dangerous sound waves do not use the trunk road system.
8. Lack of an economic case to continue the NOWTTF site. FCC question if there has been any local economic benefit since 2012. The community benefit fund split between four communities, has not been sufficient to provide any tangible benefit to Fairlie to date.

Response: Noted. The points raised by Fairlie Community Council have been addressed above. The matters regarding community benefit are not material planning considerations.

Largs Community Council - No objection.

Response: Noted

West Kilbride Community Council - No objection. West Kilbride Community Council would point out that the original consent was for 5 years for the construction of a Temporary Offshore Wind Turbine Test Facility. During the erection of the second turbine there was a significant increase in road vehicle movements. There has been concerns raised mainly by Fairlie residents regarding the low frequency noise associated with the second turbine that was erected. There are no proposals to erect a third turbine.

Response: Noted.

4. Analysis

In relation to an application under Section 42 of the Town and Country Planning (Scotland) Act 1997, the Planning Authority shall consider only the question of the conditions subject to which permission should be granted. The applicant proposes to vary condition No. 1 of a Planning Permission (ref. 14/00164/PPM) in order to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019. The main determining issue in this case is whether the proposed time extension would accord with the provisions of the development plan, and whether there are any other material planning considerations, which would not permit the extension of time. In this case, the adopted North Ayrshire Local Development Plan (LDP) is the development plan. The original application was determined against the Ayrshire Joint Structure Plan (AJSP) and the previous North Ayrshire Local Plan (excluding Isle of Arran) (NALP). North Ayrshire Council's current Local Development Plan (LDP) was considered to be a material consideration.

It was considered in 2012 that as the development is fully reversible, the effects would not undermine the primary purpose of the Local Plan. The development would be consistent with one of the principal aims of the Development Plan, namely, the continued economic development of the site at Hunterston, the safeguarding of land for nationally important development requiring deep water facilities and the support of National Renewable Energy Policy. Given the overall conformity with the objectives of NPF2 and the Development Plan, the Council's Economic Development and Regeneration Strategy (EDRS), the uniqueness of the proposal for a national test centre limited to an operational life of five years, the short term and reversible impacts, the potential for downstream manufacturer investment and opportunities for job creation at Hunterston, the Scottish Government's desire to develop Scotland's renewable energy potential to address climate change and the identification of Hunterston as the best location in Scotland for a test centre, the application was recommended for approval.

In consideration of the current proposal to extend the operational time period of the National Offshore Wind Turbine Testing Facility (NOWTTF) until 14th October 2019, the applicant has provided both economic and planning statements which refer primarily to the current social economic benefits derived from the development, and the potential future benefits which may occur should the time extension be granted.

Policy STRAT2 states that the LDP will contribute to the Council's aim of creating new jobs by 2020 by safeguarding key business and industrial sites at Ardeer and Hunterston. At the time of adoption of the LDP Hunterston was highlighted, at national level, as having potential for major employment generating development including wind turbine testing. NPF2 identified Hunterston as a National Development location for a clean coal fired power station, container transshipment hub, maritime construction and decommissioning yard and associated energy and industrial development. It was not site specific but identified the location of the National Development as "adjoining the existing bulk handling terminal and marine construction yard at Hunterston, Ayrshire".

NPF3 replaced NPF2 and is the spatial expression of the Scottish Governments Economic Strategy and of the Government's plans for infrastructure investment. A key ambition of NPF 3 is to achieve at least an 80% reduction in greenhouse gas emissions by 2050. Hunterston is not any longer identified as a national development, but forms part of an area of co-ordinated action to provide energy hubs throughout Scotland. NPF3 states that the low carbon agenda forms a crucial part of the strategy and in regard to Hunterston NPF3 states that it should aim to make sustainable use of its key assets, including its deep water access.

A key driver for the low carbon agenda is the implementation of the National Renewables Infrastructure Plan (N-RIP). N-RIP is a key action identified in the Scottish Government's Renewables Action Plan published in June 2009. The Government's aim is to maximise the sustainable economic growth potential of a Scottish based offshore renewables industry that delivers offshore wind, wave and tidal energy with devices that are "made in Scotland". The objective of the N-RIP is to make sure that appropriate sites are available in the right locations to provide the platform for the growth of the renewables industry.

The existing planning permission for the 3 test turbines concluded that at that time the temporary use of the marine construction yard for this purpose would not conflict with the future development of the site. This consent predated NPF3.

Scottish Planning Policy (SPP) introduced a new presumption in favour of sustainable development. The presumption in favour of sustainable development does not change the statutory status of the development plan. The SPP sets out a series of principles whereby development could be considered to be sustainable. For this application, the most relevant are: giving due weight to net economic benefit; supporting delivery of infrastructure; and, supporting climate change mitigation.

NPF3 states that Planning must facilitate the transition to a low carbon economy, and help to deliver the aims of the Scottish Government spatial strategy to facilitate the development of generation technologies that will help to reduce greenhouse gas emissions from the energy sector, which includes terrestrial and marine planning to facilitate development of renewable energy technologies, link generation with consumers and guide new infrastructure to appropriate locations. It further states that renewable energy also presents a significant opportunity for associated development, investment and growth of the supply chain, particularly for ports and harbours identified in the National Renewables Infrastructure Plan.

With respect to the Local Development Plan the proposal requires to be assessed against Policies IND1, IND2, ENV 8, ENV 9, PI 9, HE2 and the General Policy of the LDP. Policy IND1 identifies Hunterston as a Strategic Business Location for nationally important development as identified in Policy IND2. The supporting text does state that the site is the preferred location for the establishment of a Test Centre for off-shore wind turbines and that the development of two new grid links would offer support. However the LDP predates NPF3 where the use of the marine construction yard for testing of off-shore turbines is not listed in the description of development for Hunterston.

Policy IND2 sets out a list of developments that shall accord with the LDP including a wind turbine test centre of national significance, and the criteria against which such developments require to be assessed. In this regard the site has a quayside location, it has the capability of importing/exporting turbines by sea and the applicants have demonstrated that infrastructure can be provided to feed into the national grid. The applicant has failed to demonstrate that the development would complement the development of Hunterston as an integrated manufacturing site for renewables and proposes to extend the ongoing use of the site for a further 2 years. It is therefore considered that the principle of the development would not comply with all of the provisions of Policy IND2 and would therefore fail to meet Policies IND1 or IND2.

With regard to Policy ENV8 the site lies within the Developed Coast where development which requires a coastal location and which would enhance the developed coast shall accord with the LDP. The applicant states that proposal requires a coastal location to closely reflect as far as possible the off-shore environment and would benefit from such a location as it would allow for the delivery and removal of wind turbine components to the site by sea thereby minimising disruption on the road network. While the consented scheme was granted permission on the basis of the temporary and reversible nature of the development this proposal would further extend the visual impact of the development by a further 2 years.

As noted within the original planning application the adverse impact of the proposed turbine on the setting of Hunterston Castle, Hunterston House and views from the Historic Gardens or Designed Landscape at Kelburn Castle, was considered to be temporary and fully reversible. The increase in length of time of operation would continue to have a significant impact on these key historical assets. The proposal would therefore conflict with Policies HE2 (Listed Buildings) and HE5 (Historic Landscapes).

ENV 9 states that proposals for development which would affect national designations such as Sites of Special Scientific Interest shall not accord with the LDP. The site is located in close proximity to Southannan Sands SSSI which comprises a coastal section, subdivided into three discrete areas, which together support one of the best examples of intertidal sandflats habitat on the Clyde coastline. The nearest turbine would be located approximately 40m west of the boundary of the SSSI. The original application was not considered to have a significant impact on the SSSI, and subject to the previous conditions, the temporary nature of the proposal would comply with Policy ENV9.

Policy PI 9 relates to Renewable Energy and requires assessment of the impact of renewable energy against a range of criteria. These are explored below:

In relation to criteria (a) (b) and (c), the proposed scale of the development is significant. The previous LVIA submitted in support of the previous application (ref.11/00679/PPM), found significant effects within 4 of the 26 landscape character areas and one of the seascape areas. The areas in which significant effects were identified were the Raised Beach in which the development would be located and the adjacent Coastal Fringe with Agriculture, Rugged Moorland Hills and Valleys and Rolling Farmland with Estates. Significant effects were predicted on the Sensitive Landscape Character Area of North Ayrshire. Significant effects were not predicted in relation to landscapes of national importance in the study area, Loch Lomond and Trossachs National Park or the Isle of Arran National Scenic Area.

Twelve of the 22 viewpoints provided in the previous LVIA were assessed to be significantly affected in terms of both visual amenity and landscape character. Of these 12 viewpoints, 6 would also be subject to significant cumulative effects when considered in relation to existing and consented turbines in the study area.

Criterion (d) relates to impacts on the natural, built, cultural or historic heritage of the locality and is considered above where it is found that the development would be contrary to Policies HE2 (Listed Buildings) and HE5 (Historic Landscapes). Criterion (f) considers impact on radar and telecommunication systems. The MOD, NATS safeguarding, Glasgow Airport and Prestwick Airport did not raise concerns regarding the original application and as no changes are proposed to the height or location of the existing consented turbines the proposal would comply with criterion (f). Criterion (g) is not directly relevant to this application as the grid connection currently exists for the Consented Scheme.

In considering the LVIA it is considered that the long term effects of the proposal would have a significant impact on a number of landscape character areas and the wider seascape character area. The long term use of the site for turbine testing would not accord with the guidance contained in the approved Landscape Capacity Study and would be unacceptable in terms of landscape and visual appearance, resulting in an unacceptable cumulative visual impact and accordingly result in failure to comply with criteria (a), (b), (c) and (h) of policy PI9. However as the application proposes a time extension of 2 years, it would be considered that the significant visual impacts would be mitigated by the temporary nature of the development.

With respect to the General Policy of the LDP, the relevant criteria in this case are (a) siting, design and external appearance, (b) amenity, (c) landscape character and (d) access, road layout, and parking provision. With regard to siting, design and external appearance, as discussed above, it is considered that the long term use of the site for turbine testing would not be satisfactory within the context of the surrounding landscape as it would result in a significant impact on the wider landscape visible from both land and sea. With regard to amenity the applicant has provided a noise assessment which considers the current operational noise of the development. Following the meeting in March 2017 the applicant has agreed to conducting a revised background noise survey, the results of which would be provided and controlled through a new planning condition. Environmental Health has not raised any objection to the proposal. Concern has been raised regarding infrasound. The applicant has previously stated that there is no evidence of health effects from infrasound or low frequency noise, citing a number of studies undertaken both nationally and internationally, Environmental Health has not raised any concerns on these matters and following the meeting in March 2017 NHS Scotland has provided the results of their investigations into the alleged health effects as a result of this development. No evidence has been found to link the development to the matters being experienced by a small portion of the community.

The applicant also provided a shadow flicker assessment as part of the original planning application (ref. 11/00679/PPM), which did not raise any significant concerns. Subject to the original conditions, the proposal would comply with criteria (b) and would not have a detrimental impact on the amenity of the neighbouring properties.

In relation to (c), the proposal is not considered to comply with this criterion for the reasons given above, however given the limited timeframe of the development, although significant, the impact is not permanent.

In relation to (d), the applicant has indicated within the updated ES statement that no significant changes to the operation of decommission transport are proposed. Again given the temporary nature of the proposal and restrictions placed within the original planning application the development is considered to comply with this criteria.

The original application for the development of the test turbine site 11/00679/PPM highlighted within the Environmental Statement that job opportunities would be created for 10-20 workers during the construction phase with further supply chain gains for the local economy through the establishment of supply chain lines with a represented investment of around £10 million with the potential to generate a range of economic opportunities for local businesses, employment opportunities and local spending.

The applicant's economic statement indicates that the NOWTTF has contributed to the local and national economies through its development and operation. The impact in the construction and professional services sector from the initial £21.0 million investment in development and construction has supported 19 job years and £2.6 million Gross Value Added (GVA) in North Ayrshire, and 75 job years and £9.2 million GVA in Scotland. The site has secured the employment of 55 employees of core partners in Scotland whose jobs are dependent on the NOWTTF. The applicants supporting information also states that the development has an impact on the companies in the local area that are able to supply goods and services to ensure the operation of the site as part of its £1.7 million annual operational spend.

The applicant has indicated that the consented has resulted in the diversification of commercial activities at the development site, without compromising its ability to utilise the deep water facilities for further development. The applicant states that the testing of offshore wind turbines is a crucial stage in developing a reliable supply chain to deliver the programme of development for offshore projects in the UK and since undergoing testing and achieving type certification at Hunterston. The applicant indicates that since undergoing testing and achieving type certification at Hunterston, the 6 MW and 7 MW variants of the Siemens STW turbine have become Europe's market leading offshore wind turbines. Siemens has received 4.5 GW of orders for the 6 MW and 7 MW variants of the turbine in the UK alone, accounting for over 80% of announced UK orders. The applicant indicates that the extra 2 years would allow further testing of the components of the Siemens turbine to assess durability, and allow commissioning and testing of the Mitsubishi turbine.

It is considered that although the current development continues to have a significant impact on the landscape character of the area, and any long term plans for the continuation development would not be supported, the proposed timeframe of 2 years would allow for the ongoing testing of the turbines in line with the 5 years timescale, which was requested in 2012. This decision to extend the timeframe by a further 2 years would not raise any longer term effects on the visual amenity of the area.

It is considered that the applicant has provided sufficient social and economic justification for the proposal however, beyond the proposed 2 years, any long term proposals for retention of the test turbine site would not comply with the wider aspirations of NPF3 or the National Renewables Infrastructure Plan (N-RIP), with regards to the future manufacturing and servicing potential of Hunterston.

5. Full Recommendation

See Appendix 1



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
10 May 2017

For further information please contact Ross Middleton , on 01294 324379

APPENDIX 1

RECOMMENDATION FOR PLANNING APPLICATION REF NO 17/00034/PPM

Grant subject to the following conditions:-

1. That the site shall be used as a facility for the testing of a maximum of 3 off-shore wind turbines at any given time for a period up until 14th October, 2019 following which the wind turbines and associated infrastructure shall be removed and the land restored to its former condition within 6 months, in accordance with a Decommissioning Method Statement to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of the development. If planning permission for the proposed multi-fuel power station at Hunterston is granted, the wind turbine test facility shall not be operational at the same time as the testing or operational phases of the multi-fuel power station.
2. That prior to the commencement of the development the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority exact details of the siting, design and finishes to all ancillary buildings, temporary buildings and structures and prior to the erection of each wind turbine the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority exact details of the siting, design and finish of the wind turbine.
3. That unless North Ayrshire Council as Planning Authority gives written consent to any variation, all turbine components shall be transported to and removed from the site by sea by way of the existing jetty at the Marine Construction Yard, to the satisfaction of North Ayrshire Council as Planning Authority.
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 Transport Management Plan which shall include matters such as identification of the routes for delivery of construction materials to the site and times of day when the deliveries can be made; the Traffic Management Plan shall be implemented in accordance with the approved details to the satisfaction of North Ayrshire Council as Planning Authority.
5. That prior to the commencement of the development the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a Construction Method Statement which shall detail measures to be put in place to avoid any materials or contaminants being released into Portencross SSSI and which shall examine specific aspects of the proposals, e.g., piling for turbine base foundations, storage of fuel which may pose higher pollution risks, general on site procedures for dealing with accidental pollution incidents; the agreed Construction Method Statement shall be provided at least two months prior to work commencing on site and the measures contained in the approved Construction Method Statement shall be implemented throughout the duration of the construction and operation of the site, to the satisfaction of North Ayrshire Council as planning authority.
6. That at the reasonable request of North Ayrshire Council as Planning Authority or following a valid complaint to the Planning Authority relating to noise immissions, ie. the sound heard by the observer, arising from the operation of the wind turbines, the operator shall employ a suitably qualified acoustic consultant or other competent person to measure the level of noise immission from the wind turbines at the property to which the complaint relates. The measurement and calculation of noise levels shall be undertaken in accordance with pages 102-109 of

ETSU-R-97 (ETSU-R-97 the Assessment and Rating of Noise from Wind Farms) including the type, classification and calibration of the measuring equipment, the location of the microphone, the relevant weather conditions and the analysis and presentation of the measured noise data or such other method agreed in writing by the Environmental Health Service of North Ayrshire Council. Where the operation of the wind turbines, when assessed at any noise sensitive premises is likely to result in audible tones, the noise immission level shall be rated as detailed in ETSU-R-97 pp 104-109, all to the satisfaction of North Ayrshire Council as Planning Authority.

7. That during night hours defined in ETSU-R-97 as 2300 to 0700 on all days, the wind turbine noise immission level at any property lawfully existing or with planning permission at the time of the consent shall not exceed the LA90, 10min levels as detailed in table "11.7: Night Time Noise Limits" of the "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement" or the measured existing LA90, 10min noise level (to be calculated from data measured from the Background Noise Survey referenced in "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement") plus 5dB(A), whichever is the greater. In the case of locations not included in table 11.7, the limit for the nearest location listed shall apply, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.

8. That during daytime hours, defined in ETSU-R-97 as 0700 to 2300 on all days the wind turbine noise immission level at any property lawfully existing or with planning permission at the time of this consent shall not exceed the ETSU-R-97 derived daytime noise limit of 35db LA90, 10min or the measured existing LA90, 10min noise level (as detailed in table "11.4: Quiet Daytime Prevailing Background Noise Levels" of the "Hunterston National Offshore Wind Turbine Test Facility Volume 1: Environmental Statement") plus 5dB (A), whichever is the greater. In the case of locations not included in table 11.4 of the Hunterston National Offshore Wind Turbine Test Facility Volume 1:Environmental Statement", the limit for the nearest location listed shall apply, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority.

9. That in respect of the 24 hour contact number to which complaints about noise nuisance can be made which has been supplied by the applicants, on receipt of any complaint directly made to the applicants, the applicants shall acknowledge receipt of the complaint to the complainant by telephone and shall notify North Ayrshire Council as planning authority both of the complaint and of the acknowledgement, all within 72 hours of receipt of the complaint. On confirmation by North Ayrshire Council as planning authority that a noise complaint, whether received directly by the Council or via the applicants, is valid Condition 6 shall apply. The result of the investigation required under Condition 6 shall be communicated to North Ayrshire Council as planning authority and to the complainant within 30 days of receipt of the complaint.

10. That in the event that the noise levels specified in Table 11.18 and Table 11.19 of the Environmental Statement are shown to be exceeded as a result of Condition 6, the operator or manufacturer(s) of the turbine(s) shall identify and implement such measures as are necessary to reduce the levels to no greater than those specified in Table 11.18 and Table 11.19. Such measures may include temporary cessation of the turbine(s) operation.

