

FALKIRK COUNCIL

Subject: DISCHARGE OF PLANNING OBLIGATION WHICH RESTRICTS THE OCCUPANCY OF THE DWELLINGHOUSE APPROVED UNDER PLANNING PERMISSION P/09/0849/FUL TO THE MANAGER, OPERATOR OR OTHER PERSON EMPLOYED OR LAST EMPLOYED FULL TIME, IN THE ADJACENT BUSINESS, PATERSON GARDEN BUILDINGS, KERSIE BANK, KERSIE TERRACE, SOUTH ALLOA, INCLUDING DEPENDANTS OF SUCH A PERSON, AND SHALL BE USED FOR NO OTHER PURPOSE IN ALL TIME COMING. AT KERSIE BANK, KERSIE TERRACE, SOUTH ALLOA, STIRLING FK7 7NJ FOR GARY PATERSON – P/13/0505/75D

Meeting: PLANNING COMMITTEE

Date: 18 September 2013

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Carse, Kinnaird and Tryst

Councillor Stephen Bird
Councillor Steven Carleschi
Councillor Charles MacDonald
Councillor Craig Martin

Community Council: Airth Parish

Case Officer: Julie Seidel (Planning Officer), Ext. 4880

1. INTRODUCTION

- 1.1 A request has been submitted to discharge an Agreement made under the terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 restricting the occupation of the dwellinghouse (approved under Planning Permission Ref: P/09/0849/FUL) to the manager, operator or other person employed or last employed full time in the adjacent business, Paterson Garden Buildings, Kersie Bank, Kersie Terrace, South Alloa.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The planning application for the erection of the dwellinghouse was considered at the meeting of the Planning Committee on 24 March 2010, 21 April 2010, 23 February 2011 and 23 March 2011. The application was originally considered at the meeting of the Planning Committee on 24 March where Members agreed to continue the application to allow a site visit. This visit took place on 15 April and the application was presented to the Planning Committee on 21 April, where Members agreed to grant the application subject to appropriate conditions and the conclusion of a Section 75 Legal Agreement. The applicant asked that the application be put on hold as concerns were raised in relation to VAT. The application was next presented to the Planning Committee on 23 February 2011 when Members agreed to continue the application to allow the preparation of an update report in relation to VAT issues. This was presented to the Planning Committee on the 23 March 2011 when it was agreed that planning permission be granted subject to a Section 75 obligation.
- 2.1 The current Scheme of Delegation requires applications of this nature, which were previously determined by Committee, to be determined by the Planning Committee when amendments or discharges of Legal Agreements are proposed.

3. BACKGROUND TO SECTION 75 AGREEMENT/SITE HISTORY

- 3.1 Planning permission Ref: P/09/0849/FUL for the erection of a dwellinghouse was subject to the conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. This agreement restricts the occupancy of the dwellinghouse and effectively ties it to the adjacent business.

4. REQUEST TO DISCHARGE SECTION 75 AGREEMENT

- 4.1 The applicant requests discharge of the Legal Agreement on the basis that it causes him financial hardship. He states that he is unable to claim back any VAT and is unable to obtain a mortgage on the property. The applicant needs to take out a short term loan and the resulting monthly payments are far higher than a mortgage would be and this is restricting completion of the dwellinghouse. The applicant also refers to changes in Scottish Government advice in relation to restricting occupancy by means of planning obligations.

5. CONSIDERATION OF REQUEST

- 5.1 Members will note that the dwellinghouse was recommended for refusal of planning permission (copy of reports to the Planning Committee appended), as it had not been demonstrated that a countryside location was essential for the proposed house and the site did not represent an appropriate infill opportunity. At the Planning Committee Site visit on 15 April 2010, following questions from Members, the applicant advised that he would be *willing* to accept an occupancy restriction.
- 5.2 Members subsequently granted planning permission for the house on the basis that the Legal Agreement justified a departure from the Development Plan.

