

FALKIRK COUNCIL

Subject: CHANGE OF USE OF LAND TO FORM EXTENSION TO GARDEN GROUND, ERECTION OF OUTBUILDINGS AND FENCING (RETROSPECTIVE) AT CULLOCH VIEW, MOSSCASTLE ROAD, SLAMANNAN, FALKIRK, FK1 3EL, FOR MRS ROSALIND FERRIER-SMITH – P/15/0101/FUL

Meeting: PLANNING COMMITTEE

Date: 25 June 2015

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Upper Braes

Councillor Gordon Hughes
Councillor John McLuckie
Councillor Rosie Murray

Community Council: No Community Council

Case Officer: Katherine Chorley (Planning Enforcement Officer), Ext. 4704

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application site consists of an area of land between Culloch View and Burnside Cottage on Mosscastle Road, Slamannan. The application site is set back from the road owing to a Scottish Water facility and associated parking area on the frontage. The land runs adjacent to the boundary with the original house and extends at half width down to the Culloch Burn. Historical maps of the site do not show a clear use, although the land may previously have been associated with surrounding agricultural land.
- 1.2 The applicant seeks retrospective planning permission for the change of use of the land to form private garden ground. The plans also include the retention of four garden buildings and the erection of fencing around the site. Much of the fencing had already been constructed at the time the application was submitted, the remaining fencing running along the front of the site was repositioned during consideration of the application. The application description has therefore been amended to confirm that the works are retrospective.
- 1.3 Concerns have been raised through the neighbour notification process in relation to land raising at the site. It is acknowledged that some changes in levels have occurred. The site had previously been used for the storage of building materials and waste associated with the development of the dwelling house, Culloch View. This material was removed and the land cleared of weeds. This has been replaced with soil to the rear and gravel along the frontage. Evidence provided during the enforcement investigation has not shown a significant increase in levels, while there have been changes these would not constitute development and thus do not require the benefit of formal planning permission.

- 1.4 A variety of infrastructure passes through the site and the applicants have been made aware of this. Scottish Water have advised that they have no objection to the scheme and have recommended that the applicants contact them directly.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application has been called to the Planning Committee at the request of Councillor Gordon Hughes.

3. SITE HISTORY

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|-----|---------------|-------------------|------------|--------------------------------------|
| 3.1 | P/08/0629/OUT | Outline - Refused | 11.12.2008 | Erection of Dwellinghouse. |
| 3.2 | F/2005/0078 | Detail - Granted | 07.04.2006 | Erection of Dwellinghouse and Garage |
| 3.3 | F/90/0830 | Detail - Granted | 26.09.1990 | Erection of Pumping Station |

4. CONSULTATIONS

- 4.1 The Roads Development Unit advised that the proposal is considered acceptable from a road safety point of view and no conditions are requested in this respect. This application is in an area which is very sensitive to flooding. Historically overland flow from surface water ponding from both Mosscastle Road and the agricultural land to the south of this area discharges through this land to the Culloch Burn. Therefore any changes in the layout of the garden area must be carefully considered as there is a risk that any alterations in particular to ground levels and through the introduction of, for example, outbuildings and upstands has the potential to increase neighbouring flood risk by altering these overland flow routes. This is a separate issue from potential risk from the watercourse to the rear of the property. There should be no ground raising or the importing of soil which results in a net increase in ground levels, without further consideration by the Council. The Unit advises against moving fencing towards the road as this could increase flood risk during a pluvial event to neighbouring property, any new fencing should be of open construction so as not to inhibit any overland flow.
- 4.2 The Environmental Protection Unit recommend informatives on contamination and noise during construction. As development is retrospective these would not be necessary, should planning permission be granted.
- 4.3 The site is located in a coal referral area, however the Coal Authority raise no objections to the application, due to the particular circumstances of the case - mainly a change of use of land together with the placing of outbuildings and fencing on paved/gravel surfaces. The Coal Authority recommend an informative, should planning permission be granted.

5. PUBLIC REPRESENTATION

5.1 In the course of the application, 3 contributors submitted letters to the Council. The salient issues are summarised below.

