

FALKIRK COUNCIL

Subject: UNDETERMINED “LEGACY” APPLICATIONS FOR
PLANNING PERMISSION FOR HOUSING
Meeting: PLANNING COMMITTEE
Date: 25 February 2015
Author: DIRECTOR OF DEVELOPMENT SERVICES
Case Officer: John Angell, Head of Planning & Transportation (ext 4951)

1. BACKGROUND AND REASON FOR COMMITTEE CONSIDERATION

- 1.1 Limited or no progress is being made with some planning applications for housing which the Planning Committee (or the previous Regulatory Committee, or officers acting under delegated powers) have decided some time ago as being minded to grant subject to legal agreements. It is worth noting that an application is not *determined* when the Committee or officers under delegated powers decide that they are minded to grant the permission subject to a legal agreement but when the decision letter is issued, following the signing of the legal agreement. This can sometimes be much later. This report considers what may be done about such older applications (known as “legacy” applications by the Scottish Government) and some other applications where insufficient progress has been made to allow a determination.
- 1.2 In view of the recession, officers have been reluctant to recommend refusal (for lack of progress) of otherwise acceptable applications which the planning authority is minded to grant, but for which the applicant is awaiting a suitable opportunity in the market before signing an agreement. Such a refusal would require the applicant to start the application process again and delay the project. However, a number of circumstances combine to change this context:
- a) some of the applications are now old, dating as far back as 2004;
 - b) while agreements to pay contributions are normally index linked, there can be variable inflation rates over time between different types of work to be undertaken;
 - c) the elements to be mitigated by contributions can themselves change over time e.g. school rolls;
 - d) performance of planning authorities is now measured not by the proportion of applications determined within a certain timescale (with no distinction being made between the target being missed by a day or by several years) to one where the decision making process is recorded by the actual time taken; and
 - e) the Scottish Government has increased the fees for planning applications subject to possible reductions at a later date if a Council does not maintain an appropriate timescale for decisions. The time taken is calculated irrespective of the reason for the delays.

- 1.3 In a letter to local authority Heads of Planning dated 4 March 2013 the Chief Planner for the Scottish Government has commented in respect of legacy applications:

I would like to take this opportunity to remind you of the importance of removing legacy cases from the system either through determinations or, where appropriate, through these cases being withdrawn. Some of these applications have been in the system for many years with no active management by parties and have an adverse impact on performance and reputation. I would suggest that a concerted effort should be made to address the issue of these historic applications. This will enable planning performance to be more objectively assessed against the requirements of the present planning process.

- 1.4 While this Council has actively managed its older cases and reduced their number considerably, circumstances have now changed and it is recommended that a more robust approach is adopted.

2. THE APPLICATIONS

- 2.1 The Appendix to this report lists the undetermined legacy applications for permission for housing which have been validated for more than a year and have not been considered by the Planning Committee recently. Some of these cases are making sufficient progress that no immediate decision to refuse them is considered to be justified. However, there are others where there is considered to be little or no prospect of movement. It is recommended that one of these applications be refused immediately for the reasons given in the Appendix and that some others are considered for possible refusal if they have not been determined or withdrawn by the next meeting of the Committee in March (or by other dates mentioned in the Appendix).
- 2.2 In order to avoid such delays in future as much as possible, it is my general intention that, in respect of any application where the legal agreement has not been signed within six months of the minded to grant decision being notified to the applicant, a recommendation to refuse will be made. This is often the practice of Reporters and, like them, we will consider exceptions for large and/or complex applications or where there are technical issues such as with title deeds.
- 2.4 In view of the delays which can occur, sometimes for legitimate reasons, current practice is to apply the index linking of contributions from the date of the minded to grant decision (rather than from the signing of the legal agreement). The Committee is asked to endorse this approach.
- 2.5 While the majority of applications considered in this report have been delayed *after* a minded to grant decision, there are other situations where there is a delay between the applicant submitting an application and the supply of the necessary information to allow it to be determined. Examples for larger applications include flood risk assessments, transport assessments and ecological information. It is not normally possible to refuse to validate such applications at the start of the process and therefore the validated application is normally delayed until the information is supplied. Again, officers normally try to accommodate applicants but there is an impact on the Council's performance.