- 5.3 Whilst it is noted that the applicant agreed to the occupancy restriction, no formal justification for the proposed house, as being essential to the management of the adjacent business, was submitted. As such the applicant failed to demonstrate the following as part of the application process:
- The operational need for the additional house in association with the business;
 - That no existing dwelling which might have served that need had been sold or otherwise alienated from the holding;
 - That there are no reasonable opportunities for reusing or converting redundant buildings rather than building a new dwellinghouse; and
 - That the business as a whole is capable of providing the main source of income for the occupant.
- 5.4 The system of Section 75 Legal Agreements are now classed as planning obligations. The Chief Planner wrote to all heads of planning on 4 November 2011, advising that the Scottish Government believes that occupancy restrictions are rarely appropriate and should be avoided. A number of issues were cited including difficulty obtaining a mortgage, difficulty selling a property and forcing people to move. It is noted that the use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining permission for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor or enforce.
- 5.5 Planning obligations should only be sought where they meet all of the following tests:
- Necessary to make the proposed development acceptable in planning terms;
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
 - Fairly and reasonably relate in scale and kind to the proposed development; and
 - Be reasonable in all other respects.
- 5.5 In this instance it is considered that the Legal Agreement does not meet all of the above tests. In particular, no justification or evidence was submitted with the application which demonstrated the operational need for the house, as such it cannot be argued that agreement was not necessary to make the proposed development acceptable in planning terms. It is also considered that the use of a Legal Agreement instead of a planning condition has led to financial difficulties for the applicant.
- 5.6 In conclusion, the Legal Agreement was not strictly speaking required to justify the house in planning terms, although it is noted that the applicant offered to have the occupancy restriction imposed. As such and in light of the comments from the Chief Planner, it is considered that the use of a Legal Agreement was unnecessary in this instance and should be discharged.

6. RECOMMENDATION

- 6.1 It is recommended that Committee agree to the discharge of the Section 75 Agreement on the grounds that it was not necessary to make the proposed development acceptable in planning terms.**

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Director of Development Services

Date: 6 September 2013

LIST OF BACKGROUND PAPERS

1. Planning application Ref: P/09/0849/FUL

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel, Planning Officer.

FALKIRK COUNCIL

Subject: **ERECTION OF DWELLINGHOUSE WITH INTEGRATED DOMESTIC
GARAGE AT KERSIE BANK, KERSIE TERRACE, SOUTH ALLOA FK7 7NJ
FOR MR PATERSON - P/09/0849/FUL**
Meeting: **PLANNING COMMITTEE**
Date: **24 March 2010**
Author: **DIRECTOR OF DEVELOPMENT SERVICES**

Local Members: **Councillor Steven Carleschi
Councillor Lynda Kenna
Councillor Charles MacDonald
Councillor Craig Martin**

Community Council: **Airth Parish**

Case Officer: Julie Seidel (Planning Officer) ext 4880

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application seeks detailed planning permission for the erection of a single dwellinghouse.
- 1.2 The application site is located within the countryside and currently forms part of the existing 'Patersons Garden Buildings' site. Access would be taken via the existing business access from Kersie Terrace.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application has been called in by Councillor Craig Martin.

3. SITE HISTORY

- 3.1 F/2004/0505 - extension to workshop - granted on 19 July 2004.
- 3.2 F/2004/0865 - extension to existing yard to form storage area, car park, lorry turning facility and extension to display - granted on 21 December 2004.
- 3.3 05/1013/REM - erection of fence and landscaping works - granted on 29 November 2005.
- 3.4 06/1102/FUL - extension to existing building to provide additional covered storage area - refused on 6 August 2007.
- 3.5 P/07/0167/ADV - display of non-illuminated advertisement - granted on 6 March 2007.
- 3.6 P/07/0965/FUL - extension to existing building to provide additional covered storage - granted on 20 March 2008.

4. CONSULTATIONS

- 4.1 Scottish Water has no objections.
- 4.2 Scottish Natural Heritage (SNH) has no objections. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly. An appropriate assessment is not required.
- 4.3 The Roads Development Unit request that the applicant confirms that the parking area and turning head is in compliance with the Design Guidelines and Construction Standards for Roads in the Falkirk Council Area. The Unit also advise of a condition relating to visibility at the vehicular access.
- 4.4 The Environmental Protection Unit request the undertaking of a contaminated land assessment and the submission of measures to protect the proposed dwelling from noise associated with the adjacent business.
- 4.5 The Scottish Environment Protection Agency (SEPA) has no objections. SEPA comment that the development will not be at risk from coastal flooding.

