



www.midandeantrim.gov.uk/business/planning
Mid and East Antrim Borough Council, Silverwood Business Park,
190 Raceview Road, Ballymena, BT42 4HZ
Tel: 028 2563 3500
E-mail: planning@midandeantrim.gov.uk

Application for certificate of lawfulness for proposed use or development
Planning Act (Northern Ireland) 2011

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Are you an agent acting on behalf of the applicant?

- Yes
 No

Pre-application Advice

Have you received any prior formal advice from the planning authority about this application?

- Yes
 No

Applicant Details

Name/Company

Title

First name

Surname

Company Name

Address

Address line 1

Address line 2

Address line 3

Carrickfergus

Postcode

BT38 7LX

Country

United Kingdom

Contact Details

Telephone number

Mobile number

Email address

Agent Details

Name/Company

Company / Organisation

Gravis Planning

Title

First name

Adam

Surname

Larkin

Address

Address line 1

1 Pavilions Office Park

Address line 2

Kinnegar Drive

Address line 3

Town/City

Holywood

BT19 1PP

Country

United Kingdom

Contact Details

Telephone number

***** REDACTED *****

Mobile number

Email address

***** REDACTED *****

Ref no.

C05445

Interest in the Land

Please state the applicant's interest in the land

Owner

Site Address

Disclaimer: Recommendations can only be based on the answers given to the questions.

If you cannot provide a postcode, then further details must be provided below for 'Description of site location' by providing the most accurate site description you can in order to help locate the site.

Number

Suffix

Property Name

Kilroot Power Station

Address Line 1

Station Road

Address Line 2

Town/city

Carrickfergus

Postcode

BT38 7LX

Description

Easting co-ordinates (x)

Northing co-ordinates (y)

Description of Proposal

Has the proposal been started?

- Yes
 No

Does the proposal consist of, or include, the carrying out of building or other operations?

- Yes
 No

Does the proposal consist of, or include, a change of use of the land or building(s)?

- Yes
 No

Use Classes (existing or last known)

Please select all existing Use Classes which are applicable:

- A1 - Shops
 A2 - Financial, professional and other services
 B1 - Business
 B2 - Light industrial
 B3 - General industrial
 B4 - Storage or distribution
 C1 - Dwelling houses
 C2 - Guest houses
 C3 - Residential institutions
 C4 - Secure residential institutions
 D1 - Community and cultural uses
 D2 - Assembly and leisure
 NOT LISTED

- (a) as an amusement arcade or centre, or a funfair
- (b) as a betting office
- (c) for the purposes of a funeral undertaker
- (d) as a hostel where a significant element of care is provided
- (e) as a hotel
- (f) as a house in multiple occupation
- (g) for the sale of fuel for motor vehicles
- (h) for the sale or display for sale of motor vehicles
- (i) for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises
- (j) as a scrapyard, or a yard for the storage or distribution of minerals or the breaking of motor vehicles
- (k) as a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations including those involving motorised vehicles or firearms
- (l) for a taxi business or business for the hire of motor vehicles
- (m) for or in connection with public worship or religious instruction
- (n) for the carrying out of any prescribed process which requires an authorisation under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997 or for the operation of any installation or mobile plant which requires a permit under regulation 9 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013
- (o) as a waste management facility for the collection, transport, treatment, recovery, recycling, transfer and disposal of waste (as defined in Council Directive 2008/98/EC)
- NOT KNOWN

Grounds for Application

Briefly explain why you consider the most recent use of the land is lawful, or why you consider that any existing buildings, which it is proposed to alter or extend are lawful

Replacement of generation units 1 and 2 approved and constructed under planning approval V/70/73 (600MW combined) located within the main power station building with a single generation unit not exceeding 500MW comprising the following main plant and equipment: gas turbine, air intake, 2 no. generators, boiler, steam turbine, condenser, cooling systems, 2 no. transformers, associated smaller items of auxiliary and plant and equipment, internal reconfiguration of the main stack inlet and ductwork, all being works which do not affect the external appearance of the building. The proposed works include alteration of the floor of the main power station building to replace existing load bearing plinths with new plinths measuring 15m wide by 90m long by 4m deep to accommodate the replacement plant and equipment

Please detail what evidence you are submitting in support of this proposal

Cover letter
 Planning Approval Notice and drawings V/70/73
 Engineer's report
 Engineer's drawings of new plant

Select which option best describes the proposed operation or use

- Permanent
- Temporary

Hours of Opening

Are Hours of Opening relevant to this proposal?

- Yes
- No

Authority Employee/Member

Are you/the applicant/applicant's spouse or partner, a member of staff within the council or an elected member of the council?

- Yes
- No

spouse or partner?

Yes

No

It is an important principle of decision-making that the process is open and transparent.

Declaration

I / We hereby apply for a Certificate of Lawful Use or Development under Section 170 of The Planning Act (Northern Ireland) 2011, in respect of the proposed use, operation or activity described in this application and the documents, drawings and plans which accompany it.

