
NORTH AYRSHIRE COUNCIL

23rd August 2023

Planning Committee

Locality	Garnock Valley
Reference	23/00388/PPM
Application Registered	31st May 2023
Decision Due	30th September 2023
Ward	Garnock Valley

Recommendation Approved subject to Conditions

Location Chivas Bros Ltd, Balgray, Beith**Applicant** Chivas Brothers Ltd**Proposal** Change of use of agricultural land to form extension to bonded warehousing complex to include the erection of 5 no. double cell and 3 no. triple cell warehouses, associated earthworks, internal access roads, SuDS and landscaping

1. Description

Planning permission is sought for the development of an extension to an established bonded warehouse site on 14 hectares of farmland to the northwest of the existing boundaries of the Balgray Bond to the north of Barrmill. The site consists of seven fields, currently used as grazing land, and which slope gently downhill from northwest to southeast. The proposed development would, in effect, 'round-off' the existing development by extending Balgray up to two adjacent public roads at the northwest and northeast of the application site boundary.

It is proposed to erect a total of 19 new warehouses within two groups of 'double' and 'triple' blocks, giving a total internal floorspace of 47,500 square metres. Subject to the submission and approval of a separate application for hazardous substances consent, the warehouses would be used to mature scotch whisky or other spirits.

There would be a total of five 'double cell' blocks sited alongside the southern boundary. Their long elevations would face generally NW/SE. A double cell warehouse is formed by

adjoining 2 no. single warehouses with a separating firewall, giving a total length of approximately 151m in length, 35m in width and 10.7m to the roof ridge.

There would also be three 'triple cell' blocks towards the northern portion of the site, also with their long elevations facing generally NW/SE. A triple cell warehouse is formed by adjoining 3 no. single warehouses with separating firewalls, giving a total length of approximately 280m in length, 35m in width and 10.7m to the roof ridge.

The proposed double and triple cell warehouses would be similar in size, height, design and appearance to the recent phases of development at Balgray, including those currently under construction at the southern end of the complex. The walls and roofs of all blocks would be clad with Olive Green coloured metal cladding.

The warehouses would be linked using a series of internal site roads. Access to the site would be taken from the existing site via the main gate which connects onto the public road to the northeast. There is no additional connection proposed from the site to the public road network.

A SuDS pond, for the storage and treatment of surface water drainage from the buildings, swales, ditches and access roads, would be formed towards the eastern part of the site, connected through existing field ditches and eventually discharging to the Dusk Water which flows through Balgray. The Dusk Water is the main watercourse in the locality, and flows southwards to the River Garnock between Dalry and Kilwinning.

The application also proposes to landscape the ground to the perimeter of the site where it adjoins the two public roads (northwest and northeast). The landscaping works would consist of earth mounding and tree planting. Elsewhere in the site, open ground would be planted with grass seed and areas would be set aside for planting aimed at enhancing biodiversity.

Balgray (and Willowyard, also near Beith) were developed on greenfield rural sites. There are currently around 56 warehouses at Balgray. In addition, the facility accommodates offices, plant, external barrel storage areas and lorry parking facilities.

The original warehouse type at Balgray was a single cell design which accounts for 38 out of the total. The single cell warehouses tend to be taller in height at around 15m to ridge. For fire safety purposes, the single cell warehouses were developed at a lower density, with a much greater separation distance between each in comparison with the warehouses built during recent decades. The more recent developments at Balgray between the 1990s and 2023 include a number of double and triple cell warehouses. The increased density of the warehousing built during the past twenty five years has made more efficient use of the available land without extending beyond the original planning permission boundary. This has been achieved through improved building standards in relation to fire suppression, including the use of more fire retardant materials and sprinkler systems. The current proposal is the first time the applicant has sought to extend beyond the original site boundary, which dates back to the early 1970s.

Beyond the warehousing complex, the surrounding area mostly comprises agricultural land. The nearest part of the village of Barrmill is located around 1.1km to the SSW of the site. The village of Gateside is approximately 1.5km to the northwest. The hamlet of Hessilhead is around 550m to the northeast. There are a number of individual houses and farms in the

vicinity of the site, the nearest being Gatehead Farm which comprises the original steading and a 1970s bungalow, which is immediately to the northwest.