5. COMMUNITY COUNCIL

- 5.1 The Airth Parish Community Council has made no comment on the application.

6. PUBLIC REPRESENTATION

- 6.1 In the course of the application, no letters of representation were received.

7. DETAILED APPRAISAL

Under section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, the determination of planning applications for local and major developments shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Accordingly,

7a The Development Plan

Falkirk Council Structure Plan

7a.1 Policy ENV.1 'Countryside and Protected Areas' states:

- “(1) There is a general presumption against development in areas defined as countryside, unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. Where it is established that a countryside location is essential, development proposals will also be assessed in relation to Local Plan policies appropriate to specific protected areas as defined generally by Schedules ENV.1 and ENV.3.*
- (2) The policies applicable to countryside and protected areas within it, together with the detailed boundaries of each area, will be set out in Local Plans.”*

7a.2 Policy ENV.1 'Countryside and Protected Areas' seeks to protect the countryside from development unless it can be demonstrated that a countryside location is essential or is an appropriate form of agricultural diversification. It has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposal is not an appropriate form of agricultural diversification. The application fails to accord with policy ENV.1.

7a.3 Policy ENV.3 'Nature Conservation' states:

“The protection and promotion of nature conservation interests will be an important consideration in assessing all development proposals. Accordingly:

- (1) Any development likely to have a significant effect on a designated or potential European Site under the Habitats or Birds Directives (Special Areas of Conservation and Special Protection Areas) or on a Ramsar or Site of Special Scientific Interest (see Schedule Env.3), must be subject to an appropriate assessment of the implications for the sites conservation objectives. The development will only be permitted where the appropriate assessment demonstrates that:*
- (a) it will not adversely affect the integrity of the site, or;*
- (b) there are no alternative solutions and there are imperative reasons of overriding national public interest.*
- (2) Sites of local or regional importance, including Wildlife Sites and Sites of Importance for Nature Conservation, will be defined in Local Plans. The designation of Sites will be based on Scottish Wildlife Trust criteria. Development likely to have an adverse impact on any such site or feature will not be granted planning permission unless it can be clearly demonstrated that there are reasons which outweigh the need to safeguard the site or feature. Until such areas are defined in Local Plans, identified or potential sites will be afforded the same protection.*
- (3) Local Plans will identify opportunities for enhancing the natural heritage including new habitat creation, the identification of 'wildlife corridors' and measures to ensure the protection of priority local habitats and species as identified in the forthcoming Falkirk Local Biodiversity Action Plan.*

- (4) *The aims and objectives of the forthcoming Falkirk Local Biodiversity Action Plan and any associated Species Action Plans and Habitat Action Plans will be a material consideration in assessing any development proposal likely to impact on local priority species and habitats.”*

7a.4 Policy ENV.3 'Nature Conservation' seeks to protect and promote nature conservation interests. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly and as such the application accords with policy ENV.3.

7a.5 Policy ENV.4 'Coastal Planning and Flooding' states:

“The Council will apply the following general principles with regard to coastal planning and flooding issues:

- (1) *There will be a general presumption against development in the undeveloped coastal zone (as indicated generally on the key diagram), unless it is clearly demonstrated that a coastal location is essential for that development.*
- (2) *In assessing proposals for development within the coastal zone or coastal defence measures on the developed coast, particular attention will be paid to the likely implications in terms of flooding, existing and future coastal defence works, nature conservation, landscape impact, water pollution and the need to work in partnership with other agencies to promote the integrated management of the estuary and its resources.*
- (3) *The Coastal zone north of the River Carron will be a priority area for evaluating the feasibility for managed retreat and other coastal zone management measures.*
- (4) *In areas where there is a significant risk of flooding, there will be a presumption against new development which would be likely to be at risk or would increase the level of risk for existing development. Where necessary the Council will require applicants to submit supplementary information to assist in the determination of planning applications.”*

7a.6 Policy ENV.4 'Costal Planning and Flooding' seeks to prevent development in areas where there is a significant risk of flooding. The existing ground level of the application site is above the currently agreed flood levels for the River Forth and as such the proposal will not be at risk of coastal flooding and accords with the terms of policy ENV.4.