I / We agree to the outlined declaration

Signed

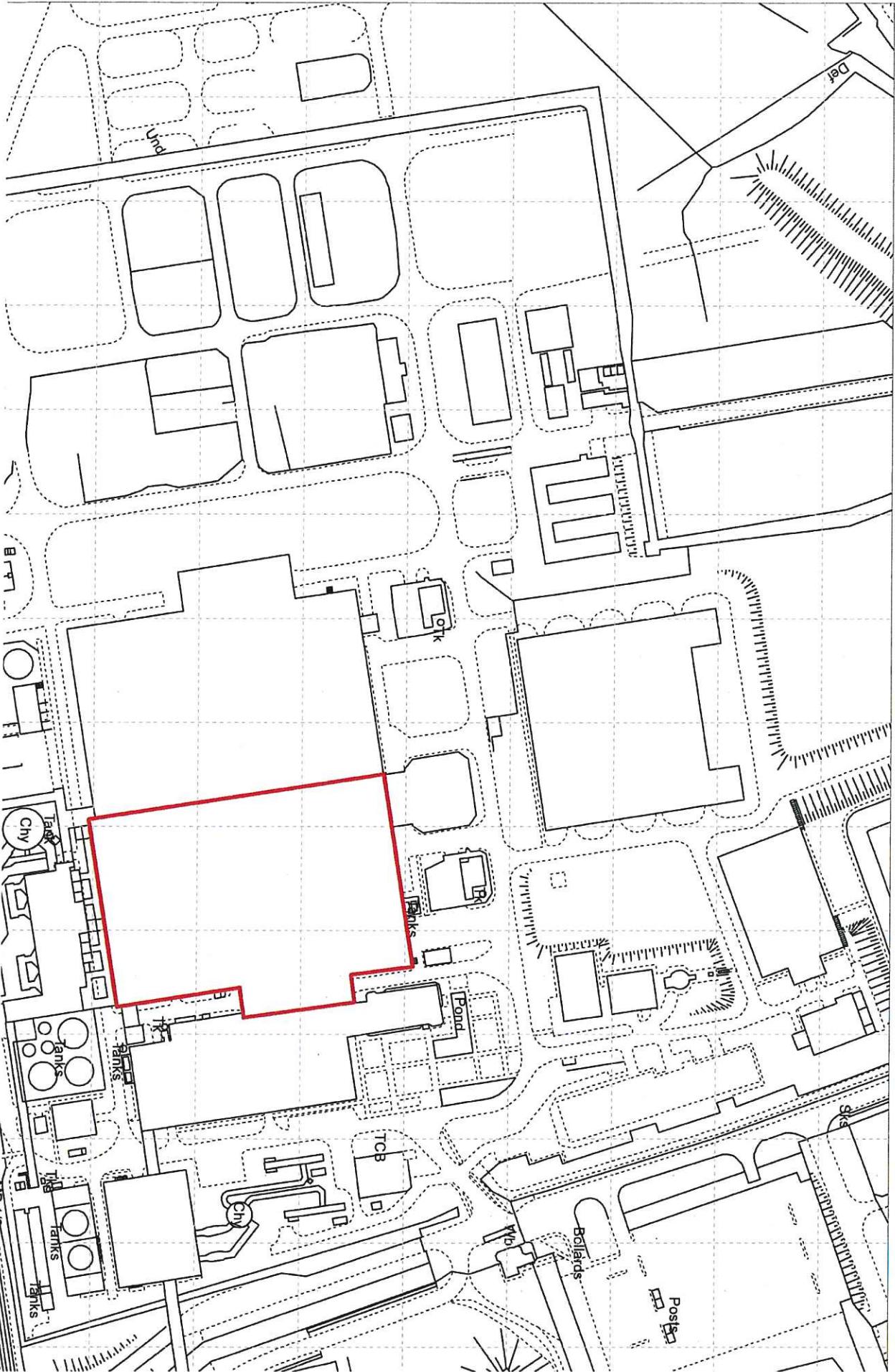
Adam Larkin

Date

04/10/2024

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Mid and East Antrim Borough Council
Planning Office
Silverwood Business Park
190 Raceview Road
Ballymena BT42 4HZ



3 October 2024

Dear Sir/Madam,

**Re: Application for a Certificate of Lawfulness for a Proposed Use or Development
Kilroot Power Station, Station Road, Carrickfergus BT38 7LX**

On behalf of EP Kilroot, please find enclosed the following documentation in respect of an application for a Certificate of Lawfulness for a Proposed Use or Development under section 170 of the Planning (Northern Ireland) Order 2011 for the following:

'Replacement of generators 1 and 2 approved and constructed under Planning Approval V/70/73 within the Main Turbine Hall'

1. Application form
2. Site Location Plan
3. Planning Approval Notice V/70/73
4. Drawings Approved under V/70/73

EP Kilroot participate in capacity auctions with the Single Market Electricity Operator (SEMO¹) to secure generating capacity at Kilroot Power Station. As part of this process, and to be able to deliver capacity it will be necessary to replace existing generators 1 and 2 with more modern generator(s). Once the old generators are removed, the new generator(s) will be placed in the same location as the existing ones inside the main turbine hall.

Planning History

Kilroot Power station received planning approval in December 1973 under V/1973/70 for *'Main power station buildings with control building, administration building and workshops'*. Four generators were approved within the main turbine hall under this permission as identified on enclosed drawing 3020-43.

Construction of Kilroot Power Station commenced in 1974 with generators 1 and 2 becoming operational in 1981 and 1982 with an installed capacity of at least 300MW each. The generators approved in bays 3 and 4 were not installed until 2023 following confirmation from the Council by way of a Certificate of Lawfulness that the installation of generators in these bays was lawful as they benefitted from the 1973 permission (ref LA02/2018/0003/LDP). Under this application the Council confirmed that the 1973 permission had been lawfully commenced and that there were no conditions imposed on the approval.

¹ Joint venture run by SONI and Eirgrid

EP Kilroot now proposes to replace the existing generators currently installed in generation bays 1 and 2 with more efficient generator(s) not exceeding 500MW capacity, which is less than the two existing generators being replaced.

The internal replacement of these generators, which were approved under V/70/73, does not constitute development as defined in s23 of the Planning Act (NI) 2011, as it is neither building, engineering, mining or any other form of operational development as no physical alteration of the building is required. Nor does it result in a material change of use of the building, which will still be used for electricity generation.

In simple terms, what is being planned is the replacement of internal plant and with that in mind, Section 250 of the 2011 Act defines a "building" to include *"any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building"*, so its replacement is not something that needs to be considered under the Act. It is effectively the replacement of old machines inside the building with a modern more efficient one.

We would respectfully request this application is considered as expediently as possible.

Your sincerely,

Gravis Planning

APPROVAL OF RESERVED MATTERS
Planning (Northern Ireland) Order 1972

Ministry of Development
Application No: V/70/73
Date application received:
12/11/73

Applicant : Northern Ireland electricity Service,
Danesfort, 120 Malone Road, Belfast

Agent : -

Site of proposed development : Kilroot, Carrickfergus

Description of proposal : Main Power Station Building with
Control Building, Administration
Building and Workshops

Date and application
number of outline permission : 5/3/73 20/3/73
41578 22/1973

With respect to the above-mentioned proposal for development, being matters reserved in the outline planning permission specified above, the Ministry of Development, in pursuance of its powers under the above Order, and in accordance with your application HEREBY APPROVES the said matters ~~subject to the following conditions.~~

Date: 19th December, 1973 (Sgd.) R. H. BELL.

