

Planning Committee

24 May 2023

At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m. involving a combination of participation by remote electronic means and physical attendance within the Council Chambers, Irvine.

Present (Physical Participation)

Robert Foster, Timothy Billings, Stewart Ferguson, Cameron Inglis and Ian Murdoch.

Present (Remote Participation)

Scott Davidson, Davina McTiernan, Jim Montgomerie and Chloé Robertson.

Also Present (Physical Participation)

Tom Marshall

In Attendance

Y. Baulk, Head of Service (Housing & Public Protection) and I. Davies, Senior Development Management Officer (Place); and R. Lynch, Senior Manager (Legal Services), J. Niven, Solicitor (Legal Services) and C. Stewart, D. McCaw and S. Wilson, Committee Services Officers (Democratic Services) (Chief Executive's Service).

Chair

Councillor Foster in the Chair.

Apologies

Amanda Kerr

1. Declarations of Interest

In respect of Agenda Items 5 (22/00712/MSCM) and 6 (23/00131/PP): 'Site at Former Coal Terminal, Hunterston, West Kilbride', Councillor Murdoch advised that he was a member of Hunterston Park Liaison Committee. However, having applied the objective test, he assessed that it was not an interest in terms of the Councillors' Code of Conduct which would prevent him from taking part in the decision. Accordingly, Councillor Murdoch did not require to leave the meeting for these items of business.

2. Minutes

The Minutes of the Meeting held on 22 March 2023 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. 23/00114/PP: Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae

Comsol Energy have applied for planning permission for installation of a photovoltaic solar farm, with associated battery energy storage systems and associated infrastructure at the site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae. 116 representations, of which 108 were objections, 1 neutral representation and 7 comments in support, were received and detailed in the report.

The Chair advised that he had accepted a request from the Elected Members of Ward 1 (North Coast and Cumbraes), who were not a Member of the Planning Committee, to address the Committee in terms of their objections to the application, whereupon it had mutually been agreed between them that Councillor Tom Marshall should speak on their behalf.

In terms of the second deputation, Dr Gregor Harvie and Mr Alex Harvie, representing Cumbrae Community Council, were in attendance to speak to the terms of their objection to the application.

The agent for the applicant, Colin Lavety, Stantec, had been invited to respond to the objections raised. Craig Little and Lynsey Breen, Comsol Energy, were in attendance as representatives of the applicant.

The Senior Manager (Legal Services) outlined the terms of the Procedure for those addressing the Planning Committee and all parties confirmed their understanding and acceptance thereof.

Councillor Marshall addressed the Committee in relation to the objections of the Local Members of Ward 1 (North Coast and Cumbraes). In this respect, Councillor Marshall advised that this was the first time he could recall that there was a unanimous view on any proposal by all the local Members who were not Members of the Planning Committee. Councillor Marshall spoke about the importance of tourism and the likely effect on the visual landscape if the proposal was to go ahead. Councillor Marshall advised that Millport and Cumbrae were areas with a declining population and, as such, needed as much support as possible.

Councillor Marshall asserted that the location was inappropriate, being in the Great Cumbrae Special Landscape Area, as defined in the Local Development Plan; that the development would adversely impact on the area; and that it would not be possible to put in place sufficient mitigation measures such as planting and screening. Secondly, the location was inappropriate being situated in part of the Barbay local nature Conservation site and would adversely impact that area. Councillor Marshall cited further considerations, namely that given the need for an Environmental Impact Assessment (EIA) was essentially subjective, the decision not to require an EIA was misjudged; the visual impact would have a detrimental effect on tourism which in the case of Cumbrae attracted 750,000 tourists a year; the access route for HGV construction vehicles was the inner circle road, which in his view was unsuitable for such heavy traffic; and, unlike other major capital projects on the island, there was no plan to mitigate against the impact caused by the large number of vehicles.

Dr Harvie addressed the Committee in support of the objections. Dr Harvie highlighted that in line with the overwhelming opposition of the local community, Cumbrae Community Council objected to the proposed solar farm on the Isle of Cumbrae as it offered no benefits whatsoever to the community, only negative impacts on a local beauty spot and an important habitat and even the power generated would be taken off the island and connected to the national grid. Dr Harvie clarified that the community was not opposed to renewable energy generation on the island, or even solar power on the island, but believed any such proposals should involve an assessment of need and proper consideration of the possible options and locations. He asserted that this poorly thought out and ill-conceived proposal, which has been hanging over the community of this small island for 7 years, had undertaken no such assessment. Dr Harvie also referred specifically to the LDP - Policy 16 and the need to demonstrate locational need, which he contends the applicants have not done; and Policy 15 where the planning authority should only support development on special landscape areas where there is no unacceptable impact. He also made reference to specific environmental factors, such as the sightings of 20 species of endangered birds in the area, 2 of which are on the priority species list.