- 2.6 The alternative is, after a reasonable period of time has been allowed for the applicant to provide the relevant information, to refuse the application for lack of this. In order to assist applicants, this has not been done often during the recession but, with increasing Scottish Government emphasis on performance (and the related threat to fee income), it is now considered appropriate to be more robust and consider refusing relevant applications earlier. This would, again, be subject to each case still being considered on its own merits.
- 2.7 A considerable amount of work has already been done over the last two years to determine older applications and this has adversely affected the performance figures to some degree, because the average time taken is recorded from determination. Determination of the applications listed in the Appendix will have a short term impact. However, this would allow for improvement thereafter.

3. CONCLUSION

- 3.1 In conclusion, the recommendations below would clear out some applications on which there has been little or no progress, would streamline the processes in future, and help to ensure that the Council's performance record and fee income are not endangered (after the initial impact on performance targets).

4. RECOMMENDATIONS

4.1 It is recommended:

- a) that Members note the terms of this report;
- b) that planning application P/07/0518/FUL by Konon Ltd for the erection of 95 dwellinghouses and flatted dwellings and associated landscaping and road and drainage infrastructure at land to the north west of Cockburn Works, Gowan Avenue, Falkirk be refused planning permission because the applicant has failed to conclude a S75 Legal Agreement required by Falkirk Council to secure financial contributions to education capacity and enable off site improvements to the access road to mitigate development impacts on education capacity and transportation respectively;
- c) that some other applications on which little progress is being made (as noted in the Appendix) be reported to a future meeting of the Planning Committee if they are still undetermined or not withdrawn by the dates mentioned in the Appendix;
- d) that the current practice of index linking developer contributions from the date of the minded to grant decision, unless otherwise agreed, be confirmed; and

- e) that the Committee note that there may be a temporary adverse impact on performance figures arising from the previous and proposed determinations of older applications.

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Director of Development Services

Date: 16 February 2015

LIST OF BACKGROUND PAPERS

Chief Planner, Scottish Government - letter of 4 March 2013 to local authority Heads of Planning.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504951 and ask for John Angell.

Appendix

Undetermined legacy planning applications for housing

Case number	Date Valid	DC STAT	APPLEV	APPNAME	Site Address	Proposal
<u>F/2004/0178</u>	01/03/2004	PDE	LOC	County Homes	Land at Airth Castle Airth Falkirk	Residential Development, Vehicular Access, Open Space and Landscaping

Comment: there were difficulties in clarifying land ownership, followed by delays in drafting an accurate plan to accompany the legal agreement. The applicant has been advised a number of times about the need for progress and of referral to Committee, the last being on 5 February 2015. At the time of writing no response has been received. Recommendation: consider possible refusal of permission if not determined by 24 June 2015.

<u>06/0377/LBC</u>	21/04/2006	PCO		Mrs Jeanette Sutherland	Dunmore Park Falkirk FK2 8LP	Restoration of Dunmore Park House to Form 15 Dwellings and Conversion of Stables to Form 10 Dwellings
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Comment: this is a listed building application related to the planning application listed next. The applicant has been advised of referral to Committee. See separate report to Committee

<u>06/1099/FUL</u>	07/11/2006	PDE	MAJ	Mrs Jeanette Sutherland	Dunmore Park Falkirk FK2 8LP	Restoration of Dunmore Park House to Form 15 Dwellings, Conversion of Stables to Form 10 Dwellings, Erection of 45 Dwellinghouse. Associated Landscaping Works, Amendments to A905 and Site Access Road
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Comment: there has been very limited progress. The applicant has been advised of referral to Committee. See separate report to Committee

Case number	Date Valid	DC STAT	APPLEV	APPNAME	Site Address	Proposal
<u>P/07/0518/FUL</u>	28/06/2007	PDE	MAJ	Konon Ltd	Land to the North West of Gowan Avenue Falkirk	Erection of 95 Dwellinghouses and Flatted Dwellings and Associated Landscaping and Road and Drainage Infrastructure

Comment: there has been no progress on this for some time. The agent has been advised that unless withdrawn the application would be referred back to Committee the last time being on 11 February 2015 with no response at the time of writing. Recommendation: refuse permission because, despite requests, documents which would allow conclusion of the S75 Legal Agreement required by Falkirk Council have not been provided.

