EAST AYRSHIRE COUNCIL

PLANNING COMMITTEE: 4 SEPTEMBER 2015

14/0013/s36AMC: DISCHARGE OF CONDITION NO. 42 (FINANCIAL INFORMATION) OF CONSENT 10/0001/S36
AT GALAWHISTLE WIND FARM, GLENBUCK, EAST AYRSHIRE
BY GALAWHISTLE WIND FARM LTD

Report by Head of Planning and Economic Development

Click for Application Details: http://eplanning.east-ayrshire.gov.uk/online/applicationDetails.do?activeTab=summary&keyVal=NGZIZUGF01B00

EXECUTIVE SUMMARY SHEET

PURPOSE OF REPORT

1 The purpose of this report is to present for determination by the Planning Committee an application to discharge the deemed consent per condition 42 of the s.36 consent (10/0001/S36) for a wind farm at Glenbuck. Under the Council’s Scheme of Delegation the application to discharge the condition requires to be determined by Planning Committee as the application relates to the discharge of a planning condition relative to decommissioning, restoration and aftercare of the site.

RECOMMENDATION

2 It is recommended that the application for discharge of Condition 42 be approved for the reason indicated at Appendix 1 of the report.

CONTRARY DECISION NOTE

3 Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, Economy and Skills, the application will require to be referred to Council as it would represent a significant departure from Council policy.

Michael Keane
Head of Planning and Economic Development

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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Report by Head of Planning and Economic Development, Economy and Skills

PURPOSE OF REPORT

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APPLICATION DETAILS

Site Description:

2 The Galawhistle s.36 application site lies approximately 7km east of Muirkirk in East Ayrshire, 4km west of Douglas and 2.5km northwest of Glespin in South Lanarkshire. The area surrounding the site is characterised by Spireslack opencast coal area immediately to the west, the operational Hagshaw Hill Wind Farm (and its extension) to the east, and forestry to the north. The A70 road passes to the south of the site approximately 900m south of the nearest turbine. The total area of the site is approximately 594 hectares and its highest point is 463m above Ordnance Datum. The site is plateau moorland landscape character type. The site lies in both East Ayrshire and South Lanarkshire’s administrative boundaries with the majority of the site in South Lanarkshire.

3 The Council did not formally object to the formal consultation on the s.36 application from the Scottish Ministers at the Southern Local Planning Committee of 30 September 2011, and thereafter, the Scottish Ministers granted s.36 consent and deemed planning permission for a maximum of 22 turbines, of no more than 122m in total height; crane hardstandings; one permanent anemometer mast; 20 km of access track; transformers and electrical cabling; four on-site borrow pits; temporary construction compound and laydown area; and substation and control buildings, all as specified in application 10/0001/S36 and accompanying Environmental Statement on 8 August 2012. The conditions relating to the consent include various matters such as details of the access tracks; peat management; habitat management; the appointment of an ecological Clerk of Works; woodland planting; traffic management /repairs and improvements to the public road; SUDS; private water supply; archaeology; noise; vibration; electromagnetic interference; as well as decommissioning and restoration; aftercare and the provision of a bond for site restoration.
When the s.36 application was approved by the Scottish Ministers, the Council had previously requested via their consultation response that the applicant be required to enter into a legal agreement with the Council, on a number of matters, with regards to the effects of the scheme in East Ayrshire. Notwithstanding this request, the Scottish Ministers issued the decision without provision for a legal agreement. However the applicant has evidenced a commitment to continue negotiations with the Council to provide such an agreement, and a legal agreement has now been agreed with the Council and registered in the General Register of Scotland as of 18 June 2015. The s.75 therefore includes legal obligations for a financial guarantee, payments to the Renewable Energy Fund (REF) and the appointment of a Planning Monitoring Officer (PMO);—notwithstanding that some of these matters are already planning conditions attached to the consent. The matters not covered by condition are the REF payment(s) and Planning Monitoring officer.