FORM P7

Authorised Officer

IMPORTANT - SEE NOTES OVERLEAF

NOTES

1. If the applicant is aggrieved by the decision of the Ministry to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Planning Appeals Commission, in accordance with Article 23 of the Planning (Northern Ireland) Order 1972, within six months of receipt of this notice. Planning Appeals Commission, 3rd Floor, Fountain House, 19 Donegall Place, Belfast, BT1 5DP.
2. If permission to develop land is refused or granted subject to conditions, whether by the Ministry or by the Commission on appeal and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Ministry of Development, a purchase notice requiring the Ministry to purchase his interest in the land in accordance with the provisions of Part 1X of the Planning (Northern Ireland) Order 1972.
3. In certain circumstances, a claim may be made against the Ministry for compensation, where permission is refused or granted subject to conditions. For further information contact Land Values Branch, Ministry of Development.
4. This decision relates to planning control only and does not cover any other approval which may be necessary under other legislation, e.g. under Building Regulations.
5. Before carrying out any work in connection with the access or any vehicular crossing in the highway, the applicant should, in his own interest, ensure that the Authorities responsible for gas, electricity water, drainage, telephone, etc. are aware of his intention so that they may first carry out their works, if any, and so avoid breaking through newly made surfaces.
6. Any failure to adhere to the details of approved plans and specifications or to comply with conditions attached to the permission constitutes a contravention of the Planning (Northern Ireland) Order 1972 in respect of which enforcement action may be taken.



Mid and East Antrim Borough Council
Planning Office
Silverwood Business Park
190 Raceview Road
Ballymena BT42 4HZ



8 October 2024

Dear Sir/Madam,

**Re: Application ref LA02/2024/0733/CLOPUD
Replacement of generators 1 & 2 approved and constructed under planning approval
V/70/73 within the main turbine hall
Kilroot Power Station, Station Road, Carrickfergus BT38 7LX**

Further to the application above submitted on behalf of EP Kilroot on 4 October 2023, we provide the following submission for your consideration to supplement the information provided to date.

Background

Kilroot Power station received planning approval in December 1973 under Planning Approval Notice V/73/70 for "Main power station buildings with control building, administration building and workshops", and the drawings approved under that Notice. Four generators were approved within the main turbine hall under this permission, as identified on approved drawing 3020-43.

Construction of Kilroot Power Station commenced in 1974 with generators 1 and 2 becoming operational in 1981 and 1982 with an installed capacity of 300MW each. The generators approved in bays 3 and 4 were not installed until 2023 following confirmation from Mid & East Antrim Borough Council ("the Council") by way of a Certificate of Lawfulness that the installation of generators in these bays was lawful as it benefitted from the 1973 permission (ref LA02/2018/0003/LDP). Under that application the Council confirmed that the 1973 permission had been lawfully commenced and that there were no conditions imposed on the approval.

EP Kilroot Ltd now proposes to replace, in the same location, the existing generators currently installed in generation bays 1 and 2 with a single, more efficient generator with an equal or lesser generating capacity than the total capacity of the two existing generators it will replace – in short, to replace existing plant with new plant.

Planning history

The relevant consent for the power station is reference V/70/73. This permission was issued in December 1973, was implemented, and remains valid and lawful to authorise the generation of electricity at the thermal power station.

In 2018 a Certificate of Lawfulness reference LA02/2018/0003/LDP was issued by the Council confirming the lawfulness of the proposed installation without further planning permission of 2 gas turbine generators in bays 3 and 4 within the existing turbine building

where no generators had been previously installed. While the specific parameters of that Certificate were different to the proposed installation – installation for the first time rather than replacement – the issue in play between the two contexts is fundamentally the same: whether installation of one or more pieces of plant in the main turbine hall is development requiring planning permission.

Statutory definition of development

The definition of development requiring planning permission is set out in Section 23 of the Planning Act (Northern Ireland) 2011 (“the Act”). Section 23(1) states:

“subject to subsections (2) to (6), ‘development’ means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material changing in the use of any buildings or other land”.

So, then, whether the proposed installation comprises development requiring planning permission turns on whether it represents:

1. building operations; or
2. engineering operations; or
3. mining operations; or
4. other operations; or
5. a material change of use.

Considering each of these individually –

Does the proposed installation represent building operations?

Section 23(2) helpfully expands on the definition of “*building*” as including:

*“(a) demolition of buildings;
(b) rebuilding;
(c) structural alteration of or addition to buildings; and
(d) other operations normally undertaken by a person carrying on business as a builder”*

Importantly, Section 250(1) of the Act defines “*building*” as including:

“any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building” (emphasis added).

That exclusion of plant and machinery comprised in a building from the definition of “*building*” applies regardless of whether, aside from the Section 250(1) definition, the plant or machinery would constitute a building as more generally defined by the Act. So, for example, the exclusion would apply even if the plant or machinery in question constituted a structure or erection, or any part thereof.

It is clear therefore that the Act expressly intended to exclude plant or machinery within a

building from the scope of what may constitute a “*building*”, and consequently to exclude its installation within a building from the scope of what may constitute building operations. So, then, the proposed installation does not represent building operations requiring planning permission.

Does the proposed installation represent engineering operations?

Engineering operations are physical works with substantial effects on land, tending to fall within civil engineering disciplines and including the construction of roads, earthworks, lakes and ponds. In essence, to be an engineering operation the activity must call for the skills of an engineer, whether a civil engineer or a specialist engineer such as a traffic engineer, though such professionals need not necessarily carry out the works as long as someone with their skills does: *Fayrewood Fish Farms Ltd v SOSE* [1984] JPL 267.

No such operations are involved in the proposed installation, so it does not represent engineering operations requiring planning permission.

Does the proposed installation represent mining operations?

No.

Does the proposed installation represent other operations?

The proposed installation does not involve operational development involving physical alteration to the land with some degree of permanence to the land itself but rather the emplacement of plant, and therefore does not represent development falling within this residual “*other operations*” category of development requiring planning permission.

Does the proposed installation represent a material change of use?

Notably, the 1973 permission authorised a thermal power station, rather than a thermal power station using any particular type of fuel, and did not impose any condition or purported limitation restricting the type of fuel to be used. It follows that the 1973 permission authorised the combustion of *any* fuel type to generate electricity in the thermal power station, and from that that a change in fuel type will not constitute a material change of use.