Rural Local Plan

7a.7 The application site lies outwith any urban or village limit, within the countryside under the adopted Rural Local Plan.

7a.8 Policy RURAL 1 'New Development in the Countryside' states:

“That within the countryside (as defined in paragraph 3.19), there will be a general presumption against new development except in the following circumstances:-

1. *Housing development absolutely essential to the pursuance of agriculture, forestry or other economic activity appropriate to a rural location. The occupation of new houses shall be limited to persons employed in agriculture as defined in Section 275(1) of the Town and Country Planning (Scotland) Act 1972, or to persons employed in forestry or other appropriate rural activities and the dependants of such persons.*
2. *On the Slamannan Plateau as indicated on the Policies and Proposals Map, single dwellinghouses developed in conjunction with significant tree planting schemes. Such proposals will be considered on merit with due regard to the provisions of the District Council's "Guide to Tree Planting/Housing Proposals on Slamannan Plateau".*
3. *Appropriate infill development where a clear gap site exists which would not contribute to ribbon, backland or sporadic development forms.*
4. *Industrial/business development where there is an overriding national or local need and a rural site is the only suitable location.*
5. *Development for tourism and countryside recreation purposes where the District Council is satisfied that the proposal requires a rural setting, is appropriate in terms of its type, scale and location and that it would enhance the image of the District. Proposals which accord with the District Council's Tourism Strategy are particularly welcomed.*
6. *Telecommunications development and development relating to the temporary use of land particularly for the working of minerals. Such proposals will be considered on merit, with due regard to the relevant specialised policies of the District Council.*

The scale, siting and design of those developments which are granted permission will be strictly controlled. Building designs compatible with the District Council's "Design Guide For Buildings In The Rural Areas" and sympathetic to vernacular architectural forms will be expected."

7a.9 Policy RURAL 1 'New Development in the Countryside' seeks to protect and conserve the open nature and character of the countryside whilst at the same time encouraging a level of beneficial development appropriate to the rural location. This policy has a general presumption against new development in the countryside except in limited circumstances. In this instance the relevant potential exceptions are Criteria 1 and 3. With regard to Criterion 1, it has not been demonstrated that the proposed dwellinghouse is essential to the pursuance of agriculture or any other economic activity requiring a rural location. With regard to Criterion 3, the proposed dwellinghouse would not occupy a clear gap in an existing development pattern and would arguably contribute to further sporadic, ribbon development at this countryside location. The proposed development is therefore not considered to represent appropriate infill development at this location. The proposal is contrary to policy RURAL 1.

7a.10 Policy RURAL 2 'Village Limits' states:

"That the boundary of the village areas as indicated on the Village Maps is regarded as the desirable limit to the growth of the villages at least for the period of the Local Plan. Accordingly, there will be a general presumption against proposals for development which would either extend the village areas beyond this limit or which would constitute undesirable sporadic development in the countryside."

7a.11 Policy RURAL 2 'Village Limits' seeks to prevent ribbon development and intrusion into open countryside. The proposal is not infill development as the application site is separate from the existing business buildings to the south-west of the application site. There are no buildings to the south-east of the application site and as such the proposal would contribute to sporadic, ribbon development in the countryside. The application is contrary to policy RURAL 2.

7a.12 Policy RURAL 12 'Ecological Sites' states:

"That to protect and conserve wildlife and other natural features of significance :-

- 1. There will be an overriding presumption against development which would adversely affect sites designated as a Special Protection Area, a Special Area of Conservation or a Ramsar site, Sites of Special Scientific Interest or any sites proposed by the UK Government or Scottish Natural Heritage for such designation.*
- 2. Development likely to adversely affect Listed Wildlife Sites and local or non-statutory nature reserves will not normally be permitted.*
- 3. Other sites of high nature conservation value will be safeguarded wherever possible.*
- 4. Where development is to be approved which could affect any site of high nature conservation value, appropriate measures will be required to conserve, as far as possible, the site's biological or geological interest and to provide for replacement habitats or features where damage is unavoidable,*
- 5. Appropriate site management will be encouraged wherever possible,*
- 6. Local nature reserves will be designated as appropriate."*

7a.13 Policy RURAL 12 'Ecological Sites' seeks to protect and conserve significant wildlife and other natural features of significance. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly and as such the application accords with policy RURAL 12.