Thereafter, the applicants applied to the Scottish Ministers to vary this consent, that is, to use a 45m blade length (which still remained within the consented turbine blade to tip height limit); amendment of the overall capacity of the site from 55 MW to 66MW; and amend various ancillary works and structures (electrical substations, construction compound; realignment of borrow pits 2 and 3 etc.); and amendment of the access track layouts, which resulted in less tracks overall in the East Ayrshire Council side of the development. This was presented to Planning Committee on 30 January 2015 and the Council did not object to the consultation. The variation was subsequently granted by the Scottish Ministers on 26 May 2015, subject to 43 conditions which effectively comprised the original conditions (some updated), and 2 additional conditions.

The consent therefore has a number of planning conditions that require to be discharged prior to the commencement of works on the site. In this case Condition 42 of the both the substantive and the variation consents (same wording) relate to the Financial Bond required to undertake and deliver the appropriate decommissioning, restoration and aftercare of the development. This condition was attached to the consent to ensure that there were sufficient funds available for the full costs of site decommissioning, restoration and aftercare. Condition 42 states:

At least one month prior to the Commencement of the Development, the Company shall provide to the Planning Authorities details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs on the expiry of this consent. No work shall commence on the Site until both Planning Authorities have confirmed in writing:

1) that the proposed bond or other financial provision is satisfactory and;

2) that the terms for reviewing this bond or financial provision are satisfactory. The Company shall ensure that the approved bond or other financial provision is maintained throughout the duration of this consent and the bond will be subject to a review every 5 years, from the Commencement of the Development, to be conducted by the Company. The outcome of each review shall be provided by the Company to both Planning Authorities and the landowners. Any recommendations in a review for changes to the proposed bond or other financial provision shall be implemented unless both Planning Authorities confirm in writing that it is not necessary to do so.

Reason: To ensure the financial security for the cost of the site reinstatement to the satisfaction of the Planning Authorities.
To complete the cost estimate for decommissioning on behalf of the applicants, AMEC produced a report which outlined the principal stages that would be followed during the proposed decommissioning and restoration of the wind farm:

1. Sit set up and Decommissioning Compound;
2. Dismantling and Removal of Wind Turbines;
3. Removal to 1m Below Ground Level of the Turbine Foundations;
4. Removal of Site Compounds;
5. Landscaping;
6. Environmental Mitigation;
7. Preliminaries and General Items;
8. Project Management.

As a result of their assessment, AMEC advised the applicant that the costs for the decommissioning and restoration (for the full development of 22 turbines across both Council areas) would be £1,022,888. Of the 22 turbines, 2 are located in East Ayrshire. The figures submitted by the applicant however do not include scrap values as the Council does not agree that scrap value should be offset in calculating the bond value as the scrap position in 25 years cannot be realistically anticipated. In addition all new tracks constructed on site are expected to stay in place.

The Planning Service, via their independent consultants Ironside Farrar, also produced figures for the cost of decommissioning and restoration, which amounted to a larger estimate of £105,194 per turbine, comprising:

- Preliminaries / Overheads / Fees: £35,065
- Site Restoration: £18,205
- Dismantling, removal and disposal of 2 turbines: £134,024
- Transportation to point of disposal: £13,000
- Disposal at assumed recycling centre: £8,000
- Aftercare: £2,094
- **Grand Total £210,388** (£105,194 per turbine)

Notwithstanding the above, it was acknowledged that with the decommissioning of projects that have large scale dismantling elements, there can be economies of scale by having large plant and the associated staff in place.

The Planning Service advised the applicants of the discrepancy between the two estimated costings and the applicants agreed to meet Ironside Farrar’s financial quantum with a bond as the financial guarantee mechanism. The financial guarantee obligation is incorporated into the s.75 legal agreement. The restoration bond is therefore agreed at £210,388 for the two turbines. The legal agreement was registered at Registers of Scotland on 18 June 2015.