11. That within the first four weeks following commissioning of each wind turbine, the operator shall employ a suitably qualified acoustic consultant or other competent person to record and measure the level of noise immission from the wind turbines at

a minimum of four locations, to be agreed in writing with North Ayrshire Council as Planning Authority prior to the commencement of such monitoring. The locations shall be as close as possible to noise monitoring locations presented in Figure 11.1 of the Environmental Statement. The measurement and calculation of noise levels shall be undertaken in accordance with pages 102 - 109 of ETSU-R-97 (ETSU-R-97 The Assessment & Rating of Noise from Wind Farms) including the type, classification and calibration of the measurement equipment, the location of the microphone, the relevant weather conditions and the analysis and presentation of the measured noise data, or such other method agreed in writing with North Ayrshire Council as Planning Authority. Where the operation of the wind turbines, when assessed at any noise sensitive premises, is likely to result in audible tones, the noise immission level shall be rated as detailed in ETSU-R-97 pp 104-109. In the event that the limits set out in conditions 7 and 8 are not met the operator or manufacturer(s) shall identify and implement such measure as are necessary to comply with the limit.

12. That the recommendations contained in the document "Hunterston NOWTTF Environmental Statement: Volume III, Technical Appendices, Appendix 9.1 - Hydrology and Ground Conditions Desk Study, Item 7 Conclusions and Recommendations" regarding the proposed contaminated land strategy shall be implemented and the subsequent findings submitted for the written approval of North Ayrshire Council as Planning Authority; contaminated land issues arising from the proposal on nearby natural and farmed shellfish beds shall be included in the scope of the contaminated land strategy, to the satisfaction of North Ayrshire Council as Planning Authority.

13. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.

14. That except with the prior written agreement of the Environmental Health Service of North Ayrshire Council (e.g. by means of an application under Section 61 of the Control of Pollution Act 1974), construction works likely to give rise to noise audible at the curtilage of any nearby noise sensitive premises shall be carried out only during the following times: Mondays - Fridays (excluding public holidays) 0800-1800 hours and Saturdays 0800-1300 hours; plant, machinery and operating methods shall be selected and used in accordance with BS 5228: Noise Control on Construction and Open Sites and the Control of Pollution Act 1974 to minimise nuisance from noise and vibration, all to the satisfaction of North Ayrshire Council as Planning Authority.

15. That the welfare facilities (toilets) provided on site shall be connected to the public mains sewerage system; otherwise prior to the commencement of the development the applicants shall submit for the written approval of North Ayrshire Council as Planning Authority proposals to demonstrate how foul sewerage from the development can be disposed of without causing nuisance.

16. That all mitigation measures detailed in Volume 1 of the Environmental Statement shall be implemented in accordance with the details described therein, to the satisfaction of North Ayrshire Council as Planning Authority.

17. That prior to the commencement of the development, the applicants shall

agree a Detailed Emergency Response Plan with North Ayrshire Council as Planning Authority in consultation with the Nuclear Site Licensees, Emergency Planning Consultative Committee and the Ayrshire Civil Contingencies Team which shall include details of all emergency planning requirements for the site during construction and operational phases and options for consultation meetings if required. The Detailed Emergency Response Plan shall also provide details of plant location, heights and sizes, alerting and notification arrangements, muster points, shelter areas, emergency evacuation routes, arrangements with emergency services and emergency contact numbers etc., all to the satisfaction of North Ayrshire Council as Planning Authority.

18. That prior to the commencement of the use of the turbines and meteorological masts, they shall be fitted with 25 candela omni-directional red lighting or infrared lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point, to the satisfaction of North Ayrshire Council as Planning Authority.

19. That unless otherwise agreed in writing with North Ayrshire Council as Planning Authority, all phases of construction shall take place out-with October to February inclusive.

20. That prior to the commencement of the development the applicant shall submit a report to demonstrate any effects that turbulence might have on dust and to mitigate any adverse effects, for the written approval of North Ayrshire Council as Planning Authority. Thereafter any such mitigation measures shall be implemented, prior to the operation of the wind turbines, all to the satisfaction of North Ayrshire Council as Planning Authority.

21. That the operator shall employ a suitably qualified acoustic consultant or other competent person to conduct and submit a Background Noise Survey within 6 months of approval, and no later than 15th December 2017. The measurement and calculation of background noise levels shall be undertaken in accordance with ETSU-R-97 "The Assessment and Rating of Noise from Wind Farms" and IOA "A good practice guide to the application of ETSU-R-97 for the assessment and rating of wind turbine noise" including the type, classification and calibration of the measuring equipment, the location of the microphones, the relevant weather conditions and the analysis and presentation of the measured noise data or such other method agreed in writing by the Environmental Health Service of North Ayrshire Council. In the event that the Background Noise Level is found to be different to the Background Noise Survey referenced in "Hunterston National Off Shore Wind Turbine Test Facility Volume 1: Environmental Statement"), the most recent levels shall be recorded as the background noise level referred to in Condition 7 and 8.

The reason(s) for the above condition(s) are:-

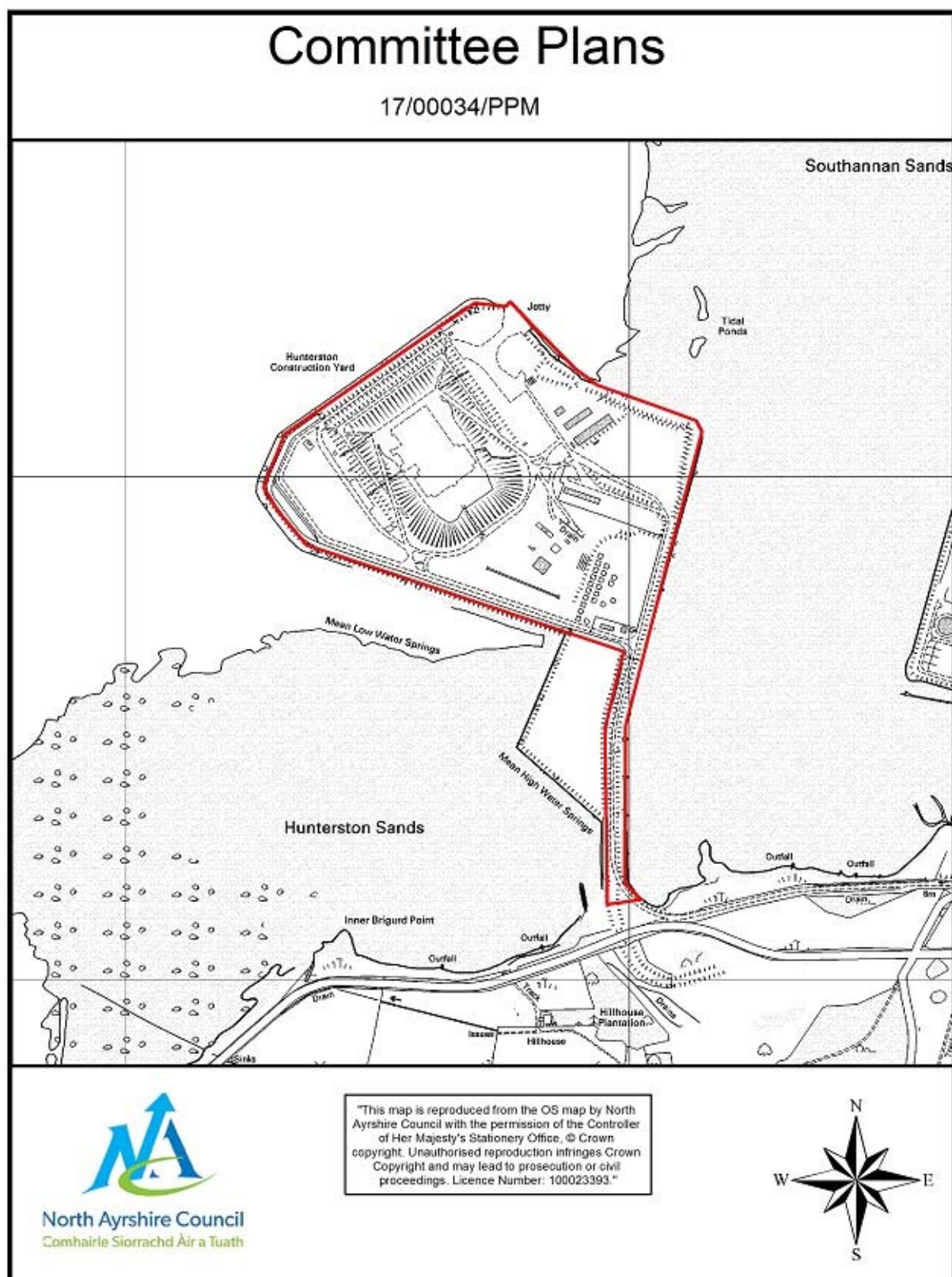
1. To restrict the development to the terms of its justification/special need and to meet the requirements of SEPA.
2. In the interest of the amenity of the area.
3. To minimise disruption on the road network.
4. To minimise disruption during peak traffic and to local residents along the road network.

5. To meet the requirements of Scottish Natural Heritage/To meet the requirements of the Scottish Environment Protection Agency.
6. To meet the requirements of Environmental Health.
7. To meet the requirements of Environmental Health.
8. To meet the requirements of Environmental Health.
9. To deal with noise complaints timeously.
10. To monitor and minimise noise.
11. To monitor and minimise noise.
12. To meet the requirements of Environmental Health.
13. To meet the requirements of Environmental Health.
14. To meet the requirements of Environmental Health.
15. To meet the requirements of Environmental Health.
16. In the interest of the amenity of the area.
17. In the interest of safety
18. To meet the requirements of the Ministry of Defence.
19. To minimise disturbance to wintering birds.
20. In the interest of the amenity of the area.
21. To meet the requirements of Environmental Health.

Reason(s) for approval:

1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 2.2

Planning Committee

14 June 2017Locality **North Coast and Cumbraes**Reference **17/00100/MSC**Application **8 February 2017**

Registered

Decision Due **14 June 2017**Ward **Dalry and West Kilbride**

Recommendation	Grant with Conditions contained in Appendix 1
-----------------------	--

Location	Site To North West Of Chapelton Mains, Seamill
-----------------	--

Applicant	Hope Homes (Scotland) Ltd
------------------	---------------------------

Proposal	Application seeking approval of matters specified in conditions / provision of information in relation to conditions (conditions 1-9 of Planning Consent N/16/00561/PPPM) and submission of detailed housing proposals for Phase 1 of development.
-----------------	--

Introduction

Planning Permission in Principle was granted by the Planning Committee in August 2016 for a residential development with associated access roads, open space, landscaping and other required infrastructure at this site. The Committee agreed that subsequent applications, in respect of the design and style of housing, would be presented to the Planning Committee for consideration.

1. Description

On 31 August 2016, Planning Permission in Principle (PPP) was granted for a residential development with associated access roads, open space, landscaping and other required infrastructure at site to the North West of Chapelton Mains, Seamill, West Kilbride (Ref. 17/00100/MSC). This application seeks approval of matters specified in the conditions of the PPP in respect of Conditions No. 1 to 9 and consent for the detailed proposals in relation to phase 1 of the development.

Condition 1 of the PPP states: "That prior to the submission of the first application for the approval of matters specified in conditions (MSC), a programme of archaeological works in accordance with a written scheme of investigation, the results of which shall inform the layout of the detailed masterplan required by Condition 4, shall be submitted for the approval of North Ayrshire Council as Planning Authority. Thereafter, the developer shall ensure that the approved programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council as Planning Authority."

In consultation with West of Scotland Archaeology Services (WoSAS) the applicant has provided a summary report of an archaeological strip and excavation which was carried out by GUARD Archaeology Limited. The report notes that an earlier evaluation phase had uncovered archaeological deposits containing midden material at the southern end of the development site including pottery sherds and animal bone fragments. Following consultation with WoSAS acting on behalf of North Ayrshire Council, it was proposed to machine strip to fully expose the extent of the deposits and a 20 m archaeologically sterile buffer zone around them. The report concludes that evidence of discarded domestic midden material and a midden pit, due to its closeness to the buildings at Chapelton Mains Farm, suggests that the materials were probably associated with an earlier phase of farm building on the site. Analysis of the pottery has provided evidence of the types of vessels used on site, their date and how they might have been utilised. This detail is provided within the applicants report.

Condition 2 of the PPP states: "That prior to the submission of the first application for the approval of matters specified in conditions (MSC) a scheme to treat the surface water arising from the site in accordance with the principles and practices contained in CIRIA's SuDS Manual (C753) (published 11th November 2015), the results of which shall inform the layout of the detailed masterplan required by Condition 4, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the scheme as may be approved shall be implemented during the course of development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority."

The applicant refers to a Drainage Strategy Report, dated April 2016, submitted with the PPP which specifies that all surface water arising from the development would discharge directly to coastal waters. The applicant has indicated that there is no requirement to provide SUDS to treat surface water discharge in line with SEPA's advice on treating low risk activities such as the development proposed.

Condition 3 of the PPP states: “That prior to the submission of the first application for the approval of matters specified in conditions (MSC), a detailed flood risk assessment (FRA) which identifies the areas of the site at risk of flooding, taking into account the impact of the development on flood risk elsewhere, shall be submitted for the approval of North Ayrshire Council as Planning Authority. Thereafter, the FRA as may be approved shall inform the layout of the detailed masterplan required by Condition 4. For the avoidance of any doubt, no built development or infrastructure should be located within the 1 in 200 year functional floodplain.”

The Flood Risk Assessment confirms that SEPA Flood Maps indicate that part of the site is potentially at risk of surface water flooding but not from fluvial flooding. The FRA considers risk from the fluvial sources, surface water runoff (pluvial flooding) from adjacent land, flooding from the existing sewer network and groundwater flooding. The FRA concludes that modelling results show that there is a risk of surface water flooding from the outside of the site. Surface water not intercepted by a railway embankment and Chapelton Road is predicted to flow across the site before finally ponding in the south east corner of the site. Surface water at a worst case reach a level of 7.6 m AOD and pond within the site and Ardrossan Road. The report recommends that surface water runoff reaching the site be intercepted along the eastern boundary and routed around the site. It is also recommended that ground levels within the site are arranged to provide an overland flow pathway should the interception measures block during an extreme event. Ponding of surface water is predicted within the south western corner of the site, largely as a result of an accumulation of surface water runoff from upslope and would be intercepted by the site drainage system. However, during a blockage to the drainage system, surface water could pond within the site before overtopping Ardrossan Road. The FRA recommends that finished floor levels of properties are set to at least 8.2 m AOD which is 600 mm above the overspill level on Ardrossan Road. The site is not predicted to be at significant risk of flooding from groundwater. It is recommended that if access is to be provided from Ardrossan Road, access is located away from the lowest point on the road. The FRA also recommends that the site is designed to that there is an emergency flow pathway through the site in the event of blockage of the site drainage system, or rainfall events in excess of design conditions. The flow pathways (e.g., road network) should route surface water through the site without flooding properties or increasing flood risk to neighbouring properties. As with any design, maintenance is an important requirement for an effective drainage system. The FRA states that regular maintenance programs need to be implemented for all components of the drainage system.

Condition 4 of the PPP states: “That prior to the submission of the first application for the approval of matters specified in conditions (MSC), a detailed masterplan together with a development brief shall be submitted for the approval of North Ayrshire Council as Planning Authority with regard to the siting, design and external appearance of, landscaping and means of access to the proposed development. For the avoidance of doubt the detailed masterplan shall take into account archaeological investigations, the detailed SuDS scheme and flood risk assessments required by conditions 1, 2 and 3 respectively, and shall incorporate details in relation to:

- the means of access to the site, including at least one vehicular connection from the public road network into the site and at least two multi-user links including links into the wider settlement of West Kilbride;
- the street layout;
- all hard and soft landscaping;
- areas of open space; and
- areas for children's play.

In addition, the detailed masterplan and development brief shall take into account the principles of the Scottish Government's 'Designing Streets' and 'Designing Places' policy documents to the satisfaction of North Ayrshire Council as Planning Authority.

Thereafter, the details contained in the MSC application(s) shall accord with the detailed masterplan and development brief as may be approved, to the satisfaction of North Ayrshire Council as Planning Authority."

The applicant has provided a Development Brief which outlines the proposed aspirations of the development, a site appraisal and contextual analysis regarding building types in the area, design principles and a masterplan which details proposed scaling, massing, design, routes/movement and materials. A masterplan with indicative road layout and a detailed layout for phase 1 has also been provided.

A landscaping plan illustrates that a 'village green' is proposed within the centre of the development with shared spaces connecting the wider masterplan area.

One main road connection is proposed onto the A78 with a further pedestrian access proposed to the north, also connecting to the footpath on the A78. Details have not been provided in relation to a secondary road access onto the B7047 but this access would be located within Phase 2 of the development.

Condition 5 of the PPP states: "That prior to the submission of the first application for the approval of matters specified in conditions (MSC), details of proposed affordable housing contributions shall be provided. For the avoidance of doubt a contribution rate of 25% will be applied to those units associated with the private housing site."

The applicant has provided a draft layout and elevations for the provision of affordable housing units located in Phase 4 of the development. Thirty one units are proposed and are of similar design to the remainder of the applicant's development.

Condition 6 of the PPP states: “That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.”

This condition would be monitored during the construction of the development.

Condition 7 of the PPP states: “That prior to the commencement of the development hereby approved, the developer shall submit a Construction Management Strategy Plan for the written approval of North Ayrshire Council as Planning Authority to include details of routing arrangements for construction traffic. For the avoidance of doubt, the Strategy shall be designed to reduce potential adverse impacts on road safety and to minimise potential disruption and congestion for road users, pedestrians and local residents. Thereafter, the development shall progress in accordance with the Construction Management Strategy Plan as may be approved unless North Ayrshire Council as Planning Authority gives written consent to any variation.”

The applicant has provided a detailed construction traffic management plan which outlines proposed preliminary actions, construction vehicle routes and times, delivery management and site accommodation/parking.

Condition 8 of the PPP states: “That prior to the commencement of the development hereby approved, the developer shall submit a Phasing Plan for the written approval of North Ayrshire Council as Planning Authority to include all land within the application site, and the development shall progress in accordance with the approved Phasing Plan unless North Ayrshire Council as Planning Authority gives written consent to any variation.”

The applicant has provided a phasing plan which indicates that the development alongside the provision of open space and affordable housing would be completed in 4 phases with development starting in the southern section of the site, moving northwards as sections of the site complete. The affordable housing site is proposed to be developed as part of phase 4 of the masterplan.

Condition 9 of the PPP states: “The applicant must demonstrate that the increased road traffic, generated as a result of this development, shall not have a detrimental effect on local air quality or result in an increase in concentrations of atmospheric pollutants such that statutory Air Quality Objectives would be exceeded at any location of relevant public exposure.”

The applicant has provided an assessment of the impact that existing and future traffic movements for three representative receptor locations where the impact of traffic generated by the development is considered to have the greatest potential to have an effect. The report concludes that given the low absolute annual mean concentrations and the small % changes as a result of the development the development would not have any significant effect on air quality and that current and future air quality objectives would be easily achieved.

Phase 1

Further to the application to discharge the above conditions the applicant has also provided details proposals for the implementation of phase 1 of the development.

Phase 1 proposes the development of twenty seven 1 to 2 1/2 storey houses of varying types and sizes.

