

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 14 MARCH 2003

**02/0867/FL: PROPOSED VARIATION OF CONDITION 1 OF PLANNING
CONSENT 00/0685/FL (PERSONAL CONSENT)
GARLAFF LANDFILL SITE, SKARES,
NEAR CUMNOCK.**

APPLICATION BY BARR LIMITED

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Permission is sought for a variation to Condition 1 of planning consent 00/0685/FL, dated 18 September 2002 to remove the personal consent granted to the applicant in respect of the extension development.

1.2 Condition 1 of consent 00/0685/FL states:

The development hereby permitted shall enure for the benefit of the applicant only, and that the approved landfill shall be completed within 20 years of the commencement date of the operations at Garlaff Landfill Extension, or within such other time as may formally be agreed in writing with the Planning Authority.

REASON: To ensure that the development, which is temporary in nature, is commenced and completed within an acceptable timescale. The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

1.3 The applicant has requested that the part of the condition pertaining to the personal consent be removed. In accordance with good and established corporate governance, the applicant wishes the planning permission to run with the land. The applicant understands the concerns relating to the future re-instatement of the Garlaff Landfill extension site, but indicates that the requisite Section 75 Agreement including the obligation to provide a bond against future re-instatement is now in place. As the obligations within Section 75 Agreement are burdened on the title of the land, there is no need for a personal consent in these circumstances.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the condition on the attached sheet.

3. CONCLUSIONS

3.1 As is indicated at Section 5 of the report there are no applicable policies in the Adopted Cumnock and Auchinleck Local Plan and therefore greater weight should be attached to the material considerations.

3.2 As is indicated in Section 6 of the report there are no specific relevant policies in the EALP and therefore greater weight should be attached to other material considerations. Given that appropriate safeguards have been secured through the Section 75 Agreement to ensure that the Garlaff Landfill extension site will be restored with appropriate aftercare, the personal consent is no longer appropriate. Therefore in terms of the good practice advocated in Circular 4/1998, the request by the applicant should be acceded to.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application would not require to be referred to the Development Services Committee as it would not be a significant breach of policy.

Alan Neish
Head of Planning and Building Control

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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APPLICATION BY BARR LIMITED

Report by the Head of Planning and Building Control

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because the proposal is the subject of an objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 4 kilometres southwest of Cumnock, approximately 1 kilometre east of Skares village and lies on the south side of the B7046 Cumnock – Skares road. The site extends to some 89.5 hectares and comprises the existing operational landfill site and its proposed extension at Garlaff, near Skares. Planning consent for the extension to the Garlaff Landfill site was approved on 18 September 2002 Ref. No. 00/0685/FL).

2.2 **Proposed Development:** Permission is sought for a variation to Condition 1 of planning consent 00/0685/FL, dated 18 September 2002 to remove the personal consent granted to the applicant in respect of the extension development.

2.3 Condition 1 of consent 00/0685/FL states:

The development hereby permitted shall enure for the benefit of the applicant only, and that the approved landfill shall be completed within 20 years of the commencement date of the operations at Garlaff Landfill Extension, or within such other time as may formally be agreed in writing with the Planning Authority.

REASON: To ensure that the development, which is temporary in nature, is commenced and completed within an acceptable timescale. The development

is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

2.4 The applicant has requested that the part of the condition pertaining to the personal consent be removed. In accordance with good and established corporate governance, the applicant wishes the planning permission to run with the land. The applicant understands the concerns relating to the future re-instatement of the Garlaff Landfill extension site, but indicates that the requisite Section 75 Agreement including the obligation to provide a bond against future re-instatement is now in place. As the obligations within Section 75 Agreement are burdened on the title of the land, there is no need for a personal consent in these circumstances.

3. CONSULTATIONS

3.1 East Ayrshire Legal Services Section has no objection to the proposed variation since the requisite Section 75 Agreement relative to the planning consent has been concluded.

Noted.

3.2 Ochiltree Community Council objects to the proposed variation as it goes against the findings laid out in the modifications to the East Ayrshire Local Plan reported to the Development Services Committee on 22 October 2002. This report stated that under paragraph 8.10 'that sufficient capacity is available at the existing operational site at Garlaff to meet demand for the local plan period and beyond'. Any expansion would be contrary to the views held by the Reporter.

The Community Council appears to be objecting to the principle of the Garlaff Landfill extension which is not valid in planning terms as this has already been established through the planning consent granted under application 00/0685/FL dated 18 September 2002. The proposed variation relates to the amendment of a planning condition which does not involve any significant variation to the operations granted for this landfill extension site. Paragraph 8.10 of the East Ayrshire Local Plan (Finalised Version with Modifications) 2002 recognises the fact that the existing operational landfill site at Garlaff, as extended by the approved planning consent, will meet the demand for the local plan period and beyond i.e. the 20 year period of the consent.