Dr Harvie went on to provide information on the history of the application and the objections it had attracted. In 2023, this, the third application was submitted, but this time with a 40% increase in power generation from 5 to 7MW, and with an additional 12MW of battery storage. This takes the development to 19MW, just 1MW below the level that would make this a major application, requiring a statutory public consultation process. He pointed out that more than 300 comments had been submitted to North Ayrshire Council in respect of the current application, just 5 of which were in favour.

Dr Harvie referred to the scale of the proposed development, which included 12,000 panels up to 4m tall, 12 buildings up to 5.3m high, a 1.5km long, 2m high fence with 31 CCTV masts and a communications tower. At an enormous 15.3 hectares, equivalent to 22 football pitches, this would take up 1.3% of the total area of the small island of Cumbrae. He suggested that this would be comparable to allowing the construction of a 565 hectare solar farm at the top of Goat Fell on Arran. Dr Harvie also highlighted concerns relating to the Landscape and Visual Impact Assessment and lack of community engagement or community benefit regarding the proposal.

Mr Lavety then addressed the Committee on behalf of the applicant, in response to the objectors. He provided contextual information on the application and, in particular, advised that Planning permission for a solar farm was previously approved on this site in 2016. Previous approval was 5MW output – now proposed to increase to 19MW. Mr Lavety asserted that the current application was – in land use planning terms - almost identical to the previous approval and that the only major changes were the increase in generating/storage capacity (as a result of advancements in renewables technology).

Mr Lavety advised that there was an increasing need for reliance on alternative renewable sources of power generation – such as solar and battery storage. He referred to National Planning Framework 4 which encouraged low and zero carbon design and expansion of renewable energy generation. Policy 11 stated that development proposals for all forms of renewable, low-carbon and zero-emissions technologies would be supported, including energy storage and solar arrays. He also referred to the North Ayrshire Local Development Plan which contained strong support for renewable energy projects via Strategic Policy 1 and Policy 29 and suggested that both the previous approval and policy support confirmed that the principle of developing this site was established.

Mr Lavety referred to the proposed site layout and the approved 2016 site layout in his presentation and also made reference to their approach, the nature of the application submitted, including commentary on environmental impacts. Mr Lavety asserted that beyond doubt the current proposal complied fully with planning policy and national energy policy, as it did in 2016.

Mr Lavety noted that, despite there being no statutory need for community consultation, the applicant had held a public event to provide information to the local community and, as agent for the applicant, he had worked positively with Council Officers to address any concerns raised by members of the local community as well as consultees throughout the determination period. He further noted that there were no objections from key statutory consultees and that the applicant had responded to those comments received from the Community Council and Scottish Wildlife Trust.

Mr Lavety asserted that there were no material considerations of sufficient weight to suggest that planning permission should be refused. It was his contention that the proposal would make a positive contribution towards the Scottish Government's Renewable Energy Targets, which would in turn support the move to a low carbon economy, both in providing energy to the national grid, and energy storage. Mr Lavety concluded his presentation by urging Members to reach a positive decision on this application, per the planning officer's recommendation, particularly as it would remove the need for any subsequent appeal process, at no cost to the applicant or the Council.

The objectors were then afforded an opportunity to make brief final comments. Dr Harvie reiterated that the proposal had been hanging over the community of Cumbrae for over seven years and in that time, there had been 800 comments made on the scheme. As far as he was aware, Comsol had not taken on board a single one of them. Referring to the points raised concerning designations, Dr Harvie suggested that, while they may only be local designations, local designations still counted.

Members then asked questions of the objectors and applicant's representatives and received further information on the following:

- whether some of the proposals in the application were against the principles contained in the Local Development Plan, particularly in relation to the Great Cumbrae Special Landscape Area;
- the strength and weight of community concerns, which also reflected in the views given by local residents to the local Ward Members;

- Millport's position-as a conservation area, in which residents did not have permitted development rights for the installation of solar panels;
- the site selection process;
- visual impact on the land, from different view points and the overall scale and size of the proposed development;
- impact on wildland habitats;
- the applicant's failure to show the landscape visual impact assessment in their presentation; and
- the anticipated affect on tourism on Cumbrae, in terms of potential impact on views, traffic during construction and concerns relating to use of CCTV in terms of privacy.