- Types a, b, and c would be 2 storey, detached, 4 bedroom houses;
- Type d would be a 1 storey, detached 1 bedroom house;
- Type e would be a 1 ½ storey, detached 3 bedroom house;
- Types f and j would be 2 storey, 3 bedroom houses either detached or semi-detached;
- Types g and h would be 1 storey, detached, 3 bedroom houses;
- Type I would be a 2 storey, detached, 5 bedroom house;
- Type V1 would be 2 storey, terraced, 3 bedroom houses;
- Type V4 would be a 2 ½ storey, detached, 3 bedroom house; and,
- Type V8 would be a 2 storey, semi-detached, 3 bedroom house.

In total one 1 bedroom, three 2 bedroom, fifteen 3 bedroom, five 4 bedroom and three 5 bedroom properties are proposed within phase 1.

All houses, apart from types d and f, would be finished in render with coloured concrete window and door surrounds, timber doors, upvc windows and slate roofs. Type f would be finished in sandstone with rear timber projections. The remainder of materials would be the same as above. Type d would be a unique pre-fabricated building clad in timber with corrugated sheet roof. It is a new housing model which is being tested on the site. Boundaries would be marked by low stone walls to the front and timber fencing to the rear. Hard surfacing would be a mixture of tarmac and monoblock with hedges, shrub beds and trees providing soft landscaping.

An open space, measuring approximately 3000 squ.m would be central to the larger masterplan area and would be developed as part of Phases 1 and 2.

In the adopted Local Development Plan (LDP) the application site is allocated for market housing, where Policy Res 2 (Additional Housing Sites) applies. In terms of Policy Res 2, the site has an indicative capacity of 124 units. Policy PI 1 relates to the promotion of active travel, which is relevant due to the scale of the development. Policy PI 8 deals with drainage, SuDS and flooding, which is relevant due to the scale of the project.

Policy RES 4 (affordable housing) is also relevant and requires all proposals for residential development to make a contribution to affordable housing provision. For the North Coast and Arran market housing area, a contribution of 25% is required and should be provided in line with the Council's supplementary guidance.

The General Policy of the LDP is also relevant and requires all development proposals to be considered against a set of assessment criteria, the relevant ones in this case being (a) siting, design and external appearance, (b) amenity, and (d) access, road layout, parking provision.

2. Consultations and Representations

The application was subject to the standard neighbour notification and was advertised in the local press on 22 February 2017. A total of 17 letters of objection were received which can be summarised as follows:

1. The proposed access onto the A78 is inappropriate due to existing traffic levels and road safety. The proposal would generate congestion on A78 and in West Kilbride. West Kilbride has narrow paths and lack of parking.

Response: Transport Scotland has not objected to the proposals subject to conditions. Transport Scotland has previously audited the applicant's transport assessment submitted with the PPP application, and concluded that the assessment and base traffic data to be robust and appropriate. Concerns about a lack of parking within the town centre are not material to this application.

2. The proposed development should not increase water run-off in the area and result in flooding in rear gardens of properties on Ardrossan Road and on the A78.

Response: The applicant provided a drainage assessment with the PPP application and provided an updated Flood Risk Assessment, both of which conclude that SEPA's Indicative Flood Map reveals the 1:200 year flood plain does not impinge on the site although some surface water flooding is predicted on the southern boundary of the site, which would be addressed with an appropriate drainage scheme. It is proposed that surface water arising from the site would be discharged to tidal waters directly from the site. NAC Flooding has raised no concerns regarding the proposals.

3. The proposed development would impact on facilities in the town including schools, nurseries, dentists, and doctors. The developer should pay for a school extension and other local infrastructure.

Response: NAC Education did not object to the PPP application. The impact of the development on other services was considered during the LDP process.

4. Affordable housing should be provided with each phase. The provision of affordable housing in one phase would create social division. The affordable housing does not appear to be built until phase 4. The development would therefore not meet LDP policy.

Response: NAC Housing requested that affordable housing provision be provided in one phase to allow for delivery and more efficient management. Discussions are ongoing between NAC Housing and the developer, with the affordable housing provision to be completed no later than 31 march 2020.

5. The proposals would impact on amenity by way of overlooking/privacy and noise from new occupiers.

Response: The proposed layout of Phase 1 has been designed to minimise any impact on privacy. Window to window distances are 30 metres, which would ensure that the amenity of existing residents would be maintained.

6. The architectural style of housing is out of keeping with the surrounding area. Materials are inappropriate. The proposals should include landscaping and play areas.

Response: The design brief and indicative masterplan for the site provide information on building style, materials, design and layout. The Phase 1 plans provide further detail with regard to varying building designs, plot sizes and house sizes. It is considered that the proposed design and layout is appropriate in context of the wider area. (see Analysis).

7. The wildlife study is out of date and was carried out in winter. A number of species have been witnessed on site including deer, owls, bats and badgers.

Response: Further to comments received with the PPP application, the applicant provided a further walk over survey of protected species and bat assessment, which was undertaken in July 2016. The assessment included a daytime walk over and dusk assessment. The study concluded that there were not any protected terrestrial mammal species, nor signs indicating their presence within the site boundary. Small numbers of bird species typical for the location and habitat were recorded flying over the site, with none observed on the ground or in sparse hedges bordering the site. Small numbers of two common and wide-spread bat species were recorded foraging over and commuting across parts of the site. No other signs of protected or notable species were observed.

8. The allocation of the site through the LDP was not properly assessed and it was proposed following the PPP application a further housing land audit would be undertaken prior to submission of further applications. The proposal does not meet the needs of West Kilbride residents by way of building scale and type.

Response: The LDP was subject to the statutory consultation procedures, which includes an independent assessment by the Scottish Government's Reporters, who confirmed that the housing land audit was satisfactory. It was not proposed to carry out a further audit prior to this application. The phase 1 development proposes the provision of a range of housing from 1 to 5 bedroom properties. Subsequent phases would include a similar variety of housing types which reflects the local housing market.

Other objections were raised regarding limited access to rear boundary walls for maintenance due to the new development, increased disturbance as a result of construction and concerns regarding litter from workers on the site, all of which are considered to be non-material.

Transport Scotland - No objection. The design of the junction onto the trunk road, proposed lighting and footpath links should be controlled through condition. No drainage connections should be made to the A78. The applicant should also provide a Travel Plan for the development with the aim of reducing dependency on the private car.

Response: Conditions could be applied with respect to road and footpath design. The matters regarding Travel Plans was addressed as part of the applicant's PPP application. As outlined in the analysis below the development site is well connected to existing public transport, walking and cycling routes. Drainage is not proposed to be connected to the A78. A condition regarding drainage design and routing would resolve any concerns regarding connections.

NAC Transportation - No objections.

Response: Noted.

NAC Environmental Health – The applicant has provided sufficient evidence in relation to condition 9. No objections.

Response: Noted.

NAC Flooding - The SEPA fluvial hazard map indicates that the existing property lies outwith the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent.

In line with the Flood Risk Assessment submitted to the development site at Seamill it is recommended that the following matters be applied as condition.

1. It is recommended that surface water runoff reaching the site is intercepted along the eastern boundary and routed around the site. It is also recommended that ground levels within the site are arranged to provide an overland flow pathway should the interception measures block during an extreme event. Maintenance of the cut-off drain to be factored. Access for maintenance of the cut-off drain is necessary and to be a minimum of 2.5 metres.
2. Ponding of surface water is predicted within the south western corner of the site. It is recommended that finished floor levels of properties are set to at least 8.2 m AOD which is 600 mm above the overspill level on Ardrossan Road.
3. Based on Ordnance Survey maps, a small pond is located adjacent to Chapelton Cottage, access to the pond could not be made and it is not known where the pond drains. If following site investigations, the pond enters land drains within the site, it is recommended that the land drain is picked up by the site drainage system and discharged to the Firth of Clyde.
4. It is also recommended that the site is designed so that there is an emergency flow pathway through the site in the event of blockage of the site drainage system, or rainfall events in excess of design conditions. The flow pathways (e.g., road network) should route surface water through the site without flooding properties or increasing flood risk to neighbouring properties.
5. It is understood that the surface water would discharge from the development site directly to the Firth of Clyde without any SUDS mitigation, however proposal from the developer is required to ensure contamination from the site (i.e. oil) is mitigated prior to construction.
6. Run-off produced as a result of the construction phase is required to be treated by SUDs.

No objection subject to conditions.

Response: Noted. Conditions regarding points 1, 2, 4, and 5 could be applied. With regard to points 3 and 5 these matters would be addressed as part of future applications within phase 2 of the masterplan area.

NAC Housing - the proposed layout and design of the affordable housing site is suitable and, that provided the contractor delivers the scheme by no later than 31 March 2020, is acceptable.

Response: Noted. A condition on the consent could ensure compliance with this requirement.

West Kilbride Community Council (WKCC)– The road access to the phase 1 site is outwith the current derestriction zone for Seamill and is in a 60 zone limit. There is no indication that a request has been submitted to extend the derestricted zone. There is no facility for a holding area for deliveries except on the actual site, which could lead to significant congestion on the A78. If not installed at the outset. Similarly vehicles leaving the site would initially require wheel cleaning prior to exiting onto the A78.

The inclusion of the proposed Affordable housing WKCC must presume is for information purposes only at this stage as it states that this is still under discussion with NAC, and would request details on the timescale forecast regarding the completion of phases 1,2,3 and 4. There are concerns regarding the house designs submitted although the mix of 1/2/3/4 bedroom homes is generally acceptable. The provision of house type D is not appropriate for the site.

The detailed drawings indicate that the developer is planting hedging against the boundary walls of the existing properties. The resident's title deeds assure them that they had an access strip of 500mm adjacent to their boundary walls for maintenance purposes. Similarly the garage indicated at Plot 1 would restrict the residents of 108 Ardrossan Road from maintaining their garage roof or even clearing their garage gutters, and suggest that this garage is relocated at least a metre from the boundary to allow this access.

Response: The matters regarding the 30mph zone were addressed during the PPP application. It would be the responsibility of the developer and Transport Scotland to discuss arrangements for extending this zone. The applicant has provided a Construction Management Plan which outlines that all vehicle parking and storage would be located on the application site with monitoring of the cleanliness of roads monitored during construction. The affordable housing phase would be delivered in conjunction with the timescale outlined by NAC Housing. Should North Ayrshire Council propose to design and develop the phase 4 site themselves planning permission would not be required. Otherwise a detailed planning application would be required. Details regarding housing completions and overall completion of the development would be outwith the control of the developer as it relies on the housing market and overall success of the development, and could not be controlled through Planning. The matters regarding maintenance of walls would be a private legal matter and would not be controlled by Planning. It would be unreasonable to restrict the developer and future residents from planting along the boundary. Matters regarding building design and provision are addressed below. Housing type D is a new housing model which is being tested on the site.

West of Scotland Archaeology - No objections.

Response: Noted

3. Analysis

This application seeks approval of matters specified in the conditions of the PPP in respect of Conditions No. 1 to 9 and consent for the detailed proposals in relation to phase 1 of the development. In the adopted Local Development Plan (LDP) the application site is allocated for market housing, where Policy Res 2 (Additional Housing Sites) applies. In terms of Policy Res 2, the site has an indicative capacity of 124 units. Policies PI 1, PI 8 and RES 4 are relevant to the consideration of the application. The General Policy of the LDP is also relevant and requires all development proposals to be considered against a set of assessment criteria, the relevant ones in this case being (a) siting, design and external appearance, (b) amenity, and (d) access, road layout, parking provision.

With regard to Policy PI 1 the applicant has previously provided a transport assessment which considers issues and methods to promote active travel and the use of public transport. The site is well located for pedestrians and cyclists, being connected to the existing network of local footpaths, national cycle route and is within walking distance of West Kilbride town centre. The site is also well located for public transport, with the A78 being on the main bus route between Greenock and Ayr. In summary, the proposal is satisfactory in relation to Policy PI 1.

Policy PI 8 relates to drainage, SuDS and flooding. The PPP application was subject to a drainage assessment. The applicant has subsequently provided a Flood Risk Assessment which concludes that SEPA's Indicative Flood Map 1:200 year flood plain does not impinge on the site although some surface water flooding is predicted on the southern boundary of the site. It is proposed that surface water arising from the site would be discharged to tidal waters directly from the site and that there should be no issues regarding flooding of the proposed development, or elsewhere as a result of the development. In terms of Condition No. 2, the applicant refers to a Drainage Strategy Report, dated April 2016, submitted with the PPP, which specifies that all surface water arising from the development would discharge directly to coastal waters. The applicant has indicated that there is no requirement to provide SUDS to treat surface water discharge in line with SEPA's advice on treating low risk activities such as the development proposed. No objections have been received from NAC Flooding subject to conditions. The proposal is satisfactory in relation to Policy PI 8.

With respect to Policy RES 4 in line with Condition No. 5, the applicant has provided a draft layout and elevations for the provision of affordable housing units located in Phase 4 of the development. 31 units are proposed and are of similar design to the remainder of the applicant's development. Planning permission would be required for the erection of the units and would be subject to separate assessment with respect to design and siting. NAC Housing is negotiating the terms of delivery but expects completion by 31 March 2020. Subject to agreement with Housing the proposal satisfies the terms of Policy RES 4.

With regard to the General Policy the relevant ones in this case are (a) siting, design and external appearance, (b) amenity, and (d) access, road layout, parking provision.

(a) siting, design and external appearance.

The applicant has provided detailed designs for phase 1 including elevations, site plans and road details. Indicative road layouts for the subsequent phases have also been provided.

A design brief and masterplan outline the approach taken with the detail for the development and outlines the traditional precedents utilised in order to develop the proposed design solution for phase 1 and subsequent phases. The applicant proposes to take influence from more historic development in the area with the view of creating a 'Place'. The statement notes that there are a range of building types in the area as well as more modern bungalow/suburban type housing. Overall a mixture of one, two and two and a half storey housing is proposed to provide variety and focal points within the development. The statement also refers to potential materials and detailing, which reflect a more traditional approach to design, with influence taken from North Ayrshire Council's 'Neighbourhood Design' document.

The introduction of shared spaces and reduced road widths would encourage reduced traffic speeds within the development whilst helping create a sense of place. In certain areas buildings have minimal set-backs from the road to create a contained and intimate street rather than the more modern approach of standard set-backs. It is considered that the layout would create a balance of ensuring suitable housing density whilst creating an attractive and designed housing development.

Concerns have been raised regarding the building frontages, designs and their relationship to more modern bungalows and 1½ storey houses in the immediate area. However the design brief explains the background and influence taken from the wider environment within West Kilbride, in particular the centre of the town which contains more historic buildings. The design addresses modern housing needs and proportions whilst ensuring the development is not a pastiche of historic building types. It is not considered that a more modern 2 storey or 1 storey standard design would be appropriate for the site, which would not complement the built character of West Kilbride and would not comply with the Scottish Government's Designing Places guidance.

Therefore it is considered that the proposed siting, design and layout of phase 1 of the development is acceptable in design terms and would set a high standard of design for the remaining phases of the PPP area. The proposal would comply with criteria (a).

(b) amenity.

In order to address amenity concerns raised during the course of the PPP, phase 1 plan proposes a mixture of building types throughout the site. This approach would result in a variety of properties to suit varying needs and whilst the traditional design would not reflect that of the immediate vicinity, the stepping up of building heights along the A78 frontage, leading away from the adjoining bungalows would provide an attractive transition to the main development. It would not be considered that a frontage of bungalows or 1 storey buildings would provide the design interest proposed in the development. This approach would help mitigate any concerns regarding visual amenity.

With respect to the privacy and overshadowing of existing occupants, the first phase would adjoin the boundaries of those bungalows at the edge of the settlement. The closest window would be 9.4 metres from the existing neighbouring boundaries with any direct window to window overlooking separated by some 30 metres, which would minimise any direct overlooking and maintain the privacy of new and existing residents. Any overshadowing from new buildings would be contained within the site, mainly due to their siting, restricted height and orientation.

The properties would be sited within varying plot sizes, which reflect the scale of the house proposed, and would offer acceptable levels of amenity for future residents. Many would have direct or immediate access to a large share greenspace. Phase 1 has been designed to reflect the intrinsic design values of the wider area and due to siting, restricted building heights and varying plot sizes, the amenity of existing residents would be protected and any new residents would have an acceptable level of residential amenity. The proposals would comply with criterion b).

d) access, road layout, parking provision.

Prior to submission, the applicant has undertaken pre application advice with NAC Transportation and Planning, with the applicant has been encouraged to take account of the Scottish Governments Guidance, Designing Streets. The geometry of the road has been designed to limit vehicle speeds within the development, through a reduced road width, shared spaces, natural landscaping and the siting of buildings. The design reduces the need for more formal traffic attenuation such as speed bumps, helping create a more attractive place. Phase 1 layout would set the standard for road design within the remainder of the site with further opportunities for landscaping and informal shared spaces.

The reduction in road widths, siting of parking within side curtilages of houses and rear courtyards would result in limited on road parking and limit the visual impacts of cars on the streetscape. Further enhancing the visual amenity of the development. NAC Transportation has not objected to the proposals.

The proposed access onto the A78 would be designed to meet the needs of Transport Scotland, who has not objected, subject to conditions relating to the design of the main access, provision of a footpath along the A87 frontage and drainage design. Subject to condition the proposed design for phase 1 would comply with criterion d).

The proposed development is considered to comply with the requirements of the LDP. It is considered that the matters submitted in response to the conditions of PPP (ref 17/00100/MS) and the design of Phase 1 are acceptable, subject to the conditions contained in Appendix 1.

4. Full Recommendation

See Appendix 1



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
3 May 2017

For further information please contact Ross Middleton , on 01294 324379

APPENDIX 1

RECOMMENDATION FOR MATTERS SPECIFIED IN CONDITIONS REF NO 17/00100/MSC

Grant subject to the following conditions:-

1. That prior to the commencement of Phase 1 the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority details regarding the proposed drainage of surface water, routing of drainage into the Firth of Clyde, details of proposed connections to the public sewerage system and details regarding the proposed treatment of contamination or pollution contained with surface water prior to its discharge into the Firth of Clyde. Thereafter, the scheme as may be approved shall be implemented during the course of development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

2. That the flood management measures recommended in the Flood Risk Assessment by Kaya Consulting Limited dated December 2016 shall be fully implemented and no development shall take place until information has been submitted for the written approval of North Ayrshire Council as Planning Authority in relation to flood risk, specifically:

(i) Details of remediation works and arrangement of ground levels to ensure that surface water runoff reaching the site is intercepted along the eastern boundary and routed around the site and provide an overland flow pathway should the interception measures block during an extreme event;

(ii) Proposals for an appropriate inspection and management regime to be put in place with regard to the proposed cut of drain;

(iii) Details of an emergency flow pathway through the site in the event of blockage of the site drainage system, or rainfall events in excess of design conditions. The flow pathways should route surface water through the site without flooding properties or increasing flood risk to neighbouring properties;

(iv) A programme for the implementation of the flood management measures, all to the satisfaction of North Ayrshire Council as Planning Authority.

