
NORTH AYRSHIRE COUNCIL

22nd January 2025

Planning Committee

Locality	Irvine
Reference	24/00888/PP
Application Registered	29th November 2024
Decision Due	29th January 2025
Ward	Irvine East

Recommendation Approved subject to Conditions

Location 1 - 5 Crompton Way North Newmoor Irvine North
Ayrshire KA11 4HU**Applicant** Manse Irvine LLP**Proposal** Removal of condition 7 of planning permission
22/00094/PPM and the amendment of access
arrangements for the development

1. Description

A Section 42 application has been submitted in relation to a condition attached to a planning permission for a major housing development at Crompton Way, North Newmoor, Irvine. The site has been allocated for residential development purposes since the adoption of the Council's first Local Development Plan in May 2014 with planning permission granted for 60 houses on 24th August 2022 (ref. 22/00094/PPM).

The site has been marketed for over 2 years. The owners now seek the deletion of a planning condition which related to low and zero carbon energy systems. Following the prohibition of Direct Emissions Heating (DEH) systems in new domestic buildings which came into law on 1st April 2024, the Scottish Government has advised planning authorities that there is no longer any requirement for planning conditions to address this issue. (Circular 4/1998 advises that planning conditions should not be used or duplicated where there is a more appropriate or direct form of regulatory control under other statutes). In this instance, the regulation of the low or zero carbon heating systems for the

new housing would be governed by the building warrant process rather than under the planning permission.

A further issue that has arisen during the marketing exercise relates to the requirement, within the approved site layout, for the developer to construct a new service access road for Amer Sports to the east of the site. There is already an industrial access road leading from Crompton Way into the Amer Sports site. It is reported by the applicant's agent that the cost of constructing a new industrial access road (when there is already one in place) has deterred prospective purchasers who have otherwise expressed positive interest in developing the approved 60 houses.

As such, it is proposed in this application to modify the layout to retain the existing service access for Amer Sports along the northern boundary of the site as an alternative to forming a new service access. A new access into the housing is proposed from Crompton Way as an alternative to the reconstruction of the existing service access leading to Amer Sports, and for some changes to the layout itself. The housing mix and total number of houses would remain at 60. A similar mix of terraced, semi-detached and detached housing with gardens, parking, open space and SuDs detention basin would be developed.

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." The substitution of a layout for a development of the same character and description is a competent action with a Section 42 application.

2. Consultations and Representations

Neighbour notification was undertaken in accordance with statutory requirements, and the application was advertised in local newspaper. Two letters of objections were received, with the points raised summarised below:

1. This is a large development in a small already crowded area with no amenities or facilities. The access paths across from this potential build which provide access into Irvine are unlit and narrow and dangerous for the current conditions never mind another estate. That end of Crompton Way is regularly blocked with parked lorries reducing visibility access further which will only become more hazardous with an increase in vehicles, as someone with kids in the area more developments are ruining their chances of being able to have freedom outside of their home.

Response: As noted above, planning permission was granted for the development of 60 houses on the land in 2022 and remains extant. The current application seeks to remove a condition of the 2022 permission and to modify the access arrangements. Whilst noting the above points, it is not within the scope of the current application to address the matters raised. The footpaths being referred to (on the west side of Crompton Way) are not within the application site and are understood to be adopted public footpaths with lighting. If additional maintenance is required (such as cutting back vegetation) this can be referred to the appropriate Council service for investigation and remedial action. When land was first released for housing at North Newmoor in 2014 under LDP1, it was intended to be a mixed residential and industrial area, retaining existing employment whilst allowing for

new housing on the vacant or derelict land. This has been achieved. Any parts of a public road that are blocked by vehicles can be reported to the Police, if/when it occurs, for investigation/action under their powers.

2. Moving the access road for HGV deliveries to the nearby factory will cause HGV's to be travelling through a residential area. This is dangerous for residents and will cause reduction in air quality, increase in noise etc. The access to the factory should be kept away from the residential development as in the previous planning request.

Response: As noted above, the service road already exists and is in use. Its retention would help to enable the consented housing development to proceed, otherwise the vacant land will remain disused and harm the amenity of North Newmoor. It is not considered that the safety of the existing residents would be adversely affected given that the service road already exists and has been taken account of in the design/layout of the Persimmon housing estate to the north. There is a 2m high palisade fence alongside the road as well as 2.5m high timber fencing on the boundaries of the Persimmon housing which directly adjoin the road.

Consultation

NAC Active Travel and Transport - no comments.

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 deletion of condition 7 would accord with the relevant LDP policies for the site and in respect of the suitability of the amended access arrangements.

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

Condition 7 of the 2022 planning permission states the following:

That prior to the commencement of the development hereby approved, the developer shall provide full details of the low and zero carbon generating technologies to be used in the development for the written approval of North Ayrshire Council as Planning Authority. For the avoidance of doubt, at least 10% of the current carbon emission reduction targets set by Scottish Building Standards shall be met through the use of low or zero carbon generating technologies. Thereafter, the development shall progress in accordance with such details as may be approved.

Reason: In recognition of the climate emergency.