The proposed installation plainly does not comprise a change in the character or purpose of the use, given that the authorised use of the development in the original planning permissions was expressly for the generation of electricity and that use will continue with, and its continuation be facilitated by - and made more efficient by - the proposed installation. Although the fuel to be combusted in the plant will change from coal to mains natural gas, that will not lead to a material change of use.

It follows that the proposed installation does not represent a material change of use requiring planning permission.

Conclusion

Given the above analysis, the internal replacement of existing plant by new plant within the

existing building does not involve any form of operational development and does not result in a material change of use requiring planning permission.

It is, quite simply, the internal replacement of plant within a building, which is not - and cannot be - development requiring planning permission. Nothing further occurs.

We would respectfully request this application is considered as expediently as possible.

Your sincerely,

Gravis Planning

Adam Larkin
Gravis Planning
1 Pavilions Office Park
Holywood BT18 9JQ

(alarkin@gravisplanning.com)

15 October 2024

Dear Adam,

**Re. Application for a certificate of lawfulness of proposed use or development at
Kilroot Power Station, Station Road, Carrickfergus BT38 7LX**

I refer to your recent application for a certificate of lawfulness of proposed use or development at Kilroot Power Station, Station Road, Carrickfergus BT38 7LX received by the Council on 3 October 2024 and the further information provided by way of a letter dated 8 October 2024.

The application seeks to certify as lawful the following.

“Replacement of generators 1 and 2 approved and constructed under planning approval V/70/73 within the main turbine hall”.

The covering letter accompanying the application invites the Council to certify that the works described are lawful because they do not amount to development as defined by section 23 of the Planning Act (Northern Ireland) 2011.

“The internal replacement of these generators, which were approved under V/70/73, does not constitute development as defined in s23 of the Planning Act (NI) 2011, as it is neither building, engineering, mining or any other form of operational development as no physical alteration of the building is required”.

The letter of 8 October 2024 explains that what is proposed is the replacement of the two generators in bays 1 and 2 with a single generator with an equal or lesser generating capacity than the total capacity of the two existing generators it will replace. That letter goes on to explain with reference to section 23 of the Planning Act (Northern Ireland) 2011 why the works are not considered to be development.

In order to enable the Council to reach an informed view on this matter, the Council requires more information. In particular, it requires more information on the nature and extent of the proposed operations. At present, the application simply refers to the “*replacement of generators 1 and 2*” and the letter of 8 October 2024 explains only very briefly what these works will involve. You will be aware that under article 11(2)(b) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 applications should be accompanied by “*such evidence verifying the information included in the application as the applicant can provide*”. You are invited to detail the operators proposed and to provide evidence in support of the same so far as that is necessary. You are invited to provide the following.

- (1) a full description of the works proposed;
- (2) a full description of proposed replacement generators which should include information to corroborate the claims made that the operations “*do[] not involve operational development involving physical alteration to the land with some degree of permanence to the land itself*” or “*engineering operations*”.
- (3) an explanation of any land use implications (e.g. odour or aerial emissions) associated with the change of fuel from coal to natural gas;

The Council would find it helpful if there were drawings detailing the proposed operations which could be provided. The Council would be grateful if you could address these matters through the submission of further evidence and would request that this is provided within fourteen days to enable this application to be progressed as requested. The Council reserves the right to request further information if judged to be necessary.

Yours sincerely,

Kyle Patterson

Please reply to:

☐ Head Office
The Braid
1-29 Bridge Street
Ballymena BT43 5EJ

☐ Ballymena Office
Ardeevin
80 Galgorm Road
Ballymena BT42 1AB

☐ Carrickfergus Office
Museum & Civic Centre
11 Antrim Street
Carrickfergus BT38 7DG

☐ Larne Office
Smiley Buildings
Victoria Road
Larne BT40 1RU

☐ Planning Office
Silverwood Business Park
190 Raceview Road
Ballymena, BT42 4HZ

Interim Chief
Executive
Valerie Watts



Kyle Patterson
Mid and East Antrim Borough Council
Planning Office
Silverwood Business Park
190 Raceview Road
Ballymena
BT42 4HZ



18 October 2024

Dear Kyle,

Re: Application ref LA02/2024/0733/CLOPUD - Replacement of generators 1 & 2 approved and constructed under planning approval V/70/73 within the main turbine hall, Kilroot Power Station, Station Road, Carrickfergus BT38 7LX

Please find below our response to the queries raised in correspondence dated 15 October 2024 in respect of this application.

1. A full description of the works proposed

The proposed works will consist of the replacement of the existing K1 and K2 coal fired power generation units, which have nominal capacity 300MW each (nominal 600MW total), with a single new gas fired power generation unit with a nominal capacity of up to 500MW.

Both K1 and K2 coal fired power generation units currently in situ are made up of the following plant and relevant equipment (per unit): air intake, boiler, steam turbine, condenser, cooling systems, generator, and transformer, all of which is located entirely within the turbine hall.

All of the plant and relevant equipment listed above will be removed, apart from the boiler which may be removed subject to final design, and replaced with new plant and equipment to create a single gas-fired power generation unit which will comprise of the following plant and equipment (subject to final design): gas turbine, air intake, two generators, boiler and steam turbine, condenser, cooling systems, and transformer, all to be located inside the building.

The replacement plant and equipment will be installed in the same locations as the removed coal fired power generation unit plant and equipment. The existing stack and cooling water systems will be reused, and it will not be necessary for additional equipment or structures to be installed outside of the building.

Within the context of this fuller description of the proposed works, we feel that it is necessary to make a minor change to the description set out in the CLOPUD application form to include the term "generation units" as opposed "generators" to more accurately represent what is proposed. We would be grateful if you could therefore change the description to: '**Replacement of generation units 1 & 2 approved and constructed under planning approval V/70/73 within the main turbine hall**' so as to avoid confusion between the 'generating units' that comprise all the equipment and plant necessary for the generation of electricity and the electrical generators attached to the turbines which comprise a part of the 'generating units'.