3. Prior to the commencement of development details regarding the design of the proposed footpaths, street lighting and the access onto the A78 shall be submitted for the written approval of North Ayrshire Council as Planning Authority. For the avoidance of doubt the proposed access shall join the trunk road at a new junction which shall be constructed by the applicant to a standard as described in the Department of Transport Advice Note TD 41/95 (Vehicular Access to All-Purpose Trunk Roads) (as amended in Scotland). This design shall comply with required design standards, as set out in the Department for Transport Advice Notes TD 9/93 (Highway Link Design) and TD 42/95 (Geometric Design of Major/Minor Priority Junctions), considering the design speed of the A78 trunk road in the vicinity of the new junction. The access shall be completed in accordance with the approved details prior to the occupation of the first dwellinghouse.

4. That prior to the occupation of the first dwellinghouse the developer shall provide for the written approval of North Ayrshire Council as Planning Authority, details of the draft design and layout of the affordable housing units, as agreed with the North Ayrshire Council Housing Department, a timetable for submission of relevant planning applications and dates for completion. For the avoidance of doubt

the affordable housing units shall be delivered no later than 31 March 2020, unless otherwise agreed in writing.

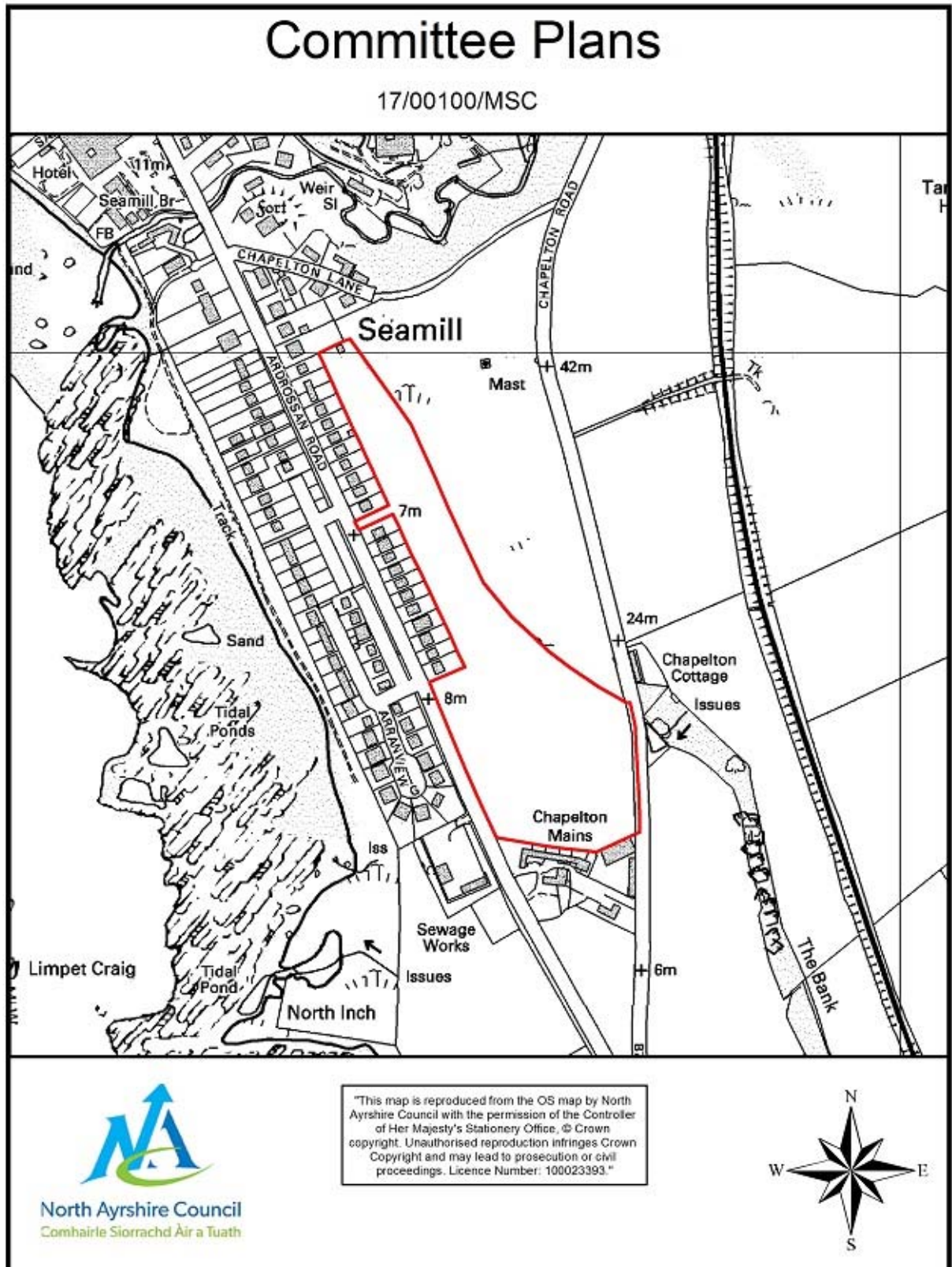
The reason(s) for the above condition(s) are:-

1. To minimise the risk of flooding within the site and elsewhere.
2. To minimise the risk of flooding within the site and elsewhere.
3. To meet the requirements of Transport Scotland as Trunk Roads Authority.
4. To meet the requirements of Housing and ensure compliance with the Local Development Plan.

Reason(s) for approval:

1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 3

Planning Committee

14 June 2017

Locality

Arran

Reference

17/00148/PP

Application

22 February 2017

Registered

Decision Due

22 April 2017

Ward

Ardrossan and Arran

Recommendation	Grant without conditions as per Appendix 1
-----------------------	---

Location	Kilmichael Country House Hotel Brodict Isle Of Arran KA27 8BY
-----------------	--

Applicant	Mr Geoffrey Botterill Kilmichael Country House Hotel Brodict Isle Of Arran KA27 8BY
------------------	---

Proposal	Change of use to residential, buildings to be changed include hotel, self catering apartments and removal of condition 7 to allow Cottages 1, 3 and 4 to be permanent dwellinghouses
-----------------	--

1. Description

Kilmichael Country House Hotel, a B-Listed Building, is situated at Glencloy in countryside to the south-west of Brodict. Planning permission is being sought for i) a change of use of the principal building, Kilmichael House, from a hotel to a dwelling; ii) change of use in respect of Peacock and Vane Cottage from holiday letting cottages to permanent dwellings; and, iii) change of use from holiday letting cottages (cottages 1, 3 and 4) to permanent dwellinghouses, in respect of condition 7 of planning permission (ref. 05/00248/PP).

It is advised that Kilmichael Country House was used previously as a boarding house in the 1950's, prior to the purchase by the current owners. The Class 7 Hotel has been in use for over 10 years and is deemed lawful in terms of the Planning Acts. Prior to the change of use in the 1950's the property was a dwelling for over 200 years. There is a considerable Planning history to development at the site:

- Planning permission (ref. 96/00112/PP) was approved on 4 September 1996 for the demolition of a derelict building and erection of a self-catering unit on the same site. Condition 1 states *'That the Premises shall be used for the purposes of a self-catering unit in association with Kilmichael Hotel and for no other purpose'*. Planning permission (ref. 95/00110/PP) was approved on 29 February 1996 for the conversion of outbuildings to bedrooms with en suites.
- Planning permission (ref. 05/00248/PP) was approved on 1 July 2005 for the erection of 4 semi-detached self-catering cottages at the hotel. Condition 7 of the consent states "that the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority."
- Planning application (ref. 15/00208/PP) was approved on the 17 August 2015 for a change of use of one of the cottages from holiday letting to permanent dwellinghouse at Bluebird Cottage, on the basis that the applicant was seeking to fund repairs to the listed Hotel through the sale of one holiday letting cottage as a permanent dwellinghouse. That dwelling has since been sold with works to the building due to start in the Autumn.

The applicant's supporting statement states that the hotel use is no longer viable due to increased competition from the Douglas Hotel and Auchrannie Resort. The hotels previously award winning restaurant has since closed due to a lack of custom which has in turn impacted on the use of the hotel and the purpose built cottages. The applicant states that occupancy levels at the Kilmichael Hotel and self catering cottages have been under 10%.

The applicant has acknowledged that the development of the cottages was solely justified in terms of the tourism policies within the Development Plan, however the applicant states that the operating environment has deteriorated dramatically since consent was granted. The cottages cannot be lawfully let for any other purpose than holidays, for longer periods such as long lets throughout the winter and cannot be occupied to meet other established needs, for example, accommodation for GPs or key workers. The applicant also seeks the option to sell the cottages, should this be required in the future.

The applicant advises that Kilmichael House is a comparatively expensive building to run to contemporary standards. Even after the planned repairs have been carried out in association with planning approval (ref. 15/00208/PP), it would always need to generate additional income to pay its way. In the opinion of the applicant it has no viable future as a hotel. One of the original outbuildings, which has been converted into a cottage and has no occupancy restriction on it, could be sold, however the long-term future of this historic building and the preservation of its setting can best be served by keeping the original group of main house and converted outbuildings intact in one ownership. With further capital investment, the garden and grounds could be opened to the public, creating another visitor attraction on the island. It should be noted that in planning terms there is no reason why these proposals could not be introduced at present.

The applicant further considers that the cottages were designed specifically to harmonise with both the original listed group and the existing landscape. The removal of the restriction would allow the more flexibility and include more positive environmental effects, including improvement of the grounds, enhancement of the original listed group and upgrading of the road.

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 ENV 2 Housing Development in the Countryside which states that the rural landscape should be protected from insensitive housing development but it is recognised that there are opportunities for individual or small scale additions in certain locations. It also indicates that subject to certain criteria there is sometimes an operational need for housing for workers in locations where such development may not normally be acceptable.

All applications require to be assessed against the relevant criteria of the General Policy of the LDP.

A previous application (ref. 16/00545/PP) for the change of use from holiday letting cottages (cottages 1, 3 and 4) to permanent dwellinghouses in respect of condition 7 of planning permission 05/00248/PP, was withdrawn by the applicant to allow for further consideration of the future of the hotel. The applicant has undertaken pre-application discussions with Planning Services following the withdrawal of the previous application.

2. Consultations and Representations

The application was subject to the standard neighbour notification and was advertised in the local press on 10 March 2017. One letter of representation was received supporting the application. There was not any need for consultations.

3. Analysis

The proposal requires to be considered in terms of the adopted Local Development Plan policy ENV 2 as well as any other material planning considerations. Policy ENV 2 relates to the circumstances under which new housing in the countryside can be justified. The application seeks to change the use of the hotel to a residence and remove the planning conditions which restricts occupancy of the cottages.

In terms of Policy ENV2, the building has been in use in various extended forms since circa 1681, and used as a dwelling for over 250 years prior to its use as a boarding house in the 1950's. It is considered that the change to its historic use as a dwelling would be acceptable.

In terms of the removal of occupancy conditions, the following points can be considered to be material considerations:

- (a) Both Peacock and Vane Cottages date from 1998 and the remaining cottages 1, 3 and 4 were built in 2007. All cottages were built specifically as holiday letting units in association with the Kilmichael House Hotel;
- (b) in terms of substantial change in circumstance, the Scottish Government guidance in relation to the use of such conditions has changed in recent years and the use of occupancy restrictions is not promoted;
- (c) the applicants supporting statement indicates that the occupancy of the cottages for tourism purposes has reduced significantly in the last 5 years with an annual occupancy rate ranging from 8% to 1%; and,
- (d) The cottages were consented and built as part of the expansion of the Kilmichael House Hotel. As it is now accepted that the hotel would cease to operate through its change back to a dwellinghouse, the conditions are no longer relevant.

Whilst the applicant has not submitted full evidence of periods of occupancy and vacancy over the life of the development, it is considered that for the above reasons there is no longer a requirement to maintain the occupancy restriction. Given the relatively unique circumstances, the proposal would not create an undesirable precedent.

Finally in respect of the General Policy of the adopted Local Development Plan, it is considered that given the siting, traditional design of the cottages, the acceptable level of private amenity space and provision for car parking the cottages would comply with the General Policy providing an acceptable level amenity to future occupants. It is recommended that planning permission be granted for the change of use to a hotel and that the occupancy restrictions and the associated planning conditions be removed.

4. Full Recommendation

See Appendix 1.



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
10 May 2017

For further information please contact Ross Middleton , on 01294 324379

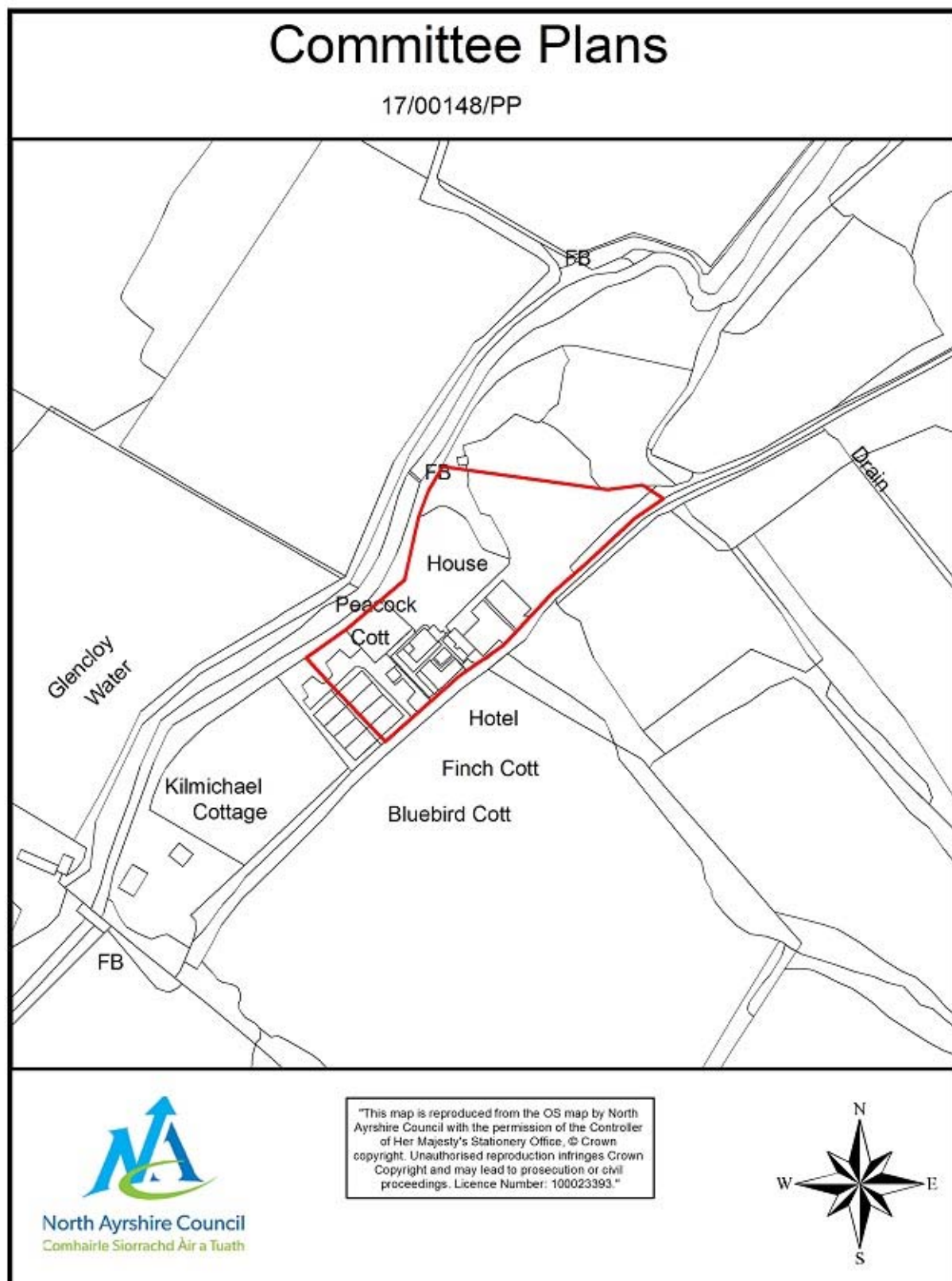
APPENDIX 1

RECOMMENDATION FOR PLANNING APPLICATION REF NO 17/00148/PP
Grant (No conditions).

Reason(s) for approval:

1. The proposal complies with the relevant provisions of the Local Development Plan and there are no other material considerations that indicate otherwise.

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 4

Planning Committee

Locality	14 June 2017
Reference	Garnock Valley
Application	17/00389/PPPM
Registered	19 April 2017
Decision Due	19 August 2017
Ward	Kilbirnie and Beith

Recommendation	Agree to (a) issue a direction under section 59(5)(a) of the Town and Country Planning (Scotland) Act 1997, as amended, to substitute the 3 year period for making an application for requisite approval to 5 years, and (b) to grant subject to the conditions contained in Appendix 1
-----------------------	--

Location	Site to the east of 7-9 Beith Road, Glengarnock, Beith
-----------------	--

Applicant	Hallam Land Management Ltd. Suite A, 39 Cadogan Street Glasgow G2 7AB
------------------	--

Proposal	Renewal of planning permission in principle N/13/00501/PPPM for erection of residential development
-----------------	---

1. Description

Planning permission in principle was approved on 23 April 2014 for residential development at site to the east of 7-9 Beith Road, Glengarnock (Ref: 13/00501/PPPM). The current application was submitted on 19 April 2017 and is therefore a valid application for renewal.

The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 classes the proposed development as a major development as the site area exceeds 2 Ha. The application site is approx. 3.13 Ha and an indicative layout has been submitted, which shows the provision of 50 dwellings with access to be taken from Beith Road.

The application site relates to a large expanse of open fields, located approximately 1km south west of Beith to the south of Longbar, Glengarnock. The ground slopes away from the southern boundary at Beith Road (B777) to the residential properties at Longbar Avenue at the northern boundary. The proposed site would be accessed from Beith Road. The site is bounded to the north by Longbar Avenue and a pedestrian footpath to the east. Beith Road forms the south and west boundaries, beyond which, to the south, are residential properties.

In terms of the Adopted Local Development Plan (LDP), Policy RES 2 allocates the application site for housing development. The site is identified in table 1 and on the LDP maps for market housing to meet the identified housing requirements of 2025 (Policy RES 2 Additional Housing sites), gives an indicative capacity of 60 units, and requires that mitigation against the any unacceptable adverse impacts on infrastructure, arising as a result of the sites developments undertaken. Indicative requirements for infrastructure are set out in the Action Programme. In relation to this site educational restraints are not identified, access can be taken from Beith Road, and an updated Flood Risk Assessment and development brief would be required.

