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**NORTH AYRSHIRE COUNCIL**

22nd May 2024

**Planning Committee**

Locality	Garnock Valley
Reference	24/00307/PP
Application Registered	3rd April 2024
Decision Due	3rd June 2024
Ward	Garnock Valley

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**Recommendation**      Approved subject to Conditions

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**Location**              Blairland Farm, Dalry**Applicant**              The Blair Trust Co Ltd c/o Galbraith**Proposal**              Application under Section 42 of Town and Country Planning (Scotland) Act 1997 to vary conditions 2, 8 and 9 of planning permission in principle ref. 21/00214/PP

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**1. Description**

A Section 42 application has been sought in relation to some of the planning conditions attached to permission in principle for a major housing development at Blairland Farm in Dalry. The site has been allocated for residential development purposes since the adoption of the Council's first Local Development Plan in May 2014.

Planning permission in principle was granted for residential development in June 2015 under ref. 15/00103/PPPM. An application was subsequently granted in May 2018 (ref. 18/00328/PPM) to extend the time for submitting matters specified in conditions (MSC) applications. A further application to extend the time period for MSC was granted in April 2021 (ref. 21/00214/PP).

Although there has been interest in developing the site from several national housebuilders (during the period 2018-2020 and in 2021-22), matters did not progress for a variety of reasons, primarily in respect of access.

The site owners are therefore seeking a further extension of time in order to market the site to prospective developers. It is proposed to retain the previous conditions with minor updates to the text of conditions 2, 8 and 9. A planning statement has been submitted to explain the proposed changes to the conditions, which are essentially matters relating to methodology as opposed to substantial changes.

Under amendments to Section 59 of the Town and Country Planning (Scotland) Act 1997 which came into force in October 2022, the duration of a planning permission in principle is now 5 years. When the previous application was granted, the duration was 3 years. An application under Section 42 of the Act, if granted, creates a new planning permission without altering the conditions on the previously granted permission. The planning authority must consider "only the question of the conditions to which planning permission should be granted."

## **2. Consultations and Representations**

The application was subject to the statutory neighbour notification procedures which involved the notification of 90 neighbouring residential properties. Four letters of objection have been received, the points of which are summarised below:

1. More houses despite not increasing local amenities. School and nursery are already pushed for spaces in the area. Doctors surgery can't cope with the current residents of Dalry never mind adding in any more. We are losing our country side one field at a time.

*Response: Not agreed. The land was allocated for housing development in 2014 and remains allocated for housing development in the current development plan, with an indicative capacity of 200 houses. Planning permission in principle was granted subject to a suite of conditions in 2015. The current application seeks, for the third time, to renew the planning permission in principle. By law, decisions on planning applications require to be taken in accordance with the provisions of the development plan unless material considerations indicate otherwise. Since the Blairland Farm site was allocated in 2014, there has been no major housing development in Dalry. If detailed proposals for the site, or parts of it, are submitted to the Council at a future date, there would be a further opportunity for public comments.*

2. The evidenced plans appear to encroach onto land not owned by the local authority or the applicant as can be observed to the West of houses on Finlay Avenue. The indicated area trespasses onto the gardens of property on this row.

*Response: The land immediately to the west of the existing houses on Finlay Avenue is owned by North Ayrshire Council. The Council, as landowner, has been notified of the application by the applicant's agent in accordance with statutory procedures. The land further west is owned by Network Rail, who have also been served the appropriate notification by the applicant's agent.*

3. The roads in and surrounding Blair housing estate are already congested and the busy bus route struggles to get round. The parking restrictions on local roads limit the movement of the vehicles already in use, the addition of heavy goods vehicles would only agitate this more.

*Response: Noted. A condition on the previous grant of planning permission required the submission of a Construction Management Strategy Plan (CMSP) for the written approval of the Council as Planning Authority. A CMSP, or an equivalent Construction Environmental Management Plan (CEMP) would need to include details of routing arrangements for construction traffic. A similar condition could be attached in the event of planning permission being renewed.*

4. The dirt, mess, noise and disruption to local residents would be excessive. The privacy to homes neighbouring the field involved would be reduced. The views from existing homes would be removed.

*Response: Noted. As per above, a condition on the previous grant of planning permission required the submission of a Construction Management Strategy Plan. Such a Plan would need to address reduce potential adverse impacts on road safety and to minimise potential disruption and congestion for road users, pedestrians and local residents. A similar condition could be attached in the event of planning permission being renewed. Until detailed proposals have been drawn up and submitted, impacts on privacy cannot be assessed. Any views of the countryside from existing houses cannot be protected by the planning system.*

5. The required archaeological survey is supported but it is not understood what is meant by a 'phasing plan'. Does this mean that they will carry out an archaeological assessment on part of the land, build and then go onto the next area of land? This would not be acceptable if something was found in the next phase. Would this then be reported if it meant the building works were to stop? A full survey is required before any building takes place on the site.