2. ***A full description of proposed replacement generators which should include information to corroborate the claims made that the operations “does not involve operational development involving physical alteration to the land with some degree of permanence to the land itself” or “engineering operations”.***

Specific details of the gas fired power generation unit that will replace the two existing coal fired power generation units are not yet known and will not be known with any degree of certainty until the work is tendered and the selected bidder submits a final design. However, as set out above and in the cover letter to our application, the capacity of the new gas fired power generation unit will be up to, but not exceeding, 500MW which will be less than the combined capacity of the two existing 300MW coal fired power generation units to be replaced.

‘Not Development’

Section 23 (3) (a) of the Planning (NI) 2011 Act states:

(3) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building. (our emphasis)*

The new plant is likely to require replacement of the existing load bearing plinths. This will involve digging out some of the existing concrete floor, which is part of the building, and the installation of new plinths and flooring. These works will involve *alteration* of the building which *do not materially affect the external appearance* of the approved turbine hall. Such works therefore would not require planning permission as they are not considered to involve the development of land by virtue of s23(3)(a) of the 2011 Act.

Building Operations

The 2011 Act expressly excludes both plant and machinery (s250 ‘Building’ definition) and internal alterations of the building (s23) from the definition of development as set out in our letters of the 3rd and 8th of October.

Engineering Operations

The replacement plant and equipment will be connected to existing plant and equipment within the main turbine hall, e.g. ductwork, electrical systems, cooling water systems, and does not represent engineering operations requiring planning permission (note that this is the sole basis that the CLUD is sought). Engineering operations are physical works with substantial effects on land such as the construction of roads and bridges and other earthworks. Although supervised by an engineer, these internal works cannot be regarded as engineering operations because they do not involve physical alteration to the land.

Operational Development

The proposed installation does not involve operational development involving physical alteration to the land with some degree of permanence to the land itself (as envisaged in *Parkes v SOSE* [1978] 1 WLR 1308) but rather the emplacement of plant and machinery inside a building and, therefore, does not represent development falling within this residual “*other operations*” category of development requiring planning permission.

External Works (if required)

If it transpires, during the course of design development, that alterations are required that will affect the external appearance of the building, then a planning application will be necessary at that stage. This was the approach used in the previously approved application at LA02/2021/0216/F which permitted the installation of external stacks and plant (the ‘Stacks application’) to facilitate the installation of generation units 3 and 4 which were permitted under the 2018 CLOPUD application LA02/2018/0003/LDP.

As with the ‘Stacks application’, any application necessary for external plant associated with the replacement turbine materially affecting the external appearance of the building, along with any other proposed operational development, will include an Environmental Impact Assessment (EIA) that will assess the entire project including cumulative effects of previously approved applications on the site. However, in this instance, that is not what has been applied for and because all proposed works are contained within the building, it is our contention that a combination of s23 (3) (a) and s250 mean that the proposed installation of the new plant would be lawful without needing planning permission.

3. An explanation of any land use implications (e.g. odour or aerial emissions) associated with the change of fuel from coal to natural gas

On the matter of change of use, we repeat the following relevant points from our 8th October letter:

- the 1973 permission authorised a thermal power station and did not impose any condition restricting the type of fuel to be used. It therefore follows that the 1973 permission authorised the combustion of *any* fuel type to generate electricity and from that, a change in fuel type will not constitute a material change of use.
- The proposed installation plainly does not comprise a change in the character or purpose of the use, given that the authorised use of the development in the original planning permissions was expressly for the generation of electricity and that use will continue with, and its continuation be facilitated by - and made more efficient by - the proposed installation.

While the fuel to be combusted in the plant will change with the proposed installation from coal to natural gas, that will not lead to a material change of use. Consistent with the judgment in *R (on the application of Lowther) v Durham County Council and another* [2001] 3 PLR 83 the purpose of the process, to generate electricity, will remain the same. Furthermore, the change in fuel will not alter the character of that use (cf. “*The character of the process was not altered to an extent that constituted a material change in the use of land*” – per Lord Phillips MR in *Lowther* at 103).

So far as emissions are concerned, as the proposed replacement generation unit does not fall within the definition of development under s23/s250 of the 2011 Act, it is not subject to EIA as part of the planning process. However, the power station would be required to vary the existing PPC permit for the replacement generation unit as its emissions cannot simply be ignored. The PPC permit variation application process will be subject to environmental assessment in relation to these emissions. Therefore, any potential environmental impacts will be appropriately considered at that time however it should be noted that we have fully considered any emission requirements as part of this application and are confident that no external works would be required.

4. Additional Drawings

As explained above, specific design details of the replacement generation unit such its precise location, footprint and orientation are unconfirmed at present therefore no further drawings can be provided in this respect. The red line site location plan submitted with the application will therefore suffice for the purposes of this application given that all of the works are internal and do not involve any changes to the external appearance of the building.

We respectfully request this information set out in this letter is considered as expediently as possible.

Yours sincerely,

A solid black rectangular box used to redact the signature of Richard Bowman.

Richard Bowman

Group MD (Planning)

Adam Larkin
Gravis Planning
1 Pavilions Office Park
Holywood BT18 9JQ

(alarkin@gravisplanning.com)

31 October 2024

Dear Adam,

Re. Application for a certificate of lawfulness of proposed use or development at
Kilroot Power Station, Station Road, Carrickfergus BT38 7LX

I write in response to your letter of 18 October 2024 which enclosed a revised
application form updating the description of the certificate which is being sought.

In determining an application under section 170 of the Planning Act (Northern
Ireland) 2011, the Council is required to assess whether the operations specified
would be lawful. If the Council is provided with information satisfying it that the
operations are lawful, then it must issue a certificate; otherwise it must refuse
the application (section 170(2)). The Council cannot reach a judgement on these
matters unless the operations which are seeking to be certified as lawful are
set out with a sufficient degree of particularity to enable an assessment to be made.

Whilst your letter of 18 October 2024 provides more detail than previous
submissions, it is still considered to fall short of providing enough information to
enable the Council to reach a judgment on lawfulness under section 170(2).

As matters stand, this application is asking the Council to specify as lawful the
following broad operations.

*“Replacement of generation units 1 & 2 approved and constructed under
planning approval V/70/73 within the main turbine hall”.*

It is evident from your most recent letter, however, that details of what is involved in the “*replacement*” operations described are not yet available. It is not possible based on the information presently submitted to state with any degree of certainty what the “*replacement*” in question would involve.