<u>P/07/0635/FUL</u>	18/07/2007	PDE	MAJ	JAD Homes Ltd	Land North of 58 Bridge Street Bridge Street Bonnybridge	Mixed Development Comprising 98 Flats Over 4-6 Storeys, 2 Integrated Small Commercial Units, Replacement Chapel, Associated Infrastructure and Public Space
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Comment: flooding engineering issues are still being investigated. Recommendation: continue consideration for the time being.

Case number	Date Valid	DC STAT	APPLEV	APPNAME	Site Address	Proposal
<u>P/09/0508/OUT</u>	24/07/2009	PDE	MAJ	MacTaggart Mickel	& Land To The North Of Watson Place Glasgow Road Longcroft	Development of Land for up to 550 Houses and a Commercial Block, and Associated Infrastructure including Access Junction Works, New Roads and Paths, Open Space, Woodland Planting, Surface Water Drainage Ponds and Play Facilities

Comment: Conclusion of the Section 75 and determination of this application is slowly progressing. The applicant advised in April 2014 that they are keen to conclude a Section 75. In August 2014 they met with officers but have still to action matters agreed. On 23 December 2014 the agent emailed that he was awaiting further instruction from his client. On 6 February 2015 an email was sent to the agent to advise that consideration was being given to reporting the application to the Planning Committee at their meeting on 25 February 2015 with a recommendation to consider possible refusal of permission if the Section 75 is not concluded by September 2015. The agent has not replied to date. Recommendation: consider possible refusal of permission if not determined by September 2015.

<u>P/10/0188/PPP</u>	31/03/2010	PDE	MAJ	Morston Assets/ MWL Maxine Dury	Manuel Works Linlithgow EH49 6LH	Residential and Mixed Use Phased Development for the Whitecross SIRR, Including up to 1500 Residential Units, Community and Enterprise Facilities, Transport and Environmental Infrastructure and Employment Space
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Comment: the s.75 agreement awaits signature by one further landowner. The applicant has been advised of referral to Committee. See separate report to Committee.

Case number	Date Valid	DC STAT	APPLEV	APPNAME	Site Address	Proposal
<u>P/10/0360/PPP</u>	02/06/2010	PDE	MAJ	I & H Brown Ltd	Land To The North Of Bankview Nursing Home Kilsyth Road Banknock	Development of up to 550 Houses, a Neighbourhood Centre Including Retail and Community Uses, Access Junctions, New Access Roads, Provision of a Nature Conservation Area, Associated Roads and Infrastructure

Comment: applicant is progressing various drainage and land acquisition issues. Recommendation: allow time for this to progress.

<u>P/10/0512/PPP</u>	13/07/2010	PDE	MAJ	British Waterways (Scotland) and Falkirk Council	Land To The North Of Tamfourhill Road Tamfourhill Road Falkirk	Development of Land for Residential, Retail, Leisure and Boating Purposes
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Comment: now being progressed. Education contribution being revised. Recommendation: continue consideration for the time being.

<u>P/11/0142/PPP</u>	11/03/2011	PCO	MAJ	Stewart Homes	Milnquarter Farm Roman Road Bonnybridge FK4 2DE	Development of Land for Residential Purposes
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Comment: this application is related to another application which is minded to grant subject to referral to Ministers. Recommendation: allow time for this to progress.

Case number	Date Valid	DC STAT	APPLEV	APPNAME	Site Address	Proposal
P/12/0314/PPP	01/06/2012	PDE	LOC	Ms Jackie Kemp	Land To The West Of Schiehallion Falkirk	Development of Land for Residential Use

Comment: applicant is in liquidation and her representatives have been advised that unless withdrawn the application will be referred to Committee. The last communication to the applicant was on 5 February 2015, to which no formal response had been received at the time of writing. Recommendation: consider possible refusal of permission if not determined by 24 March 2015.

<u>P/12/0543/PPP</u>	13/09/2012	PCO	LOC	Mr Mark Agnew	Castings Community Sports & Social Club Etna Road Falkirk FK2 9EG	Demolition of Existing Buildings and Development of Land for Residential Purposes
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Comment: Some progress has been made of late and the applicant has been advised of referral to Committee, the last time being on 12 February 2015. Recommendation: consider possible refusal of permission if not determined by 24 June 2015.