In addition to plans and drawings, the application is accompanied by the following reports and information:

Pre application Consultation (PAC) Report

The PAC report identifies the engagement undertaken by the applicant with the local community and the planning authority before the proposals were finalised. It notes that the first public event was held on 26th January 2023 in Barrmill Community Centre. The second public event was held on 22nd February 2023 also in Barrmill Community Centre. Both events are documented in the PAC report. Attendance at the first event was 15, with 13 people attending the second. The main issues raised were in respect of concerns about additional traffic, including the effect on school drop-off/pick-up times at Gateside Primary School, road safety, the blackening of buildings from mould, and the lack of any perceived community benefit.

Design and Access Statement

It is a statutory requirement to provide a design and access statement for major planning applications (other than for applications seeking permission in principle). The document provides an overview of the site, describes the proposed development together with the design solutions adopted and discusses the proposed access arrangements for traffic, pedestrians, cyclists and service vehicles. The basis for the submitted design is to accommodate whisky barrels on pallets. Six barrels can be stored on a pallet and stacked seven high. The storage period would range from 3 years to 21 years. It discusses the need to form level platforms on which to build the warehouses for the pallets/barrels. Soils to be excavated for the platforms would be retained on site and used to create earthworks. Warehouses would have concrete floors and steel framed walls and roofs, clad using Olive Green metal cladding panels. The warehouses would be unheated with minimal lighting.

Access to the site would be by road using the existing route from Beith via Gateside. Current traffic levels are typically 45 HGVs per week (90 two way movements). The proposed development would generate an increase of 3 (or 6 two way movements) to 48 per week (a total of 96 two way movements weekly). Other traffic consists of staff cars and small service vehicles delivering to the offices. Working hours are between 7am and 5.45pm on Mondays to Thursdays and from 7am to 1.45pm on Fridays.

Data for construction traffic and construction working hours are not detailed and would require to be the subject of additional information, should planning permission be granted.

Drainage Strategy

The strategy identifies that the site is not at risk of flooding from surface water nor watercourses. The drainage strategy relates to the management of surface water flows from the site, taking into account the need to manage spillages and contaminated water in the event of a fire.

Ground Investigation Report

Ground investigation works took place prior to the acquisition of the site by the applicant. The site was found to comprise a layer of topsoil over clay and bedrock. The investigation concluded that there is no evidence of made ground nor contamination. Ground gas levels

were investigated and it has been concluded that the site is acceptable for the proposed development.

Mining Stability Report

Investigation involving the use of boreholes was carried out. It was established that the Dalry Clayband Ironstone seam was encountered between depths of 4.85m and 24.95. The boreholes found the seam to be intact, with the conclusion that no ironstone has been worked below the investigation area in the past, and that the site can be regarded as minerally stable.

Planning Statement

The statement reviews the development plan, including National Planning Framework 4 (NPF4) and the North Ayrshire Local Development Plan (LDP). A review of the various policies were carried out. Both NPF4 the LDP provide support in principle for development associated with the whisky industry. The statement goes on to discuss how the proposed development would address the climate and nature crises through appropriate mitigation and through the use of pro-active measures to improve biodiversity at the site, such as new planting. It concludes that significant weight should be given to these factors in the determination of the application.

Preliminary Ecological Appraisal

The appraisal includes a phase 1 habitat survey, desk study and survey for protected species. The survey work was carried out in April 2023 and is considered to be up to date. The desk study indicated that records for soprano pipistrelle and brown long-eared bat can be found within 2km of the site. There are 19 designated sites of wildlife interest within 2km, including four ancient woodlands and an SSSI at Trearne Quarry. The site provides suitable habitat for foraging and commuting bats and vegetation provides opportunities for tree and ground nesting birds within the active season. No field signs for protected species were identified. A series of recommendations have been made in the appraisal, including the avoidance of any site clearance works during the main bird breeding season and in respect of appropriate planting and other measures for nature.