4. REPRESENTATIONS

4.1 Ochiltree Community Council has objected to the proposed variation as indicated in paragraph 3.2 above.

Noted.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted Cumnock and Auchinleck Local Plan (1992). The adopted local plan was prepared within the context of the then emerging Strathclyde Structure Plan. However, there are no specific policies within the adopted local plan relative to the determination of this proposal, therefore greater weight should be attached to other material considerations.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The other principal material considerations relevant to the determination of this application are the East Ayrshire Local Plan (Finalised Version with Modifications) 2002, (EALP), the objection detailed in Section 3 above, relevant planning history and Circular 4/1998: The Use of Conditions in Planning Permissions.

East Ayrshire Local Plan

6.2 The Adopted Local Plan covering the development site is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the East Ayrshire Local Plan (Finalised Version with Modifications) 2002, (EALP) is a material consideration in the determination of development proposals. Again, however, there are no specific policies within the EALP relevant to the determination of this application.

Noted.

Representations

6.3 The letter of representation is not considered to be valid in terms of the proposed variation and relates to the principle of the development which has already been established.

Consultation Responses

6.4 There are no consultation responses that would justify refusal of the application.

Planning History

6.5 The more relevant planning history of the site relates to the granting of planning consent for the Garlaff Landfill extension site on 18 September 2002 (Ref. No. 00/0685/FL) following the conclusion of a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997.

Planning Circulars

6.6 Circular 4/1998: The Use of Conditions in Planning Permissions states in Paragraph 92 of its Annex that unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person- usually the applicant. A permission personal to a company is generally inappropriate.

The purpose of applying a personal condition in the case of the proposed Garlaff Landfill extension site was due to the requirements relating to the securing of a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 including the obligation to provide a Restoration and Aftercare Bond for the extension site.

The requisite Section 75 Agreement has now been concluded and the obligations therein are now burdened on the title of the land associated with the landfill development. As a consequence, these obligations will transfer to any subsequent owner/operator of the Garlaff Landfill extension site. In this regard, it is therefore considered that the imposition of a personal consent is no longer considered appropriate in this instance, particularly in light of advice given in Circular 4/1998.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As is indicated at Section 5 of the report there are no applicable policies in the Adopted Cumnock and Auchinleck Local Plan and therefore greater weight should be attached to the material considerations.

8.2 As is indicated in Section 6 of the report there are no specific relevant policies in the EALP and therefore greater weight should be attached to other material considerations. Given that appropriate safeguards have been secured through the Section 75 Agreement to ensure that the Garlaff Landfill extension site will be restored with appropriate aftercare, the personal consent is no longer appropriate. Therefore in terms of the good practice advocated in Circular 4/1998, the request by the applicant should be acceded to.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the condition on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application would not require to be referred to the Development Services Committee as it would not be a significant breach of policy.

Alan Neish
Head of Planning and Building Control
03 March 2003
HM/HM/SMB
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans
2. Statutory notices and certificates
3. Consultation responses
4. East Ayrshire Local Plan (Finalised Version with Modifications) 2002
5. Adopted Cumnock and Auchinleck Local Plan 1992
6. Approved Ayrshire Joint Structure Plan 1999
7. SEDD Circular 4/1998 :The Use of Conditions in Planning Permissions
8. Previous planning application 00/0685/FL

Any person wishing to inspect the background papers listed above, should contact Mr. Hugh Melvin on 01563 555481.

Implementation Officer: Dave Morris

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 02/0867/FL

Location	Garlaff Landfill Site, Skares, Near Cumnock
Nature of Proposal:	Proposed variation of condition 1 of planning consent 00/0685/FL (Personal Consent)
Name and Address of Applicant:	Barr Limited Heathfield AYR KA8 9SL
Name and Address of Agent	Barr Technical Services Heathfield AYR KA8 9SL

DPO's Ref: []
PPO's Ref: [Hugh Melvin]

The above **FULL** application should be granted subject to the following conditions:

1. Condition 1 of Planning Consent 00/0685/FL dated 18 September 2002 shall be amended to read as follows:

The approved landfill operations shall be completed within 20 years of the commencement date of the operations at Garlaff Landfill Extension, or within such other time as may be formally agreed in writing with the Planning Authority.

REASON: To ensure that the development, which is temporary in nature, is commenced and completed within an acceptable timescale.

REASON: To remove the personal nature of the consent previously granted, as it is no longer held to be appropriate.

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