7a.14 Accordingly, the proposal does not accord with the Development Plan.

7b Material Considerations

7b.1 The following matters were considered to be material in the consideration of the application:

- Falkirk Council Local Plan Finalised Draft (Deposit Version);
- Scottish Planning Policy;
- Responses to consultation; and
- Information Submitted in support of the proposal.

Falkirk Council Local Plan Finalised Draft (Deposit Version).

7b.2 The application site lies outwith any urban or village limit, within the countryside, under the emerging Local Plan, Falkirk Council Local Plan Finalised Draft (Deposit Version).

7b.3 Policy EQ19 - 'Countryside' states:

“(1) The Urban and Village Limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Land outwith these boundaries is designated as countryside and will be subject to the detailed policies for specific uses indicated in Table 3.3. Development proposals in the countryside for uses not covered by these policies will only be permitted where:

- it can be demonstrated that they require a countryside location;*
- they constitute appropriate infill development; or*
- they utilise suitable existing buildings.*

(2) In circumstances where development meets the relevant countryside policy criteria, the scale, siting and design of development will be strictly controlled to ensure that there is no adverse impact on the character of the countryside. In particular:

- the siting should be unobtrusive, making use of natural features to integrate development into the landform and avoiding skylines;*
- building design should be sympathetic to vernacular building styles and comply with the design principles contained within the Council's 'Design Guide for Buildings in the Rural Areas'; and*
- boundary and curtilage treatments should be sympathetic to the rural area, with a preference for stone walling and hedging using native species.”*

7b.4 Policy EQ19 'Countryside' of the above Local Plan sets out the detailed policies for consideration of development proposals in the countryside. In this instance the detailed policy is Policy SC3 'Housing Development in the Countryside'.

7b.5 Policy SC3 - 'Housing Development In The Countryside' states:

“Housing development in the countryside will only be permitted in the following circumstances:

(1) Housing essential to the pursuance of agriculture, horticulture or forestry, or the management of a business for which a countryside location is essential. In these instances, the applicant must demonstrate:

- The operational need for the additional house in association with the business*
- That no existing dwelling which might have served that need has been sold or otherwise alienated from the holding*
- That there are no reasonable opportunities for reusing or converting redundant buildings rather than building a new dwellinghouse*
- That the business as a whole is capable of providing the main source of income for the occupant;*

(2) Proposals involving the rehabilitation of former residential properties, or the conversion of farm and other buildings to residential use, where

- *The building, by virtue of its existing character, makes a positive contribution to the rural landscape*
- *The building is in a reasonable state of repair, still stands substantially intact and is capable of beneficial restoration, as verified by a report and certificate from a qualified structural engineer*
- *The restored or converted building is of comparable scale and character to the original building*
- *In the case of former non-residential buildings, the building is no longer required for the purpose for which it was built; or*

(3) *Appropriate infill opportunities within the envelope of an existing group of buildings, where the development would not result in ribbon, backland or sporadic development, and the proposal satisfies Policy SC8.”*

7b.6 Policy SC3 'Housing Development in the Countryside' continues the general presumption of the Development Plan against new housing development in the countryside except in limited circumstances. The relevant potential exceptions in this instance are 1 and 3. With regard to 1, it has not been demonstrated that the proposed dwellinghouse is essential for the pursuance of an activity for which a countryside location is essential. With regard to 3, the proposed dwellinghouse would not be sited within the envelope of an existing group of residential buildings and it would arguably contribute towards sporadic development at this countryside location. The proposed dwellinghouse is therefore not considered to represent an appropriate infill opportunity. The application does not accord with policy SC3.