Policies PI 1 (Walking, Cycling and Public Transport), PI 8 (Drainage, SUDS and Flooding), PI 13 (Carbon Emissions and New Buildings) and A3 (Supplementary Guidance) are also relevant. The General Policy must also be taken into account. The planning history is as follows:

- Planning permission in principle was approved on 23 April 2014 for residential development (ref: 13/00501/PPPM). This application seeks to renew planning permission in principle.
- Planning permission, in principle, was refused in November 2009 (ref: 09/00505/PPPM) for a residential development with an ancillary convenience retail shop, as contrary to Policy ENV1 (Development in the Countryside), RES1 (Housing Allocation), RES 2 (Additional Housing Sites (2003 to 2010)) and TC6 (Local Shops). It was also considered that the proposal was premature in advance on the emerging North Ayrshire Local Development Plan.
- Since the planning permission was approved in April 2014 (Ref: 13/00501/PPPM), permission was approved for the erection of a secondary school (Garnock Campus) approximately 300m north west of the site (ref: 14/00284/PPM). The Campus is also accessed from Beith Road and serves approx. 1200 pupils.

The following supporting information forms part of the submission.

Pre-Application Consultation (PAC) Report

A PAC report is required by the Development Management Regulations for all major planning applications. The PAC report sets out details of the steps taken by the applicant to disseminate information about the proposed development, the public event, feedback received and how these comments were taken on board by the applicant.

Design and Access Statement

This document states that, although this is an application for planning permission in principle, the indicative layout demonstrates that the site could accommodate approx. 50 dwellings with the necessary access, infrastructure and open space, play areas and landscaping. Details of siting, design and landscaping would be submitted within a Matters Specified in Conditions application and will be consistent with the aims of the Scottish Government's Designing Streets and Designing Places policy statements which aims to raise the standards of design in urban and rural development.

Flood Risk Assessment (FRA) and Drainage Strategy (DS)

The SEPA Indicative River and Coastal Flooding Map which is based on a probability of flooding of 0.5%, or 1 in 200 year return period, indicates that the section of the Powgree Burn adjacent to the site is susceptible to flooding. The Type 1 FRA as detailed in the document confirms however, that the site is at low risk of flooding from fluvial, groundwater and pluvial flooding sources and that there would be no requirement to progress to a Type 2 or 3 Assessment. Detailed designs will be required in due course, however it is anticipated that finished levels will relate closely to the existing site levels. SUDs is also discussed in the document including the possibility of a SUDs pond within the site.

Transport Statement (TS)

This document concluded that the site is well served by footways and cycling facilities and well placed for bus and rail facilities. As discussed above, since planning permission was approved in April 2014 (ref: 13/00501/PPPM), permission was approved for the erection of a secondary school (Garnock Campus) approximately 300m north west of the site, (ref: 14/00284/PPM). The Campus is also accessed from Beith Road and serves approx. 1200 pupils. The application site and residential capacity was taken into account as part of the Garnock Campus Transport Assessment and various mitigation measures were undertaken as part of the consent including, path improvements, widening, guardrail, crossings etc. The development of the Garnock Campus since the original consent (ref: 13/00501/PPPM) has significantly improved the transport accessibility and sustainability of the application site from that which existed at the time when planning permission was originally granted.

Phase 1 Habitat Survey

There are no protected species within the site. This document recommends that pre-start checks for any evidence of protected species and that any ground works/scrub clearance should be carried out during September to February to avoid the bird nesting season. In the event of scrub clearance not being completed by the end of February, nest checks will be needed from March to August in advance of any site clearance works. Landscape design should retain and enhance the boundaries of the site to link adjacent habitats and create wildlife corridors. Landscape design should utilise native species by preference. Species can be selected where they have value to wildlife, e.g. fruit, nut, seed bearing, and other species should be included sparingly. If the aforementioned recommendations are followed this would retain habitat linkage for bats if they are commuting or foraging around the site.

Archaeological Mitigation, Method Statement

This Method Statement provides the detail of the works (investigation and reporting) for the mitigation pertaining to all ground breaking works.

Since planning permission in principle was approved in April 2014, the site has been marketed without success.

2. Consultations and Representations

Neighbour notification was undertaken on 19 April 2017. The application was also advertised for the purposes of neighbour notification on 26 April 2017. Neither any objections nor representations have been received.

As part of the previous application, consultations were undertaken and can be summarised as follows: -

Environmental Health: - No objections. Prior to the commencement of the development, the applicants shall undertake a desk study of the application site, (including the review of any previous site investigations) to assess the likelihood of contamination and assist in the design of an appropriate site investigation and subsequent suitable quantitative risk assessment. Remediation proposals shall also be presented in relation to any significant findings. Standard advice also given with regards to waste management and demolition/construction.

Response: Noted. This could be addressed with the imposition of an appropriate condition and informative.

SEPA: - No objections. The following comments were provided.

Flood Risk

A basic Flood Risk Assessment (FRA) has been submitted in support of the proposed development. Based on the assumption that the management measures proposed (using natural topography, provision of storm water attenuation and limited discharge) will be fully implemented, SEPA would again agree with the FRA findings that pluvial flooding risk is relatively low.

Drainage Strategy

As the surface water drainage from the site is to be discharged to the public sewerage system, the applicant should consult with Scottish Water as it is for them to determine what is acceptable.

Response: An appropriate condition would ensure that an updated FRA and Drainage Strategy is submitted for consideration as part of the subsequent Matters Specified in Conditions application. An informative can also be attached requiring that the applicant contact Scottish Water directly with respect to surface water discharge to the public sewerage system.

North Ayrshire Council Flooding Engineer: - No objections in principle on flooding grounds. The Drainage Strategy is also acceptable in principle. However, the applicant should confirm with Scottish Water whether surface water is allowed into the public sewer.

Response: An appropriate condition would ensure that an updated FRA and Drainage Strategy is submitted for consideration as part of the subsequent detailed application. An informative can also be attached requiring that the applicant contact Scottish Water directly with respect to surface water discharge to the public sewerage system.

Scottish Water: No objections. Any planning approval does not guarantee a connection into Scottish Water infrastructure. Approval for connection can only be given when the appropriate detailed application and technical details have been received. A totally separate drainage system will be required with the surface water discharging to a suitable outlet. Scottish Water requires a sustainable urban drainage system (SUDs) as detailed in Sewers for Scotland 2 if the system is to be considered for adoption.

Response: SUDs can be addressed through the imposition of an appropriate condition. An informative can also be attached requiring the applicant to contact Scottish Water directly with respect to surface water discharge to the public sewerage system.

Scottish Natural Heritage: - No comments.

West of Scotland Archaeology Service: - No objections. There are no recorded sites within the proposed development area. However, because the proposed development is located on previously undeveloped land, there is potential for there being significant unrecorded sub-surface archaeological deposits present within the area. It is considered that the programme of work outlined in the Archaeological Mitigation Method Statement would represent an appropriate method of assessing whether significant archaeological material is present within the plot, and provides suitable methods of mitigating the impact of development on this material, should this prove necessary. A condition that no development shall take place within the site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter, the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

Response: This matter could be addressed with the imposition of an appropriate planning condition.

NAC Transportation (Roads):- No objections. Vehicles entering and exiting the proposed development will impact on the residents of 3 to 10 Beith Road, therefore additional measures will be required to reduce the vehicular impact. The location of the proposed junction is located on a gradient approximately 60m from the commencement of the 30mph speed limit. The increased number of turning vehicles created by this development has led to the need to highlight the speed limit. Therefore, the applicant will be required to install a physical gateway measure in the form of islands and countdown markers. Conditions with respect to the formation of a footway/cycleway to the front of the site, minimum carriageway width along the length of the B777, the installation of a physical gateway measure at the existing 30mph speed limit and upgrading of existing street lighting to accommodate new junction arrangements and footways.

Response: Noted. These matters could be addressed by the imposition of appropriate planning conditions.

North Ayrshire Council Access Officer : - No objections. The provision of paths within the development is welcomed and further details should be provided. A path with a minimum width of 3m should be provided along the frontage of the site.

Response: Noted. The provision of paths within the site and along the site frontage could be addressed by the imposition of an appropriate planning conditions. A condition requiring the submission of an updated Transport Statement would be required.

3. Analysis

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions by planning authorities shall be in accordance with the Development Plan, unless material considerations indicate otherwise.

Policy RES 2 of the LDP allocates the application site for housing development. The site is identified in table 1 and on the LDP maps for market housing to meet the identified housing requirements of 2025 (Policy RES 2 Additional Housing sites), gives an indicative capacity of 60 units, and requires that mitigation against the any unacceptable adverse impacts on infrastructure, arising as a result of the sites developments undertaken. Indicative requirements for infrastructure are set out in the Action Programme. In relation to this site educational restraints are not identified, access can be taken from Beith Road, and an updated Flood Risk Assessment and development brief would be required. These matters can be addressed by condition.

PI 1 (Walking, Cycling and Public Transport) requires significant trip generating proposals to demonstrate that account has been taken of the needs of walkers, cyclists and public transport users by addressing listed criterion. The issues detailed in the criterion are largely matters of detail and shall be assessed at the MSC application stage. The applicant can be made aware of this issue through an informative.

In order to comply with Policy PI 8 (Drainage, SUDS and Flooding), conditions would require that the following matters are included in any MSC submission: a comprehensive Drainage Strategy, that SUDs techniques are incorporated; that a detailed Flood Risk Assessment (FRA) be completed. It is considered that the proposals are acceptable in principle and that detailed assessment shall take place at the MSC stage.

PI 13 (Carbon Emissions and New Buildings) requires that all new buildings must reduce their CO2 emissions above or in line with Building Standards, through appropriately designed: on-site low or zero carbon generating technologies (LZCGTs); and/or passive/operational energy efficiency measures. This matter would be taken into consideration in any building warrant submission.

The Council's 'Neighbourhood Design Guidance' seeks new high quality design solutions, which seek to 'knit together' and 'mend' existing settings, creating a 'sense of place' and encourage design that links communities and promotes activity. It is considered that these aims can be addressed at the MSC stage. However, a condition could be applied to ensure that the development is designed in accordance with the principles of the Scottish Government's Designing Streets and Designing Places policy documents and the Council's Neighbourhood Design Guidance.

A development brief for the site has not been prepared to date. However it is considered that detailed design matters can be considered adequately as part of an MSC application.

Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended, provides that applications for requisite approval must be made within 3 years of the date of the grant of planning permission. However, section 59(5)(a) enables the planning authority when granting permission, to substitute, through direction, an alternative time period. As discussed above, since planning permission in principle was approved in April 2014, it has been marketed without success. It is considered that a direction to substitute the time period of 3 years to 5 years, would allow for more time to successfully sell the site for residential development.

In conclusion, it is considered that the proposal accords with the relevant provisions of the approved Local Development Plan and it is recommended that planning permission, in principle, is granted subject to the direction and conditions in Appendix 1.

4. Full Recommendation

See Appendix 1



KAREN YEOMANS
Executive Director (Economy and Communities)

Cunninghame House, Irvine
4 May 2017

For further information please contact Fiona Knighton , on 01294 324313

APPENDIX 1

RECOMMENDATION FOR PLANNING APPLICATION REF NO 17/00389/PPPM

Agree to (a) issue a direction under section 59(5)(a) of the Town and Country Planning (Scotland) Act 1997, as amended, to substitute the 3 year period for making an application for requisite approval to 5 years, and (b) to grant subject to the following conditions: -

1. Prior to the commencement of development on site, a further application(s) for the approval of the matters specified in this condition must be submitted to and approved by North Ayrshire Council as Planning Authority. These matters are as follows:

- (a) the layout of the site, including all roads, footways, shared paths, car parking areas, and open spaces;
- (b) the siting, design and external appearance of all building(s) and any other structures, including plans and elevations showing their dimensions and type and colour of external materials;
- (c) a detailed flood risk assessment, including cross-sections of existing and proposed ground levels, details of underbuilding and finished floor levels in relation to a fixed datum, preferably ordnance datum, and detailing how flood issues are addressed.
- (d) the means of drainage and surface water strategy and methodology for sewage disposal, including Sustainable Urban Drainage Systems (SUDS), all set out in a comprehensive Drainage Assessment, including maintenance. Such SUDS shall be self-certified by a suitably qualified person;
- (e) the means of access to the site including an updated Transport Strategy;
- (f) the design and location of all boundary treatments including walls and fences;
- (g) the landscaping and associated maintenance proposals for the site, including details of existing trees, hedgerows and other planting to be retained and tree protection measures together with proposals for new planting specifying number, size and species of all trees and shrubs and a woodland management implementation programme;
- (h) details of the phasing of development (covering all relevant aspects of development detailed in (a) above);
- (i) a design and access statement with the design issues addressed in the formulation of the proposals, set out in line with the relevant supplementary design guidance approved by North Ayrshire Council.

2. The proposed development shall be designed in accordance with the principles of the Scottish Government's "Designing Streets" and "Designing Places" policy documents and North Ayrshire Council's Neighbourhood Design Guidance to the satisfaction of North Ayrshire Council as Planning Authority.

3. That prior to the commencement of the development, hereby approved, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority, a Strategy for Open Space which shall include proposals for (i) the provision of open space and play provision, in accordance with the North Ayrshire Council policy "Provision and Maintenance of Landscaping, Open Space and Play Areas in New Housing Developments" together with proposals for the management

and maintenance thereof.

4. That no development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant in consultation with the West

of Scotland Archaeology Service and approved by North Ayrshire Council as Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council as Planning Authority.

5. A 3m wide footway/cycleway shall be provided along the frontage of the site and 2m wide footway shall be provided along the frontage of the residential dwellings of 3 to 10 Beith Road to the satisfaction of North Ayrshire Council as Planning Authority.

6. That a minimum carriageway width of between 6 to 7.3m shall be retained along the length of the B777 (Beith Road) fronting the site to the satisfaction of North Ayrshire Council as Planning Authority.

7. That a physical gateway measure in the form of islands and countdown markings shall be installed at the 30mph speed limit to the satisfaction of North Ayrshire Council as Planning Authority.

8. That the existing street lighting shall be upgraded to accommodate the proposed junction arrangements and footways. For the avoidance of doubt, full details and timescales of works shall be submitted for the consideration and approval in writing by North Ayrshire Council as Planning Authority prior to the commencement of development.

9. That the recommendations within the Phase 1 Habitat Survey submitted in support of the application, shall be implemented to the satisfaction of North Ayrshire Council as Planning Authority. Details shall be submitted demonstrating of the undertaking and/or programming of these recommendations implementations.

10. That prior to the commencement of the development, hereby approved, the applicant shall undertake a desk study of the application site, (including the review of any previous site investigations) to assess the likelihood of contamination and assist in the design of an appropriate site investigation and subsequent suitable quantitative risk assessment as advocated in BS10175: 2011. Remediation proposals shall also be presented in relation to any significant findings. All documentation shall be verified by a suitably qualified Environmental Consultant and submitted to North Ayrshire Council as Planning Authority. Any required remediation measures shall be undertaken, prior to the commencement of the development to the satisfaction of North Ayrshire Council as Planning Authority. Thereafter the presence of any significant unsuspected contamination, which becomes evident during the development of the site, shall be reported to North Ayrshire Council and treated in accordance with an agreed remediation scheme. On completion of the proposed works written verification, detailing what was done by way of any remediation, shall also be submitted to the North Ayrshire Council as Planning Authority.

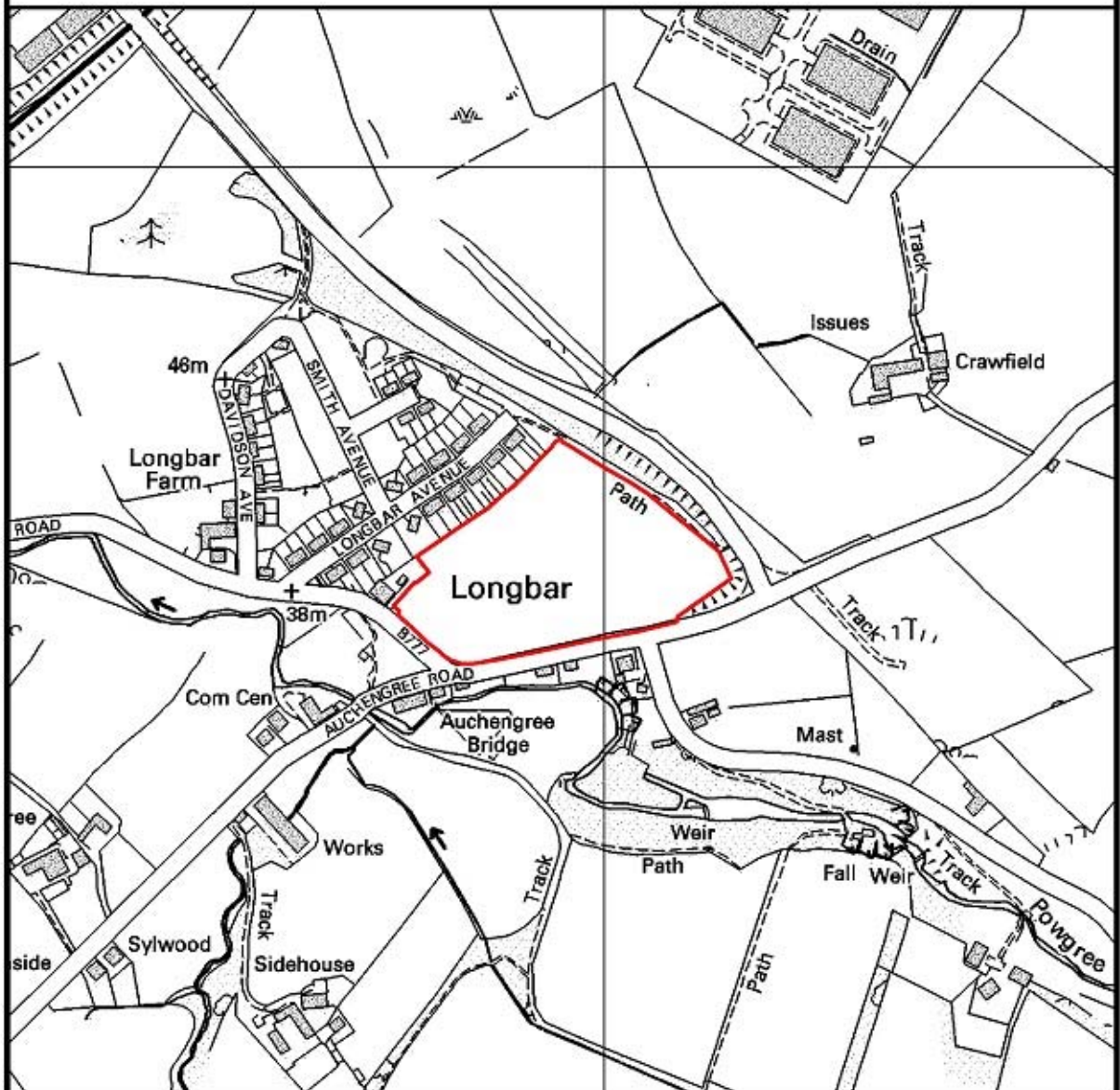
The reason(s) for the above condition(s) are:-

1. In order that these matters can be considered in detail.
2. In order to ensure compliance with current national and local design guidance.
3. To ensure compliance with North Ayrshire Council policy and in the interests of adequate open space and play provision.
4. In recognition that the site is located on previously undeveloped land.
5. To meet the requirements of North Ayrshire Council as Roads Authority.
6. To meet the requirements of North Ayrshire Council as Roads Authority.
7. To meet the requirements of North Ayrshire Council as Roads Authority.
8. To meet the requirements of North Ayrshire Council as Roads Authority.
9. In the interests of preserving flora and fauna.
10. To meet the requirements of Environmental Health.