The Senior Development Management Officer then outlined the terms of the planning report.

Members had the opportunity to ask further questions and received clarification on the following: -

- the rationale for selecting particular locations in terms of the visual impact assessments; and
- the likely impact on the local area of the proposed traffic changes including the installation of additional passing places.

Councillor Billings, seconded by Councillor Murdoch, moved that the application be refused on the grounds that the development was contrary to the Local Development Plan, in particular in that there would be adverse impacts on habitats, visual impact and tourism, and that the applicants submitted insufficient evidence to justify the level of detriment. In addition, there was insufficient evidence that the extent of environmental impact had been properly considered. There being no amendment, the motion was declared carried.

4. Notice under Sections 207 and 208 of the Town and Country Planning (Scotland) Act 1997: Site to North of Kirn Point, Lochranza, Isle of Arran

Submitted report by the Executive Director (Place) seeking approval to promote a Path Diversion Order under sections 207 and 208 of the Town and Country Planning (Scotland) Act 1997 to divert the Right of Way SCU123/1.

The Committee agreed to grant authority to proceed with promoting a Path Diversion Order for Right of Way SCU123/1 through a site to the North of Kirn Point, Lochranza, Isle of Arran.

In terms of Standing Order 5.7, Councillor Foster, Chair, agreed that the meeting be adjourned at 3.30 p.m. for a short comfort break. The meeting reconvened at 3.40 p.m. with the same Members and officers present and in attendance.

Prior to continuing with the remaining business, the Committee Services Officer was asked to confirm the decision in relation to the previous application '23/00114/PP: Site to the North East of Wee Minnemoer, Millport, Isle of Cumbrae', as a technical issue had resulted in a failure in the livestream of the proceedings.

5. 22/00712/MSCM: Site at Former Coal Terminal, Hunterston, West Kilbride

XLCC have applied for planning permission for details pertaining to pre-commencement conditions relating to erection of a high voltage cable manufacturing facility, at the former coal terminal, Hunterston, West Kilbride. Four objections were received in relation to the application.

The Chair advised that he had accepted a request from Fairlie Community Council to address the Committee in terms of their objections to the application. The Chair had also accepted a request from a John Riddell who had a representation he wished to make in terms of the application.

Mr Riddell was heard first in respect of his representation, and was then followed by Fairlie Community Council, who were represented by Rita Holmes (Chair) and who was joined (virtually) by Melvin Grosvenor who had compiled their noise report and by Les Huson (noise specialist).

XLCC, as the applicant, had been invited to respond to the objections raised. Alan Mathers and David Kelly, representing XLCC, and Jim Bailey and Lise Tjellesen (RPS Group) were in attendance.

Mr Riddell addressed the Committee and asked if the Committee could accept a change to Proposed Condition 6 in the report, the addition of which was annotated in **bold** below:

“The rated noise level, as defined in BS4142:2014+A1: 2019, from the operation of the development must not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application. **For the avoidance of doubt a daytime background noise level of 34 dB(A) and a night time background noise level of 26 dB(A) shall apply to all residential receptors situated within the Fairlie settlement boundary**”.

Ms Holmes then addressed the Committee in support of the Community Council's objections and circulated a document in support of the oral submission. In this regard, Ms Holmes expressed the view that the Fairlie and Cumbrae communities would bear the brunt of any negative impacts from the facility or the jetty. In terms of their Commissioned Comprehensive Noise Report, Ms Holmes advised that it indicated that there was the very real potential for the local community to be exposed to intolerable levels of noise and vibration, not only from the Cable Manufacturing Facility, utilising huge machinery and hazardous materials, but from the Cable Vessels coming into Hunterston jetty. She also referred to the impacts caused by the development in terms of other matters including impinging on residential amenity and visual amenity.

Ms Holmes advised that the community council's second concern related to the location plan submitted by XLCC regarding the cable delivery infrastructure out to and onto the jetty and the absence of any illustrative photo montages. She considered that the plan was unclear as to which jetty it related to and this had already been flagged up in a letter from the community council to the Chief Executive of XLCC. Ms Holmes asserted that the plan appeared to have been submitted in haste and lacked sufficient detail to determine the impact on visual amenity.

Lastly, Ms Holmes suggested that the 'cut and paste' quotes from the Local Development Plan merely served to highlight the inappropriateness and incongruity of such a huge industrial development so close to the village of Fairlie.