7b.7 Policy EQ24 'Ecological Sites and Features' states:

- “(1) *Development likely to have a significant effect on Natura 2000 sites (including Special Protection Areas, Special Areas of Conservation, and Ramsar Sites) will be subject to an appropriate assessment. Where an assessment is unable to conclude that a development will not adversely affect the integrity of the site, development will only be permitted where there are no alternative solutions; and there are imperative reasons of overriding public interest, including those of a social or economic nature. These can be of a social or economic nature except where the site has been designated for a European priority habitat or species. Consent can only be issued in such cases where the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers).*..
- (2) *Development affecting Sites of Special Scientific interest will not be permitted unless it can be demonstrated that the overall objectives of the designation and the overall integrity of the designated area would not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of national importance.*
- (3) *Development affecting Wildlife Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, wildlife corridors and other nature conservation sites of regional or local importance will not be permitted unless it can be demonstrated that the overall integrity of the site will not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of substantial local importance.*
- (4) *Development likely to have an adverse affect on species which are protected under the Wildlife and Countryside Act 1981, as amended, the Habitats and Birds Directives, or the Protection of Badgers Act 1992, will not be permitted.*

- (5) *Where development is to be approved which could adversely affect any site of significant nature conservation value, the Council will require mitigating measures to conserve and secure future management of the site's natural heritage interest. Where habitat loss is unavoidable, the creation of replacement habitat to compensate for any losses will be required along with provision for its future management.*
- (6) *The Council, in partnership with landowners and other relevant interests, will seek the preparation and implementation of management plans for sites of nature conservation interest."*

7b.8 Policy EQ24 'Ecological Sites and Features', sets out the Councils policy for protecting the network of sites of ecological importance with the area. SNH comment that it is unlikely the proposal will have a significant effect on any qualifying interests of the Firth of Forth Special Protection Area (SPA) either directly or indirectly. The application accords with policy EQ24.

7b.9 Policy EQ28 'The Coastal Zone' states:

"The Council will promote an integrated approach to the management of the coastal zone, and will support the provisions of the Forth Integrated Management Strategy. Development and other land management proposals within the coastal zone will be assessed in terms of:

- (1) *Impacts on the amenity, ecology and water quality of the coastal environment (see Policies EQ 24 and EQ25);*
- (2) *The requirement to safeguard the undeveloped coast, as defined on the Proposals Map, from further development unless it is proven that the development is essential, a coastal location is essential, and no suitable sites exist within the developed coast;*
- (3) *Long-term flooding risk (see Policy ST12), and compatibility with existing coastal defence strategies, including the desirability of working with natural coastal processes where possible and the need to recognise the wider impacts where intervention is unavoidable; and*
- (4) *Appropriate promotion of the recreational potential of the coastal zone, including the development of the Forth Foreshore Path and linked coastal access networks, providing it is compatible with Policy EQ24 and the protection of coastal habitats and species."*

7b.10 Policy EQ28 'The Coastal Zone' provides a list of criteria against which proposals within the coastal zone will be considered. The application site is adjacent to the River Forth and as such is considered to be within the coastal zone. The application is unlikely to have a significant impact on the amenity, ecology and water quality of the coastal environment and as such the application does not offend the terms of policy EQ28.

7b.11 Policy ST12 - 'Flooding' states:

"In areas where there is significant risk of flooding, there will be a presumption against new development which would be likely to be at risk, would increase the level of risk for existing development or would be likely to require high levels of public expenditure on flood protection works. Applicants will be required to provide information demonstrating that any flood risks can be adequately managed both within and outwith the site."

7b.12 Policy ST12 'Flooding' seeks to prevent new development in areas which are likely to be at significant risk from flooding. The existing ground level of the application site is above the currently agreed flood levels for the River Forth and as such the proposal will not be at risk of coastal flooding and therefore accords with the terms of policy ST12.

- 7b.13 The emerging District wide Local Plan supports the policies set out in the Development Plan, Falkirk Council Structure Plan and Rural Local Plan covering this site and described earlier in this report. The proposed development is contrary to the terms of the Falkirk Council Local Plan Finalised Draft (Deposit Version).