Appendix: Location Plan

Committee Plans

17/00389/PPPM



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

"This map is reproduced from the OS map by North Ayrshire Council with the permission of the Controller of Her Majesty's Stationery Office. © Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence Number: 100023393."



NORTH AYRSHIRE COUNCIL

Agenda Item 5

Planning Committee

	14 June 2017
Locality	Irvine
Reference	17/00378/ALO
Application	5th April 2017
Registered	
Decision Due	5th June 2017
Ward	Irvine South

Recommendation	Agree to (i) discharge the Section 75 Obligation and (ii) refer the decision to Legal Services to conclude the process as per Appendix 1
-----------------------	---

Location	Site to south east of Pet Crematorium, Murdoch Place, Irvine
-----------------	--

Applicant	Irvine Energy Recovery Ltd 25 Farringdon Street London EC4A 4AB
------------------	--

Proposal	Discharge of section 75 obligation relating to unimplemented and expired planning permission 07/00072/PP
-----------------	--

1. Description

This application seeks the removal of a section 75 obligation relating to a planning permission granted in January 2009 (ref. 07/00072/PP) which authorised the erection of a gasification building and associated plant. The plant would have produced 7MW of electricity per year from waste materials using a gasification process. The planning permission was granted following the applicant entering into a legal obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 to ensure that 90% of waste materials used in the gasification process were sourced from North Ayrshire.

The applicant now requests that the Section 75 Agreement be discharged as:

- (i) the planning permission was never implemented and has lapsed;

- (ii) the company that obtained the planning permission has been dissolved;
- (ii) the formal discharge of the Section 75 Agreement would allow the land to be sold for an alternative use without the burden of a legal obligation relating to an expired planning permission on the title.

The site is allocated for industrial use in terms of the adopted Local Development Plan, and is presently disused.

2. Consultations and Representations

There is no requirement for neighbour notification nor other forms of publicity for this category of application. No consultations were required.

3. Analysis

The section 75 obligation is a title burden on the application site as a consequence of granting planning permission for the development of the site as a gasification plant in 2009. The sole purpose of the obligation was to ensure that waste materials for the gasification plant were sourced from North Ayrshire. The obligation is no longer relevant since the development was never implemented and has now lapsed.

In these circumstances, it is not necessary for the Section 75 obligation to remain in place, since it was specific to a particular planning permission. The site is currently on the market and the removal of the title burden would assist a future owner to progress alternative development options for the land. The site is within an established industrial area in terms of the adopted Local Development Plan.

Legal Services will require an instruction to progress the formal discharge of the Section 75 Agreement following the decision on this application.

4. Full Recommendation

See Appendix 1.



KAREN YEOMANS
Executive Director (Economy and Communities)

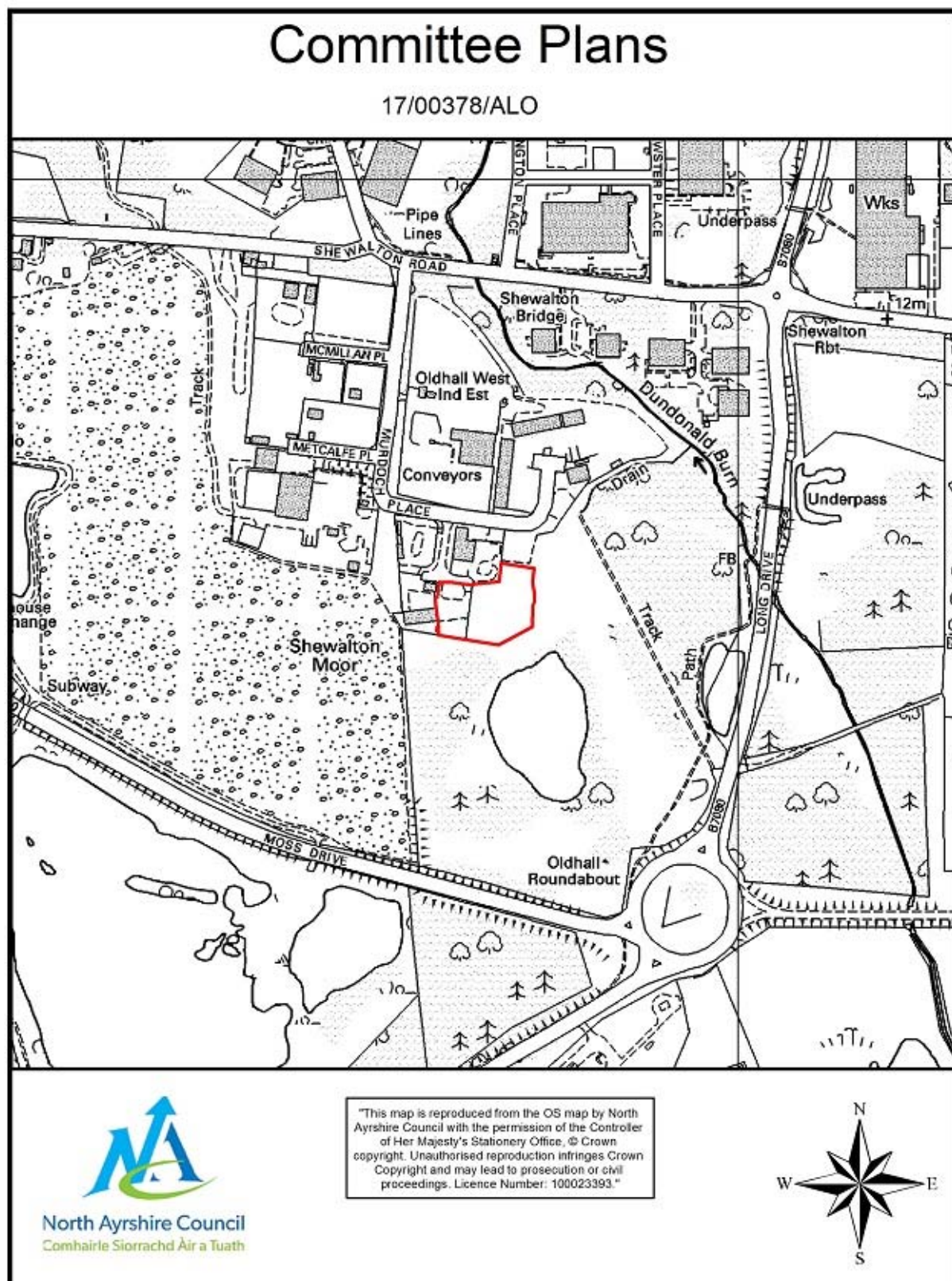
Cunninghame House, Irvine
5 May 2017

For further information please contact Mr A. Hume, Senior Development Management Officer , on 01294 324318

APPENDIX 1

Agree to (i) discharge the Section 75 Obligation and (ii) refer the decision to Legal Services to conclude the process as per Appendix 1 Agree to (i) discharge the Section 75 Obligation and (ii) refer the decision to Legal Services to conclude the process.

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 6

14 June 2017

Planning Committee

Title: **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Site to South of 56 Boglemart Street, Stevenston**

Purpose: To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the land for storage and the removal of the storage container sited upon it at Site to South of 56 Boglemart Street, Stevenston

Recommendation: To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring cessation of the use of the land for storage and the removal of the storage container sited upon it at Site to South of 56 Boglemart Street, Stevenston

1. Executive Summary

- 1.1 A storage container facilitating the use of land for storage (Use Class 6) has been sited on land to the south of 56 Boglemart Street, Stevenston. The site is approx. 518sqm in area, comprising former garden ground to the rear (south) of Nos. 56 and 58 Boglemart Street, Stevenston. The cabin is located in the north-east corner of the site.
- 1.2 The site is located within a residential area in Stevenston, as indicated in the Adopted North Ayrshire Local Plan (LDP). The properties to either side (east and west) and to the north are residential, with land to the south being vacant open space. The land was previously used as garden ground associated with the properties to either side. Planning permission was refused for a house on the site in 2008 (08/00025/OPP). Permission was granted in 2010 for it to be used as garden ground for a new house on the south side of Boglemart Street. However, this permission was not implemented and has now lapsed (ref: 10/00257/PP). The land does not currently have a lawful use.

- 1.3 The site is situated within an area predominantly residential in character and is sited and to the rear of existing residential properties. The site shares an access from Boglemart Street (the B780) with the residential properties. It is considered that a storage use of the land is inappropriate for the location and would have the potential for adverse impacts on residential amenity. The storage container is out of character with the area, and harms the visual amenity of the area.
- 1.4 Given the above and in particular, the adverse impact of the unauthorised development on amenity, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require cessation of the use of the land for storage and the removal of the storage container. The Enforcement Notice would take effect not less than 35 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 6 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

2. Background

- 2.1 The use of the land and container was first brought to the Council's attention in June 2016. The owner of the land has been advised that the change of use of the land for storage and siting of the storage container is unauthorised and that a planning application would not be supported, and has been advised to cease the use and remove the container.
- 2.2 The owner of the land stated in June 2016 that the container had been purchased on a short term basis to allow the use of the land for storage, due to personal circumstances. The owner was advised that any such use in excess of 28 days would require planning permission. However, given the personal circumstances, the Council could allow until January 2017 to cease the use and remove the container. An inspection of the property on the 17th May 2017 revealed the use had not ceased and the container remained in situ. The owner has been advised of the Council's intention to seek authority for formal enforcement action.
- 2.3 During the course of the investigation, the owner has also erected a timber fence and gate around the land to enclose it, which does not require planning permission.

- 2.4 The use has been in operation for approximately 1 year and it is considered that adequate time has been given to cease the use and remove the container. The use has the potential to impact on the amenity of nearby residential properties and shares an access with the adjacent residential properties. This access is onto a classified road and it is not considered that a storage use can be properly serviced by a residential access. Although to the rear of the adjacent residential properties, it is also considered that the container harms the visual amenity of the predominantly residential area by its siting, design and appearance. The use is therefore held to be contrary to criteria (a) Siting, Design and External Appearance (b) Amenity and (d) Access, Road Layout, Parking Provision of the General Policy of the LDP.

3. Proposals

- 3.1 In the interest of the visual and residential amenity of the area and potential impacts on access and the classified road, it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-
- i) Cessation of the use of the land for storage and removal of the container sited on the land.

4. Implications

Financial:	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision.



KAREN YEOMANS
Executive Director (Economy and Communities)

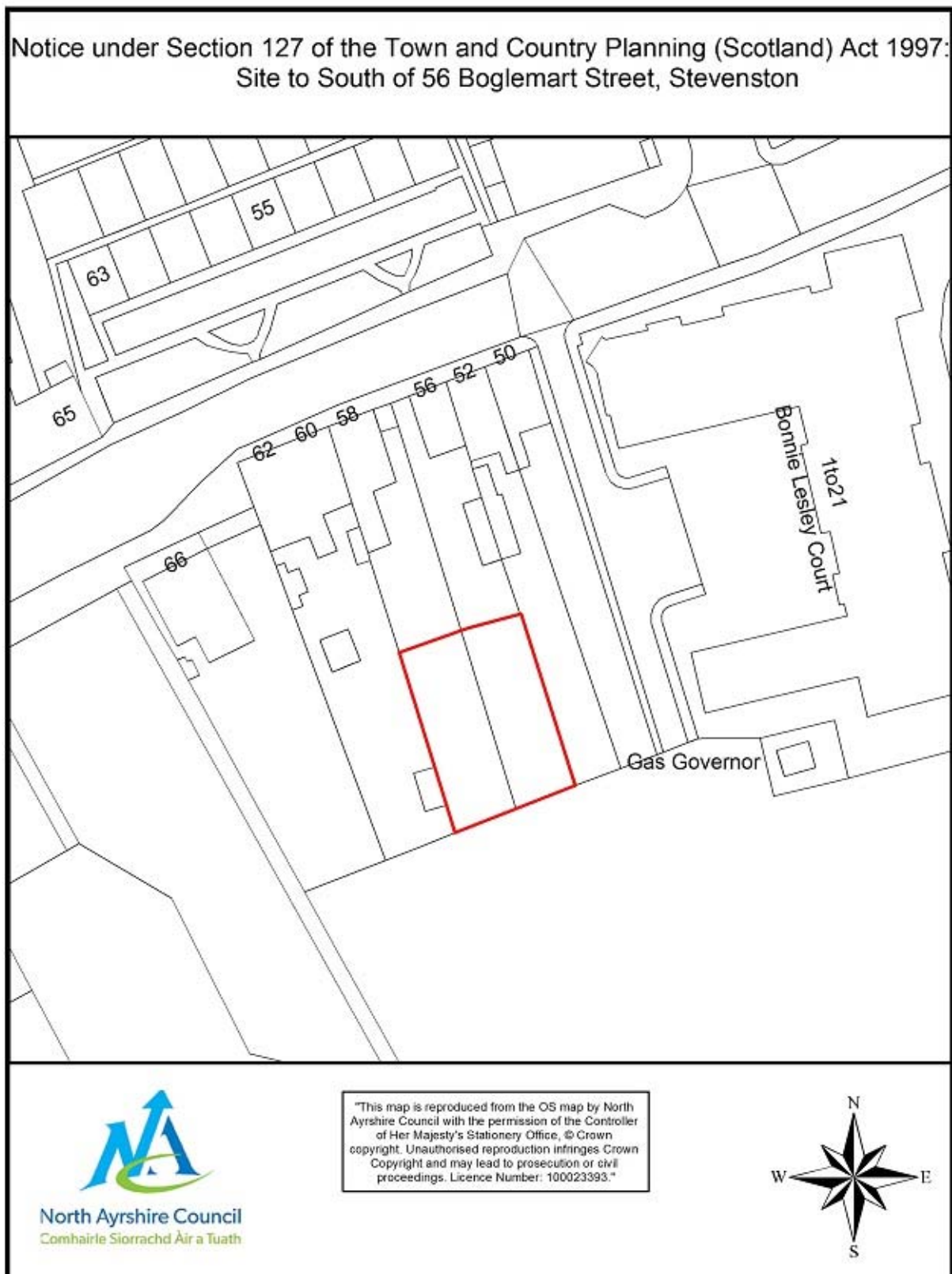
Reference : 16/00075/COUB

For further information please contact Iain Davies on 01294 324 320

Background Papers

0

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 7

14 June 2017

Planning Committee

Title: **Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 148 Main Street, Largs KA30 8JN**

Purpose: To seek authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN

Recommendation: Agree to grant authority to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring removal of flagpole from front elevation of property at first floor level, 148 Main Street, Largs KA30 8JN

1. Executive Summary

- 1.1 A flagpole, protruding over the public highway, has been erected at first floor level on a property known as 148 Main Street, Largs. The property is a three storey building with a public house at ground floor level and four flats above on the first and second floors. The flagpole had originally been used to facilitate the display of a national flag. However, a flag is not currently being displayed on it. It is understood the flagpole was erected in connection with one of the flats in the upper floors. The site is located within an area identified as part of the settlement of Largs by the Adopted North Ayrshire Local Plan.
- 1.2 The matter was reported to the Planning Committee on 8th March 2017. The Committee resolved that (a) the notice should not be served, (b) the property owner be asked to submit an application for the erection of the flagpole, and (c) the Senior Manager (Planning Services) report to a future meeting of the Committee if an application is not received. The owners of the flats were again written to on the 16th March 2017 and invited to apply for planning permission. There has neither been any response nor any application submitted.

- 1.3 Given the above and in particular, the adverse impact of the unauthorised development on visual amenity, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require removal of the flagpole and any associated fixings. The Enforcement Notice would take effect not less than 28 days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be in full compliance within 6 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

2. Background

- 2.1 The owners of the flatted properties on the first and second floor have been advised that the flagpole is unauthorised. As noted above they have been requested to make an application or alternatively remove the flagpole. However, to date an application has not been made and the flagpole remains in situ. The owners have been advised that the Council is considering the issue of a formal enforcement notice, and have not responded to take responsibility for the flagpole.
- 2.2 A complaint regarding the flagpole was first received from the local MP in August 2016. From the Council's records it can be determined that the flagpole was installed sometime between May 2014 and September 2014. The flagpole has therefore been in situ for less than 4 consecutive years and is therefore not immune from planning control.
- 2.3 It is considered that the flagpole harms the visual amenity of the area by way of its high level siting, its prominence in the streetscene, a main route into and out of the Town Centre, and its incongruous appearance on the host building. The flagpole is therefore held to be contrary to criterion (a) Siting, Design and External Appearance of the General Policy of the LDP.

3. Proposals

- 3.1 In the interest of the visual amenity of the area, it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-

- i) Removal of the flagpole from first floor level of the building.

4. Implications

Financial:	The Council can take direct action against non-compliance with an enforcement and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

- 5.1 Finance and Corporate Support has been advised of the report in terms of its budgetary provision



KAREN YEOMANS
Executive Director (Economy and Communities)

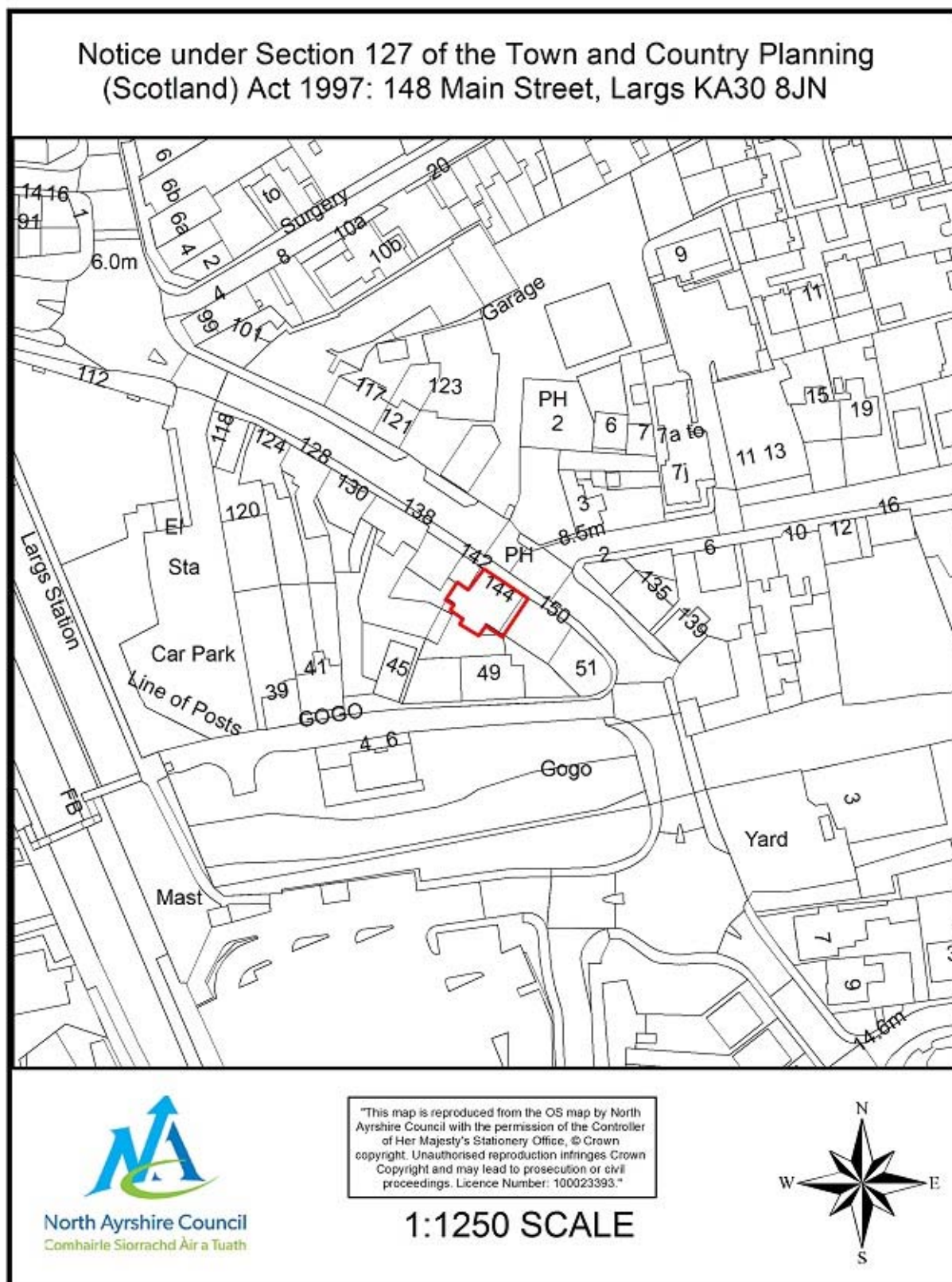
Reference : 16/00115/COUB

For further information please contact Iain Davies on 01294 324320

Background Papers

0

Appendix: Location Plan



NORTH AYRSHIRE COUNCIL

Agenda Item 8

14 June 2017

Planning Committee

Title: **Proposed Section 11 Exemption Order under the Land Reform (Scotland) Act 2003 for the Aberdeen Asset Management Ladies Scottish Open**

Purpose: To seek approval for the issue of a Section 11 Exemption Order for the event.