In this respect, the following is noted.

- (1) Your letter itself acknowledges that specific details are unknown at this stage.

“Specific details of the gas fired power generation unit that will replace the two existing coal fired power generation units are not yet known and will not be known with any degree of certainty until the work is tendered and the selected bidder submits a final design”.

- (2) It goes on to reinforce this point towards the end.

“As explained above, specific design details of the replacement generation unit such [sic] its precise location, footprint and orientation are unconfirmed at present therefore no further drawings can be provided in this respect”.

It is unclear how this sits with the earlier statement that *“the replacement plant and equipment will be installed in the same locations as the removed coal fired power generation unit plant and equipment”.*

- (3) There appears to be some residual uncertainty over whether external works will be required for the “*replacement*”. Near the beginning of the letter it is categorically stated that *“it will not be necessary for additional equipment or structures to be installed outside the building”.* However, later the language used is conditional: *“if it transpires, during the course of design development, that alterations will affect the external appearance of the building, then a planning application will be necessary”.* The lack of certainty around whether the proposed replacement will involve external works casts doubt on the applicability of section 23(3)(a) in circumstances where the description of operations is broadly cast as “*replacement*”.
- (4) So far as material change of use is concerned, one of the key points made in *R (Lowther) v Durham County Council* [2003] 3 PLR 83 is that *“an alteration in the source of power or fuel used for a process is capable of constituting a*

material change in the use of land” (see, paragraph 79). Here it is proposed that there will be a change in the source of power or fuel from two coal powered generating units to a single gas fired generating unit. Applying the dicta in *Lowther*, it falls to be assessed whether that change in fuel amounts to a material change of use. It falls to be assessed as a matter of fact and degree. In order to make this judgement, the Council needs to be provided with information about what differences, if any, there will be in land use implications arising from the change from coal powered generators to a single gas fired generator. Notably, your letter refers to potential differences in emissions giving rise to a need to make a variation application under the pollution prevention and control regime. It is not clear what these differences are and whether they give rise to changes which fall to be considered as part of the planning regime. More information is needed.

- (5) Your letter accepts that the operations in question would be “*supervised by an engineer*” but argues that they are not “*engineering operations*”. In *Fayrewood Fish Farms v Secretary of State for the Environment* [1984] JPL 267, it was explained that engineering operations meant the following.

“In the absence of a definition, the term ‘engineering operations’, in my judgment, should be given its ordinary meaning in the English language. It must mean operations of the kind usually undertaken by engineers, i.e., operations calling for the skills of an engineer. In relation to land, the engineering skills are likely to be those of a civil engineer, but I do not think that the phrase is limited to that branch of the profession. The definition in the Act shows that the operations of traffic engineers may come within the phrase, and there may be other specialist engineers who apply their skills to land. This does not mean that an engineer must actually be engaged on the project, simply that it is the kind of operation on which an engineer could be employed, or which would be within his purview”.

You are asked to clarify how, in light of the comments made in your letter, this proposal does not fall within this definition of “*engineering operations*”. This should involve details about the involvement of an engineer in this project, including confirmation about whether they are involved in any works to the land, which may include alterations to the load bearing plinths.

- (6) Your letter references replacement of existing load bearing plinths which is said to involve digging of the concrete floor. Further detail on these works is required.

You will be aware that the courts have warned planning authorities about the need to ensure that any certificates which they issue are drafted with precision given the legal consequences of granting certificates (section 170(4)) (see, notably: *Broxbourne Borough Council v Secretary of State for the Environment* [1980] QB 1). The Council is not presently satisfied that sufficient information has been provided about the operations which you are seeking to have certified as lawful, and their associated land use implications (if any). It is in the interests of all parties, including the applicant, that any certificate sought is precisely drafted.

You are invited to reflect carefully on this and to submit such further information as you consider to be necessary to enable this application to be determined. You are invited to do so within twenty-one days, however if you require further time you should indicate so.

Upon receipt of such further information as you provide, the Council then intends to notify the public of this application and to allow a period of fourteen days for public consultation. It has decided to do so, exceptionally, in the exercise of its discretion because of the nature of the issues raised by this application and the fact that other parties may wish to comment on this application before it is determined (that it is open to the council to do so, in the exercise of its discretion, is well established: *The Government of the Republic of France v Royal Borough of Kensington and Chelsea* [2017] EWCA Civ 429).

You are reminded that if you fail to provide sufficient information to satisfy the Council of the lawfulness of the operations described, then this application can be refused on that basis (section 170(2)).

Yours sincerely,

Henry McAlister
Senior Planning Officer

18th November 2024

Kyle Patterson
Mid and East Antrim Borough Council
Planning Office
Silverwood Business Park
190 Raceview Road
Ballymena
BT42 4HZ



Our Ref: C05445

Dear Kyle,

Re: Application ref LA02/2024/0733/CLOPUD - Replacement of generators 1 & 2 approved and constructed under planning approval V/70/73 within the main power station building, Kilroot Power Station, Station Road, Carrickfergus BT38 7LX

Please find below our response to the queries raised in correspondence dated 31 October 2024 in respect of this application.

1. *The Council cannot reach a judgement on the lawfulness of the proposal unless the operations which are seeking to be certified are set out with sufficient degree of particularity*

The Council's comments in respect of the above are noted. In response, the applicant has undertaken further design of the proposed replacement generation unit located within the power station building which is the subject of this application (comprising gas turbine, air intake, generators, boiler, steam turbine, condenser, cooling systems, transformers and associated smaller items of plant and equipment as set out in our correspondence of 18 October).

The proposed layout and configuration which the applicant seeks certification for is set out on the enclosed drawings 3437-8320-002 and 3437-8340-002, with explanation in the enclosed report from Fichtner Consulting Engineers. Drawing 3437-8320-002 shows the location of the K1 and K2 coal powered generators (which are to be replaced), overlain with the configuration for the new plant shown in red.