- Concerns over land raising;
- No flood risk assessment has been provided;
- Proposal does not accord with policy Coastal Planning and Flooding, European Flood Directive 2009. Scottish Planning Policy SSP7 or Local Plan Flood Policies;
- Environmental Impact Assessment may be required;
- Concerns over potential for increased flooding;
- Impact on character of area from flooding;
- Impact on functional flood plain;
- Impact on landscape and AGLV (Area of Great Landscape Value);
- Detrimental to public amenity;
- Detrimental to local residents enjoyment of their properties;
- Impact on road safety, convenience of road users and access for emergency services;
- Risk to public and animal health from flood water contaminated with sewerage;
- Site is described in Councils paperwork as a route back to the Culloch Burn for flood water and is also described as the lowest point at Mosscastle Road and acts as a collecting point for flood water and a route for flood water to reach the burn. Reference is made to P/08/0629/OUT which was refused planning permission;
- Drainage infrastructure passes through the site which requires access for maintenance;
- Proper neighbour notification has not been carried out;
- Decision on P/08/0629/OUT shows that site is unsuitable for development;
- Engineering works have been carried out without consent from SEPA;
- Request that following additional information be considered;
- Falkirk Council Development Services Culloch Burn Slamannan Flood Study Report and associated topographical study;
- Fairhust Document submitted at Local Plan inquiry 2009;
- Slamannan Flood Files DVD 2000-2013;
- Falkirk Council biennial flood reports 1999-2007;

5.2 It is noted that two objections may be withdrawn if a suitable route for flood water of sufficient size can be agreed within the site.

6. 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 There are no strategic issues.

Falkirk Council Local Plan

7a.2 Policy EQ1 'Sustainable Design Principles' states:

"New development will be required to achieve a high standard of design quality and compliance with principles of sustainable development. Proposals should accord with the following principles:

- (1) Natural and Built Heritage. Existing natural, built or cultural heritage features should be identified, conserved, enhanced and integrated sensitively into development;*
- (2) Urban and Landscape Design. The scale, siting and design of new development should respond positively and sympathetically to the site's surroundings, and create buildings and spaces that are attractive, safe and easy to use;*
- (3) Accessibility. Development should be designed to encourage the use of sustainable, integrated transport and to provide safe access for all users;*
- (4) Resource Use. Development should promote the efficient use of natural resources, and take account of life cycle costs, in terms of energy efficient design, choice and sourcing of materials, reduction of waste, recycling of materials and exploitation of renewable energy;*
- (5) Infrastructure. Infrastructure needs and their impacts should be identified and addressed by sustainable mitigation techniques, with particular regard to drainage, surface water management, flooding, traffic, road safety and noise; and*
- (6) Maintenance. Proposals should demonstrate that provision will be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure."*

7a.3 Policy EQ1 of the Local Plan requires that new development incorporates a high standard of design quality and compliance with the principles of sustainable development. There are no existing natural, built or cultural heritage features within the site. The buildings and fencing are proportionate in size and are in keeping with the intended use of the land as private garden ground. The development would have no impact on accessibility, resource use and does not contain any areas of publicly accessible land requiring maintenance. Issues associated with infrastructure are addressed later in the report. The proposal is considered to comply with policy EQ1 of the Local Plan.

7a.4 Policy SC12 - 'Urban Open Space' states:

"The Council will protect all urban open space, including parks, playing fields and other areas of urban greenspace, which is considered to have landscape, amenity, recreational or ecological value, with particular reference to the areas identified on the Proposals Map. Development involving the loss of urban open space will only be permitted where:

- (1) There is no adverse effect on the character and appearance of the area, particularly through the loss of amenity space planned as an integral part of a development;*
- (2) In the case of recreational open space, it can be clearly demonstrated from a settlement and neighbourhood audit that the area is surplus to recreational requirements, and that its release for development will be compensated for by qualitative improvements to other open space or recreational facilities;*

- (3) *The area is not of significant ecological value, having regard to Policies EQ24 and EQ25; and*
- (4) *Connectivity within the overall open space network is not threatened and public access routes in or adjacent to the open space will be safeguarded."*

7a.5 The application site, which is within the Slamannan village limit, does not constitute publicly accessible open space and was not formed as an integral part of a development. It is an area of open space located between two dwellinghouses and its loss would not have a detrimental impact on the character and appearance of the area. The application site does not form recreational open space and is not contained within the open space audit and strategy. The site is also not noted for having significant ecological value. There are no public access routes in or adjacent to the open space and as such connectivity would not be impacted by the change of use. The loss of open space is acceptable in this case and the development complies with policy SC12.

7a.6 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."

7a.7 In areas where there is a significant risk of flooding, policy ST12 advises that 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. The application is in an area which is very sensitive to flooding, historically overland flow from surface water ponding from both Mosscastle Road and the agricultural land to the South of this area flows through this land to the Culloch Burn at the rear. Changes to the layout of the garden area need to be carefully considered as there is a risk that alterations to ground levels have the potential to increase neighbouring flood risk by altering overland flow routes. It has been explained previously that the land has been raised slightly, however this is not something within the control of the planning authority as it did not require planning permission.