Scottish Planning Policy

- 7b.14 Scottish Planning Policy 'A Statement of the Scottish Government's Policy on Nationally Important Land Use Planning Matters' promotes opportunities, through the Development Plan, for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding. All new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards, particularly in relation to energy efficiency. Planning authorities should apply proportionate standards to access roads to enable small developments to remain viable.
- 7b.15 Scottish Planning Policy promotes the Development Plan as the means by which to identify opportunities for housing in the countryside. In this instance the Development Plan and the Falkirk Council Local Plan Finalised Draft (Deposit Version) are considered to provide an appropriate policy framework to support a range of sustainable development opportunities for housing in the countryside. The proposed development has been found, in this report, to be contrary to the relevant policies of these plans.

Responses to Consultation

- 7b.16 The Environmental Protection Unit advise that contamination is a material consideration and should be dealt with at the application stage. The area surrounding the application site has been recorded as producing ground gas readings of methane at elevated concentrations. Other contaminative activities relating to the site and surrounding area have also been identified. The applicant was advised on 12 January 2010 that a contaminated land assessment and noise mitigation details are required. To date the required information has not been submitted. The other issues raised through consultation are noted.

Information Submitted in Support of the Proposal

- 7b.17 The applicant has submitted a letter of support for the proposal as follows:
1. The applicant's business was set up in 1993 and moved to Kersie bank in 2000. Eight people are employed on a permanent full time basis and the business has built up an excellent reputation;
 2. The business has helped with work experience from Falkirk College and Alloa Academy;
 3. The proposed house is in keeping with the surrounding area of South Alloa and will not intrude in anyone's privacy;
 4. The house is required for security reasons, to protect the machinery and stock and to enable the applicant to run a successful business; and

5. The house is required due to a change in family circumstances.

7b.18 The points raised by Mr Paterson are noted. However, these fail to demonstrate the operational need for a house in association with the business, particularly as the business has been operating at this location without the need for a dwellinghouse since 2000. The applicant was given an opportunity to provide further information to support the proposal but, to date, further supporting information has not been received.

7c Conclusion

7c.1 The proposed development, for the erection of a dwellinghouse, is contrary to the Development Plan for the reasons detailed in this report. Material considerations are therefore required to justify setting aside the terms of the Development Plan and approve the application. In this instance it is considered that the weight of material considerations, as detailed in this report, do not support a departure from the above mentioned policies in the Development Plan.

7c.2 Accordingly, the application is recommended for refusal.

8. RECOMMENDATION

8.1 It is therefore recommended that Committee refuse the planning application for the following reason(s):

- (1) The application does not accord with Policy ENV. 1 'Countryside and Protected Areas' of the approved Falkirk Council Structure Plan, Policy Rural 1 'New Development in the Countryside' and policy RURAL 2 'Village Limits' of the adopted Rural Local Plan and Policy SC3 'Housing Development in the Countryside' of the Falkirk Council Local Plan Finalised Draft (Deposit Version) as it has not been demonstrated that a countryside location is essential for the proposed dwellinghouse and the proposed dwellinghouse is not considered to represent an appropriate infill opportunity. The proposed development therefore represents unjustified development in the countryside.

Informative(s):

- (1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our reference number(s) 01 - 10 and additional information.

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Director of Development Services

Date: 16th March 2010

LIST OF BACKGROUND PAPERS

1. Falkirk Council Structure Plan.
2. Rural Local Plan.
3. Falkirk Council Local Plan Finalised Draft (Deposit Version).
4. Scottish Planning Policy