In order to provide further particularity on the proposal, we have updated the description of the CLOPUD application to the following as detailed on the enclosed page 5 from the application form:

'Replacement of generation units 1 and 2 approved and constructed under planning approval V/70/73 (600MW combined) located within the main power station building with a single generation unit not exceeding 500MW comprising the following main plant and equipment: gas turbine, air intake, 2 no. generators, boiler, steam turbine, condenser, cooling systems, 2 no. transformers, associated smaller items of auxiliary and plant and equipment, internal reconfiguration of the main stack inlet and ductwork, all being works which do not affect the external appearance of the building. The proposed works include alteration of the floor of the main power station building to replace existing load bearing plinths with new plinths measuring 15m wide by 90m long by 4m deep to accommodate the replacement plant and equipment.'

2. External Works

It remains our position that the emplacement *per se* of the generating plant itself does not involve development requiring planning permission, given that the definition of “building” in s250(1) of the Act expressly excludes plant or machinery comprised in a building. The remaining question is whether the physical works required to emplace the generating plant (“the physical emplacement works”) constitute development requiring planning permission.

The latest updated design and description of the application provided above is precise. What is proposed in terms of the physical emplacement works requires no external works, and no works affecting the external appearance of the building are proposed. The Council is therefore requested to determine the CLOPUD application on the basis of the updated details submitted in accordance with the requirements of section 170 of the Planning (Northern Ireland) Act 2011.

For clarification, the reference to potential external works in the previous letter was simply a demonstration that we understand that a planning application would be required if any such works were subsequently required and that we are not making an assumption that approval of the CLUD would include any such works. It was a statement to reflect the fact that the proposal falls squarely within the scope of s23 (3)(a) of the Planning (Northern Ireland) Act 2011, in that the works do not materially affect the external appearance of the building.

We now acknowledge that the statement had the potential to cause confusion and as such any references in the previous correspondence to the *potential* of external works being required in the future are withdrawn and can be ignored in the determination of this application.

3. Land use implications arising from replacement of coal fired generators with a single gas fired generator

To reiterate the points made in this respect in our previous correspondence of the 8th and 18th of October:

The 1973 permission authorised a thermal power station *simpliciter*, rather than a thermal power station using any particular type of fuel and did not impose any condition or purported limitation restricting the type of fuel to be used or the nature of the thermal process involved. It follows that the 1973 permission authorised the combustion of *any* fuel type to generate electricity by any form of thermal processing in the thermal power station, and from that, a change in fuel type will not constitute a material change of use. What follows is without prejudice to that point.

The proposed installation plainly does not comprise a change in the character or purpose of the use, given that the authorised use of the development in the original planning permissions was expressly for the generation of electricity and that use will continue with, and its continuation be facilitated by - and made more efficient by - the proposed installation.

While the fuel to be combusted in the plant will change with the proposed installation from coal to natural gas, that will not lead to a material change of use. Consistent with the judgment in *R (on the application of Lowther) v Durham County Council and another* [2001] 3 PLR 83 the purpose of the process – to generate electricity from heating steam from thermal combustion – will remain the same. Moreover, the character of the use of land, namely as a thermal power station, will remain the same, and the change in fuel will not alter the character of that use (Cf. “*The character of the process was*

not altered to an extent that constituted a material change in the use of land” – per Lord Phillips MR in *Lowther* at 103).

The existing Gas Turbines operating in generation bays 3 and 4 of the main turbine hall are served by the gas pipeline connecting Kilroot Power Station to the Belfast Transmission Pipeline approved under LA02/2020/0417/F. The use of gas to power electricity generating units at Kilroot is therefore not new, so not only is there no change of use, but there is also no change in character.

The subject proposal only involves internal replacement of plant and machinery as described with no alterations or additions outside the building envelope. The reference in our 18th October letter to emissions is to note that such emissions will be different to those from the coal fired generators, but the nature of the emissions does not affect the point that what is proposed is internal replacement of plant and machinery that will take place within the building envelope. There will still be emissions from the existing stack, via existing duct work, but those emissions will be cleaner and have lower carbon emissions, with no material change of use. This improvement in emissions does not involve any form of operational development and does not constitute a material change of use, therefore there are no land use planning implications. This is why this change in emissions will only require a variation to the existing PPC permit.

4. Engineering Operations

Your letter of 31 October seeks clarification with regards to how the proposal does not fall within the definition of “*engineering operations*” provided within *Fayrewood Fish Farms v Secretary of State for the Environment* [1984] JPL 267.

It is accepted that engineers will be involved in the replacement of existing plant with the new generation unit and other engineers will oversee the replacement of the load bearing plinths (more detail in next section) under the floor of the building.

It is therefore acknowledged that these physical emplacement works do fall within the category of engineering operations. However, as they are part and parcel of the alteration of the building and do not materially affect the external appearance of the building they, by virtue of s23(3)(a), “*shall not be taken for the purposes of [the] Act to involve development*” and hence do not require planning permission and in the case of replacement of the generating plant, it does not involve development requiring planning permission, given that the definition of “*building*” in S.250(1) of the Act expressly excludes plant or machinery comprised in a building.

5. Load Bearing Plinths

As things stand, load bearing plinths exist under the floor of the power station building. They were installed during construction of the building. They are in place under the existing generation units to support their weight and are there to reinforce the floor which by itself would crack and subside under the weight of these machines.

The plinths are large foundational concrete blocks 4m in depth and are very much part of the building fabric in that they form part of its floor structure to reinforce the floor so as to allow the building to function and operate as an electricity generating station. If for instance the building ceased functioning as a power station, the plinths would remain as part of the building fabric as part of any future use – there would be no need to remove them.

The replacement plant and equipment will have different foundational plinth support requirements to those currently in place. For instance, while the existing steam turbines will already have robust, rigid foundations capable of withstanding high vertical loads, the gas turbine will be lighter and produce shorter frequency vibrations requiring less rigid foundations with different dampening properties. Likewise, the replacement turbines and HRSG/boiler will have different weight loading points than the existing equipment. Therefore, parts of the existing concrete floor will need to be replaced with a stronger floor in certain areas.

The floor within a building would ordinarily be regarded as part and parcel of that building, and there is nothing in Section 250(1) – or indeed elsewhere in the 2011 Act – to suggest otherwise in the planning context either generally or in the context of the proposal. By way of illustration, the installation of mezzanine floors in retail warehouses are considered not to be development, thereby taking advantage of Section 23(3)(a) unless the overall floorspace was restricted in the original approval, despite the fact that their installation requires operational development. Indeed, in *Eastleigh Borough Council v First Secretary of State* [2004] 24 EG 149 (CS) the Court held that on the basis of the original form of the provision the doubling of retail floor space by the insertion of a mezzanine floor did not amount to development.