7a.8 The Scottish Environment Protection Agency (SEPA) have been consulted in relation to the potential flood risk associated with the site. Their hydrologists have confirmed they have no objections to the proposal and do not consider that the change of use would have a significant effect on the storage capacity of the functional floodplain. Furthermore applications for the erection of garden sheds are generally outside the scope of Scottish Planning Policy provided they do not have a detrimental effect on the functional floodplain or local flood risk. Given the above comments, a flood risk assessment was not considered necessary in this case.

7a.9 The Roads Development Unit have recommended that there should be no additional ground raising or importing of soil which results in a net increase in ground levels. They have also advised against moving the fencing closer to the road as this could increase flood risk during a pluvial event. However, it is recommended that fencing should be of open construction so as not to inhibit overland flow. The fencing has already been relocated closer to the road and is of an open construction. There are no new buildings proposed as part of the application, other than those already on site. Owing to the sensitive nature of the site it is recommended that permitted development rights be removed for additional fencing, extensions, garden buildings

and engineering operations. This would allow the Council to control future development on the site and ensure future changes do not have an impact on flooding in the local area.

7b Material Considerations

- 7b.1 The material consideration to be assessed are the Falkirk Council Local Development Plan, Flooding and Sustainable Urban Drainage Systems Supplementary Planning Guidance and consideration of the site in relation to coal mining legacy.
- 7b.2 The Proposed Falkirk Local Development Plan (FLDP) was approved by the Council for consultation in March 2013, with the period for representations running from April to June 2013. It is expected to be adopted in 2015, at which point it will replace the current Structure Plan and Local Plan. It provides the most up to date indication of Falkirk Council's views in relation to Development Plan Policy and constitutes a material consideration in the determination of planning applications.
- 7b.3 The following policies of the Falkirk Local Development Plan are relevant to the determination of this application.
- 7b.4 Policy INF03 – ‘Protection of Open Space’ states:

“The Council will protect all urban open space, including parks, playing fields and other areas of urban greenspace, which is considered to have landscape, amenity, recreational or ecological value. Accordingly:

1. *Development involving the loss of urban open space will only be permitted where:*
 - *There is no adverse effect on the character or appearance of the area, particularly through the loss of amenity space planned as an integral part of a development;*
 - *There will be no significant adverse effect on the overall recreational amenity of the local area, taking account of the Council's open space standards (defined within the Open Space Strategy) and its release for development will be compensated for by qualitative improvements to other parts of the green network in the local area;*
 - *The area is not of significant ecological value (this can include areas that are not specifically designated for ecological features, but which are important in supporting the qualifying features of Natura 2000 sites); and*
 - *Connectivity within, and functionality of, the wider green network is not threatened and public access routes in or adjacent to the open space will be safeguarded.*
2. *Where development would also involve the loss of playing fields or sports pitches, it must additionally be demonstrated that:*
 - *The proposed development is ancillary to the principal use of the site as a playing field; or*
 - *The proposed development involves a minor part of the playing field which would not affect its use and potential for sport and training; or*
 - *The playing field which would be lost would be replaced by a new playing field of comparable or greater benefit for sport and in a location which is convenient for its users, or by the upgrading of an existing playing field to provide a better quality facility either within the same site or at another location which is convenient for its users and which maintains or improves the overall playing capacity in the area; or*
 - *The Council's pitch strategy has shown that there is a clear excess of sports pitches to meet current and anticipated future demand in the area, and that the site could be developed without detriment to the overall quality of provision.”*

7b.5 INF03, protection of open space, reads in a similar way to policy SC12 although with an additional section on the loss of playing fields and sports pitches. The development is considered to comply with both the existing and emerging policies.

7b.6 Policy D02 – ‘Sustainable Design Principles’ states:

“New development will be required to achieve a high standard of design quality and compliance with principles of sustainable development. Proposals should accord with the following principles:

- 1. Natural and Built Heritage. Existing natural, built or cultural heritage features should be identified, conserved, enhanced and integrated sensitively into development;*
- 2. Urban and Landscape Design. The scale, siting and design of new development should respond positively and sympathetically to the site’s surroundings, and create buildings and spaces that are attractive, distinctive, welcoming, adaptable, safe and easy to use;*
- 3. Accessibility. Development should be designed to encourage the use of sustainable, integrated transport and to provide safe access for all users;*
- 4. Climate Change & Resource Use. Development should promote the efficient use of natural resources and the minimisation of greenhouse gas emissions through energy efficient design, choice and sourcing of materials, reduction of waste, recycling of materials and exploitation of renewable energy;*
- 5. Infrastructure. Infrastructure needs and their impacts should be identified and addressed by sustainable mitigation techniques, with particular regard to drainage, surface water management, flooding, traffic, road safety and noise; and*
- 6. Maintenance. Proposals should demonstrate that provision will be made for the satisfactory future management and maintenance of all public areas, landscaping and infrastructure.*

Masterplans will be required for significant development proposals requiring a co-ordinated approach to design and infrastructure, and should demonstrate how the above principles have been incorporated into the proposals. Masterplans should be informed by a development framework or brief where relevant.

7b.7 Policy D02 of the emerging Local Development Plan reiterates the wording of policy EQ01 in the Local Plan and the development is considered to comply with this.

7b.8 Policy RW06 – ‘Flooding’ states:

- “1. Development on the functional flood plain should be avoided. In areas where there is significant risk of flooding from any source (including flooding up to and including 0.5% (1 in 200 year) flood event) development proposals will be assessed against advice and the Flood Risk Framework in the SPP. There will be a presumption against new development which would:*
 - be likely to be at risk of flooding;*
 - increase the level of risk of flooding for existing development; or*
 - result in a use more vulnerable to flooding or with a larger footprint than any previous development on site.*
- 2. Development proposals on land identified as being at risk from flooding, or where other available information suggests there may be a risk, will be required to provide a flood risk assessment that demonstrates that:*
 - any flood risks can be adequately managed both within and outwith the site;*

- *an adequate allowance for climate change and freeboard has been built into the flood risk assessment;*
- *access and egress can be provided to the site which is free of flood risk; and*
- *water resistant materials and forms of construction will be utilised where appropriate.*

3. *Where suitably robust evidence suggests that land contributes or has the potential to contribute towards sustainable flood management measures development will only be permitted where the land's sustainable flood management function can be safeguarded.*

7b.9 In relation to policy RW06 on Flooding, SEPA have advised that they have no objection to the development and as such the proposal is considered to comply with this policy.

7b.10 Accordingly, the proposal accords with the emerging Local Development Plan.

7b.11 The proposed development is considered to comply with the guidance set out in the Flooding and Sustainable Urban Drainage Systems SPG.

7b.12 The application site falls within or is partially within the Development High Risk Area as defined by the Coal Authority. It is recognised that flexibility and discretion are necessary parts of the planning system and as such there may be exemptions to the requirement for a desk based Coal Mining Risk Assessment within the Development High Risk Area. The Coal Authority have advised that no risk assessment is required in this case, due to the particular circumstances of the site.

7c Conclusion

7c.1 The proposed development is considered to comply with the relevant policies in the Local Plan and emerging Local Development Plan. A condition is proposed to restrict permitted development rights and this would ensure that any further development on the site can be controlled and checked for its impact on flooding in the local area. There are no other material considerations which would warrant refusal of planning permission in this case.

8. RECOMMENDATION

8.1 It is therefore recommended that the Planning Committee grant planning permission subject to the following condition:-

- 1) **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking, re-enacting or modifying that Order)(with or without modification) no development shall be carried out on the site beyond that hereby granted planning permission without the prior written approval of the Local Planning Authority;**

Reason(s)

- 1) To allow the Local Planning Authority to control any further development in relation to visual amenity and any potential increase in flood risk as a result of the development.

Informative(s)

- 1) For the avoidance of doubt, the plan(s) to which this decision refer(s) bear our online reference number(s) 01A, 02A and 03.
- 2) Scottish Water have requested that the applicant contact them directly regarding existing infrastructure under the site. The applicants have been made aware of this, however a further copy of the information can be provided on request.

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pp Director of Development Services

Date: 15 June 2015

LIST OF BACKGROUND PAPERS

1. Falkirk Council Local Plan
2. Falkirk Council Local Development Plan – Proposed Plan
3. Falkirk Council Supplementary Guidance
4. Letter of objection received from Mr James Robertson, Craigavon, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 21 April 2015.
5. Letter of objection received from Mr Adam Mair, Burnside Cottage, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 14 April 2015.
6. Letter of objection received from Mr William Robertson, Arluchairt, Mosscastle Road, Slamannan, Falkirk, FK1 3EL on 22 April 2015.

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504704 and ask for Katherine Chorley, Planning Enforcement Officer.

Planning Committee

Planning Application Location Plan

P/15/0101/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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