In terms of the adopted Local Development Plan (LDP), the application site and surrounding area is within a Countryside Area. Strategic Policy 1 (Countryside Objective) applies to development in rural areas. The application requires to be considered in terms of the Placemaking Policy of the LDP (Strategic Policy 2) and Policy 35 (Hazardous Installations and Substances). The application also requires to be considered in terms of National Planning Framework 4 (NPF4).

The application was subject to a processing agreement.

2. Consultations and Representations

Neighbour notification was undertaken in accordance with statutory procedures which included the publication of a notice in a local newspaper. 5 representations were received, all expressing concerns with the proposed development.

Representations

1. Loss of farmland. Planting hedges around the perimeter will not replace the effects on wildlife and farming opportunities nor help our carbon footprint. Healthy trees and hedgerows are already being removed to facilitate the current development taking place.

Response: There is no evidence to suggest that the loss of farmland would be significant in this instance. The land is used for grazing/silage production and is of similar quality to the surrounding agricultural land (Grade 4.2 in terms of the James Hutton Institute Classification, which is noted as 'poor quality'). The proposals would provide enhanced conditions for wildlife and ecology in comparison with intensive farmland through the creation of new woodland areas, hedgerows, water features and wild flower meadows. To secure these outcomes, the long term management of the land around the proposed warehouses would be subject to a planning condition.

2. The development will not create any long term jobs since the warehouses are for storage only.

Response: The proposed development would safeguard existing employment at the site and within the scotch whisky industry in the wider region. See Analysis, below.

3. The effects of the existing warehousing at Balgray results in black mould forming on all outdoor surfaces including buildings, plants, children's toys, vehicles, etc. The applicant has never taken responsibility for this side effect which local residents have no control over. There is no environmental report which addresses this matter in the application. The resultant impact of additional warehouses will reduce property values in the area. The applicant should be held accountable for this issue and either be made to add filtration systems to each warehouse in order to prevent the release of vapour, or fund the cleaning and repainting of the houses/gardens impacted by the mould each year. Building additional sheds will only make matters worse.

Response: Comments about black mould and property values are private legal matters rather than material planning considerations. Accordingly, there is no planning issue to consider in relation to the determination of the application. Refer also to point 6, below.

4. The access road to the site is unfit for the current heavy goods vehicles using it to access the existing warehouses. The road is not wide enough. The additional traffic that the proposed development will generate will worsen road safety.

Response: No objection to the application has been raised by the Council's Active Travel and Transport officers (see below). A condition is recommended with respect to the management of construction traffic. Since the application is for a major development, with the potential for significant traffic generation during the construction phase, is considered necessary to attach a Construction Environmental Management Plan (CEMP) which would address traffic management during construction. It is not considered that the operational traffic levels (once the construction phase is over) would result in significant additional traffic generation on the nearby public roads. Figures provided by the applicant's agent indicate HGV vehicle movements would increase from 90 per week (2 x 45 in each direction) to 96 per week (2 x 48). See also consultation response from Beith Community Council, below.

5. The application has been subject to consultation with the Health and Safety Executive but not in respect of the intended use of the proposed warehousing to store ethanol spirits. It is anticipated that, in due course, the adjoining fields will be designated as being within a consultation zone for health and safety purposes under the COMAH Directive (Control of Major Accident Hazards) once an application for hazardous substances consent is considered by the Council. This will significantly affect property and buildings not owned or controlled by the applicant outside their site boundaries. It is argued that both applications should be lodged and considered together and not separately. The safety implications of the proposed development should be wholly contained within the application site or within land owned by Chivas Brothers and not on land owned by third parties. The HSE will, in due course, arbitrarily issue a consultation zone that will impact on what surrounding landowners are able to do with their land in the future due to the safety implications associated with the management of an expanded COMAH site at Balgray. It is suggested that the HSE should apply its zones inwards to the Chivas site in order that the Council can determine what can safely be built within land owned by Chivas without external effects on others beyond.