*Response: In the event the site is to be developed as a result of a future application (or applications), it is likely that this would take place on a phased basis (due to the size of the site). The conditions of the planning permission in principle as previously granted required the submission of a phasing plan in order to identify how the site would be developed over time. Archaeological investigations would only take place before any ground disturbance within any given phase, not across the entire site at one time. The proposed amendment to condition 2 recognises this.*

6. Can the wording 'park and ride' be removed from the 1:2500 location plan?

*Response: The map submitted with the application is an extract from the published Ordnance Survey plan for the area and its purpose is to identify the site location and application boundaries only. The text 'Park & Ride' on the Ordnance Survey plan is part of the published map. For the avoidance of doubt, this text refers to the existing railway station car park and does not represent a proposal to create a new park and ride facility.*

### **3. Analysis**

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. As noted above, Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be

granted." The main determining issue in this case is whether the proposed conditions would accord with the relevant LDP policies for the site.

Strategic Policy 1, the spatial strategy of the adopted Local Development Plan (LDP), states under the Towns and Villages Objective that "within the General Urban Area, proposals for residential development will accord with the development plan in principle." Since its allocation for residential development in 2014, when the previous LDP was adopted, Blairland Farm has been included within the General Urban Area of Dalry.

Policy 1 of the LDP states "in principle we will support and promote residential development of the 51 effective housing supply sites shown in Schedules 2a and 2b." Blairland Farm is listed under Schedule 2b with an indicative capacity of 200 houses.

As such, the proposed development of Blairland Farm for housing accords with the spatial strategy for Towns and Villages and Policy 1 of the LDP.

Circular 4/1998 sets out the tests for planning conditions, as follows:

- Need for a Condition
- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

As in the 2015, 2018 and 2021 planning permissions, the proposed conditions would comply with all of the above tests. Other than minor wording amendments, where necessary, there are no substantive changes proposed to the conditions previously attached to the 2021 planning permission. At the time of the permission in principle being considered during 2015, there was no developer attached to the site. As such, the applicant's planning consultant recommended an approach whereby various additional investigations and studies were undertaken in advance of the submission of an application for matters specified in conditions. The consultant had considered this to be good practice in the circumstances, taking account of other similar projects elsewhere in Scotland.

It is considered that this approach remains acceptable on the grounds that the intent of the original conditions would be fulfilled. The main benefit to the applicants would be to consolidate the planning process in the lead up to the development. The opportunity has been taken to review and update the conditions to current standards, where necessary. The planning authority would continue to have the same opportunity to scrutinise all of the details associated with the proposal, which is the key issue in this case. The wider community would also have the same opportunity to make representations.

The delivery of major housing sites identified in the adopted LDP remains a key priority for the Council, particularly in relation to its strategic policies of stimulating population growth and economic development as part of the regeneration of North Ayrshire. The proposal to develop the site for housing purposes therefore accords with the development plan.

With regard to NPF4, which was adopted in February 2023, it has been determined that the Section 42 application does not raise any significant strategic planning issues which conflict with the foregoing assessment.

It is therefore recommended that planning permission is approved, subject to the conditions set out below. If granted, the renewed planning permission in principle would be brought into alignment with the updated legislation dating from 2022, which sets out, in Section 59, that the standard time period for a planning permission in principle is 5 years.

#### **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, along with the first application for the approval of matters specified in conditions (MSC), further intrusive site investigations shall be undertaken to establish the location and condition of the recorded mine entries, the results of which shall inform the layout of the detailed masterplan required by Condition 5 and any subsequent remediation works which may be required. Confirmation shall be submitted in writing to North Ayrshire Council as Planning Authority and certified by a suitably qualified person that the required site investigations and any subsequent remedial works have been undertaken.

##### **Reason**

To meet the requirements of The Coal Authority in the interests of ground stability.

##### **Condition**

2. That, along with 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 5, 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 (taking phasing into account) 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.

##### **Reason**

To ensure an appropriate investigation is carried out for potential archaeological remains below the ground.

##### **Condition**

3. That, along with 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 "Sustainable Urban Drainage Systems Manual", (November 2015), the results of which shall inform the layout of the detailed masterplan required by Condition 5, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. For the avoidance of doubt:

- there shall be no drainage connections to the trunk road drainage system;
- all waste water arising from the development must be collected and diverted away from operational railway land;
- all surface water arising from the development must be collected and discharged no closer than 10 metres from operational railway land; and,
- the SuDS scheme shall not be sited within 10 metres of railway infrastructure.

Thereafter, the scheme as may be approved shall be implemented during the course of development (taking phasing into account) and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

To ensure that an appropriate SuDS strategy is prepared and implemented in accordance with up to date practice.

**Condition**

4. That, along with 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 5. For the avoidance of any doubt, no built development or infrastructure should be located within the 1 in 200 year functional floodplain.

**Reason**

To safeguard the development and the surrounding area against the risk of flooding.