Recommendation: That the Committee agree to a) approve a Section 11 Exemption Order for the event; and b) the Issue of a public notice confirming the Order.

1. Executive Summary

The Land Reform (Scotland) Act 2003 provides a right of responsible access to most land and inland water in Scotland. The Act sets out the statutory duties, obligations and powers of Local Authorities in relation to its delivery. Section 11 of the Act provides Access Authorities with the power to exempt areas of land or inland water from the access rights for a fixed period. The Council's Policy on Section 11 Orders was approved by the Corporate Services Committee in May 2005. The main purpose of these powers is to enable the exemption of land for short periods of time in connection with admission to events.

The Aberdeen Asset Management Ladies Scottish Open Championship is being held at Dundonald Links between 27 to 30 July 2017. An application has been received from the organiser, IMG, for such an Order to facilitate the event. This would exempt the Dundonald Links golf course from the access rights between 26 and 30 July 2017. The purpose of this is to enable a charge to be made for admission and provide for public safety and security prior to, during and after the event.

2. Background

The Land Reform (Scotland) Act 2003 provides a right of responsible access to most land and inland water in Scotland. It places a reciprocal obligation on landowners and managers to manage their land responsibly for outdoor access. This includes access to woods and forests, grassland, paths and tracks, rivers and lochs and open spaces. The access rights can be exercised for recreation, education and some commercial purposes. Access rights also extend to crossing golf courses provided that the access user does not interfere with golf.

The Act sets out the statutory duties, obligations and powers of Local Authorities in relation to its delivery. Section 11 of the Act provides Access Authorities with the power to exempt areas of land or inland water from the access rights for a fixed period. This can be on application by third party or on their own initiative. The main purpose of these powers is to enable the exemption of land for short periods of time in connection with admission to events. Exemption Orders can be for between 1 day and 2 years:

- Short term exemptions for up to 6 days are confirmed by the Local Authority.
- Longer term exemptions for between 6 days and two years are confirmed by Scottish Ministers.

An application has been received from IMG for the exemption of access rights to Dundonald Links Golf Course to facilitate the Ladies Scottish Golf Open 2017. The application is provided in Appendix One. This proposes the exclusion of access rights within the area outlined in Appendix Two between 26 and 30 July 2017. The purpose of this is to enable a charge to be made for admission and provide for player and public safety and security prior to, during and after the event. It highlights that there would be difficulties administering a charge without an Order which would affect the viability of the event. This is typically the case for events of this nature including The Open 2016 at Royal Troon.

Formal public consultation is not required for exemptions up to 6 days. The Guidance for Local Authorities and National Park Authorities on the Act encourages consultation with the landowner and Local Outdoor Access Forum on such applications. This has been undertaken and the landowner has confirmed their agreement of and support for the event and the issue of the Order. The Outdoor Access Forum is also supportive of the event and in agreement with the issue of the Order.

3. Proposals

It is recommended that the Committee agree to:

- a) Approve a Section 11 Exemption Order for the event;
- b) The Issue of a public notice confirming the Order.

4. Implications

Financial:	There are no financial implications arising out of this report. The cost of the public notice required for the Order will be met by the applicant.
Human Resources:	There are no human resources implications arising out of this report.
Legal:	The Order is consistent with the provisions of the Land Reform (Scotland) Act 2003, the Council's Policy on Section 11 Orders and the Land Reform (Scotland) Act 2003 (Modification) Order 2013 Guidance.
Equality:	There are no equality implications arising out of this report.
Environmental & Sustainability:	There are no environmental or sustainability implications arising out of this report. Any paths or access rights affected by the Order will be reinstated after the event.
Key Priorities:	The event will contribute to the local economy and attract a large number of visitors to the local area. This will contribute to the delivery of the Council's strategic objectives including Growing our Economy, Increasing Employment and Regenerating Towns.
Community Benefits:	There are no community benefit implications arising out of this report. The event will however offer a range of volunteering opportunities for local communities.

5. Consultation

Formal public consultation is not required for exemptions up to 6 days. In line with the Guidance to Local Authorities and National Park Authorities on the Land Reform (Scotland) Act 2003 and the Land Reform (Scotland) Act 2003 (Modification) Order 2013 Guidance the landowner and Outdoor Access Forum have been consulted on this proposal. The landowner has confirmed their agreement of and support for the event and the issue of the Order. The Outdoor Access Forum is also supportive of the event and in agreement with the issue of the Order.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : LRSAS11

For further information please contact Louise Kirk, Active Travel and Transport Manager on 01294 324766

Background Papers

Land Reform (Scotland) Act 2003

Scottish Outdoor Access Code

Appendix 1



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

For Office Use Only

Reference:

Public Notice (1):

Public Notice (2):

Outcome:

Application for Short Term Access Rights Exemption Orders under Section 11 of the Land Reform (Scotland) Act 2003

Part 1: Applicant Details

Name of Organisation	IMG
Contact Name	Harry Owen
Contact Address <i>Please include a postcode</i>	566 Chiswick High Rd Bldg 6 London W4 5HR
Daytime Telephone Number	07884 236895

Part 2: Closure Details

Name of Event	Aberdeen Asset Management Ladies Scottish Open		
Date of Event	27 th July 17 – 30 th July 17		
Period of Closure	From:	26 th July 2017	To: 30 th July 2017
Reason for Closure	The reason for the closure is to enable a charge to be made for admission and to provide for public and player safety during the final stages of the event build period and during the event itself. Without this order the public right of access would undermine chargeable.		

Please provide justification that the exemption is for the minimum period required below

The Order has been requested from Wednesday 27th to Sunday 30th July with players being on course for all 5 days. This is anticipated to be the minimum amount of time required to ensure public safety and security of the participants during the staging of the Ladies Scottish Open. This will also enable access to be restricted to ticket holders and staff.

Whilst the threat level anticipated at a golf event such as the Ladies Scottish Open is low IMG have a duty to ensure that maintaining a high level of security is vital to the event. IMG therefore require control to have control over who enters the golf course.

Various areas of the event infrastructure may still be under construction during the exemption order period. In the interest of public safety it is important that IMG maintain control over those who can enter the golf course.

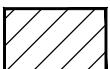
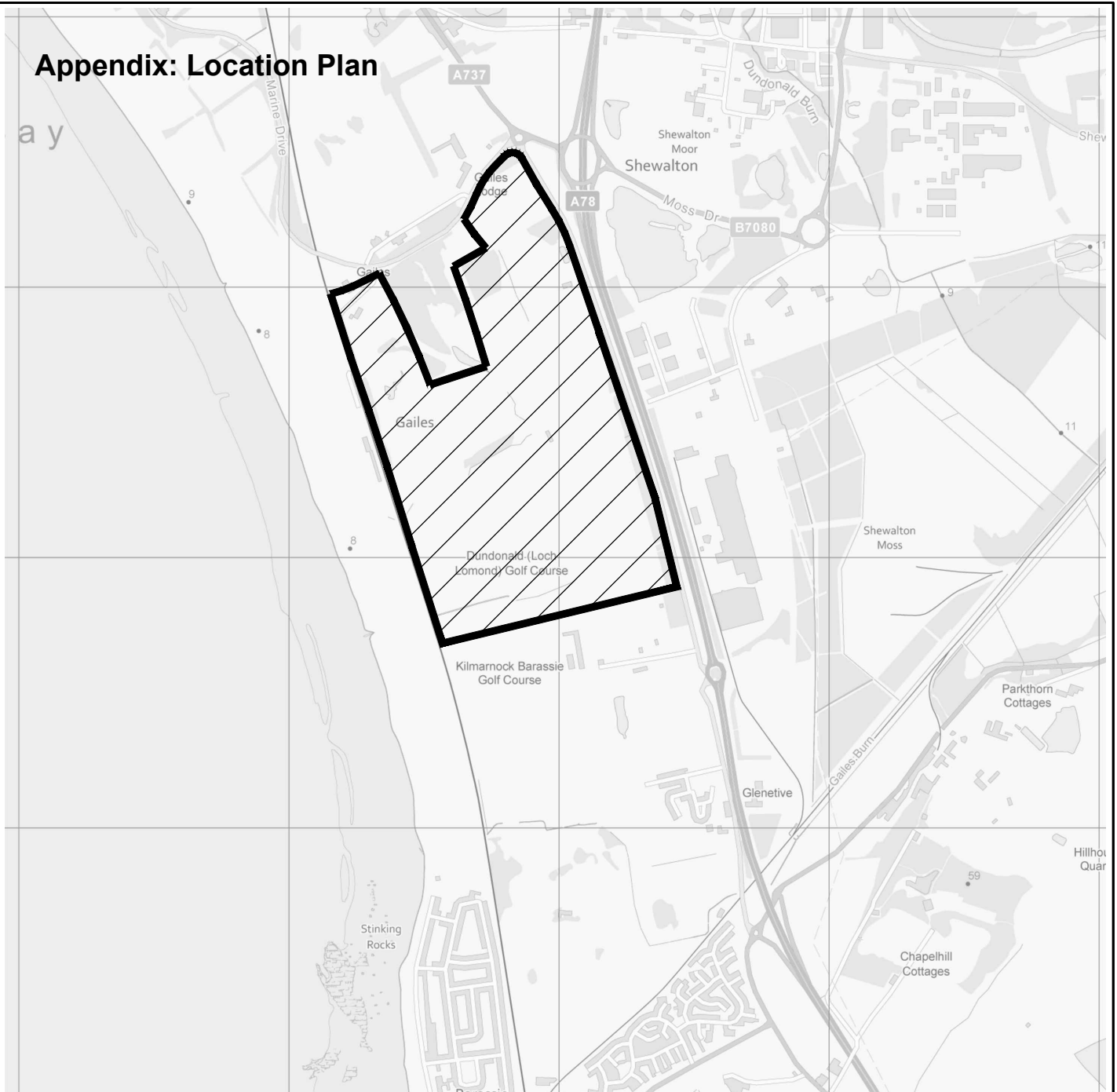
Location of event	Dundonald Golf Links, North Ayrshire, Scotland
Grid Reference	NS 32952 35428
Location of Grid Reference	Dundonald Links Car Park

Please provide a map of the site alongside your application. This should include the location of the site and preferably be Ordnance Survey. SEE ATTACHED

Are you as the applicant the <i>(please tick the appropriate box)</i>							
landowner		tenant		land manager		Other	X
If other please detail:		Event Director					
If you are not the landowner have you consulted them?				Yes	X	No	
If yes, what was the outcome? Please detail below:							
Land owned by Loch Lomond Golf Course. Liaison with them has been on an ongoing basis surrounding all event plans.							
Part 3: Justification for Closure							
Please provide justification that no alternative arrangements could be made below							
The Ladies Scottish Open is a major sporting event on the calendar and as such needs to be staged at a venue that has the infrastructure available to host such a tournament. It is not deemed appropriate to allow access to the venue for non-spectating public during the event due to the negative impact this may have on the security of those in attendance/the event/players.							
Is there local or public support for the event?				Yes	X	No	
If yes, please provide details below							
Liaison with the various local authority, emergency services partners and adjacent land owners has already begun. So far the feedback from those parties has been positive.							
Please detail the proposals for the diversion of access users below							
Diversion for non-motorised users will be to use Core Path IK20 and IK21 which respectively follow the northern and eastern boundaries of the venue.							
Please detail the proposals for the signage of the closure below							
Signage at nominated entry points to the course to state "Access to course closed under Section 11 of Land Reform (Scotland) Act 2003. All non-motorised users should utilise core paths IK20 and IK21. Closure is in effect from Wednesday 26 th July 2017 through Sunday 30 th July 2017 inclusive."							
Please detail the proposals for the reinstatement of any paths or access rights affected by the closure below							
Agreement between North Ayrshire Council, relevant landowners and European Tour on existing standard of paths prior to closure commencing and European Tour agree to re-instate to existing levels on completion of closure.							

Part 4: Declaration	
I confirm that the details provided above are correct	
Name:	Harry Owen
Signature	<i>Information Redacted</i>
Date	13/04/2017

Appendix: Location Plan



SECTION 11 ACCESS
EXEMPTION AREA

Rev.	Date	Description	Drawn	Checked	Approved
------	------	-------------	-------	---------	----------

IMG	Project Title: ABERDEEN ASSET MANAGEMENT LADIES SCOTTISH OPEN 2017 DUNDONALD LINKS				
	Drawing Title: SECTION 11 ACCESS EXEMPTION PLAN				

FAIRHURST

43 George Street,
EDINBURGH, EH2 2HT
Tel: 0131 225 6741 Fax: 0844 381 4412

Scale at A4: NTS		Status: INFORMATION	
Drawn: MP	Checked: AG	Approved: SMC	
Date: 30.03.17	Date: 30.03.17	Date: 30.03.17	
Drawing No.: 118756-2017-101			Revision:

NORTH AYRSHIRE COUNCIL

Agenda Item 9

14 June 2017

Planning Committee

Title: **Enforcement Charter: Town and Country Planning (Scotland) Act 1997, as Amended by the Planning Etc. (Scotland) Act 2006**

Purpose: To seek approval for the adoption of the Council's Planning Enforcement Charter, which requires to be reviewed and republished by the Council every two years, under the terms of Section 158A of the Town and Country Planning (Scotland) Act 1997, as amended.

Recommendation: Agree the adoption of the reviewed version of the Planning Enforcement Charter.

1. Executive Summary

- 1.1 The Planning Etc (Scotland) Act 2006 (the Act) came into force on 1st April 2007. Section 27 of the Act introduced section 158A of the Town and Country Planning (Scotland) Act 1997 which requires that all Planning Authorities prepare and publish an Enforcement Charter. The Act requires all Planning Authorities Enforcement Charters to set out:
- A statement of the authority's policies as regards their taking of enforcement action;
 - An account of how members of the public can bring any ostensible breach of planning control to the attention of the authority;
 - How any complaint about how the authority takes enforcement action can be made; and
 - The authority's procedures for dealing with any such complaint.
- 1.2 The Charter must be published on the Council's website and made available through public libraries in the Planning Authority's area. A copy should also be sent to the Scottish Government. Authorities are required to review, update and republish the Charter on a regular basis. The Council first approved and adopted the existing Planning Enforcement Charter in 2007 and it has subsequently been updated at two year intervals, including most recently in March 2015.

2. Background

- 2.1 The Council approved and adopted the existing Planning Enforcement Charter in 2007. The Charter has been revised since first adopted to incorporate a number of updates and additions in respect of advertisement and treework controls. The Charter takes account of Scottish Government guidance on the form and content of Enforcement Charters. The main changes from 2015 are the updating of links to the Council's website and contact details. Appendix 1 to the report contains the proposed Charter.
- 2.2 The Council, as Planning Authority, has to consider each case on its merits and decide the most appropriate response. The Council is unlikely to take formal action, for example over developments, which in planning terms, are seen to be acceptable. In some cases, enforcement action may not be considered appropriate, even although planning regulations may have been breached. Enforcement action will only be taken when it is in the wider public interest, which is at the Council's discretion.

3. Proposals

- 3.1 The Committee agree the adoption of the Enforcement Charter.

4. Implications

Financial:	The cost of investigating breaches of planning control can be met from existing budgets.
Human Resources:	N/A
Legal:	The Enforcement Charter has been prepared in accordance with the relevant Acts and Scottish Government guidance.
Equality:	N/A
Environmental & Sustainability:	N/A
Key Priorities:	Planning enforcement action can support all the Council Plan priorities particularly "Supporting all out people to stay safe, healthy and active" and "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

5.1 None.



KAREN YEOMANS
Executive Director (Economy and Communities)

Reference : EnforcementCharter2017

For further information please contact Iain Davies on 01294 324320

Background Papers

Scottish Government Guidance *Planning Enforcement Charter: A guide to enforcing* 2009



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Planning Enforcement Charter

A Guide to Enforcing Planning Controls in North Ayrshire

Contents

1. Introduction (page 2)
2. Key points on planning enforcement (page 3)
3. Identifying possible breaches of planning control (pages 4-5)
4. Investigating alleged breaches of planning control (page 6)
5. Acting on alleged breaches of planning control (page 7)
6. Making a suggestion or complaint (page 10)
7. Enforcement powers (pages 11-14)
8. Enforcement and advertising (page 15)
9. Enforcement contacts (page 16)
10. Summary of the Planning Enforcement Charter (page 17)

1. Introduction

The Scottish Government places a strong emphasis on the role of planning enforcement in delivering key policy objectives and maintaining public confidence in the planning system. The Planning etc. (Scotland) Act 2006 introduced the requirement for Councils to produce enforcement charters, as a means of clarifying the purpose, powers and raising the overall profile of planning enforcement.

This Charter, which was revised in 2015, explains what enforcement means, what the Council can and cannot do, the service standards and what happens at each stage of what can be a lengthy process.

Planning permission is required for most development that takes place in Scotland, with the exception of a wide range of “permitted developments” and some changes of use.