Response: There is no statutory obligation for an applicant to seek a hazardous substances consent (HSC) at the same time as applying for planning permission. Planning decisions can be made independently and without prejudice to the determination of any subsequent HSC application. In the event that an HSC consent was not obtained, it is unlikely that the applicant would proceed with the development, given the intended purpose of the proposed warehousing. With respect to this issue, the applicant's agent has commented as follows:

"The COMAH zones will be undertaken during the HSC application as part of Chivas requirements to update the COMAH Site Safety Report for the enhanced site. It should be noted that when COMAH was implemented in 1999 the site would have been designated as an Upper tier COMAH site and by default the Browns Pressure washer building would have sat within the inner zone based on its current close proximity to the historic warehouses that predated the COMAH implementation.

The proposed new warehousing moves the COMAH inner zone to stand off from the boundary of these new warehouses. This new inner zone has no detriment to the Browns Pressure washer building, as it already sits within the Inner zone irrespective of this application.

Gatehead Farm is the only property in the vicinity of the site that would be incorporated within the revised inner zone boundary. The land that is part of this application is being sold by the owner of Gatehead Farm to Chivas Brothers and is aware of the proposed use of land.

In relation to the specific allowance on permitted properties within the Inner Zone. There is no clear guidance on existing properties within a COMAH zone other than notification.

The only guidance in place would be if a new farm and farm building was to be formed within the COMAH zones. The HSE Land use planning methodology would permit the construction of a new farm building to be constructed within the inner zone provided it was less than 3 storeys and employed less than 100 people. We would suggest that Gatehead Farm falls within this category."

6. A current case being heard by the Court of Session on a claim of damage to private property in the Bonnybridge area from a bonded warehouse complex should be taken into account in the planning conditions for the proposals at Balgray. Such a condition should require Chivas to automatically abide by any outcome of the damages case and accept it as a legal precedent.

Response: This is not a material planning consideration. Planning applications must be determined on their planning merits in accordance with the development plan and not in relation to legal matters outwith the scope of the statutory planning application process. The applicant's agent has stated that the legal case referred to is "ongoing and has been for well over 10 years. It has yet to be heard in court therefore there is no determination in place. The objector appears to have predetermined the outcome of the case. This aspect of the objection has no bearing on the planning application."

Consultations

NAC Active Travel & Transport - no objection subject to the condition that a construction traffic management plan should be submitted and approved before construction work begins.

Response: Noted. The use of a Construction Environmental Management Plan (CEMP) would address the matters raised. A CEMP can be secured by condition.

Beith Community Council - highlight concerns about traffic impacts and road safety, and raise several questions in respect of traffic management, especially for the construction phase. There is particular concern about the timing of heavy vehicles passing through Gateside at school drop off and pick up times. The community council have also asked if a community benefit scheme can be given consideration to support local residents with community activities and to reduce the impacts of the black mould on their properties.

Response: As noted above, a CEMP would be attached as a condition of any planning permission granted. Community benefits schemes are outwith the scope of the planning process and are not material considerations. As noted above, comments made in respect of mould are not a material planning consideration.

NAC Environmental Health - no objections. Various observations have been made with respect to the control of environmental impacts (noise and other forms of pollution) during construction.

Response: Noted. The use of a Construction Environmental Management Plan (CEMP) would address the matters raised. A CEMP can be secured by condition.

NAC Flooding Officer - no objection. Various matters raised for consideration by the applicants relating to drainage design.

Response: All points raised have been addressed by the applicant's agent.

Health & Safety Executive - does not advise, on safety grounds, against the granting of planning permission in this case.

Response: Noted.

Scottish Water - no objection. There is sufficient capacity in the water treatment works at Camphill to service the development. There is no public sewer in the area.

Response: The development does not require a waste water connection. The surface water would be treated and attenuated in a SuDS system which would include a detention basin and drained to existing ditches where it would subsequently discharge to the Dusk Water.

SEPA - no objection. Review of the SEPA Flood Map indicates that the site is outwith the river/coastal future flood extents. A small watercourse runs along the eastern edge of the site boundary. SEPA recommends that the buffer zone between the proposed SuDS pond and the small watercourse is set back as far as possible to ensure flood extents which may originate from the watercourse are unable to reach the pond. The existing facilities at Balgray fall within the scope of the Control of Major Accident Hazards Regulations 2015 (COMAH) for which SEPA and HSE are competent authority. It is recommended that the applicant makes contact with the competent authority to submit an updated notification.