Mr Grosvenor was heard in relation to the Grosvenor Consultancy report and Mr Huson in relation to the technical aspects of the noise complaint issues contained within the report and to the request that a noise monitoring scheme should be in place prior to approval being given to the application.

Mr Bailey, RPS Group, spoke in support of the application. He acknowledged there would be some temporary noise during construction, but advised that the applicant would do their utmost to minimise noise both during the construction phase and during operation. In terms of the noise aspects, Mr Bailey advised that Ms Tjellesen, was present to give information and answer questions relating to the noise aspects in relation to the application. Mr Bailey also referred to additional consultation meetings that had been held in relation to the proposal. Mr Bailey also referred to the painting of the tower building, to blend into the surrounding area.

Mr Alan Mathers, XLCC, provided information on the technical aspects of the application and the background to the proposal. Mr Mathers also made reference to a similar factory in Sweden and noise aspects including proximity to residential buildings. Mr Mathers spoke about the employment aspects of the proposed development and the apprenticeship opportunities that the development would bring.

Members then asked questions of the objectors and applicant's representatives, including hearing from Ms Tjellesen (RPS Group), in relation to acoustics, and received further information on the following:-

- the height and colour of the proposed tower;
- the lack of a financial bond for the removal of the tower in the event of redundancy;
- the request for a noise monitoring scheme to be in place prior to the application being approved and the rationale for this;
- potential noise that could be generated in relation to the proposal and measurements at specific locations including a proxy measurement where access at that particular location could not be given;
- background noise levels and infrasound low frequency noise and the methodology of the computer modelling;
- whether the noise report commissioned by Fairlie Community Council had been given serious consideration and how the applicant would deal with their concerns;
- control of noise of piling operations during construction;
- monitoring and control of contaminants and dust, including mitigation measures;
- previous background and operating noise levels at the location, and whether this information was readily available including compliance monitoring; and
- electrical connections to Hunterston Park Jetty and the responsibility for this.

The Senior Development Management Officer then outlined the terms of the planning report.

Members had the opportunity to ask further questions and received clarification on the following:-

- considerable concern about potential issues around both the construction and operating phase and why was there no detailed noise submission submitted;
- the separate noise reports submitted by the applicant and the noise report submitted by Fairlie Community Council and whether appropriate consideration had been given to the latter;
- enforcement of conditions contained in the application and the resources/capacity available to allow for this;
- whether a noise monitoring programme could be addressed by the addition of a further condition;
- potential damage to the roads, including traffic levels and routes and the imposition of a construction management plan and code of practice being put in place by the Council as Roads Authority;
- updated information provided by the applicant and the reasons why this was allowed in terms of planning application processes; and
- noise levels at Hunterston Park Jetty and enforcement powers with regard to noise generated by a ship docked at the Jetty.

Councillor Foster, seconded by Councillor Inglis, moved that the application be granted, subject to the conditions outlined in the report, with Condition 6 amended to include the additional wording proposed by Mr Riddell in his presentation.

Councillor Billings proposed a strengthened additional condition for a noise monitoring scheme to be put in place for the first 12 months of operation of the site, to the satisfaction of North Ayrshire Council and a further additional condition requiring products to be transported to and from the factory in an environmentally sustainable way, including roads that should not be used, and this should be to the satisfaction of North Ayrshire Council and delegated to officers. Both the mover, Councillor Foster, and seconder of the motion, Councillor Inglis, indicated their consent and agreement to the additional conditions proposed by Councillor Billings.

Accordingly, the Committee agreed to grant the application, subject to the following conditions:

1. The development shall be undertaken only in accordance with the approved Dust Management Plan.
2. The development shall be carried out only in accordance with the approved Construction Management Plan and Code of Practice. For the avoidance of doubt construction traffic shall use the rail and port connections as a first principle and the use of the A78 through Fairlie, the B780/B781, the C26 and all local non-classified roads shall be prohibited to construction vehicles.
3. The development shall be carried out only with oversight of the appointed Ecological Clerk of Works (ECoW) with the responsibilities and powers as approved.
4. The development shall be carried out only in accordance with the approved drainage details.

5. That the landscaping approved shall be carried out in the first planting season following the operation of the factory or erection of the buildings whichever is soonest. Any landscaping which is removed, dies, becomes diseased or otherwise fails shall be replaced within 5 years of planting.
6. The rated noise level, as defined in `BS4142:2014+A1:2019, from the operation of the development must not exceed the background noise level at the curtilage of any existing or consented noise sensitive property at the time of application. For the avoidance of doubt a daytime background noise level of 34 dB(A) and a night time background noise level of 26 dB(A) shall apply to all residential receptors situated within the Fairlie settlement boundary.
7. The operation of the development shall be carried out only in accordance with the approved sustainable travel plan.
8. Prior to the operation of the development a noise monitoring scheme for the first 12 months of operation of the facility shall be submitted to the Council, as Planning Authority, for written approval. Thereafter any scheme as may be approved shall be carried out in accordance with the details of the scheme.