**Condition**

5. That, along with the first application for the approval of matters specified in conditions (MSC), a development brief together with a masterplan for the site shall be submitted for the approval of North Ayrshire Council as Planning Authority. The brief and masterplan shall take into account the findings of the further intrusive site investigations, archaeological investigations, the detailed SuDS scheme and flood risk assessments required by conditions 1, 2, 3 and 4 respectively.

The development brief and associated masterplan 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 development brief and masterplan as may be approved, to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

To secure a masterplan for the development in the interests of the proper planning of the area.

**Condition**

6. That application(s) for the approval of matters specified in conditions (MSC) shall include a scheme of mitigation measures for the design and construction of the houses to ensure that the noise levels at each plot shall not exceed the following:

- (a) Daytime external level, 50-55dB LAeq 16hrs (0700-2300);
- (b) Night time internal level, 30dB LAeq 8hrs (2300-0700); and
- (c) Night time internal level, 45dB LA Max (2300-0700).

Thereafter, the development shall be implemented only in accordance with the approved scheme of noise mitigation measures unless North Ayrshire Council as Planning Authority gives written consent to any variation.

**Reason**

To ensure that the houses are provided with an adequate level of protection against road and railway noise.

**Condition**

7. That, prior to the commencement of the development hereby approved, the developer shall implement the recommendations contained within the "Preliminary Geo-Environmental Risk Assessment including Coal Mining Risk Assessment Report" dated March 2014 by Waterman (document reference EED14275-100-R-1-2-1-JLD-PERA) and also the recommendations contained within the "Preliminary Slag Analysis Report" by Waterman dated 7th July 2014 (document reference EED14275-100-C-001-SC-HW) in order to assess the likelihood of any ground contamination present at the site. Remediation proposals shall also be presented to North Ayrshire Council as Planning Authority in relation to any significant findings. All documentation shall meet BS 10175:2011 and shall be verified by a suitably qualified environmental consultant. 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 a remediation scheme to be agreed in writing with North Ayrshire Council as Planning Authority. On completion of the proposed works, written verification, detailing what was done by way of any remediation, shall also be submitted to North Ayrshire Council as Planning Authority.

**Reason**

To ensure that any contamination is appropriately remediated.

**Condition**

8. That prior to the commencement of the development hereby approved, the developer shall submit a Construction Environmental Management Plan (CEMP) for the written approval of North Ayrshire Council as Planning Authority, which shall include details of routing arrangements for construction traffic. For the avoidance of doubt, the CEMP 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 CEMP as approved.

**Reason**

In the interests of amenity, traffic and pedestrian safety.

**Condition**

9. 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.

**Reason**

In the interests of the proper planning of the development.

**Condition**

10. That prior to the commencement of the development hereby approved, the developer shall submit details of the lighting within the site for the written approval of North Ayrshire Council as Planning Authority, after consultation with Transport Scotland.

**Reason**

To meet the requirements of Transport Scotland in the interests of trunk road safety.

**Condition**

11. That prior to the commencement of the development hereby approved, the developer shall submit details of the landscaping treatment along the boundary with the A737 Dalry bypass trunk road for the written approval of North Ayrshire Council as Planning Authority, after consultation with Transport Scotland.

**Reason**

To meet the requirements of Transport Scotland in the interests of trunk road safety.

**Condition**

12. That, prior to the occupation of any dwellings within the development, a barrier/boundary feature of a type to be approved in writing by North Ayrshire Council as Planning Authority in consultation with Transport Scotland shall be erected and maintained along the proposed boundary of the site with the A737 Dalry Bypass trunk road. In addition, the developer shall provide a suitable trespass proof fence adjacent to Network Rail's boundary, which shall include provision for access to facilitate future maintenance and renewal.

**Reason**

To meet the requirements of Transport Scotland and Network Rail in the interests of trunk road and railway safety.

**Condition**

13. That the recommendations of the "Bat Survey Report" (ref. EED14275-100-R-2-2-1) and "Preliminary Ecological Survey" (ref. EED14275-100\_R\_1\_1\_2\_WE) by Waterman shall be reviewed, updated and taken into account during the MSC stage and implemented during the course of the development to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

In the interests of the ecology of the area and to safeguard protected species.

**Condition**



14. That the development shall initially be limited to a maximum of 25 house completions per annum unless otherwise agreed in writing between the developer and North Ayrshire Council as Planning Authority. Thereafter, at 2 yearly intervals following the commencement of the development until its completion, a review of the build rate shall be undertaken by the developer to consider new house completions, new house sales and local primary school capacity. Each review shall propose the number of houses that can be completed during the following 2 year period (at a rate of not less than 25 units per annum), and shall be submitted for the consideration and written approval of North Ayrshire Council as Planning Authority.

**Reason**

To enable the development proceed on a phased basis in order to take into account local primary school capacity.

Allan Finlayson  
Chief Planning Officer

For further information please contact Mr A Hume Planning Officer on 01294 324318.

## Appendix 1 – Location Plan

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