**CONSULTATIONS AND ISSUES RAISED**

East Ayrshire Council Finance Section

The Finance Section highlighted that we should not accept the inclusion of the scrap value within any bond.

*Noted and accepted.*

East Ayrshire Council Legal Services (6 October 2014)
No outstanding issues. The financial guarantee quantum and mechanism have been assessed and agreed with the Council’s Legal and Financial Services.

**REPRESENTATIONS**

There were no representations received regarding the discharge of this condition, notwithstanding, this process has no representation period as part of its process.

**ASSESSMENT OF DOCUMENTS IN SUPPORT OF DISCHARGE OF CONDITION 42**

As highlighted above, in paragraph 11, the applicants have also come to an agreement with the costs suggested by the Council’s consultants Ironside Farrar for the decommissioning, restoration and aftercare works. Furthermore, the applicants have entered into a s.75 agreement with the Council to legal bind such decommissioning, restoration and aftercare, and to provide payments to the Renewable Energy Fund.

A financial bond is currently being progressed to ensure that this resource is in place should the restoration obligation require to be implemented.

**ASSESSMENT AGAINST ANY MATERIAL CONSIDERATIONS**

The material considerations relevant to the determination of the discharge of condition 42 are Scottish Planning Policy (SPP), the Council's Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014, the consultation responses and any representations received in connection with the application.

**Scottish Planning Policy (SPP)**

Scottish Planning Policy was published in June 2014 and states that the planning authority should apply “conditions relating to the decommissioning of developments, including ancillary infrastructure, and site restoration” and also to “secure provision for restoration to return the land to its former status”, highlighting also “the need for a robust planning obligation to ensure that operators achieve site restoration.” The Planning Service has complied with the requirements of SPP by requiring the operator to provide financial guarantees in order to implement the appropriate decommissioning and restoration of the site. The applicant has provided sufficient information to achieve the decommissioning and restoration requirements of SPP.

**The Council's Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014**

The above mentioned report to Cabinet sets out The Council's approach for the submission, agreement, implementation and monitoring of financial guarantees that are required in respect of the decommissioning, restoration, after care and mitigation of, inter alia, onshore windfarms.

Para 27 of this report states that “the Council’s Finance, Legal and Planning Services will consider, at the earliest opportunity:

- The purpose of any proposed financial guarantee
The associate risk rating of the proposed financial guarantee with reference to the risk assessment contained in the Appendix to the report, and

The sufficiency of any quantum proposed taking into account any assessment provided by the independent environmental consultant

**The Council's Finance, Legal and Planning Services have assessed the proposed financial guarantee and the sufficiency of the quantum proposed, in terms of the overall risks involved and is satisfied that the measures in place are sufficient to mitigate the risks which may be encountered with the decommissioning, restoration and aftercare of the site.**

Para 29 of the Cabinet Report states that “the following matters will be considered by officers when assessing the terms of any financial guarantee proposed:

- The reason why the financial guarantee is required i.e. decommissioning, restoration, aftercare, mitigation or in combination;
- The risk it is required to cover i.e. breach of any planning conditions, associated legal obligations relative to decommissioning, restoration, aftercare or mitigation or insolvency;
- The length of time the financial guarantee is required to cover and its expiry;
- What will constitute a valid call being made on the financial guarantee;
- When can the monies be claimed i.e. before or after money expended by the Council in rectifying any breach, and
- The financial guarantees quantum profile and the triggers for reduction in value and associated timescales."

**All the above issues have been taken account of in the s.75 obligations, and also the planning conditions attached to the consent.**

**Consultation Responses**

The Councils Finance Services has indicated that the Council does not accept the inclusion of the scrap value within any bond, and both the Council’s consultants and the applicants have assessed the decommissioning restoration and aftercare costs on that basis. The financial guarantee quantum and mechanism have also been assessed and agreed with the Council’s Legal and Financial Services.