In terms of Standing Order 5.7, Councillor Foster, Chair, agreed that the meeting be adjourned at 5.35 p.m. for a short comfort break. The meeting reconvened at 5.45 p.m. with the same Members and officers present and in attendance, with the exception of Councillor Montgomerie.

At the invitation of the Chair, the Senior Manager (Legal Services) advised Committee that there had been technical issues affecting the livestream of the meeting for those viewing the proceedings online, which had resulted in dropouts and gaps in the broadcast, and efforts would be made to try and reinstate the full recording of the meeting, following the meeting, if at all possible.

6. 23/00131/PP: Site at Former Coal Terminal, Hunterston, West Kilbride

XLCC have applied for Variation of condition 11 of planning permission N/22/00133/PPPM relating to the construction of a high voltage sub-sea cable manufacturing facility, at the former coal terminal, Hunterston, West Kilbride. Seven objections were received in relation to the application.

The Chair advised that he had accepted a request from Fairlie Community Council to address the Committee in terms of their objection to the application. Fairlie Community Council were represented by Rita Holmes (Chair).

XLCC, as the applicant, had been invited to respond to the objections raised. Alan Mathers and David Kelly, representing XLCC, and Jim Bailey and Lise Tjellesen (RPS Group) were in attendance.

Ms Holmes addressed the Committee in support of the Community Council's objections. She referred to the lack of a financial bond being in place in relation to the tower prior to commencement of any works, to ensure its removal in the event of it becoming redundant. Ms Holmes asserted that the original condition 11 should still stand and should not be varied in the circumstances proposed in the application.

Mr Alan Mathers, XLCC, spoke in support of the application and advised that as regards the concern regarding removal of the tower if it became redundant or was not finished, the applicant was willing to put in place a bond meaning that the tower would be removed once construction started and the construction was above ground level, which would take approximately 8 months from the commencement of construction.

The Senior Development Management Officer then outlined the terms of the planning report and advised that there was a drafting error in respect of Paragraph 5 on page 70 of the agenda papers and this paragraph should not be taken as part of the report. Following the decision, in relation to what was agreed in condition 6 of the previous application, '22/00712/MSCM: Site at Former Coal Terminal, Hunterston, West Kilbride', Condition 17 of this application would be adjusted to be consistent with the previously amended condition.

Councillor Inglis, seconded by Councillor Ferguson, moved that the application to vary condition 11 be granted as set out in the report. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed (a) to grant the application to vary condition 11 to read as follows:

11. Prior to commencement of the works above ground level of development of the tower, details of a financial bond to be secured with the landowner for the removal of the tower in the event of redundancy shall be submitted to North Ayrshire Council, as Planning Authority, for written approval. Any such bond shall be retained through the life of the development with confirmation to be provided to North Ayrshire Council, as Planning Authority, on a yearly basis following completion of the tower.

7. 23/00190/PP: Site to Trearne Quarry, Gateside, Beith

Submitted report by the Head of Service (Housing & Public Protection) regarding Amendment of condition 2 of planning permission 15/00573/DCMS for the continuation of quarrying and the importation of soil forming materials to create a soils growing medium for the purpose of site restoration.

Councillor Billings, seconded by Councillor Foster, moved that the application be granted, subject to conditions. There being no amendment, the motion was declared carried.

The Committee agreed to grant the application, subject to the following conditions:

1. That all quarrying operations at the site shall be discontinued within 3 years from the date of this decision and the entire site shall be restored within a further 2 years in accordance with the approved restoration scheme (as required under the periodic review of minerals consent 15/00573/DCMS) to the satisfaction of the Council, as Planning Authority. For the avoidance of doubt, all other conditions attached to consent ref. 15/00573/DCMS would continue to apply.

2. That no further vegetation or soil stripping shall take place on the site until the developer has appointed an ecological clerk of works to undertake pre-commencement habitat surveys together with recommendations on any mitigation measures as may be necessary. A report of the survey and recommendations shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the implementation of the consent shall be undertaken in accordance with such details as may be approved.

The meeting ended at 6.10 p.m.