Even if the excavation of the sub-soil beneath the existing floor was considered to constitute 'engineering operations' (i.e. being works supervised by an engineer which result in physical alteration of the land), such 'works' cannot be considered development in accordance with s23(3)(a) of the Planning (Northern Ireland) Act 2011 as these 'works' are part and parcel of the 'alteration' of the floor of the building to accommodate the proposed plant and equipment which do not - and indeed by definition cannot - materially affect the external appearance of the building.

6. Public Notification of the CLOPUD application

The Council's position on this is noted and in the interests of expediency, the applicant respectfully requests that a determination on this application is made as soon as possible following the expiration of the 14-day notification period.

We hope that the information provided is sufficient to address the Council's queries but that if further information is considered necessary then we would be glad to provide it before the Council reaches its determination.

Yours sincerely,

A black rectangular redaction box covering the signature area.

Richard Bowman
Group MD (Planning)

Memorandum

To James Crankshaw
Head of Business Development

Organisation EP UK Investments Ltd

CC

From Graham Geraghty

Our ref 3437-0030-0010GTG

Date 18 November 2024

Pages 3

Subject Kilroot CCGT - Location inside existing building

Dear James,

1. Introduction & Scope

Further to recent communications, EP Kilroot Ltd (EPK) has requested Fichtner Consulting Engineers Ltd (Fichtner) provide an opinion on the technical feasibility of installing a 500 MW "F Class" combined cycle gas turbine (CCGT) within the confines of the existing coal fired power station building envelope at Kilroot Power Station. This covers all necessary plant and equipment including the Gas Turbine, Steam Turbine, Condenser, Cooling System, Generators, HRSG, Air Intake, Transformer and associated small auxiliary plant. Where equipment is to be reused (such as the existing chimney) an opinion on the suitability of this is provided.

As you are aware, Fichtner is well acquainted with the Kilroot site and has previously carried out layout development for the recent OCGT project and the options associated with the proposed "GT West" CCGT plant.

2. Building Dimensions

The feasibility of locating a new CCGT plant inside the existing Kilroot coal fired power station building will be driven by the dimensions of the main CCGT components and the principal building dimensions of the existing boiler hall and turbine hall.

The overall length of an "F" Class gas turbine generator exhausting to a horizontal HRSG would be 90m. This would fit comfortably within the existing Kilroot Unit 1 (K1) and Kilroot Unit 2 (K2) turbine and boiler hall bays.

The HRSG would be located in the area currently occupied by the original K2 boiler to simplify the ductwork routing the stack. The width of the existing turbine hall is approximately 35m (north-south), which would be sufficient to accommodate the new gas turbine, steam turbine and auxiliaries.

The proposed arrangement is shown in layout drawing (3437-8320-0002) provided with this memo. The new equipment is indicated in redline with the existing (recently installed) gas turbines (GT6 and GT7) shown in black. The new gas turbine would be arranged parallel to the existing gas turbines with the hot exhaust gases discharging to a new HRSG located between columns 6 and 7 and connecting into the existing exhaust ductwork to the existing stack. The steam turbine would be arranged longitudinally in the position of the original K1 steam turbine.

This would facilitate reuse of the existing condenser cooling water connections and turbine hall crane.

A sectional elevation drawing (3437-8340-0002) has also been prepared to show the estimated heights of the new steam turbine and HRSG and how these would fit inside the existing building.

3. Stack Configuration

Constructing the new CCGT within the building means that it would be necessary to utilise the existing Kilroot chimney which was originally designed to accommodate four flues located inside a common concrete windshield. To accommodate the gas flow rate required it would be necessary to utilise the existing K1 and K2 flues and reconfigure the inlet to both flues, within the building, to incorporate a manifold to distribute the gas flow between the flues.

It would be necessary to remove the existing K1 and K2 precipitator internals and retain the existing precipitator outer structure to install the ductwork connecting the HRSG exhaust to the stack flues.

4. Air Intakes

Constructing the new CCGT within the building means that it would be necessary to locate the air intake inside the existing Kilroot turbine hall. Most gas turbine manufacturers locate the air intake on the left-hand side of the gas turbine (when looking at the exhaust end). It is evident from drawing 3437-8320-0002 that this proposed arrangement represents the best option for Kilroot. The proposed location provides unimpeded free air flow whilst also maintaining good maintenance access around the gas and steam turbine generators.

5. Other Considerations

Location of the new CCGT inside the existing K1 and K2 turbine hall means that the new steam turbine condenser can benefit from the original sea water cooling circuit which formed part of the original coal fired boiler steam turbines. A water-cooled condenser means there would be no requirement for forced air cooling of the closed-circuit cooling water (CCCW) system. This would also obviate the need for any additional acoustic screening.

The main generator step-up transformer and unit auxiliary transformers would fit comfortably within the space currently occupied by the existing K1 and K2 transformers. All of the new LV and MV switchgear, cabling and control equipment could easily be located within the space above the existing transformer rooms.

Boiler small auxiliary plant such as boiler feedwater pumps, feed regulating station, and boiler chemical dosing, etc. are typically supplied as skid mounted units that would easily be located in and around the boiler structure, within the existing building. Gas and steam turbine small auxiliary plant such as the lube and control oil skids, compressor cleaning, gland steam, vacuum raising, and fire detection and protection equipment can also be supplied as discrete skid assemblies and located entirely within the existing K1/K2 turbine hall building.

6. Conclusions

In summary, Fichtner has considered the feasibility of constructing a new 500 MW CCGT plant inside the building envelope of the existing Kilroot Unit 1 and Unit 2 boiler and turbine halls. This review has not identified any technical impediment to the proposal.

Should you have any comments or queries on the memo, please do not hesitate to contact the undersigned.

Yours sincerely

FICHTNER Consulting Engineers Limited



Graham Geraghty
Engineering Manager

Brian Needham
Head of Fichtner in Ireland

Enclosures: 3437-8320-0002DW - 500MW CCGT Concept Layout R3.0
3437-8340-0002DW - 500MW CCGT Concept Layout Section A-A R2.0