**Representations**

No representations have been received in connection with the application to discharge condition 42 of the planning consent, notwithstanding there is no period for representation as with general planning applications.

**FINANCIAL AND LEGAL IMPLICATIONS**

The Council is committed to securing appropriate Decommissioning, Restoration and Aftercare of development sites as indicated in the Council’s Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014. In this case both the financial guarantee mechanism and the quantum of the financial guarantee have been agreed between the applicant and the Council.
There are potential financial implications for the Council in coming to a view on this application to discharge the planning condition as, should the Planning Committee be minded to refuse the proposed development, this could lead to an appeal by the applicant. Furthermore, if the Council is considered to have acted unreasonably in refusing to discharge the planning condition, a claim for an award of expenses could be made by the applicant. Notwithstanding, the Planning Committee should note that the ongoing discussions between Planning /Legal Services and the applicants have resulted in legal agreement to provide a financial guarantee for the decommissioning restoration and aftercare of the wind farm, where there was no obligation to have such with the terms of the consent issued by the Scottish Ministers. Furthermore, although it has no impact on the determination of this application, Members should note the applicants continued commitment to make payment to the Renewable Energy Fund, in relation to the 2 turbines located in East Ayrshire, via the s.75 obligations, also where there was no obligation to have such with the terms of the consent issued by the Scottish Ministers.

COMMUNITY PLAN

Managing development proposals to mitigate impacts of development on the local community and wider environment is clearly consistent with community plan objectives and outcomes. In addition, ensuring bond values are adequate and associated legal agreements effective is a critical part of this management process.

CONCLUSIONS

This application is consistent with the requirements of Condition 42, in that the submitted details satisfy this Condition. In summary, condition 42 requires the Company to provide to the Planning Authority details of the bond or other financial provision which it proposes to put in place to cover all site restoration costs the expiry of this consent. As such, the information submitted complies with the requirements of Condition 42 of the s.36 consent.

As indicated in the report, this application is to consider the discharge of condition 42 (financial bond) of the planning consent for the Galawhistle wind farm. The material consideration section of this report indicates that the applicant has provided sufficient information to discharge this planning condition. It is considered that the submission by the applicant can be supported in terms of Scottish Planning Policy, the Council’s Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014 and the consultation responses.

In addition, it should be noted that the Council’s Planning, Legal and Finance Services and the applicant have reached agreement on the quantum and mechanism of the financial bond for the development which therefore complies with the terms of The Council’s Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees.

RECOMMENDATION

It is recommended that the application for discharge of Condition 42 be approved for the reason indicated at Appendix 1 of the report.
CONTRARY DECISION NOTE

31. Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development, Economy and Skills, the application will require to be referred to Council as it would represent a significant departure from Council policy.

Michael Keane
Head of Planning and Economic Development, Economy and Skills

Implementation Officer: David McDowall:- Operations Manager: Building Standards and Development Management

26 August 2015

FV/MK

LIST OF BACKGROUND PAPERS

1. Application Form and Plans
2. Statutory Notices and Certificates
3. Decision letter 10/0001/s36
4. Decision letter 10/0001/s36VAR
5. Consultation Responses
6. Adopted East Ayrshire Local Plan (2010)
7. Scottish Planning Policy
9. AMEC report on decommissioning costs

Anyone wishing to inspect the above papers please contact Marion Fergusson, Senior Planning Officer on 01563 576769
The above application to discharge condition 42 of consent 10/0001/S36 should be approved for the following reasons:

1. The applicant has agreed the financial bond quantum and the components within the bond as required by the The Council’s Cabinet Report on Decommissioning, Restoration, Aftercare and Mitigation Financial Guarantees dated 21 May 2014 or in compliance with Scottish Planning Policy.

   REASON - The applicant’s bond is consistent with the obligations included in the Section 75 Legal Agreement.