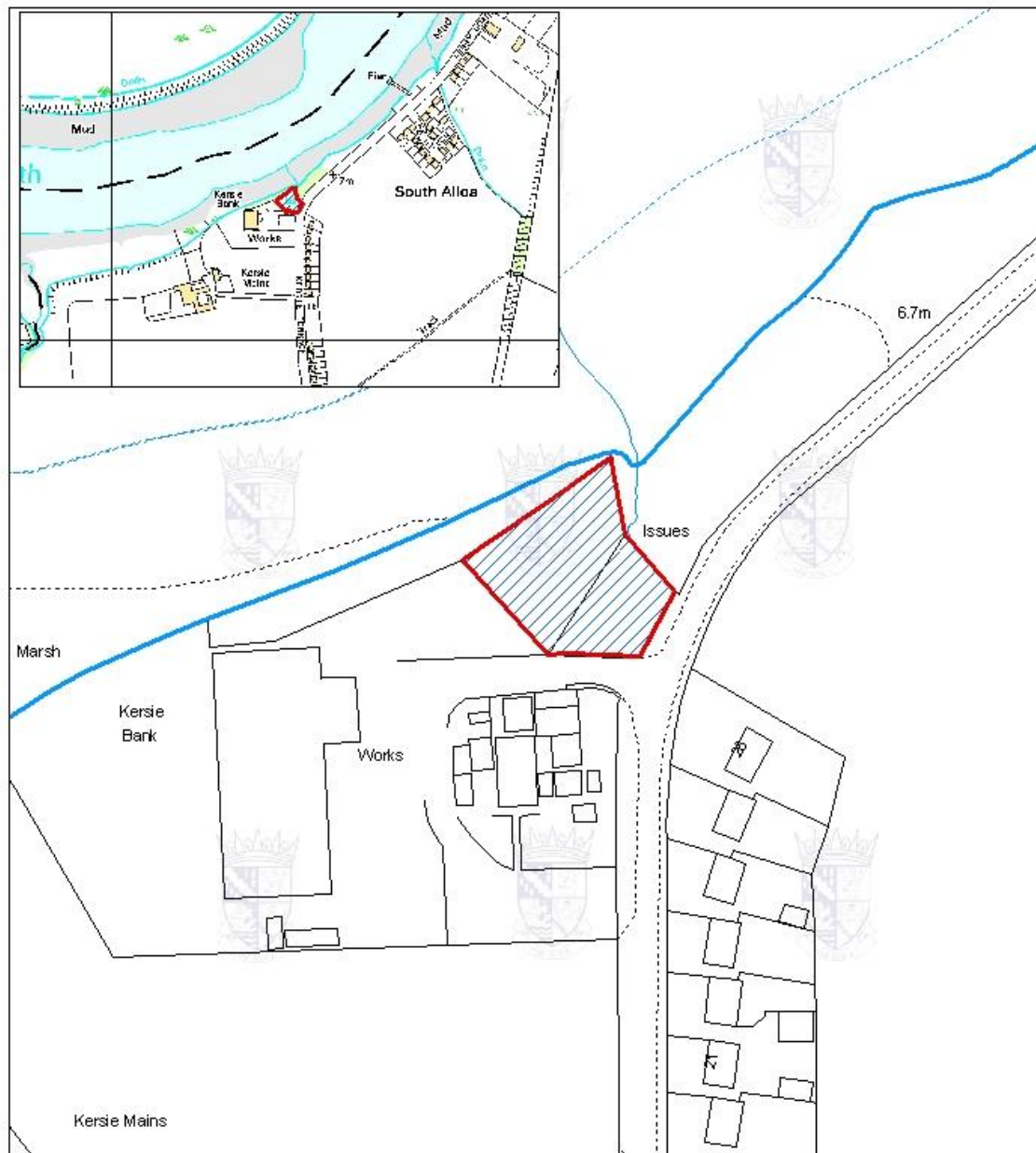
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504880 and ask for Julie Seidel (Planning Officer).

Planning Committee

Planning Application Location Plan

P/09/0849/FUL

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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Directorate for the Built Environment
Jim Mackinnon, Director and Chief Planner

T: 0131-244 0770 F: 0131-244 7174
E: jim.mackinnon@scotland.gsi.gov.uk



Heads of Planning

DELIVERING
A GAMES LEGACY FOR SCOTLAND

4 November 2011

Dear Sir/Madam

OCCUPANCY RESTRICTIONS AND RURAL HOUSING

I am writing to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

Occupancy restrictions are typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with a farming or other rural business that requires on-site residency, or to people with a local connection. Sometimes new houses are tied to particular land holdings, preventing them being sold separately. Such restrictions have been applied either through planning conditions or Section 75 planning obligations.

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move. While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.

Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

B5142669
Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk

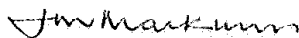


In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.

Where sites are considered unsuitable for new housing, more acceptable locations will often exist elsewhere on the same landholding or nearby, and planning authorities can assist applicants by advising where these are.

Yours faithfully



JAMES G MACKINNON