Response: The applicant has taken into account the issues raised by SEPA in the drainage design and a condition is also recommended in this regard to enable details to be finalised before any development of the site commences. The other matters raised have been sent to the applicant's agent for their attention and appropriate action.

West of Scotland Archaeology Service - no objection. Recommend a programme of archaeological works in accordance with a written scheme of investigation to be submitted and approved beforehand.

Response: Noted. An appropriate condition could be attached.

3. Analysis

As noted above, the application site is located within the countryside as defined by the North Ayrshire LDP.

Strategic Policy 1 (the Countryside Objective), indicates support in principle for expansions to existing rural businesses and uses such as expansions to the brewery and distillery based enterprises in the area. Given that the proposal is for the maturation of ethanol spirit primarily related to the Scotch Whisky industry, it is considered that the proposed development as an expansion of the existing Balgray complex has a justifiable specific locational need. The existing operation already provides all necessary site security, staffing and road access infrastructure. Whilst the proposed development would result in the loss of some 14 hectares of grazing land, it would 'round-off' the existing warehouse complex and create more defensible long-term boundaries beside two adjoining rural roads using earthworks and structure planting. In addition to being supported by the planning history of the site, the proposal accords with Strategic Policy 1.

The siting and design attributes of the proposed development requires to be reviewed in terms of Strategic Policy 2 (Placemaking), which follows below. The most relevant qualities of a successful place to this proposal are 'safe and pleasant', 'resource efficient' and 'easy to move around and beyond.' A response to each quality is provided below, as follows:

'safe and pleasant' - it is noted that the existing warehouse complex at Balgray imposes a relatively significant visual impact on the rural landscape around Barrmill, albeit across a fairly localised area. The proposed earthworks and associated woodland planting, once mature, would greatly mitigate the visual impact of the development when viewed from the nearby public roads, the bungalow and steading at Gatehead, as well as mitigating the visual impact of the existing warehouses further east.

The use of Olive Green cladding would help to reduce the apparent bulk of the warehouses in comparison with lighter colours (such as light grey or light green) that were used in earlier phases at Balgray. The evidence for the reduced visual impacts achieved through the use of Olive Green cladding has been demonstrated successfully by the recent bonded warehousing built towards the southern part of Balgray.

'resource efficient' - a SuDS drainage system would be provided to ensure that run-off from the development is properly treated, attenuated and discharged to the Dusk Water, which flows to the east of the site. As well as reducing the visual impact of the proposed development, the proposed earthworks would reduce the need for off-site disposal of surplus soils.

'easy to move around and beyond' - all access to the site would be via the existing gated access serving the Balgray site. The complex is easily accessible by road, being less than two miles from the A737 trunk road at Beith (via the B777 at Gateside) and around 1.5 miles from the A736. As noted above, a condition could be attached with regard to construction environmental management, which would address traffic impacts in the locality in addition to other matters.

In summary, the proposal would satisfy the requirements of the Placemaking Policy.

In terms of Policy 35 (Hazardous Installations and Substances), a consultation was undertaken with the Health & Safety Executive who has no objection to the proposal. A further Hazardous Substances Consent (HSC) for the storage of ethanol spirits requires to be sought and obtained before the proposed warehouses could be used. This would involve further consultation with the Health & Safety Executive and SEPA, as the competent authority for COMAH sites. The applicant is currently working towards the submission of an HSC application. Given the economic justification for expanding the existing facility at Balgray, it is considered that the application is acceptable in terms of Policy 35.

Turning to NPF4, the applicant has provided a statement which appraises the proposed development against the spatial framework and policies.

It is considered that, in principle, the proposed development accords with the strategic intention of NPF4 in respect of the whisky industry. NPF4 recognises the importance of whisky as a nationally important export product and its significance to the Scottish and UK economy. The LDP is broadly in alignment with NPF4 in respect of its other strategic policy objective, those of tackling the climate and nature crises. New development requires to be 'nature positive'. Vegetation removal would chiefly relate to grasses and some poorly maintained hedgerows, with no loss of woodland. Soil would be retained on the land and re-used for bunding and landscaping.