As noted above, the use of planning conditions must be in accordance with the tests set out in Circular 4/1998. In light of the changes to the building standards which came into law on 1st April 2024, the above condition is no longer necessary, nor relevant to planning. In effect, the amended building standards prohibit the use of gas boilers (or other forms of direct emissions heating system) as the primary source of heating and domestic hot water for new domestic buildings. As there is no building warrant in place, the developer would be required to comply with the new building standards, the aim of which is to ensure that all new houses built in Scotland have climate friendly heating systems which do not produce any greenhouse gas emissions at the point of use. The new building standards go considerably beyond the carbon reduction measures achievable under the above planning condition. The new standards are regulated by the Council's Building Standards service. Given the above factors, the proposed deletion of condition 7 is therefore acceptable.

With regards to the proposed changes to the access arrangements for the development, including the retention of the existing industrial access serving the yard at Amer Sports, it is considered that the only significant difference would be that the new housing to the north (being developed by Persimmon Homes and nearing completion) would be separated from the application site by a service road. It is not considered that the service road would be intrusive to either housing development, given that it already exists and can be appropriately fenced off from the housing within each development (as is already the case with the Persimmon development). Within the site itself, there would be no material difference in the layout nor the housing itself. The proposed new access onto Crompton Way would serve only the new housing and would be designed to the appropriate residential standard.

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. Development viability remains a key issue given the significant impact of inflation on construction projects in recent years. The proposal to modify the layout in order to reduce construction costs is therefore acceptable, particularly given that the existing access serving Amer Sports meets the required standards for an industrial access road. As previously, road construction consent (RCC) would be required for the new development. An application for RCC will require to be submitted once a developer is secured and considered by the relevant service of the Council in due course. This process will enable all technical and construction standards for the road design and street lighting to be considered at the appropriate time.

With regard to National Planning Framework 4, 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 would be brought into alignment with the updated building standards with a layout that is both viable and deliverable.

4. Full Recommendation

Approved subject to Conditions

Condition

1. That prior to the commencement of the development hereby approved, the developer shall provide full details of the proposed finishing materials for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the development shall progress in accordance with such details as may be approved.

Reason

In order to ensure that the finishing materials are of high quality in the interest of the visual amenity of the area.

Condition

2. That prior to the commencement of the development hereby approved, the developer shall provide full details of the proposed boundary treatments for the written approval of North Ayrshire Council as Planning Authority. For the avoidance of doubt, all houses with vehicular parking to the rear shall be provided with a direct means of access from their allocated parking space to their rear door. Thereafter, the development shall progress in accordance with such details as may be approved.

Reason

In order to ensure that the design and appearance of the boundary treatments is acceptable in the interest of the visual amenity, safety and security.

Condition

3. That no development shall take place until there has been submitted to and approved by North Ayrshire Council as Planning Authority a scheme of landscaping, which shall include details of species, planting densities, soil treatment and aftercare. The scheme shall include indications of all existing trees on the land to be retained together with measures for their protection in the course of the development.

Reason

In order to ensure that the site is appropriately landscaped in the interest of amenity.

Condition

4. That all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of the development die, are removed, become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless North Ayrshire Council as Planning Authority gives written consent to any variation.

Reason

In order to ensure that the landscaping scheme is undertaken in the interest of amenity.

Condition

5. That prior to the commencement of the development hereby approved, full details of the surface water drainage system, including the discharge rate, basin capacity, other

temporary storage capacity, water quality treatment measures and post development flood flow paths shall be submitted for the agreement of North Ayrshire Council as Planning Authority. Confirmation shall be submitted in writing to North Ayrshire Council as Planning Authority and certified by a suitably qualified person that a surface water drainage system to manage and treat runoff at the site has been designed in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C753, published November 2015). Thereafter, the details as may be approved shall be implemented prior to the completion of the development to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

To secure a sustainable drainage system for the management of surface water.

Condition

6. That prior to the commencement of the development hereby approved, the developer shall provide full details of the proposed acoustic barrier to be erected between the development and the Amer Sports warehouse for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the barrier shall be erected in accordance with such details as may be approved prior to the first occupation of the development and permanently retained unless otherwise agreed in writing by North Ayrshire Council as Planning Authority.

Reason

In order to ensure that the dwellinghouses hereby approved are not affected by noise from the neighbouring warehouse in the interest of amenity.

Condition

7. The internal noise level from road traffic during daytime hours (0700-2300 hours) in any habitable room within any residential property to which this consent relates must not exceed LAeq 16-hour 35dB. In addition, the internal noise level from road traffic during night hours (2300-0700 hours) in any habitable room within any residential property to which this consent relates must not exceed LAeq 8-hour 30dB. If these levels cannot be achieved with an open window strategy, then alternative means of ventilation will require to be provided.

Reason

In order to ensure that the dwellinghouses hereby approved are not affected by road noise in the interest of amenity.

Condition

8. That prior to the commencement of the development, the applicants shall finalise the ground investigation report submitted in support of the application by JPB Reference Number VG190-18/SAG/MAK Draft Issue and dated December 2021 and submit a Remediation Strategy. All documentation shall be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of 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.

Reason

In order to ensure that the site is remediated for residential use in the interest of health and safety.

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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