
NORTH AYRSHIRE COUNCIL

28th April 2021

Planning Committee

Locality	Garnock Valley
Reference	21/00214/PP
Application Registered	9th March 2021
Decision Due	9th May 2021
Ward	Dalry And West Kilbride

Recommendation	Approved subject to Conditions
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Location	Blairland Farm Dalry Ayrshire KA24 4EJ
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Applicant	The Blair Trust Co Ltd Per Galbraith
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Proposal	Application under Section 42 of Town and Country Planning (Scotland) Act 1997 to vary conditions 1, 2, 3, 4 and 5 planning permission of planning permission in principle ref. 15/00103/PPPM as amended by planning permission ref. 18/00328/PPM
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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 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. At that time, developer interest had been expressed from a national house builder.

Since May 2018, the following key events have occurred in relation to the Blairland Farm site:

1. The A737 Dalry bypass was completed in May 2019, which has brought about a substantial reduction in traffic levels through Dalry as well as creating the 'defensible edge' to the settlement envisaged at the time the Blairland Farm site was first released through the 2014 LDP. The defensible edge takes the form of earthworks and landscaping, which acts to screen the bypass from the Blairland Farm site and the existing built-up area of Dalry.

2. The adoption of LDP 2 in November 2019, which continued to allocate Blairland Farm as a housing opportunity site within the Garnock Valley. The site is therefore part of the established housing land supply, with an indicative capacity of 200 units. The LDP is the statutory development plan against which all applications for planning permission in North Ayrshire must be determined.

3. Persimmon Homes had been preparing to submit a planning application for a first phase of development around the time of the Covid-19 lockdown in March 2020, but subsequently withdrew interest in the site in June 2020, citing the presence of deep peat deposits below parts the ground at the northeast 'corridor' (i.e.. between the rear of Baidland Avenue and the Dalry Bypass) as a constraint which emerged following a detailed site investigation undertaken in January/February 2020. Notwithstanding the decision of Persimmon Homes, the owners are continuing to market the site with the benefit of the planning permission in principle and have been in active discussion with several other potential developers over the past 9 months.

Due to the Covid-19 Emergency legislation, all planning permissions (including permissions in principle) which would have been due to expire between 24th February 2021 and 30th September 2021 have been automatically extended for a further year until 31st March 2022. However, for marketing purposes, the owners of Blairland Farm are seeking a further three year extension to the planning permission in principle to avoid any doubt or uncertainty as to the developmental status of the site in land use planning terms.

In the current application, it is proposed to retain the previous conditions with minor updates to the text, where necessary, whilst allowing for a further 3 years to enable MSC application(s) to be submitted to the Council. 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 included an advertisement in a local newspaper and notification of 86 neighbouring residential properties. Four letters of objection have been received, the points of which are summarised below:

1. Loss of greenfield land, loss of views across the countryside from existing housing and the farm track through the site (which is popular local walk), overdevelopment of the land, the number of houses proposed which seems disproportionate for the area, loss of peace and quiet, removal of green spaces and trees, adverse impacts on wildlife and the Blair Estate designed landscape, privacy and overlooking impacts from new housing on existing housing, and the process favours the applicant rather than the local community.

Response: The current application seeks permission to provide a further three-year period during which detailed applications for the development of the site could be submitted. As noted above, the site has been allocated for residential development in the adopted North Ayrshire Local Development Plan since May 2014. In addition, planning permission has previously been granted, on two occasions, for the principle of housing development on the land.

The indicative capacity of the site is 200 houses, which reflects the various constraints on the site including former coal bings, topography and areas of potentially unstable ground. The current application has been submitted under Section 42 of the planning legislation, and therefore does not provide a detailed layout, which would follow in any future matters specified in conditions application(s) to the Council. Whilst the loss of a view is not a material planning consideration, the other matters raised would require consideration as part of any future detailed applications.

It is not considered that the Blair Estate Designed Landscape would be affected by any housing development at Blairland Farm due to the existing earthworks alongside the Dalry bypass, which visually encloses and separates the site from the woodland grounds of the Blair Estate.

Finally, if detailed proposals are submitted, there would be a further opportunity for public comments.

2. Concern about general disruption arising from construction activities and new housing, traffic generation and damage to roads/pavements, and privacy and overlooking impacts from new housing on existing housing.

Response: Conditions would be attached to any grant of consent (as in the previous applications), to address a range of environmental, amenity, site layout, ecological and other factors, including the management of construction impacts such as traffic routing.

3. A belief that planning permission had previously been refused on two occasions, and a decrease in property values.

Response: There is no history of planning permission ever having been refused for the development of Blairland Farm. The impact of new development on property values is not a material planning consideration.

Communities and Education – advise that having reviewed the roll projection for Dalry Primary School, whilst the roll is projected to increase as a direct result of this proposed development, the maximum number of units per annum could be raised to 25.

Response: The previous consent restricted the maximum number of units per annum to 20. A condition can address this amendment whilst still maintaining the need for periodic review.

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 and 2018 planning permissions, the proposed conditions would comply with all the above tests. The planning permission in principle remains extant. Other than minor wording amendments where necessary (e.g. the omission of the word 'proposed' in relation to the Dalry bypass, since this is now complete), there are no substantive changes proposed to the conditions previously attached to the 2018 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.

The developer previously attached to the site, Persimmon Homes, had proposed in 2018 that the remaining investigations and studies (relating to historic coal mining, archaeology, flooding and sustainable drainage) could be submitted concurrently with the first application for the approval of matters specified in conditions (MSC), and that that the masterplan and development brief would be drawn up and submitted with the first MSC application.

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 streamline the planning process in the lead up to the development. 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 LDP.

It is therefore recommended that planning permission is approved, subject to the conditions set out below. This would enable a further three-year period during which detailed matters specified in conditions application(s) could be submitted for the consideration of the Council.

4. Full Recommendation

Approved subject to Conditions

Reasons for Decision

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.

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 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 meet the requirements of the West of Scotland Archaeology Service.

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 foul 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 meet the requirements of SEPA.

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

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 unless North Ayrshire Council as Planning Authority gives written consent to any variation.

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

James Miller
Chief Planning Officer

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

Appendix 1 – Location Plan

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