A series of recommendations have been made in the ecology survey submitted in support of the application. In order to take into account the matters raised, it is considered that a

condition should be attached to require their implementation during the development of the site. This would help to ensure that the principles set out in NPF4 for nature are implemented.

Once construction works are complete, the proposed warehousing would not result in significant energy consumption during its operational lifespan, since the warehouses would not be heated and artificial lighting would be minimal. Whilst there would be a permanent loss of agricultural land to the development, much of the site would be planted with trees, wildflowers and grasses, in addition to the creation of a large water body. Subject to adequate management practices, the proposed measures would create favourable conditions for a wider range of wildlife than is the case on the land at present.

Future land management would reduce the need for pesticides and fertilisers, which would also improve conditions for wildlife and have a beneficial effect on water quality. In the above ways, it is considered that the proposed development would be nature positive and would accord with NPF4.

There are no other material considerations. In conclusion, it is considered that the proposed warehouse development would accord with the development plan. The development would support the ongoing use of Balgray for the maturation of ethanol spirit, thus supporting local employment within a key sector of the Scottish economy. It is recommended that planning permission is granted, subject to the conditions noted below.

4. Full Recommendation

Approved subject to Conditions

Reasons for Decision

The proposal complies with the relevant provisions of the development plan and there are no other material considerations that indicate otherwise. This is determined following an assessment which has had regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

Condition

1. That no development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation to be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by North Ayrshire Council as Planning Authority. Thereafter the applicant 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.

Reason

To ensure any archaeological remains below the ground are investigated and recorded/recovered before the development commences.

Condition

2. That prior to the commencement of the development hereby approved, the applicant shall submit a Construction Environmental Management Plan (CEMP) for the written approval of North Ayrshire Council as Planning Authority. The CEMP shall take into account the management of construction traffic to and from the site, and shall include information about the roads to be used and their suitability for heavy goods vehicles. Consideration shall be given to the potential impacts on safety within the village of Gateside particularly during school drop-off and pick-up times. The CEMP shall also identify the hours of working for the construction of the development. Thereafter, the development shall be implemented in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

In the interests of safety and environmental protection during the construction phase.

Condition

3. That, for the avoidance of doubt, surface water arising from the development of the site, including during construction operations, shall be treated and managed using a SuDS system. Prior to the commencement of the development, hereby approved, confirmation shall be submitted in writing to North Ayrshire Council as Planning Authority and certified by a suitably qualified person that a scheme to treat the surface water arising from the development of the site (during construction and operational phases) has been prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C753, published November 2015). Thereafter, the certified scheme shall be implemented prior to the completion of the development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

In the interests of securing sustainable drainage for the development to safeguard the water environment.

Condition

4. That, prior to the commencement of any landscaping works, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a finalised scheme of landscaping and planting. The finalised scheme shall be based on the landscape plan hereby approved and as per the recommendations Part 5 (Planting for Wildlife) of the Preliminary Ecological Appraisal submitted in support of the application (Wild Surveys project number WWS4047.23 dated 18 April 2023). The scheme shall include details of species, planting densities, soil treatment, aftercare and future management. All tree and plant species shall be selected to enhance biodiversity and support nature/wildlife, with future management measures designed to minimise the use of chemical pesticides and manufactured fertilisers. The scheme as may be approved shall be implemented prior the development becoming operational and retained/managed permanently thereafter to the satisfaction of North Ayrshire Council as Planning Authority. Any trees or areas of planting which fail shall be replaced until successfully established.

Reason

To mitigate landscape and visual impacts and in the interests of amenity, biodiversity and habitat creation.

Condition

5. That the recommendations contained in Part 5 of the Preliminary Ecological Appraisal submitted in support of the application (Wild Surveys project number WSWS4047.23 dated 18 April 2023) shall be implemented during the course of the development. For the avoidance of doubt, no vegetation clearance or soil stripping works shall be undertaken during the main bird breeding season of March - September.

Reason

To prevent any disturbance to breeding birds and their habitats.

Allan Finlayson
Chief Planning Officer

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

Appendix 1 – Location Plan

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