Sometimes, development is undertaken without the necessary consents or without complying with conditions of a permission which has been granted. In such cases, the Council has powers to take action in order to remedy the issues which can occur.

The Council routinely monitors high profile and other developments of public interest to ensure planning regulations and conditions are being adhered to.

There is also a role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small.

It should be noted that enforcement action is a discretionary power: even when a breach of planning control has occurred, it may be determined by the Council that it would not be in the public interest to take formal action. The planning system does not exist to protect the interests of private individuals against each other, but must work in the public interest.

The Council, as Planning Authority, has to consider each case on its merits and decide the most appropriate response. The Council is unlikely to take formal action, for example over developments, which in planning terms, are seen to be acceptable.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that the adopted procedures are applied fairly and reasonably, and that interested parties are kept informed and are made aware of the process.

It is understood that planning enforcement is an issue that interests many people and it is hoped that this Charter is useful. It should also be noted that we regularly review the Charter and that comments on its content are welcomed.

This Charter sets out the current powers available to Planning Authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

2. Key points on planning enforcement

- A breach of planning control is **not** of itself a criminal offence
- A breach of listed building control can be a criminal offence

It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred, rather than to apply punitive measures to those responsible. In addition, any action taken has to be appropriate to the breach. The Council has statutory powers to:

- investigate alleged breaches of planning (such as unauthorised developments and changes of use);
- investigate alleged unauthorised works to listed buildings;
- investigate alleged displays of unauthorised advertisements;
- investigate alleged unauthorised treeworks;
- investigate the conditions attached to permissions/consents;
- initiate formal action where a satisfactory outcome cannot be achieved by negotiation.

The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary.

Fuller information on the use of enforcement powers can be found in the Scottish Governments Planning Circular 10/2009: *Planning Enforcement* which can be viewed online at <http://www.gov.scot/Publications/2009/09/16092848/0>

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this Charter to ensure that standards and targets are being met.

The Charter will be made available on the Council's website, in local libraries and at Planning Services, Cunninghame House, Irvine KA12 8EE.

3. Identifying possible breaches of planning control

Planning enforcement has two main issues –

1. To establish whether a breach has taken place, and
2. Whether it is expedient or appropriate to take enforcement action.

The decision to take enforcement action is at the sole discretion of the Council.

Possible breaches of planning and listed building control can include:

- Development being undertaken without planning permission;
- Alterations to or demolition of a listed building without listed building consent;
- the change of use of a building or land without planning permission;
- the failure of a developer, owner or occupier of land/buildings to comply with conditions attached to planning permission or listed building consent; and
- departures from approved plans or consents.

Members of the public have a vital role in reporting breaches of control. Any concern should be raised with the Council either via a local councillor or directly to Planning Services (see below). You can make preliminary enquiries by telephone or in person at the Council offices but these must be followed up in writing or email in order for an alleged breach to be investigated.

Suspected planning breaches should be reported to the Council as follows:

Using the North Ayrshire Council website:

https://www.online.north-ayrshire.gov.uk/OnlineServices/ReportOnline/RO_PlanningBreach.aspx

By telephone:

01294 324320 (24 hour voicemail facility available)
01294 324319 (during Monday – Friday office hours only)

By email:

eplanning@north-ayrshire.gov.uk

By post or in person:

Planning Services
North Ayrshire Council
Cunninghame House, Irvine KA12 8EE

The following information is essential when reporting a suspected breach:

- Details of the alleged breach, with times and dates if relevant;
- The address or location of the breach;
- Your name, telephone number, postal and email address;
- Whether the enquiry is to be treated confidentially.

The Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the Council to take formal action and cannot be guaranteed if the case leads to court proceedings.

In relation to development with planning permission, monitoring is undertaken by the Council's Planning Services. It is not a statutory requirement that the Council monitors all planning conditions at all times. Public involvement is therefore invaluable in providing information where it is believed that conditions attached to consents are not being complied with or have not been discharged in a satisfactory way.

Information received by Planning Services is checked to ensure that it involves a possible breach of control and includes all the details required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, and where contact details have been provided, a written or email acknowledgment will be sent to the person who has made the complaint.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued.

SERVICE STANDARD

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, an acknowledgement will be sent out within 5 working days if a postal address or email address has been provided. The acknowledgement will include a reference number and contact details for the Planning Officer.

4. Investigating alleged breaches of planning control

A priority system is used for investigating complaints based on matters such as the significance of the harm of the alleged breach on amenity or other relevant planning considerations.

SERVICE STANDARD

Priority will be given to significant alleged breaches of planning control including, but not limited to:

- Significant detrimental impact on amenity;
- Alleged breaches of condition for major developments;
- Irreversible damage to listed buildings; and
- Unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders

An investigation normally begins with the Planning Officer visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed.

In some cases, additional investigation may be needed. A record will be maintained of all contact, both verbal and written.

SERVICE STANDARD

Where contact details have been provided, a person who provides information by letter or email to Planning Services will receive a formal response within 20 working days of receipt. The person will also be advised of the proposed action to be taken. The action may include the need for additional investigation prior to deciding on the course of action. The person will be advised if the matter does not involve a breach of planning control.

The length of time required to resolve the case or take action can be affected by a number of factors. Progress can be delayed by the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to remedy the alleged breach or an appeal against a decision of the Council can also delay resolution of the case.

The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach.

The Council recognises that delays can be a source of considerable frustration to persons submitting information, particularly if they consider their amenity is affected by the alleged breach. Consequently, interested parties may wish to contact the Planning Officer for more regular updates.

5. Acting on alleged breaches of planning control

The Council has to consider each case on its merits and decide on the most appropriate solution.

In the first instance, an investigation will be undertaken by the Planning Officer to establish whether or not a breach has occurred and decide on whether to take any further action.

In some cases, enforcement action may not be considered appropriate, even although planning regulations may have been breached. Enforcement action will only be taken when it is in the wider public interest which is at the Council's discretion.

The Council is unlikely to take formal enforcement action over developments which, in planning terms, are considered acceptable had an application been made beforehand. In such cases, a retrospective planning application is normally sought. In granting planning permission retrospectively, the Council can impose conditions to regulate a wide range of planning matters in order to make a retrospective development acceptable. It is not always necessary to impose conditions.

Only a relatively small number of cases lead to formal enforcement action. Where formal action is required, a report may be prepared for consideration by the Council's Planning Committee. Formal enforcement action can include the issue of a Notice to the land owner or developer. Various options are available, including a Notice requiring a retrospective planning application to be made, an Enforcement Notice, or a Breach of Condition Notice.

The Council also has the power to serve an Amenity Notice, the purpose of which is to require improvements to land or buildings which have become detrimental to the amenity of an area.

Enforcement Notices served by the Council are placed on the Enforcement Register. You can view the Register at Planning Services, Cunninghame House, Irvine between 9am and 4.45pm Monday – Thursday (9am and 4pm on Fridays).

Enforcement Notices and Breach of Condition Notices include the following information:

- A description of the breach of control that has taken place;
- The steps that should be taken to remedy the breach;
- The timescale for taking these steps;
- The consequences of failure to comply with the Notice; and
- Where appropriate, any rights of appeal the recipient has and how to lodge such an appeal.

Appeals against Enforcement Notices and Amenity Notices are considered by Scottish Ministers and dealt with by a Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

There is no right of appeal against a Breach of Condition Notice.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, formal enforcement action will be taken. Authorisation from the Planning Committee is required for the service of a Notice, or to take any other formal action that is appropriate to the breach. The Notice will explain to the recipients what is required, the timescales involved and the available options to resolve the issue.

Failure to comply with a Notice may result in the Planning Authority taking further action. There are a range of possible options, such as:

- Referring the case to the Procurator Fiscal for possible prosecution;
- The Council may carry out work and charge the person for the costs involved;
- Seeking a court interdict to stop or prevent a breach of planning control.

For more details, see the Enforcement Powers section at page 11.

SERVICE STANDARD

Where the terms of any formal Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- In the case of an Enforcement Notice, direct action by the Council;
- For either an Enforcement Notice or a Breach of Condition Notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a Fixed Penalty Notice).

The Council has powers to enter land to:

- Establish if there has been a breach of planning regulations;
- Check if there has been compliance with a formal Notice; and
- Check if a breach has been satisfactorily resolved.

Powers of entry apply to any land and may also involve officials entering land adjacent to the site of the alleged breach.

Enforcement Action has to be taken within strict time limits:

A four year limit applies to “unauthorised operational development” (the carrying out of building, engineering, mining or other operations in, on, over or under land) and the change of use of a building to a dwellinghouse. After 4 years, such developments become lawful for planning purposes, and enforcement action cannot be taken.

A ten year limit applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After 10 years the development becomes lawful if no enforcement action has begun; and

There is no time limit for breaches of listed building control.

Breaches of listed building control can be a criminal offence. Persons responsible can be reported to the Procurator Fiscal without the prior issue of a Listed Building enforcement notice.

6. Making a suggestion or complaint

The Council makes every effort to deliver a satisfactory planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you.

The Council is committed to improving our Planning service. We will consider all complaints about the way an Enforcement Inquiry has been dealt with.

Dissatisfaction with the outcome of an investigation is not sufficient grounds for complaint.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, please request a discussion with the Senior Planning Officer (see list of contacts). If they are unable to help, you will be given the name of a more Senior Manager who will investigate the matter.

Written complaints will be acknowledged within 10 working days and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons for this will be explained.

SERVICE STANDARD

Where contact details are provided, we will get in touch with you within 5 working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If you are not happy with the level of service provided (but not the decision reached on planning merits), you can make a complaint. You can submit the details via the Council's Complaints and Feedback section on the website:

<https://www.north-ayrshire.gov.uk/contact-us/complaints-and-feedback/complaints-and-feedback.aspx>

The various stages of the complaints procedure are set out on the complaints form and on the website.

Lastly, if you are dissatisfied with the Council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

FREEPOST SPSO, EDINBURGH

Telephone: **0800 377 7330**

Email: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months following the conclusion of the Council's complaints procedures.

7. Enforcement Powers

The planning enforcement powers available to the Council are set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. Listed Building Enforcement Notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts can be viewed on line at www.legislation.gov.uk

Scottish Government policy on planning enforcement is set out in planning Circular 10/2009: *Planning Enforcement*. The Circular is published on the Scottish Government website - <http://www.gov.scot/Publications/2009/09/16092848/0>

Types of Notice

Breach of Condition Notice (BCN) – used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an Enforcement Notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a BCN can result in the Council deciding to prosecute. On conviction, a fine of up to £1,000 can be imposed.

Enforcement Notice (EN) – generally used to deal with unauthorised development. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An EN will specify a time period to take effect (a minimum of 28 days – but see section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal to Scottish Ministers against an EN. In the event of an appeal, the terms of the EN are suspended until a decision is reached.

Failure to comply with an EN within the time specified is an offence. On conviction, this can result in a fine of up to £20,000. Failure to comply may also result in the Council taking direct action to remedy the breach (see other powers below). The Council will then seek to recover costs from the owner of the building or land.

Listed Building Enforcement Notice (LBEN) – in the event of unauthorised works to a listed building, including demolition, an LBEN can be served on the owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The LBEN must specify the steps to be taken to remedy the breach and a date for compliance. Failure to meet the terms of an LBEN by the specified date is an offence. There is the right of appeal to Scottish Ministers against the LBEN.

Breaches of listed building control are considered a serious matter. The legislation makes it clear that it is a criminal offence to undertake works to demolish, significantly alter, or extend a listed building without the proper authorisation from the Council and, in some circumstances, Historic Scotland. On conviction, this can lead either to an unlimited fine or imprisonment.

Stop Notice – used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a Stop Notice is served, the

planning authority must also issue an Enforcement Notice. There is no right of appeal against a Stop Notice and failure to comply is an offence. An appeal can be made against the accompanying Enforcement Notice. If a Stop Notice is served without an adequate reason, or an appeal against the Enforcement Notice is successful, the Stop Notice may be quashed and the Council may face claims for compensation.

The use of Stop Notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) – used to require the *immediate* halt of an activity which breaches planning control. There is an exception that a Temporary Stop Notice cannot prohibit the use of building or a caravan as a dwellinghouse. Temporary Stop Notices are enforceable for 28 days, after which time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a Temporary Stop Notice.

Fixed Penalty Notice (FPN) – used to address situations where a person has failed to comply with the requirements of an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the Fixed Penalty Notice, the person will discharge any liability for prosecution for the offence. It will not, however, discharge the obligation to comply with the terms of the Enforcement Notice or Breach of Condition Notice and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The Council is not required to offer the option of paying a fixed penalty. Any decision to do so would depend on specific considerations, such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development Already Carried Out – where the Council considers that a development which does not have planning permission may be acceptable they may issue a Notice requiring the land owner or development to submit a retrospective planning application. Such an application would be considered on its planning merits and handled in the same way as any other planning application. Issuing such a Notice does **not** guarantee that permission will be granted – the Council may decide instead to refuse permission, or to grant permission subject to conditions or amendments to make the development acceptable.

Other Powers

Planning Contravention Notice (PCN) - used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, or a person with any other interest on the land or who is carrying out operations on the land. Such a notice may be a precursor to further investigation. Failure to comply with a PCN is an offence and, on conviction, can result in a fine.

Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997 – S.179 allows planning authorities to serve a Notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an “Amenity Notice” and sets out the action that needs to be taken to

improve the condition of the land or building within a specified period. There is a right of appeal against a Section 179 notice. Whilst non-compliance cannot result in prosecution, the Council may undertake the specified work at its expense and re-charge the owner, occupier or lessee, as appropriate, to recover the costs.

Notice under Section 272 of the Town and Country Planning (Scotland) Act 1997 – S.272 provides limited powers to obtain information on interests on land and the use of land. Failure to provide the information required is an offence.

Interdict and Interim Interdict – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek Interdicts in serious cases or where Enforcement Notices have been ignored in the past. However, a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action – failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the land owner.

Notification of Initiation of Development (NID); Notification of Completion of Development (NCD) and Display of Notices while Development is Carried Out – while not in themselves planning enforcement powers, these Notices are intended to improve delivery the monitoring of planning enforcement by requiring confirmation that development has commenced and been completed. For example, this enables planning conditions to be checked for compliance. Site Notices, which apply to major developments, may help to raise awareness of developments in a locality.

Starting a development without submitting an NID is a breach of planning control and the Council may consider enforcement action. The NCD requires a developer to submit a further Notice after development has been completed.

Site notices contain basic information about the site and the development. Notices also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display a site notice when required to do so.

Certificates of Lawful Use or Development (CLUD) – may determine whether any enforcement action could be taken by providing a mechanism for establishing the planning status of land i.e. whether an existing or proposed use or development is considered lawful for planning purposes. In addition, the procedure provides a mechanism for obtaining from the Council (or the Scottish Ministers on appeal) a statutory document certifying the lawfulness, for planning purposes, of existing operational development or use as a single dwellinghouse. Anyone can apply to the Council for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation is lawful for planning purposes.

There are similar provisions for establishing whether a proposed use or operational development would be lawful for planning purposes. In both cases, the onus of proof lies with the applicant. Certificates can be revoked if it subsequently appears that false or misleading information has been submitted with an application.

It should be noted that a CLUD does not mean that planning permission has been granted, but that the use or development is lawful and immune from enforcement action.

8. Enforcement and advertising

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements (Scotland) Regulations 1984 (as amended). Many advertisements are displayed with what is called “deemed consent” which means they do not require advertisement consent from the Council if they meet the criteria and conditions set out in the Regulations.

One of these conditions is that the land owner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the Regulations is an offence. On conviction, an offender can be fined. The Court can impose further fines for each day the breach of the Regulations continues.

The Council also has the power to serve an Enforcement Notice against unauthorised advertisements, requiring their removal. Such a notice specifies the time period (normally 28 days) for compliance. However, the compliance period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An Enforcement Notice can also require that a particular piece of land should not be used to display advertisements. A notice remains in force even once the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the Notice.

The Council can also take action against advertising being displayed with “deemed consent” where it is held that the advert is either a danger to public safety or substantially injures local amenity.

A Discontinuance Notice, requiring removal of an advert, can be served on the owner or occupier of the land as well as the person who displays the advertisement.

There is a right of appeal against both an Enforcement Notice and Discontinuance Notice.

The Council also has powers to remove or destroy placards and posters that do not benefit from either advertisement consent or deemed consent. If the person or company who put up the poster can be identified, they have to be given at least two days notice that the Council intends to take the poster down. If the person or company cannot readily be identified, then the advert can be removed immediately.

If necessary, Council planning officers can enter unoccupied land to remove an advertisement. However, planning officers have no powers to remove advertisement displays within a building to which there is no public access.

9. Enforcement contacts

Suspected breaches of planning control should be reported to Planning Services in the first instance. There are various ways to do this:

Using the North Ayrshire Council website:

https://www.online.north-ayrshire.gov.uk/OnlineServices/ReportOnline/RO_PlanningBreach.aspx

By telephone:

01294 324320 (24 hour voicemail facility available)
01294 324319 (during Monday – Friday office hours only)

By email:

epanning@north-ayrshire.gov.uk

By post or in person:

Planning Services
North Ayrshire Council
Cunninghame House, Irvine KA12 8EE

If the initial complaint has not been resolved to your satisfaction, you may report the matter to the Senior Development Management Officers on either 01294 324318 (East Team) or 01294 324379 (West Team). Both numbers have voicemail should you be unable to speak directly to the person.

General enquiries on planning issues in North Ayrshire should be made either by phone to 01294 324319 or email to epanning@north-ayrshire.gov.uk

The postal address for making a complaint regarding the handling of a planning enforcement matter is:

Customer Complaint Team
Bridgegate House
Irvine
KA12 8BD

For enquiries about the Planning and Enforcement system in Scotland, please contact the Scottish Government Planning Helpline on 0300 244 4000 (Monday – Friday, 9.00 am to 5.00 pm) or write to The Scottish Government at Victoria Quay, Edinburgh EH6 6QQ. The Scottish Government website also has an extensive planning section at <http://www.gov.scot/Topics/Built-Environment/planning>

Free, impartial and professional planning advice can be obtained from Planning Aid Scotland on 0300 323 7602 and via <http://pas.org.uk>

Complaints regarding the **content** of advertisements should be made to the Advertising Standards Authority via its website www.asa.org.uk

10. Summary of the Planning Enforcement Charter

This Charter does not comprise an authoritative interpretation of the Planning Acts in Scotland.

- It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred rather than to apply punitive measures to those responsible
- The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary
- A priority system is used for investigating complaints based on matters such as the significance of the alleged breach on amenity or other relevant planning considerations
- The Council routinely monitors high profile and other developments of public interest to ensure planning regulations and conditions are being adhered to
- There is a role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small
- Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued
- The planning system does not exist to protect the interests of private individuals against each other, but must work in the public interest
- The resolution of enforcement cases can be lengthy
- The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach

Planning legislation is complex, and if you are in receipt of any correspondence or formal notice from the Council relating to planning enforcement, you are advised to seek legal or independent professional planning advice.

Updated June 2017